

ORIGINAL

IN THE SUPREME COURT OF OHIO

Case No. 2014-0636

Sam Jodka,)
)
)
)
Plaintiff-Appellee/Cross-Appellant,)
)
v.)
)
City of Cleveland, et al.,)
)
Defendants-Appellants/Cross Appellees.)

On appeal from the Cuyahoga
County Court of Appeals,
Eighth Appellate District
Case No. CA-13-099951

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Appellee/Cross-Appellant Sam Jodka's S.Ct.Prac.R. 7.05 combined memorandum in support of jurisdiction of his cross-appeal & Memorandum in response to jurisdiction of the separate appeals filed by Appellants/Cross-Appellees (1) The City of Cleveland and (2) Affiliated Computer Services, Inc., Boulder Acquisition Corp., and Xerox Corporation

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

John T. Murray (0008793)
MURRAY & MURRAY CO., L.P.A.
111 East Shoreline Drive
Sandusky, Ohio 44870-2517
Telephone: (419) 624-3125
iotm@murrayandmurray.com

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

Chris Bator (0038550)
Gregory V. Mersol (0030838)
Baker Hostetler LLP
3200 National City Center
1900 East Ninth Street
Cleveland, Ohio 44114-3485
216.621.0200
Fax: 216.696.0740
gmersol@bakerlaw.com
cbator@bakerlaw.com

Counsel for Appellee/Cross-Appellant
Bradley L. Walker

Counsel for Appellants/Cross-Appellees
Affiliated Computer Services, et al.

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EXPLANATION AS TO WHY THIS CASE IS OF PUBLIC OR GREAT GENERAL INTEREST.

This case is one of public or great general interest. But not because of the reasons stated in the jurisdictional memoranda filed by Cleveland and Xerox.¹ This case is significant because—according to the majority below—an ordinance may be used first as a sword to collect monies unconstitutionally and then as a shield to *keep* the monies unconstitutionally collected.

It's true. The split-decision below basically encourages municipalities and private corporations to hold and collect monies from everyday citizens in a manner that unconstitutionally diminishes the jurisdiction of Ohio's municipal-court system. As the entire court below acknowledged, a municipality may *not* impair or restrict a court's jurisdiction. Accordingly, the court openly held that Cleveland's traffic-camera is unconstitutional because it illegally diminishes the jurisdiction of the Cleveland municipal court. But after holding this, the court did absolutely nothing about it.

This is bad. It makes as much sense as telling a pickpocket that he shouldn't steal, but can keep whatever he pilfers even if caught red handed. Settled constitutional law will not be obeyed if it can be broken for profit—including corporate profit—without consequence. Indeed, even after the court below unanimously found Cleveland's traffic-camera ordinance to be violative of the constitution of this state, Cleveland issued a *press release* stating that it would keep on enforcing its unconstitutional ordinance anyway.² It's frustrating that the city is so brazen in publicly flouting this state's constitution. But by the same token, its conduct is arguably rational

¹ The private entities in this case are collectively referred to as “Xerox” in this brief.

² <http://portal.cleveland-oh.gov/PRPortlet/document/download/2-12-14%20Automated%20Enforcement%20Program%20Decision.pdf?id=15608>

under the decision below: the majority practically ensured that Cleveland and Xerox will only *profit* together by violating the constitution. That may not be what the majority intended, but that is what it created.

Out of nowhere, two judges spontaneously held that Jodka lacks standing to present an unjust-enrichment claim seeking restitution of the monies that Cleveland and Xerox collected *from Jodka* under the unconstitutional ordinance. The logic is alarming: because Jodka did not capitulate to a non-judicial officer's purported "jurisdiction"—jurisdiction that the entire court openly agreed to be illegal under the Ohio constitution—Jodka is said to lack standing.

This rationale is extendable well beyond traffic-camera ordinances and facilitates constitutional *disobedience*. What other unconstitutional requirements may Cleveland impose before a person is said to have standing? It has no end.

Under the majority's standing analysis, if an Ohioan does not capitulate to the illegal jurisdiction of a "hearing officer" as part of an unconstitutional non-judicial process, but instead pays a financial penalty to a city and private company—a payment that avoids extrajudicial (1) credit-score damage, (2) potential impoundment, and (3) guaranteed increased financial sanctions for nonpayment—then the city and company get to *keep* the monies held and collected under the very ordinance that the entire court found unconstitutional. According to the majority, no individual even has standing to present an unjust-enrichment claim: Ohioans must first surrender to the hearing officer's openly illegal jurisdiction before correcting the resultant unjust enrichment that flows from holding and collecting monies under an ordinance that systematically violates the Ohio constitution.

This does not make sense: Ohioans should never have to submit to unconstitutional jurisdiction. Xerox and Cleveland must agree because *they never argued that Jodka lacked*

standing. Their advocates did not “miss” a standing defense—these talented lawyers know that Jodka has standing. And they apparently have no confidence in the lower court’s standing analysis for they ask this court for a decision on the merits, just like the appellants in *Walker*.

The Eighth District’s standing analysis is unworkable and dangerous. After rebuking Cleveland’s ordinance (“**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 opportunity to present a defense**”)³ and expressly finding it unconstitutional (“**the power to adjudicate civil violations of moving traffic laws lies solely in municipal court**”),⁴ the majority summarily concluded that Jodka does not have standing. The majority first stated that, “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.”⁵ It then concluded, “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.”⁶

This illogical analysis is exposed by a subsequent Eighth District opinion that (correctly) holds that no person may ever facially challenge the hearing officer’s “jurisdiction” during the quasi-judicial process. *See, Dawson v. Cleveland*, 8th Dist. No. 99964, 2014-Ohio-1636 (April 17, 2014), vacating 2014-Ohio-500. The Eighth District issued *Dawson* upon reconsideration requested by Cleveland. Under *Jodka*, nobody has standing unless they caved to the hearing

³ *Jodka v. Cleveland*, 8th Dist. No. 99951, 2014-Ohio-208, ¶22.

⁴ *Id.*, ¶32.

⁵ *Id.*, ¶34. All emphasis in this brief is added by Jodka.

⁶ *Id.*, ¶37.

officer's "jurisdiction" and challenge that jurisdiction at the (illegal) administrative hearing. But under *Dawson*, nobody is allowed to make such a challenge because hearing officers have no authority to determine constitutional issues.

Thus, under current case law, when Xerox sends citizens an unconstitutional, non-judicial "Notice of Liability" demanding money from them—a demand backed by the threats of impoundment, collections, and increased fines under Cleveland's ordinances—nobody may challenge the hearing officer's openly-unconstitutional jurisdiction at an administrative hearing. Yet if Cleveland and Xerox hold and collect monies under the unconstitutional ordinance, anyone who pays is said to "lack standing" if they did not first contest the ordinance's constitutionality during the administrative process—which is exactly what *Dawson* forbids.

No wonder why Cleveland urged this paradoxical rule of law on reconsideration in *Dawson*—it practically ensures that the city and Xerox will profit by defying the Ohio constitution. The courthouse doors are closed not once but twice. And if citizens have the gall to not make payment, then they find themselves in the worst position of all—impoundment, credit ruination, and increased fines are looming. No rational legal system should tolerate this. Unless this court takes action, Xerox and one of the largest cities in Ohio may continually (1) send non-judicial "Notices of Liability" in the mail backed by the threat of non-judicial sanctions and (2) confer upon a non-judicial officer what appeals courts openly acknowledge to be unconstitutional "jurisdiction" and thus force folks into an untenable constitutional conundrum:

- (a) Cave to the hearing officer’s openly illegal “jurisdiction” and “[contest] the ordinance’s constitutionality” during the “unconstitutional quasi-judicial process created by CCO 413.031”—something that *Dawson* forbids;
- (b) Do nothing—including not making payment—risking diminished person credit, impoundment, and more sanctions; *or*
- (c) Do nothing but make payment—a rational choice under the circumstances—yet lack standing to present a claim to correct the resultant unjust enrichment of Xerox and Cleveland collecting and holding monies under these illegal circumstances.

This has an indefensible upshot: municipalities may now freely manipulate Ohioans and visitors of this state into submitting to a proceeding that multiple courts agree to be violative of Art. IV, Sec. 1. The net effect is that cities across Ohio will put an unconstitutional chokehold on the municipal-court system without consequence. For example, even though *Walker v. Toledo* has not been stayed by this court under S.Ct.Prac.R. 7.01(A)(3), superimposed below is a March 5, 2014 letter from a collection law firm hired by Toledo. The collections notice seeks a \$120 penalty plus a \$25 “late” fee under the ordinance expressly declared unconstitutional in *Walker*:

ordinance that has been unconstitutional since its enactment. *Second*, as in *Dawson*, Jodka could not contest the ordinance's constitutionality during the administrative process. "Because administrative bodies have no authority to interpret the Constitution, requiring litigants to assert constitutional arguments administratively would be a waste of time and effort for all involved." *Jones v. Chagrin Falls*, 77 Ohio St.3d 456, 460-461, 674 N.E.2d 1388, 1997-Ohio-253.

And then Xerox and Cleveland use the threat of collections, impoundment, and increased fines to create the constitutional conundrum. When a citizen makes the demanded payment—tantamount to protection money—it does not foreclose their standing to seek restitution through an actual court to get it back, premised upon the ordinance's underlying facial unconstitutionality. It is precisely *why* they have standing to seek restitution. *See e.g., Judy v. Ohio Bur. of Motor Vehicles*, 100 Ohio St.3d 122, 797 N.E.2d 45, 2003-Ohio-5277 (unjust-enrichment case involving payment of illegal reinstatement fees). In its briefing below, Cleveland itself succinctly stated that "(i)n order for a Court to find that Jodka has a claim for unjust enrichment as he has alleged, the court must determine the allegations of unconstitutionality." This is precisely correct. And because the appeals court determined the allegations of unconstitutionality in favor of Jodka, its conclusion that Jodka supposedly lacks standing is a classic *non sequitur*.

Jodka never had a duty to "place himself" under someone else's illegal authority. Indeed, no Ohioan or visitor to this state has a duty to jump through the unconstitutional hoops that Cleveland and others have laid before them. "**An unconstitutional act is not a law**; it confers no rights; **it imposes no duties**; it affords no protection; it creates no office; **it is**, in legal contemplation, **as inoperative as though it had never been passed.**" *Middletown v. Ferguson*, 25 Ohio St.3d 71, 80, 495 N.E.2d 380 (1986).

Although the majority’s opinion uses the word “standing,” its analysis actually has nothing to do with Ohio’s standing doctrine. At most, the lower court’s analysis presents a failure-to-exhaust issue—not standing. Appellees did not raise a failure-to-exhaust defense and therefore it is waived. *Jones v. Chagrin Falls*, supra; *Driscoll v. Austintown Assoc.* 42 Ohio St.2d 263, 71 O.O.2d 247, 328 N.E.2d 395 (1975). That defense would lack merit here anyway: Jodka need not “exhaust” something that he alleges to be—and is—unconstitutional. The focus is on the *power* of the administrative authority to provide the relief requested, not on the happenstance of the relief being granted. *Nemazee v. Mt. Sinai Med. Ctr.*, 56 Ohio St.3d 109, 115, (1990).

STATEMENT OF THE CASE AND FACTS

This case and *Walker v. Toledo* both involve underlying Article IV, Section 1 challenges.⁷ Jodka’s complaint also alleged that the version of Cleveland’s traffic-camera ordinance in effect at the time of Jodka’s citation violated Ohio’s equal-protection provision, Article I, Section 2, because the ordinance only applied on its face to vehicle owners, including Jodka, but did not apply to leased vehicles. *See e.g., Lycan v. Cleveland*, 8th Dist. No. 94353, 2010-Ohio-6021, appeal not allowed 128 Ohio St.3d 1501; *Lycan v. Cleveland*, 8th Dist. No. 99698, 2014-Ohio-203, (“*Lycan IP*”).⁸ Jodka argued that this classification is irrational. Appellees never disagreed, but raised other various defenses summarized below.

Defendant’s arguments/severed summary judgment. All defendants moved to dismiss under Civ. R. 12(B)(6), with Xerox also moving for summary judgment. The summary-judgment motion raised factual matters outside the pleadings and therefore, by stipulation, the trial court

⁷ Jodka served Attorney General DeWine with the complaint, thus satisfying R.C. 2721.12(A). The AG’s office declined to defend the ordinance.

⁸ The amended ordinance now defines “vehicle owner” to include a lessee. CCO 413.031(p)(4).

issued a journal entry stating that the summary-judgment motion is severed, leaving only the Rule 12 motions for review. In those motions, the defendants argued that (1) Jodka's underlying Article IV, Section 1 challenge fails under *Mendenhall v. Akron* and (2) the underlying Article I, Section 2 challenge fails because an unjust-enrichment claim can never be premised upon a violation of the Ohio constitution. Xerox also curiously argued that Jodka lacked standing with respect only to his underlying equal-protection challenge.⁹ According to Xerox, Jodka was not within the class burdened by the ordinance—even though he is a vehicle owner and was cited under the ordinance, which at the time applied only to vehicle owners.

Trial court's decision. The trial court dismissed the portion of Jodka's unjust-enrichment claim premised upon Article IV, Section 1, finding no underlying violation. The trial court never got to the merits of the underlying Art. I, Sec. 2 theory because the court made the unprecedented ruling that an unjust-enrichment claim can *never* be premised upon any underlying constitutional violation, which is demonstrably false. *See e.g., Santos v. Ohio BWC*, 101 Ohio St.3d 74, 801 N.E.2d 441, 2004-Ohio-28, ¶17, (“This court held in [*Holeton v. Crouse Cartage Company*] that the workers' compensation subrogation statute was unconstitutional. Accordingly, any collection or retention of moneys collected under the statute by the BWC was wrongful.”). *Holeton* involved a violation of Article I, Section 2.

Lastly, without notice, the trial court granted “summary judgment” to Xerox.

Jodka timely appealed. On appeal, Jodka argued that:

- The ordinance violates Art. IV, Sec. 1;
- An unjust-enrichment claim may be premised upon an underlying constitutional violation; and

⁹ Nobody disputed Jodka's standing with respect to his underlying Art. IV, Sec. 1 challenge.

- The trial court should not have granted Xerox’s *severed* summary-judgment motion.

Appellate opinion. The court agreed that the ordinance violates Art. IV, Sec. 1, but in a split decision stated that Jodka lacked standing to present his unjust-enrichment claim. The court never determined the underlying equal-protection problem. Further, the appeals court declined to rule upon the summary-judgment issue, stating that Jodka did not cite any case law on point. The problem there is that because it is so patently obvious that courts should *not* rule upon severed motions, no case law on point exists since nobody would ever argue otherwise.

Lycan II/reconsideration. On the same day that the Eighth District ruled in this case, the court affirmed an award of summary judgment on behalf of a certified class of lessees whose monies were held and collected under the same traffic-camera ordinance in effect at the time of Jodka’s citation. *Lycan II*.¹⁰ This highlights the equal-protection problem. And while the Eighth District correctly decided *Lycan I* and *II*, those decisions underscore the court’s arbitrary “standing” analysis in this case: it’s inconceivable that the plaintiffs in *Lycan* have standing to present their unjust-enrichment claim, but that Jodka lacks it—especially when Jodka has affirmatively demonstrated that the ordinance is unconstitutional whereas *Lycan* hinged upon the factual question of whether a person was a lessee. In contrast, Jodka has shown that *all* non-judicial citations issued under CCO 413.031 are nullities whether sent to a lessee or owner.

Thus, Jodka asked for reconsideration or alternative *en banc* review under App. R. 26(A)(2)(c). On March 13, 2014 the panel denied reconsideration over a dissent from Judge Sean C. Gallagher, who also dissented in the opinion below, correctly noting that Jodka does have

¹⁰ *Lycan II* is pending jurisdictional review in Supreme Court Case No. 2014-0358.

standing. And on March 14, 2014, the Eighth District declined *en banc* review, again over Judge Gallagher's dissent, stating that *Lycan* was not decided on the issue of standing. In the interim, on February 27, 2014 the panel below certified a conflict between its decision and *Walker v. Toledo*. On March 28, 2014 Jodka filed a notice of certified conflict with this court in Case No. 2014-0480. He now requests this court to also accept this case as a jurisdictional appeal and affirmatively adopt the proposition of law outlined below.

ARGUMENT IN SUPPORT OF JODKA'S PROPOSITION OF LAW

Proposition of law: A plaintiff that alleges (1) that a municipality has held or collected monies under an ordinance that impairs or restricts a court's jurisdiction in violation of Article IV, Section 1 of the Ohio constitution has standing to assert a common law unjust-enrichment claim seeking restitution if the plaintiff also alleges (2) that the defendants have held or collected plaintiff's money under the disputed ordinance. The plaintiff's standing does *not* depend upon whether or not the plaintiff previously submitted to an allegedly unconstitutional procedure that displaces a court's jurisdiction.

This proposition of law (1) succinctly states the law of standing in Ohio as it should be applied here and in future cases involving alleged Article IV, Section 1 violations and (2) discourages municipalities from holding and collecting monies in violation of the constitution.

Unfortunately, the appeals court turned the doctrine of standing into something more complicated than it actually is. This court recently explained that "our cases make clear that we are generous in considering whether a party has standing." *Moore v. Middletown*, 133 Ohio St.3d 55, 975 N.E.2d 977, 2012-Ohio-3897, ¶48. As further explained in *Moore*:

Judges are cautioned to remember, standing is not a technical rule intended to keep aggrieved parties out of court. "Rather, it is a practical concept designed to insure that courts and parties are not vexed by suits brought to vindicate nonjusticiable interests and that judicial decisions which may affect the rights of others are forged in hot controversy, with each view fairly and vigorously represented."

Id., ¶47, quoting *Maloney v. Pac*, 183 Conn. 313, 320, 439 A.2d 349 (1981).

The standing doctrine requires a concrete dispute between adverse parties—a “hot controversy.” *Id.* at ¶47. A “hot controversy” ensures that the litigants will sharply present their cases for determination on the merits, which assists the courts. This has been achieved here: perhaps no parties could be more adverse than in the case of Jodka versus Cleveland and Xerox. And Jodka’s claim for restitution is absolutely concrete. He therefore has standing. Xerox and Cleveland have themselves asked for a determination on the merits and therefore they cannot seriously dispute the fact that Jodka has standing.

I. Jodka has standing.

The central purpose of the standing doctrine has been distilled:

The essence of the doctrine of standing is whether the party seeking relief has alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination.

Racing Guild of Ohio, Local 304 v. Ohio State Racing Com’n, 28 Ohio St.3d 317, 321, 503 N.E.2d 1025 (1986)

Members of the general public who never received a citation may consider Cleveland’s ordinance to be unconstitutional. But Jodka is not just a member of the general public. Because he has a personal stake in the outcome of this case—i.e., whether he gets restitution of the money that appellees held and collected from him under the illegal ordinance—he has standing to present his unjust-enrichment claim. This is *not* an abstract “generalized-grievance” case. It is concrete—a red-hot controversy.

Only those persons whose monies were *not* held or collected under the unconstitutional ordinance can be said to lack standing to present an unjust-enrichment claim—they have no injury to be redressed. The majority lost its way in a *big* way: it came to a rule and result that

facilitates ongoing illegal impairment of the judicial branch, the very thing that the entire court found unconstitutional.

It's unfortunate because the majority actually cited cases that confirm that Jodka has standing. For example, the opinion below at ¶34 cites *Moore v. Middletown*, which in turn cited the United States Supreme Court's opinion in *Warth v. Seldin*, 422 U.S. 490, 501, 95 S.Ct. 2197 (1975) for the unremarkable proposition 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." But without any further analysis, the majority came to the following *non sequitur*:

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. (Majority Op., ¶34—emphasis added).

A brief analysis of *Warth v. Seldin* and *Moore v. Middleton* shows that these cases directly refute the majority's anomalous decision. That is, that Jodka lacks standing to present his unjust-enrichment claim despite prevailing on the constitutional merits underpinning that claim. The facts of *Warth* bear no resemblance to the facts and issues of this case. In *Warth*, the petitioners were "various organizations and individuals resident in Rochester, N.Y." that brought a §1983 suit in federal district court against the town of Penfield "an incorporated municipality adjacent to Rochester" against members of Penfield's Zoning, Planning, and Town Boards. *Warth*, 422 U.S. at 493. The petitioners claimed that the town's zoning ordinance, by its terms and as enforced by the defendant board members, "effectively excluded persons of low and moderate income from living in the town." The Supreme Court found that none of the groups of petitioners, various taxpayers and associations, for example, had standing. *Id.* at 502-518. But

unlike the plaintiffs in *Warth*, Jodka is seeking relief of his own, not simply to vindicate the rights of “third parties.” Thus, *Warth* does not defeat Jodka’s standing in this case.

Similarly, in *Moore v. Middletown* this court reiterated the familiar three-prong test for standing. A plaintiff must show: (1) “an injury” that is (2) “fairly traceable to the defendant’s allegedly unlawful conduct,” and (3) that the injury is “likely to be redressed by the requested relief.” *Moore*, 2012-Ohio-3897, ¶22. Under this standard, the court found that the plaintiff had standing and held—quite expansively—that “property owners whose property is *adjacent to* property rezoned *by a foreign municipality* may use a declaratory-judgment action to challenge the constitutionality of the zoning action *if the owner pleads that he has suffered an injury caused by the rezoning that is likely to be redressed.*” *Moore*, ¶56. If the property owners in *Moore v. Middletown* have standing to challenge the zoning action of foreign municipalities so long as they “plead” that they have “suffered an injury caused by the rezoning that is likely to be redressed,” then Jodka surely at least has standing to seek restitution of the money that appellees held and collected from him under Cleveland’s allegedly unconstitutional ordinance.

II. The majority wrongfully conflated the concepts of standing and *res judicata*.

The majority below cites *Carroll v. Cleveland*. But *Carroll* addresses *res judicata*—not standing. In *Carroll*, just as in *Lycan v. Cleveland*, a group of lessees sought refunds paid under Cleveland’s traffic-camera ordinance, arguing a “takings” theory in federal court. As in *Lycan*, they never raised the jurisdictional-impairment issue raised by Jodka. The whole case depended upon the plaintiffs’ status as lessees. Of course, whether a person is a lessee is a *factual* issue that—unlike Jodka’s underlying facial constitutional challenges—could have been raised at an administrative hearing assuming *arguendo* that such a hearing is constitutional (which it’s not). In *Carroll*, because the factual lessee issue was not raised at an administrative hearing, the

Carroll majority found (over a dissent citing *Lycan I*), that plaintiffs' claims were barred by the doctrine of *res judicata*. Even so, *Carroll* does not support the notion that Jodka lacks standing.

The doctrines of *res judicata* and standing are antithetical. *Res judicata* means that once a tribunal with competent jurisdiction decides the merits of a plaintiff's claim—which *requires standing* to bring the claim in the first place—the plaintiff is barred from re-filing the same cause of action based upon the facts and circumstances of the prior case. Prior to this lawsuit, no tribunal with any competent jurisdiction in this case—let alone competent jurisdiction over constitutional questions—has ever issued a final judgment on the merits. Thus, the doctrine of *res judicata* simply does not apply. *Lycan II*.¹¹ Additionally, *res judicata* may not be raised under Rule 12(B).¹² Finally, the Eighth District's reliance upon *Carroll* is particularly troublesome given that the Eighth District expressly—and properly—rejected application of *Carroll* in *Lycan II* at ¶¶13-19.

ARGUMENT AGAINST XEROX'S AND CLEVELAND'S PROPOSITIONS OF LAW

I. This court should not accept Xerox's and Cleveland's jurisdictional appeals because (1) Xerox and Cleveland prevailed below and (2) the propositions they raise are simply reprinted verbatim from Toledo's jurisdictional memorandum in *Walker*.

Although Jodka has standing to present his claims and his appeal, Xerox and Cleveland have no standing to appeal to this court. They prevailed below when the appeals court erroneously said that Jodka lacks standing. They may attempt to defend that judgment on other grounds, but this court does not exist to opine upon issues brought to it by parties who prevailed

¹¹ See also, *State ex. rel. Estate of Miles v. Village of Piketon*, 121 Ohio St.3d 231, 903 N.E.2d 311, 2009-Ohio-786, ¶30 (“The binding effect of *res judicata* has been held not to apply when fairness and justice would not support it.”)

¹² *State ex. rel. Freeman v. Morris*, 62 Ohio St.3d 107, 109, 579 N.E.2d 702 (1991), (“[W]e hold that the defense of *res judicata* may not be raised by motion to dismiss under Civ.R. 12(B).”)

in the lower courts. Further, Xerox and Cleveland simply reprint—verbatim—the same legal propositions that Toledo raised in its jurisdictional memorandum in *Walker*, but that were later abandoned in Toledo’s merit brief in favor of mere assignments of error. (“They court of appeals erred when...”)

Perhaps Xerox and Cleveland will argue that Jodka lacks standing, similar to their recently-filed amicus brief in *Walker v. Toledo*.¹³ If so, it would be disingenuous because (1) Xerox and Cleveland themselves ask for a merits decision in this case and (2) they never argued below that Jodka lacks standing in connection with his underlying Article IV, Section 1 theory. Their inaction in not arguing standing below speaks louder than their words in the *Walker* amicus brief, filed after Bradley Walker turned in his one and only merit brief, which had no reason to address standing because Toledo and RedFlex never contended in their jurisdictional appeal that Walker lacked standing. Like Xerox and Cleveland, Toledo and RedFlex ask for a merits determination. Cleveland, Toledo, RedFlex and Xerox all must lose on the merits.

II. Xerox’s and Cleveland’s arguments on the merits lack merit.

Appellants’ tendered propositions of law have absolutely zero merit for all the reasons that Bradley Walker has argued in his case—and for all the reasons addressed by the Sixth and Eighth Districts, along with several common pleas courts in Southwestern Ohio.

For example, Xerox has argued here and in its amicus briefs in *Walker*, that municipalities have a *constitutional*, home-rule power to vest jurisdiction in a hearing officer, but its entire argument is based off the way Xerox “interprets” certain *statutes*. This makes no sense. If Xerox actually believed that Cleveland had a home-rule, constitutional power to act, it would

¹³ See Supreme Court Case Number Case No. 2013-1277, brief filed March 28, 2014.

not even matter what “any” means as used in R.C. 1901.20—a statute. This court does not determine constitutional powers by reviewing statutes. But even if it did, Xerox would still lose.

Even Toledo finally concedes that the municipal court has jurisdiction under R.C. 1901.20. So to avoid that, Xerox argues that R.C. 1901.20 does not give the municipal court “exclusive” jurisdiction. Yes it does. The General Assembly has exclusive authority to confer jurisdiction upon courts. And since the specific grant of jurisdiction in R.C. 1901.20 is the only grant of jurisdiction that applies—and because there is a statutory exception that does *not* apply—the conferral of jurisdiction is indeed exclusive. But even if not—even if some other unknown court would have “concurrent” jurisdiction—that would simply mean that Cleveland has cut back the jurisdiction of not one but two courts to whom the legislature has conferred jurisdiction under its exclusive Article IV, Section 1 powers.

The General Assembly has made the statewide determination that except for alleged parking violations, the municipal courts across this state have jurisdiction of alleged ordinance violations. This makes perfect sense. It avoids patchwork justice and overwhelming common pleas courts with “administrative appeals” of ordinance violations, something never envisioned by R.C. 2506.01. Xerox fails to explain what policy the Ohio constitution would be serving if a person in *CITY X* were entitled to appear in municipal court—where the rules of evidence and other judicial protections apply—but in adjacent, neighboring *CITY Y* a person alleged to have engaged in identical conduct must submit to a hearing officer exercising jurisdiction under whatever “protections” the local city council decides to supply.

Xerox’s complaint seems to be that R.C. 1901.20 does not state that the “municipal court has *exclusive* jurisdiction of...” But Xerox fails to realize that (1) there is no need to use the word “exclusive” in R.C. 1901.20 because that statute is the exclusive, specific statutory

conferral of judicial jurisdiction that applies here and (2) under Xerox's home-rule argument, the General Assembly could *not* confer exclusive jurisdiction upon the municipal court because doing so would necessarily impinge upon Cleveland's supposed "home-rule" power to vest its own hearing officer with jurisdiction of ordinance violations.

Xerox is confused. There is no such thing as a stand alone "home rule" power to confer jurisdiction in a hearing officer when the General Assembly has already declared that "the municipal court has jurisdiction." It's not a police power. And it's not a power of local *self* government. Xerox simply *concludes* that it is. Xerox must *earn* its constitutional conclusions. Instead, it recites statutes and engages in an odd mode of statutory "interpretation."

For example, Xerox argues on page four of its March 28th amicus brief in *Walker* that "the references to Chapter 4521 in [the second sentence of] R.C. 1901.20(A) reinforce the point that the statute otherwise identifies the limited statutory-based criminal jurisdiction provided to municipal courts." Cleveland makes the same argument on page fourteen of its jurisdictional memorandum in this case. Xerox and Cleveland could not be more wrong. The actual text of the second sentence of R.C. 1901.20 states that:

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.

Xerox and Cleveland fail to credit the General Assembly's precision: the words "resolution" and "regulation" refer to resolutions or regulations of townships or counties. Jurisdiction of alleged municipal ordinance violations is specifically covered by the *first* sentence of R.C. 1901.20(A), which is why the term "ordinance" is not mentioned in the second

sentence. The words (1) “ordinance,” (2) “resolution” and (3) “regulation” have different meanings. As shown by R.C. 4521.02(A), they are *not* interchangeable:

A local authority that enacts any ordinance, resolution, or regulation that regulates the standing or parking of vehicles and that is authorized pursuant to section 505.17 or 4511.07 of the Revised Code also by ordinance, resolution, or regulation may specify that a violation of the regulatory ordinance, resolution, or regulation shall not be considered a criminal offense for any purpose, that a person who commits the violation shall not be arrested as a result of the commission of the violation, and that the violation shall be handled pursuant to this chapter. ***

Next, if Xerox and Cleveland were correct, cities could confer jurisdiction of alleged parking violations upon “hearing officers” without ever needing to first establish a parking-violations bureau. According to them, there is a “home rule” right to do this. And in turn, the common pleas court would have “administrative appeal” jurisdiction over any appeals from the hearing officer, but if a parking-violation bureau were established, the municipal court would have jurisdiction of any appeals. *See*, 1901.20(C); R.C. 4521.08(D). This is absurd. The General Assembly never intended the courts of common pleas to be general, mini-appeals courts for civil ordinance violations that are an extra layer of review before a case reaches the regular appeals courts. Rather, the municipal courts are given jurisdiction of ordinance violations specifically and therefore appeals of those municipal court judgments are to the court of appeals. And in parking-violations cases where the municipality has created a parking-violations bureau, any appeal of the bureau’s decision goes to the appropriate municipal court, whose decision is final, not subject to any further review. R.C. 4521.08 (D).

The common pleas courts’ administrative-appeal jurisdiction granted under R.C. 2506.01 pre-supposes review of a decision that was itself within the issuing hearing officer’s jurisdiction. No hearing officer gets their jurisdiction from R.C. 2506.01, as Xerox backwardly implies. Instead, the statute gives the common pleas court certain appellate jurisdiction. And under the

decision below, common pleas courts retain jurisdiction under R.C. 2506.01 over matters that are properly administrative.

In closing, perhaps Xerox or Cleveland will argue that Jodka should have filed a declaratory-judgment action when he received his citation. This argument is wholly impractical and has nothing to do with the concept of standing. It is no defense in this unjust-enrichment action that Jodka could have hypothetically filed an expensive declaratory-injunction action and expended exponentially more dollars than the penalty under CCO 413.031. That could have also been done in *Santos* or *Judy* theoretically. This “defense” rests upon the unspoken premise of “yes, we shouldn’t have taken your money this way, but you should have spent far more money stopping us in the first place.” This is precisely the circumstance that is unjust. It’s no defense—especially not on Rule 12. Even if Jodka had hired a lawyer to file a declaratory-judgment action on the same day he received the Notice of Liability, the civil rules’ allotted time of twenty-eight days for Cleveland to file an answer after service would have alone outlasted the city’s edict that Jodka request an administrative hearing within 21 days of the date “listed” on the ticket. *See* CCO 413.031(k). After that, Cleveland would be claiming default and demanding fees for the costs of third-party debt collectors as allowed under CCO 413.032. Cleveland’s ordinances further mandate that if a payment is not made within 20 days, the fine jumps by up to 60%.¹⁴ Thus, any claim that Jodka is to be blamed for not spending far more money in a protracted declaratory-judgment battle is pie in the sky.

¹⁴ *See* CCO 413.031(o), (“Late penalties: for both offenses, if the penalty is not paid within twenty (20) days from the date of mailing of the ticket to the offender, an additional twenty dollars (\$20.00) shall be imposed, and if not paid within forty (40) days from that date, another forty dollars (\$40.00) shall be imposed, for a total additional penalty in such a case of sixty dollars (\$60.00).”)

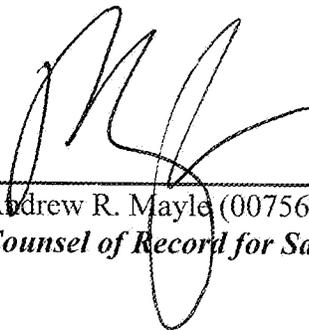
CONCLUSION

The majority's standing analysis creates dangerous and unworkable precedent that ends up gutting the very municipal-court system that the court intended to protect. But even if Cleveland's ordinance is somehow deemed constitutional, Walker and Jodka still have *standing* to sue Toledo and Cleveland because "(i)t is well settled that standing does not depend on the merits of the plaintiff's contention that particular conduct is illegal or unconstitutional." *Moore v. Middletown*, 2012-Ohio-3897, ¶23. Indeed, even the dissent in *Walker* concurred that Mr. Walker had standing.

This court should:

- Decline Xerox's propositions of law;
- Accept Jodka's proposition of law;
- Find that Jodka has standing; and
- Reverse the Eighth District's standing analysis and remand this case to the trial court for further proceedings, with instructions that the trial court reconsider (1) its ruling that an unjust-enrichment claim can never be premised upon an underlying equal-protection violation (*Santos*) and (2) its grant of a non-pending summary-judgment motion.

Respectfully submitted,



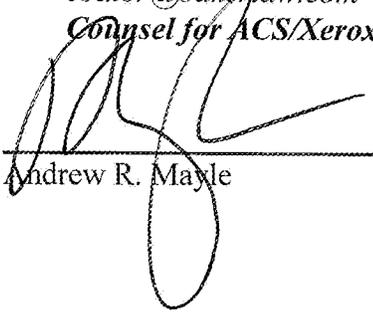
Andrew R. Mayle (0075622)
Counsel of Record for Sam Jodka

CERTIFICATE OF SERVICE

I hereby certify that on May 1, 2014 a true and accurate copy of the foregoing was sent by U.S. Mail, postage prepaid to the following:

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

Chris Bator (0038550)
Gregory V. Mersol (0030838)
Baker Hostetler LLP
3200 National City Center
1900 East Ninth Street
Cleveland, Ohio 44114-3485
gmersol@bakerlaw.com
cbator@bakerlaw.com
Counsel for ACS/Xerox et al.



Andrew R. Mayle