

ORIGINAL

IN THE SUPREME COURT OF OHIO

Janine Lycan, et al.	:	Supreme Court Case No. 14-0358
	:	
Plaintiffs-Appellees,	:	On Appeal from the Cuyahoga
	:	County Court of Appeals,
v.	:	Eighth Appellate District
	:	(Case No. 99698)
City of Cleveland,	:	
	:	
Defendant-Appellant.	:	

**BRIEF OF AMICUS CURIAE REDFLEX TRAFFIC SYSTEMS, INC.
IN SUPPORT OF DEFENDANT-APPELLANT CITY OF CLEVELAND**

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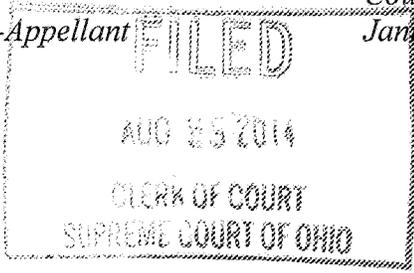
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STATEMENT OF AMICUS' INTEREST

Redflex Traffic Systems, Inc. (“Redflex”) is a company that installs, operates, and maintains traffic photo-enforcement equipment (including red light and speed cameras) in Ohio and throughout the United States. Redflex is the current provider of photo-enforcement equipment and services to several Ohio municipalities, including Columbus, Toledo, Dayton, Middletown, Trotwood, West Carrolton, and Hamilton. Redflex, along with many of these cities, is a party in various class-action lawsuits pending around Ohio that involve situations where plaintiffs failed to avail themselves of the administrative hearing process established by municipal ordinance, and now are seeking to claw back millions of dollars of fines paid oftentimes years earlier for civil traffic violations they voluntarily paid. *See, e.g., Walker v. City of Toledo, et al.*, Ohio Supreme Court Case No. 2013-1277; *Lindsay v. City of Garfield Heights, et al.*, Cuyahoga County Case No. CV-13-813804; *Toney v. City of Dayton*, Montgomery County Case No. 2014-cv-1713; *Howard v. City of Trotwood*, Montgomery County Case No. 2014-cv-3294; *Troxell v. City of West Carrolton*, Montgomery County Case No. 2014-cv-3292.

STATEMENT OF FACTS

Redflex hereby adopts and incorporates by reference herein the Statement of Facts set forth in the Merit of Brief of Appellant City of Cleveland.

ARGUMENT

Proposition of Law No. 1: Cleveland Codified Ordinance 413.031 provides an adequate remedy in the ordinary course of law to those receiving a civil notice of liability in the form of an administrative proceeding as set forth in the ordinance. *State ex rel. Scott v. Cleveland*, 112 Ohio St.3d 324, 2006-Ohio-6573, 859 N.E.2d 923. Individuals who receive notices of liability issued pursuant to the ordinance and who fail to avail themselves of the adequate remedy provided by the ordinance have waived any further challenge to the ordinance and are barred by *res judicata* from subsequently challenging the ordinance. *Carroll v. Cleveland*, 522 Fed.Appx. 299 (6th Cir. Ohio 2013).

A. **Introduction**

The Eighth District Court of Appeals acknowledged this Court's prior holdings that the doctrine of *res judicata* applies to administrative hearings. But then it decided that the doctrine of *res judicata* does not apply to *photo enforcement* administrative hearings. This is a significant deviation from the law that has long been settled in Ohio and many other jurisdictions.

The Eighth District held that as to photo enforcement administrative proceedings, "*res judicata* does not apply because there was never an actual 'judgment' rendered by a court, or administrative tribunal, of competent jurisdiction." But administrative hearings conducted by cities never result in a "judgment." If this was the requirement for applying *res judicata* to administrative hearings, then *res judicata* would never apply to administrative hearings.

Perhaps recognizing the weakness of this position, the Eighth District went on to hold:

"Even if an administrative decision had been rendered, the claims for unjust enrichment and declaratory judgment [asserted by Plaintiffs] were not claims that could have been litigated or decided by the parking violations bureau."

With the highest respect to the Eighth District, this is an odd conclusion. If an administrative decision had been rendered confirming civil liability from a photo enforcement infraction, there would be no claims "for unjust enrichment and declaratory judgment." That is, if a respondent to a notice of liability (1) pays the civil penalty and thereby admits liability under the ordinance, or (2) requests an administrative decision and loses, that person has no claim for unjust enrichment

or declaratory judgment. This is even more the case if they never pursue appeal to the common pleas court. And if the respondent prevails at the hearing, she gets a full refund of everything she had to pay to secure a hearing, thereby suffering no loss and thereby having no claim for unjust enrichment or standing to pursue a claim for declaratory relief.

But the Eighth District has made even more dangerous precedent. It has inserted into the jurisprudence of Ohio the notion that if the amount at issue in an administrative hearing is deemed to be “minor in nature,” then the doctrine of *res judicata* does not apply to administrative hearings—even though this Court has held that it applies without any such exception. This holding creates an entirely new area of litigation where the respondent in any administrative proceeding conducted by a political subdivision—photo enforcement or otherwise—can ignore the proceedings and then file a civil action claiming that *res judicata* does not apply because, as the Eighth District held, “there is little incentive to contest a citation or to vigorously litigate the matter.”

This is an ironic holding in view of the fact that this case involves plaintiffs who apparently felt “little incentive to contest a citation or to vigorously litigate the matter” when they could have, only to file a massive class action lawsuit years after they paid the civil penalty. This very lawsuit gives the lie to the notion that the photo enforcement liability faced by these Plaintiffs was “minor in nature.”

This new “minor-in-nature” test applicable to administrative hearings was implicitly rejected in another appellate decision—from the Eighth District. In *Davis v. City of Cleveland*, 8th Dist. Cuyahoga No. 99187, 2013-Ohio-2914, a photo enforcement respondent appealed an adverse administrative finding to the common pleas court and presented new arguments and defenses she had not raised at the hearing, including challenges to the constitutionality of the

photo enforcement program. The Eighth District held that since she had failed to raise these arguments at the administrative hearing, she waived those issues on appeal.

While the legal doctrine at issue in *Davis* was waiver and not *res judicata*, it is telling that the Eighth District did not find that photo enforcement infractions were “minor in nature,” so that the doctrine of waiver did not apply. There is no principled distinction which supports the notion that the doctrines of *res judicata* and waiver should be treated differently—with *res judicata* being limited in its application to administrative proceedings by a new “minor-in-nature” test and waiver having no such limitation. Indeed, the *Davis* case itself refutes the finding of the Eighth District that photo enforcement infractions are so minor that parties do not challenge them. *Davis* challenged her notice of liability by seeking an administrative hearing, pursuing an appeal to the common pleas court, and then pursuing an appeal to the Eighth District. And she is certainly not the first to do so.

As will be discussed more fully below, the decision of the Eighth District represents a significant deviation from long-settled law governing the application of the doctrines of *res judicata* and waiver to administrative hearings. If upheld by this Court, it would not only overturn settled precedent, it would also create a new gray battlefield for litigation arising from *any* administrative proceeding where a respondent has elected not to follow the legal pathway for raising defenses—a pathway established by local ordinance and state statute.

B. *Res Judicata Bars The Lycan Plaintiffs’ Claims Where Those Plaintiffs Did Not Pursue The Statutory Administrative Remedy.*

The proper outcome of this case is dictated by this Court’s prior jurisprudence. In *State ex rel. Scott v. City of Cleveland*, 112 Ohio St.3d 324, 2006-Ohio-6573, 859 N.E.2d 293, this Court held that an administrative hearing process made available to vehicle owners who are alleged to have violated Cleveland’s photo enforcement ordinance, CCO 413.031 (the

“Ordinance”), involved the exercise of quasi-judicial authority and provided owners with “an adequate remedy in the ordinary course of law.” *Id.* at ¶¶ 15, 24. *Res judicata* is applied in the context of administrative proceedings just as it is in courts, and bars subsequent litigation related to claims and defenses that were or could have been raised in the prior proceeding. *See Grava v. Parkman Twp.*, 73 Ohio St.3d 379, 653 N.E.2d 226 (1995). Therefore, *res judicata* bars a vehicle owner’s subsequent challenge to an ordinance where she previously failed to avail herself of the statutorily-mandated administrative hearing and appeal procedure.

The Court of Appeals attempted to avoid this plain result through tortured holdings that (1) voluntary payment of the civil fine does not constitute a final disposition or judgment, *Lycan* at ¶ 15, and (2) “traffic infractions” are exempt from the doctrine of *res judicata*, *id.* at ¶ 17. Both of these holdings by the Court of Appeals are blatantly incorrect statements of law.

1. **Payment of a civil fine or penalty constitutes a final consent judgment or disposition.**

The Eighth District made a legal error in holding that one who fails to avail himself of a quasi-judicial administrative hearing in favor of voluntary payment of a claim does not satisfy the “final judgment” element of *res judicata*. It has long been the law in Ohio that a consent judgment operates as *res judicata* to the same extent as a judgment on the merits. *See Horne v. Woolever*, 170 Ohio St. 178, 182, 163 N.E.2d 378 (1959). “The preclusive effect of a final judgment, in other words, ‘does not change simply because the parties resolved the claim without vigorously controverted proceedings.’” *Carroll v. City of Cleveland*, 522 Fed. Appx. 299, 304 (6th Cir. 2013), quoting *Scott v. City of East Cleveland*, 16 Ohio App.3d 429, 476 N.E.2d 710 (8th Dist. 1984). This rule applies both when (1) the prior proceeding is a court proceeding, *Horne*, 170 Ohio St. at 183, and (2) the prior proceeding is a quasi-judicial administrative process, *Scott*, 160 Ohio App.3d at 431.

Ohio courts routinely find a party's failure to fully participate in an administrative hearing or appeal bars that party from later making claims that could have been raised during the administrative appeals process. The reasoning is that, had the plaintiff participated in that process, she could have presented all of the defenses she later attempted to present and could have prevailed such that the claims would have become moot prior to the suit. But when a plaintiff does not follow that process, she loses the right to present the claims. *See Foor v. City of Cleveland*, No. 1:12-cv-1754, 2013 U.S. Dist. LEXIS 115552, *16-23 (N.D. Ohio Aug. 15, 2013).

As the Sixth Circuit recently held in a similar photo-enforcement case:

Had they chosen to contest the citations, Appellants would have received ample opportunity to develop the facts surrounding their citations and to present their arguments about the statute's constitutionality, first in an administrative proceeding, then in the Ohio court system. Instead of chancing litigation, Appellants admitted liability and paid their fines. They may not escape claim preclusion now simply because [they] . . . resolved the claim without vigorously controverted proceedings. (Internal quotations omitted.)

Carroll, 522 Fed. Appx. at 304.

Furthermore, a defendant may bring an end to litigation and effectuate a consent judgment by paying the claimed amount—just as a plaintiff can bring an end to litigation and effectuate a consent judgment by dismissing a claim with prejudice. *See Wessendarp v. Berling*, No. 1:12-cv-559, 2013 U.S. Dist. LEXIS 93910, *9-10 (S.D. Ohio Jul. 3, 2013) (holding that a stipulation of dismissal with prejudice is a form of consent judgment that bars future litigation between the parties concerning the claims in the first suit). Once a motorist fails to request a hearing and pays the civil penalty, the dispute is over and he is barred from later challenging the ordinance or suing to recover the fines he paid—just as a city's dismissal of the motorist's notice

of liability would bar a subsequent suit by the city against the motorist based on the same violation.

The Plaintiffs in *Lycan* had the opportunity to contest their citations but chose instead to forego a hearing. Those Plaintiffs that paid the civil penalty admitted that they committed the alleged traffic violation, without asserting any defenses. Like a settlement in a civil case, this qualifies as a final disposition.

2. There is no carve-out in *res judicata* for traffic infractions.

The Court of Appeals also made a legal error in holding that the voluntary payment of a citation for a traffic infraction cannot be *res judicata* to a later proceeding involving the same parties and same issue.

In so holding, the Court of Appeals relied on two cases—*State v. Walker*, 768 P.2d 668 (Ariz. 1989) and *Hadley v. Maxwell*, 27 P.3d 600 (Wash. 2001)—to hold that plaintiffs in traffic cases have little incentive to contest the alleged violation because the fines are relatively minor. *Lycan* at ¶ 17. But if the size of the fine is a disincentive to pursuing an administrative appeal, why then did the Plaintiffs bring this class action? Is the \$100 civil penalty any less minor now than it was several years ago when they paid it? Certainly raising defenses via an administrative appeal before paying the fine is easier than paying the fine, waiting years, and then filing a class action lawsuit to recover the money already paid. The Court of Appeals' logic makes little sense.

Moreover, neither *Walker* nor *Hadley* has any relevance to the precise issue in this case. The issue in *Walker* was whether a hearing officer's prior finding of non-liability against a motorist precluded a subsequent *criminal* charge of speeding against that motorist based on the same conduct. But that situation is not remotely similar to this case. First, this Court held in the seminal case of *Mendenhall v. Akron*, 117 Ohio St.3d 88, 2008-Ohio-270, 881 N.E.2d 255, ¶ 37,

that a person subjected to a civil penalty for violating a local photo enforcement ordinance cannot also be cited for violating state criminal speeding laws based on the same conduct. So that situation could not happen in Ohio.

But more fundamentally, the *Walker* case is inapposite because it involves the application of *res judicata* to a *criminal* charge based on prior a prior *civil* finding. It has long been understood that civil and criminal proceedings generally do not affect one another. *See Helvering v. Mitchell*, 303 U.S. 391, 58 S.Ct. 630, 82 L.Ed. 917 (1938) (prior criminal acquittal has not preclusive effect on subsequent action for monetary penalty because of the difference in the burden of proof); *Knott v. Sullivan*, 418 F.3d 561, 568 (6th Cir. 2005) (“Ohio state courts generally frown upon the use of criminal proceedings to estop parties in subsequent civil proceedings.”); *Davis v. Wal-Mart Stores, Inc.*, 93 Ohio St.3d 488, 491, 2001-Ohio-1593, 756 N.E.2d 657 (“*Res judicata* does not absolve a convicted criminal from civil liability for his conduct. It is not a shield to protect the blameworthy”) (internal citations omitted). *Walker* is inapplicable because this case involves a subsequent *civil* case that raises issues resolved in a prior *civil* case, which *does* implicate *res judicata*.

Hadley is also inapposite. In that case, Maxwell was involved in an accident with Hadley and was found guilty of an illegal lane change. In a subsequent civil suit by Hadley against Maxwell for personal injuries Hadley suffered in the accident, the court refused to apply collateral estoppel against Maxwell concerning her prior conviction. The plaintiffs in the two proceedings in *Hadley* were different. And it was the motorist who was seeking to prevent the prior judgment from being used against her in the subsequent action, otherwise known as “offensive non-mutual collateral estoppel.” The court refused to apply collateral because the

incentive to litigate a \$95 fine was low and thus it would be unfair to allow *a different plaintiff to later enforce that decision against the motorist*. *Id.* at 312-13.

But the present case presents the opposite situation. It concerns a situation of “defensive mutual collateral estoppel” because (1) the parties in both proceedings are the same, and (2) it is the losing party in the prior action who is seeking to avoid the prior judgment. *See Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 326, 99 S.Ct. 665, 58 L.Ed.2d 522, n. 4 (1978) (“defensive [use of collateral estoppel] occurs when a defendant seeks to prevent a plaintiff from asserting a claim the plaintiff has previously litigated and lost against another defendant”); *Heider v. Dept. of Transportation*, Ct. of Cl. No. 2008-06521, 2012-Ohio-1241, ¶ 10, citing *Schroyer v. Frankel*, 197 F.3d 1170, 1178 (6th Cir. 1999) (finding Ohio law allows use of defensive collateral estoppel).

The Supreme Court in *Parklane* noted that *offensive* use of collateral estoppel may be unfair if the *defendant* in the second suit is also the *defendant* in the first suit and has little incentive to defend. *Parklane*, 439 U.S. at 329-330. But that concern does not exist in a *defensive* collateral estoppel situation because the losing party is the *plaintiff* in the subsequent action. There is absolutely no unfairness where the Plaintiffs in this suit were parties to administrative proceeding and are *prosecuting* this second *civil* proceeding involving the same event to which they admitted liability.

What is particularly odd about the Court of Appeals’ decision is that it relied on plainly inapposite case law from other states while ignoring more recent on-point case law—including some cases from Ohio dealing with the same Ordinance, *see Carroll* and *Foor*, which came to the opposite conclusion.

And it ignored *Kovach v. District of Columbia*, 805 A.2d 957 (D.C. App. 2002). *Kovach* is a civil photo enforcement case. There, the motorist paid a civil traffic violation without contesting the notice of liability. The court concluded that “in failing to contest the infraction, appellant effectively acknowledged liability for running the red light.” *Id.* at 962. In affirming dismissal of the motorist’s subsequent collateral attack, the court held that “collateral estoppel restricts a party in certain circumstances from relitigating issues or facts actually litigated and necessarily decided in an earlier proceeding.” *Id.*

The same result can be found *Edwards v. City of Ellisville, Missouri*, No. ED-99389, 2013 Mo. App. LEXIS 1300 (Nov. 5, 2013). *Edwards* involved a civil photo enforcement ordinance much like Cleveland’s Ordinance. There the motorists failed to challenge their citations and voluntarily paid their civil fines. When they subsequently filed a class action against the city, the trial court dismissed the complaint. The court of appeals affirmed, holding that “the record supports a finding that [the plaintiffs] had a reasonable opportunity to raise the alleged unconstitutionality of the Ordinance prior to their filing of this action,” and that “by choosing not to raise their constitutional concerns at the earliest opportunity,” the plaintiffs were “estopped from raising such claims.” *Id.* at *16-23. *See also Edwards* at *24-25 (finding that the administrative procedure provided by the city was an adequate remedy at law if plaintiffs had wanted to challenge the ordinance).

Likewise, in *Mills v. City of Grand Forks*, 813 N.W.2d 574 (N.D. 2012), the North Dakota Supreme Court held that a plaintiff who had been charged with a “noncriminal” offense of careless driving under a Grand Fork ordinance and paid a fine could not thereafter pursue a class action against the city for restitution of that money. Citing Wright and Miller’s *Federal Practice and Procedure*, the *Mills* court noted:

“An action based on an omitted defense cannot be permitted in guise of a claim for restitution of a former judgment already paid or for damages measured by its execution.” 18 Wright, Miller & Cooper, *Federal Practice & Procedure*, §§ 4414, at 326-27 (2d ed. 2002) (Emphasis added.)

Id. at ¶ 12. The court found that because the plaintiff had failed to challenge the citation, his subsequent collateral attack was barred by *res judicata*. *Id.* at ¶ 15.

With all this on-point case law, it is difficult to understand why the Court of Appeals reached to rely upon plainly inapposite case authority. Plaintiffs’ claims are barred by *res judicata*.

C. The *Lycan* Plaintiffs’ Claims Are Also Barred By The Related Concepts of Lack of Standing and Waiver.

While the Plaintiffs’ claims in *Lycan* are barred by *res judicata*, they are also barred by the related concepts of lack of standing and waiver. A plaintiffs’ failure to raise any defenses in an administrative hearing (or in a subsequent administrative appeal to the common pleas court) and payment of the civil penalty strips the owner of standing to challenge the ordinance and amounts to a waiver of all defenses.

1. Standing

On the same day it issued its decision in *Lycan*, the Eighth District issued its decision in *Jodka v. City of Cleveland*, 8th Dist. Cuyahoga No. 99698, 2014-Ohio-208, Ohio Supreme Court Case Nos. 2014-0480 and 2014-0636. *Jodka* also involved Cleveland’s Ordinance. Just as in *Lycan*, the plaintiffs paid their notices of liability and did not pursue an administrative hearing or appeal provided by CCO 413.031 and R.C. 2506.01. The *Jodka* court held that because “*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,” *Jodka* lacked standing to challenge the Ordinance. *Id.* at ¶ 37. The *Lycan* Plaintiffs who paid their civil penalties now lack standing to bring this suit.

2. Waiver

Similarly, the failure to request a hearing and payment of the civil penalty constitutes a waiver of all claims and defenses. The language of the Ordinance makes clear that payment of the civil penalty without requesting a hearing constitutes waiver and is deemed an admission of liability. *See* CCO 413.031(k) (“A notice of appeal shall be filed with the Hearing Officer within twenty-one (21) days from the date listed on the ticket. The failure to give notice of appeal or pay the civil penalty within this time period shall constitute a waiver of the right to contest the ticket and shall be considered an admission.”).

Similar photo enforcement ordinances from other Ohio cities say the same thing. For instance, Toledo Municipal Code § 313.12(d)(4) provides that the failure to request a hearing within 21 days of a notice of liability constitutes “waiver of the right to contest the citation” and is “considered an admission.” And Dayton Code of Ordinances §70.121(e)(1)(C) states the “failure to give notice of request for review within [15 calendar days] shall constitute a waiver of the right to contest the notice of liability.”

This is hardly a new legal concept. It has long been held that the doctrine of waiver bars a litigant from raising for the first time on appeal a defense that the litigant failed to assert during the initial legal proceeding. This Court’s recent decision in *Wymyslo v. Bartec, Inc.*, 132 Ohio St.3d 167, 2012-Ohio-2187, 970 N.E.2d 898, is directly on point. There, the Ohio Department of Health (“ODH”) cited a business for violating the Smoke Free Workplace Act. The business failed to administratively appeal the ODH’s citations. This Court held that as a result of this failure, the ODH’s orders were final and the business could not bring a subsequent lawsuit to collaterally attack the constitutionality and enforceability of the Act where the business had waived those claims and failed to exhaust its administrative remedies. *Id.* at ¶¶ 20-34.

This same principle of waiver applies to both criminal and civil defendants and for parties to administrative hearing and proceedings. *See, e.g., Wertz v. Vill. of W. Milgrove*, No. 3:08-cv-604, 2009 U.S. Dist. LEXIS 37129, *11-12 (N.D. Ohio Apr. 30, 2009) (court held § 1983 challenge to criminal speeding violation was waived when plaintiff paid the citation); *Herrada v. City of Detroit*, 275 F.3d 553, 558 (6th Cir. 2001) (“Herrada lacks standing to argue that hearings are not held despite requests by vehicle owners, because she elected to pay the fine rather than request a hearing”); *Walter v. City of Chicago*, No. 91-C-6333, 1992 U.S. Dist. LEXIS 5639, *9 (N.D. Ill. Apr. 27, 1992) (“We have serious doubts at the outset whether Walter has standing to challenge these procedures inasmuch as he did not avail himself of them.”)

Just last year, the Eighth District issued an on-point decision on waiver in another case concerning Cleveland’s photo enforcement Ordinance, *Davis v. City of Cleveland*, 8th Dist. Cuyahoga No. 99187, 2013-Ohio-2914. In that case, Davis appealed her notice of liability for violating Cleveland’s photo enforcement ordinance. She requested and received an administrative hearing, at which she presented certain “objections and arguments” through an attorney. The hearing officer nonetheless found her liable for the \$100 fine, and she appealed to the Common Pleas Court pursuant to R.C. 2506. During her 2506 appeal, Davis tried to raise new arguments and defenses about the constitutionality of the program. But because Davis failed to raise these arguments at the administrative hearing, the trial court and Eighth District found she had waived those issues on appeal. *Id.* at ¶ 11.

If a party waives arguments by not presenting them at a hearing she did request, then how much more does she waive arguments when she does not request a hearing in the first instance. None of the Plaintiffs in this case requested a hearing in the first instance. Accordingly, they waived all of their defenses to liability.

Davis is consistent with the rule that a defending party waives challenges to a statute or ordinance, including constitutional challenges, when he voluntarily pays the fine or pleads guilty. *See City of Cleveland v. Bawa*, 8th Dist. Cuyahoga No. 69089, 1996 Ohio App. LEXIS 2423 (Jun. 13, 1996) (defendant charged with a criminal misdemeanor waives constitutional defects that arose before the entry of his guilty plea).

Moreover, for any plaintiff who paid the civil penalty without contesting it, Ohio law is clear that the person cannot later challenge the legal basis for the civil penalty. This is a well-established principal of law most commonly recognized in the context of a defendant who voluntarily pays a judgment against him. *See Blodgett v. Blodgett*, 49 Ohio St.3d 243, 245, 551 N.E.2d 1249 (1990) (defendant who pays judgment gives up all rights to later challenge the basis of the judgment, by appeal or otherwise).

Regardless of whether the legal basis is *res judicata*, waiver, or standing, Ohio law does not allow litigants who are provided an administrative appeal the right to stand on the sidelines, pay their civil fee, and then recoup their payment years later.

D. Other States Have Long and Widely Held That Failure To Request a Hearing and Payment of a Fine Constitutes Res Judicata, Waiver, and/or Lack of Standing.

Courts from other states—including other state Supreme Courts—have routinely held that the failure to request an administrative hearing and voluntary payment of a fine or penalty bars subsequent collateral litigation to recover the fine or penalty. Indeed, were this Court to hold otherwise, it would be among a minority of courts to hold as such (and perhaps the only court to so hold). *See, e.g., Merrilees v. Treasurer*, 618 A.2d 1314 (Vt. 1992) (Vermont Supreme Court held that attempt to challenge \$5 surcharge in statute as unconstitutional failed because plaintiffs had been subject to administrative proceedings in which they paid the surcharge without objecting on constitutional grounds, and such collateral attack is barred by *res judicata*); *Bentley*

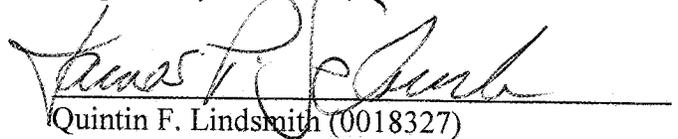
v. W. Valley City, 21 P.3d 210 (Utah 2001) (Utah Supreme Court held that plaintiffs who had been cited for speeding and thereafter paid their fines could not file a lawsuit to collaterally attack the statute and seek reimbursement of their fines: “by pleading guilty and paying their respective fines, [plaintiffs] admitted to all of the essential elements . . . and they waived all nonjurisdictional defects, including any . . . constitutional violations”); *St. Hilaire v. Maine Real Estate Comm’n*, 675 A.2d 956 (Maine 1996) (Maine Supreme Court held that *res judicata* barred subsequent challenge to Maine Real Estate Commission’s administrative license suspension action against plaintiff); *Johnston v. Bloomington*, 395 N.E.2d 549 (Ill. 1979) (plaintiff’s collateral attack on traffic ordinance was barred where he pled guilty to the violation and paid the fine); *Wilhite v. Judy*, 21 P.2d 317 (Kan. 1933) (where plaintiff was found guilty of a traffic violation and voluntarily paid fine, the prosecution ended and plaintiff could not appeal or pursue collateral action); *Welch v. District Court*, 545 N.W.2d 15 (Mich. 1996) (plaintiff’s collateral challenge to civil traffic citation was dismissed as *res judicata*, and noting that “if collateral attacks were possible years after an error was made . . . then the trial court’s decisions would forever remain open to attack and no finality would be possible.”).

The overwhelming weight of authority from other states around the country supports the conclusion that the voluntary payment of a civil fine or penalty bars a subsequent lawsuit that seeks to recover those funds. This Court should follow this plethora of well-reasoned authority.

CONCLUSION

For the reasons set forth above, this Court should reverse the decision of the Eighth District Court of Appeals.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Quintin F. Lindsmith", written over a horizontal line.

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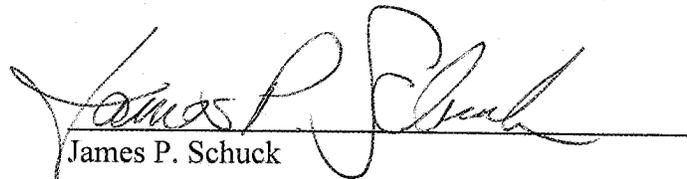
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