

IN THE SUPREME COURT OF OHIO

Case No. 13-1277

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

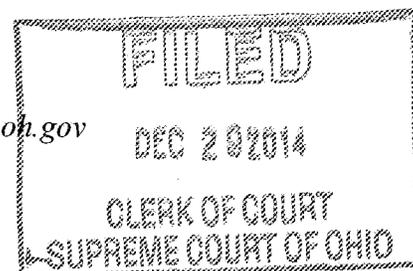
APPELLEE BRADLEY L. WALKER'S S.CT.PRAC.R.18.03 MOTION FOR RECONSIDERATION AND
MEMORANDUM IN SUPPORT

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TABLE OF CONTENTS

Page

Table of Authorities ii

Reconsideration is proper in this case because our prior decision allowed the city council to exercise a power it does not possess.....1

Memorandum.....7

 “Automated system”8

 Political appointee has exclusive original jurisdiction and therefore Cupps is dead if the majority doesn’t reconsider.....9

 Illegal substitution.....10

 Faulty premise not supported by actual constitutional text.....10

 No surrender.....11

 Mendenhall is entitled to “no consideration whatever.”.....12

 No authority v. exceeding authority.....13

 Logical fallacy.....13

The root problem with the majority’s analysis is its frequent departure from the relevant constitutional text, structure, and precedent.....14

 “Self-government” has nothing to do with this case.....15

 There is no “police power” to take away an alleged offender’s day in municipal court conferred by the General Assembly under its exclusive Article IV powers.....17

The majority’s rationale regarding R.C. 1901.20 should be reconsidered because it is inconsequential to the flagrant illegal substitution made by TMC 313.12(d)(4).....18

The majority’s preoccupation with whether R.C. 1901.20 confers exclusive jurisdiction is inherently self-contradictory.....19

The logical endpoint of the majority’s “pre-suit” administrative hearing rationale is totally untenable.....20

TABLE OF AUTHORITIES

Cases:

<i>Cupps v. City of Toledo</i> , 170 Ohio St. 144, 163 N.E.2d 384 (1959).....	<i>passim</i>
<i>Mendenhall v. Akron</i> , 117 Ohio St.3d 33, 2008-Ohio-270, 881 N.E.2d 25.....	<i>passim</i>
<i>Sizemore v. Smith</i> , 6 Ohio St. 3d 330, 453 N.E.2d 632 (1983).....	12
<i>State ex rel. Banc One Corp. v. Walker</i> , 86 Ohio St.3d 169, 1999-Ohio-151, 712 N.E.2d 742...6	
<i>State ex. rel. Cherrington v. Hutsinpillar</i> , 112 Ohio St. 468, 147 N.E. 647 (1925).....	1
<i>State ex. rel. Ebersole v. Powell</i> , 2014-Ohio-4283.....	1
<i>State ex. rel. Gordon v. Rhodes</i> , 158 Ohio St. 129,107 N.E.2d 206 (1952).....	3
<i>State ex rel. Huebner v. W. Jefferson Village Council</i> , 75 Ohio St.3d 381.....	3
<i>State ex. re. Scott. v. Cleveland</i> , 112 Ohio St.3d 324, 859 N.E.2d 923, 2006-Ohio-6573.....	3
<i>Westfield Ins. Co. v. Galatis</i> , 100 Ohio St.3d 216, 797 N.E.2d 1256, 2003-Ohio-5849.....	1

Statutes and ordinances:

Am. Sub. S.B. 342.....	15-16
R.C. 1901.20	<i>passim</i>
R.C. Chapter 2506.....	<i>passim</i>
Toledo Municipal Code 313.12(d)(4)	<i>passim</i>
Ohio Constitution:	
Article IV, Section 1	<i>passim</i>
Article XVIII, Sections 3 and 7.....	<i>passim</i>

Other Authorities:

Gotherman, Babbit, and, Lang Baldwin's Ohio Practice, Local Government Law—Municipal, §3:20 (First Edition).....	16
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“Reconsideration is proper in this case because our prior decision allowed the city council to exercise a power it does not possess...” *State ex. rel. Ebersole v. Powell*, 2014-Ohio-4283, ¶5 (Opinion per O’Connor, C.J.)

As a court of last resort, it’s not only important that this court does justice in a particular case, but announces the proper rule for future cases—especially where, as here, the issues goes to the heart of the constitutional text and structure. This is why reconsideration exists. “We use our reconsideration authority ‘to correct decisions which, upon reflection, are deemed to have been made in error.’” *Ebersole*, supra, ¶5, quoting *State ex rel. Huebner v. W. Jefferson Village Council*, 75 Ohio St.3d 381, 383, 662 N.E.2d 339. As shown below, the lead opinion authored by Justice Kennedy relies almost entirely upon inapposite and extra-constitutional authority, such as *Mendenhall* and taxicab and trash ordinances—while giving only fleeting analysis of the constitutional text. It then briefly “acknowledges” *Cupps v. Toledo* but then goes on to impliedly overrule it, without discussion, with respect to the municipal courts. But most of all, the opinion incorrectly allows city councils to exercise an awesome, sweeping power that Ohioans enumerated nowhere in Art. XVIII: the supposed “power” to *take away* Walker’s day in municipal court as provided by state lawmakers conferred under their exclusive Article IV, Section 1 power. This should be reconsidered, as should the recent amendments to R.C. 1901.20, examined below. They prove that Walker and the dissent are correct.

Not only is this decision not supported by any specific text in Art. XVIII, it’s irreconcilable with Ohioans’ adoption of Art. IV, Sec. 1. And it abandons settled precedent that predates even *Cupps*. “Section 1, Article IV, is a special provision of the Constitution that has to do with the creation of courts, and as such supersedes the general power of local self-government, as granted in Section 3, Article XVIII.” *State ex. rel. Cherrington v. Hutsinpillar*,

112 Ohio St. 468, 474, 147 N.E. 647 (1925).¹ Further, in conflating the distinct police power with the power of self government under the generic umbrella of “home-rule” in its rationale, the majority opinion causes even more confusion. Anyway, stymieing a municipal court’s jurisdiction through a special provision like TMC 313.12(d)(4) is neither a police power nor issue of “*self*” government. Creating or policing jurisdiction just isn’t in Art. XVIII.

Further, the opinion creates an unsupportable distinction between “misdemeanor” and “noncriminal” ordinances that makes no constitutional difference: repealing a person’s day in municipal court is not tethered to the potential penalty. That “power” doesn’t exist regardless of the penalty.

But perhaps the most transparent flaw in Justice Kennedy’s lead opinion is that it quickly departs from the text of the enumerated powers and instead substantially relies upon *Mendenhall*, citing it over 20 times on a jurisdictional issue. But here’s the actual certified question and answer in *Mendenhall*:

- Q:** ¶2: “Whether a municipality has the power under home rule *to enact civil penalties* for the offense of violating a traffic signal light or for the offense of speeding, both of which are criminal offenses under the Ohio Revised Code?”
- A:** ¶43: “A municipality has the power under home rule *to enact civil penalties* for the offense of violating a traffic signal light or for the offense of speeding, both of which are criminal offenses under the Ohio Revised Code, provided that the municipality does not alter statewide traffic regulations.”

¹ In abandoning settled precedent, this majority failed to adhere to *Westfield Ins. Co. v. Galatis*, 100 Ohio St.3d 216, 797 N.E.2d 1256, 2003-Ohio-5849, where this Court adopted a tripartite test to be applied in assessing whether prior precedent of this Court should be overruled.

Further, the *Mendenhall* court stated that it would “*confine [its] analysis to comparing the ordinance with [R.C. 4511.21]...*” 117 Ohio St.3d 33, 2008-Ohio-270., ¶2.² For the lead opinion to actually invoke that *Mendenhall* compelled an answer on a jurisdictional issue never posed, briefed, considered, or remotely addressed in that case is inherently flawed. And it yet again counsels in favor of reconsideration. And if the majority’s reliance upon *Mendenhall* isn’t reconsidered, it has grave implications for the scope and legitimacy of every issue certified to this court by a federal district court. In *Mendenhall*, the jurisdictional issue wasn’t even raised and therefore *it isn’t even entitled to consideration*:

A reported decision, although in a case where the question might have been raised, *is entitled to no consideration whatever as settling*, by judicial determination, a question not passed upon or raised at the time of the adjudication.

State ex. rel. Gordon v. Rhodes, 158 Ohio St. 129,107 N.E.2d 206 (1952), paragraph one of syllabus, (emphasis added).

Reliance on *Mendenhall* is another prime reason to reconsider. *State ex. rel. Huebner v. W. Jefferson*, supra, 75 Ohio St.3d 381, 383, (“We note, additionally, that the discussion of the Home Rule Amendment in our original opinion appears to be contrary to established precedent, and the sole case cited therein appears to be inapposite.”)

Similarly, the majority’s statement at ¶23 that “reading R.C. 1901.20(A)(1) as prohibiting civil enforcement of traffic ordinances under home-rule authority would require us to overrule *Mendenhall*” is totally incorrect, as just shown. *Mendenhall* isn’t even triggered here. The

² Similarly, *State ex. rel. Scott v. Cleveland* addressed only whether Cleveland’s ordinance “conflicted” with R.C. Chapter 4521, not whether the municipal court’s jurisdiction was taken away and is therefore inapposite.

jurisdictional issue might have been—but was not—raised in *Mendenhall*, which is therefore entitled to **“no consideration whatever.”**

Next, as examined at page 15 below, the Governor just signed Am. Sub. S.B. 342 amending R.C. 1901.20. This new law, which wasn't previously under this court's consideration, shows beyond any doubt that the dissent and what Walker has been stating the whole time are correct. For the new bill provides an exception from the municipal court's jurisdiction for certain alleged photo-enforcement violations. The fact that the General Assembly felt the need to amend this section to make an exception is the very evidence that absent the exception the alleged violations belong in municipal court, which is the single tribunal that the General Assembly has vested with original jurisdiction over noncriminal ordinance violations. Yet under the majority's view, the exception is pointless, which is at direct odds with the existence of Art. IV, Sec. 1 and the wording of both former and current R.C. 1901.20. If the majority doesn't reconsider, any municipality may negate a municipal court's original jurisdiction for any ordinance carrying a financial penalty.

Indeed, under the split 4-3 decision, every city council in this state may enact this global ordinance:

“Effective immediately, we hereby create a civil enforcement board. ALL misdemeanor crimes shall henceforth also carry a \$1,000 civil penalty. The police shall administer the hearing of ALL such offenses under procedures it adopts. Anyone deemed to be in violation shall pay the civil penalty or appear before the hearing officer to appeal the notice of liability. Failure to pay or appeal shall result in impoundment.”

This seems absurd. Yet it is the logical endpoint of the lead opinion. Changing the penalty is *Mendenhall*. Substituting out the municipal court for an entire class of ordinance violations is *Cupps*, Art. IV, Sec. 1, etc. Further, under the actual text of Art. XVIII, no power of city council to substitute-in the jurisdiction of a political appointee exists in the first place. That

such a wholesale ordinance as above could be said to not violate Art. IV, Sec. 1 strongly counsels in favor of reconsideration.³

Next, consider the majority's rationale slightly differently. Take the case of a city council that, for whatever reason, was in a spat with the local municipal court—maybe over funding, maybe council thought the judge or judges were too lenient or too harsh or just didn't like them—and city council decided to enact a global ordinance reciting that “all misdemeanor violations of our ordinances shall be determined in common pleas court.” But the city prosecutor still wanted to file charges in the municipal court and prosecuted John Doe in the municipal court for a violation of one of the city's misdemeanors ordinances. John Doe defends on the ground that the municipal court lacks jurisdiction as determined by council, that jurisdiction over ordinances was vested exclusively in common pleas court. No court would hesitate to hold that such an ordinance respecting the municipal court's jurisdiction was void under Article IV, Section 1, a nullity not within council's Article XVIII powers. But here, Toledo's ordinance is far worse, for it goes full tilt: instead of attempting to vest exclusive original jurisdiction of an ordinance violation in an elected common pleas judge that has true concurrent original jurisdiction over misdemeanors as vested by the General Assembly, Toledo creates *its own* form of original jurisdiction and vests it exclusively in an unknown political appointee. This can't possibly survive Art. IV, Sec. 1, for if it does, then the syllabus of *Cupps v. Toledo* is overruled

³ Additionally, Toledo's “regular” speeding ordinance (TMC 333.03) remains on the books as does TMC 313.12. Despite what was stated at oral argument by appellants' counsel, *nothing* prevents dual prosecutions under 333.03 and 313.12 except in the case of collisions. *See* TMC 313.12(c)(7). Indeed, the preamble of 313.12 recites that it was adopted “notwithstanding any other provision of the traffic code.”

with respect to the municipal courts.⁴ Again, it makes no difference that TMC 313.12 carries a financial penalty and is not a misdemeanor for *the constitutional principle remains exactly the same*: Toledo city council cannot legislate in the area of picking who presides over alleged violation of its own ordinances regardless of the potential penalty. It's just not an enumerated power that council possesses and therefore reconsideration is warranted under *Ebersole*.

Toledo city council in TMC 313.12(d)(4) vests a local political appointee with *exclusive* original jurisdiction over every single alleged violation of TMC 313.12 even though state lawmakers acting under their exclusive constitutional powers specifically conferred one tribunal, and one tribunal only—the Toledo municipal court—with original jurisdiction over alleged violations of that ordinance. Thus, the issue of whether the municipal court has “exclusive jurisdiction” under R.C. 1901.20 is immaterial to the Article IV, Section 1 issue. For whatever jurisdiction the General Assembly conferred upon the municipal under R.C. 1901.20 is consumed entirely by the appointee. Thus, how is this upheld without offending Article IV, Section 1 or abandoning *Cupps* by implication? It's no answer that there may be an appeal to the common pleas court, for that does not erase the erasure of the municipal court's original jurisdiction. In reality, the political appointee's power does not “*complement*” the municipal court's jurisdiction, it *substitutes* for it.

The majority's decision paints Walker's argument as that city council offended the General Assembly's power to “create courts.” *Maj. Op.* ¶17. But his actual argument is that the

⁴ This is why the Sixth District opined that *State ex. rel. BancOne* supports Walker. The appeals court is correct for *BancOne* states, “**When the General Assembly intends to vest exclusive jurisdiction in a court or agency**, it provides it by appropriate statutory language.” 86 Ohio St.3d 169, 171-172, 712 N.E.2d 742 (1999) (emphasis added). Here, city council vested exclusive original jurisdiction in the political appointee to the exclusion of the court, where it has no enumerated power to do so.

General Assembly created the Toledo municipal court, gave it jurisdiction over any violation of TMC 313.12, and that council has no enumerated power *to take away* his day in municipal court and *substitute-in a political appointee*. Walker is correct: Ohioans reserved the political question of who will exercise jurisdiction over ordinance-violation cases for state lawmakers, not city council members, which is common sense.

Finally, dictating “pre-suit administrative procedures” that vest a local political appointee with exclusive original jurisdiction to determine whether completed conduct, such as alleged traffic offenses, was an ordinance violation directly violates Art. IV, Sec. 1 because the hearings *take away* a person’s day in municipal court afforded by state lawmakers. This leaves the municipal courts that the lawmakers created to only enforce a predetermined decision made by the hearing officer appointed by council. This is a direct impairment and regulation of the municipal courts’ and their jurisdiction. Finally, as shown on page 21 below, the logical outcome of permitting lawsuits based upon a political appointee’s determination of guilt or innocence creates a mind boggling crisis of jurisdiction that is totally untenable.

MEMORANDUM

Article XVIII allows city council members to address conduct that may pose problems in their localities by proscribing it through ordinances that carry financial penalties for violators. That’s a powerful tool Ohioans enumerated in their constitution. But they checked and balanced the enumerated powers bestowed upon city councils by adopting Article IV, Section 1. And under it, state lawmakers possess the *exclusive* power to control who will adjudicate alleged violations of the ordinances that city councils enact under its powers. There exists no parallel power in Article XVIII to do this.

Thus, when the General Assembly sets statewide policy under its exclusive power that the municipal court has jurisdiction, absent an applicable exception, it ends the jurisdictional discussion. City council has no power enumerated in this state's constitution to dictate another result. Accordingly, while city council selects *the penalty* for an ordinance violation, it does not select who determines whether an ordinance was violated: Art. IV, Sec. 1 and municipal-court elections check and balance the enumerated Art. XVIII powers, which don't include the power to confer jurisdiction in the first place, anyway.

While cities may certainly impose financial penalties upon ordinance violators, the giant leap that they may therefore vest in a local political appointee exclusive original jurisdiction over alleged violations skips right over Article IV, Section 1. Equating the power to proscribe a penalty (*Mendenhall*) with a supposed power to impair jurisdiction (*Cupps*) is a false equivalence with no limiting principle. Alleged trespass? \$1,000 civil fine and "appeal" to the mayor's designee. DUI? \$5,000 fine—no discovery—go talk to the police chief. Domestic violence; \$10,000; appeal to our political appointee, etc.

Automated system. The lead opinion at ¶21 recites that municipalities have authority "to protect the safety and well-being of their citizens by establishing automated systems for imposing civil liability on traffic-law violators." Walker never disputed Toledo city council's power to utilize "automated systems" to impose financial liability on "traffic-law violators." But it does *not* follow that Walker therefore is less entitled to his day in municipal court when faced with an allegation that he violated local law, for his day in municipal court is not tethered to the penalty Toledo seeks. The distinction between criminal and noncriminal penalties makes no constitutional difference. Anyway, the phrase "automated systems" refers to *cameras and sensors*—not to the justice system.

This lead opinion cannot be limited to ordinances using “automated systems.” Indeed, Toledo’s merit brief correctly conceded that this case “is not really about cameras.” And if it’s attempted to be contained to just camera ordinances, one must ask why in adopting Art. XVIII in 1912 it’s believed that Ohioans had any of this in mind? The lead opinion is devoid of any historical analysis of Art. XVIII and barely delves into its text.

Political appointee has exclusive original jurisdiction and therefore Cupps is dead if the majority doesn’t reconsider. The lead opinion never actually quotes the disputed provision. “A notice of appeal *shall* be filed with the Hearing Officer.” See TMC 313.12(d)(4). This dictate confers *exclusive* original jurisdiction of every alleged violation upon an unknown political appointee. So even if in R.C. 1901.20 the General Assembly intended to confer the municipal courts that they created and unknown political appointees with concurrent jurisdiction—a rather odd result—still, how does the appointee end up with *exclusive* original jurisdiction without violating Art. IV, Sec.1? Indeed, §313.12(d)(4) may as well state that “every time our city alleges someone violated this ordinance, our own appointee shall determine guilt or innocence and the jurisdiction conferred by the state lawmakers will not be exercised.”

This would be flagrantly illegal. Yet under the constitutional analysis, these words are synonymous with “a notice of appeal shall be filed with the Hearing Officer.” Upholding that provision renders the syllabus of *Cupps v. Toledo* dead-letter law vis-à-vis municipal courts. While the majority quickly “acknowledges” *Cupps* at ¶20 (home-rule authority “does not include the power to regulate the jurisdiction of courts), the remainder of the opinion quietly abandons and guts *Cupps* with respect to municipal courts: if taking away Walker’s day in municipal court by vesting exclusive jurisdiction in an appointee doesn’t violate Art. IV, Sec. 1, then very little would. This frustrates core constitutional structure.

Illegal substitution. Contrary to ¶21 of the lead opinion, the political appointee’s jurisdiction does not “complement”—a verb meaning “to complete or make perfect”—the municipal court’s jurisdiction. Just as fine wine could never complement a steak that is taken away before the first bite, the General Assembly set the table for Walker to defend himself in municipal court and Toledo city council *took away* his day in municipal court. Thus, not only is the category of “complementary jurisdiction” previously unknown in this state; it’s inaccurate here: the reality is that the political appointee “*substitutes for*” or “*replaces*” the municipal court’s jurisdiction.

This supposed power of Toledo city council to substitute a local political appointee for a municipal court judge brings with it a sea change. The 4-3 announcement that every city council in this state possesses the sweeping, awesome *constitutional* power to *take away* a citizen’s day in municipal court conferred by state lawmakers when a city seeks to impose financial penalties upon its citizens (or visitors) is momentous. And if not reconsidered, city council may exercise a power not enumerated.

Faulty premise not supported by actual constitutional text. The lead opinion entirely rests on the following, faulty premise that merits the most reconsideration of all. The opinion requires that enumerated in the actual text of Article XVIII, Ohioans enshrined a preemptive surrender to each city council in this state their potential day in municipal court should they face a charge of lawbreaking that carries a financial penalty. Upon review of the text of the constitution, this premise is faulty. Ohioans have not surrendered their potential day in municipal court to the Toledo city council anywhere in Article XVIII. It was just *taken* by council on its own accord, in a direct affront to Art. IV, Sec. 1 and this court’s settled precedent set forth in *Cupps*. And since Ohioans never consented to this in the actual text of this state’s

constitution, it doesn't matter what R.C. 2506.01, R.C. 1901.20 or a local taxicab or trash ordinance provide.⁵

For this is a constitutional case. And the constitution's enduring force is independent of these enactments, which merely beg the constitutional issue. The lead opinion is only correct as a matter of *constitutional law if the text of Article XVIII* shows that Ohioan's empowered Toledo city council to take away their day in municipal court conferred under state lawmakers' undisputed, exclusive Art. IV., Sec. 1 powers. Yet the lead opinion barely examines that text, which is reviewed below. This court should reconsider and affirm that city council does not wield that sort of power. *Cupps*, syllabus.

In the end, the lead opinion melds what are distinct municipal powers and reaches a result that effectively abandons the syllabi of *Cupps v. Toledo* and *State ex. rel. Gordon v. Rhodes*. But most importantly, ***the power of city council to substitute for a municipal court's jurisdiction is not enumerated anywhere in this state's constitution*** and therefore under *Ebersole*, this case should be reconsidered.

No surrender. For nowhere in the actual text of Article XVIII have Ohioans preemptively surrendered their potential day in municipal court conferred under Article IV, Section 1 to the whims of the majority of any particular city council. Nor from a historical, structural, or common sense perspective would they.

⁵ That the lead opinion in ¶19 seeks extra-constitutional support for its constitutional conclusion suggests that the constitution does not support its conclusion. Further, the examples picked are not analogous for the cited taxicab and trash ordinances do not provide for noncriminal penalties at all, but rather both make violations misdemeanors. CCO 1303.08; TMC 773.99. When a "pre-suit hearing" is to decide liability for a penalty, the municipal court has jurisdiction. Substituting it impairs that jurisdiction by definition.

Broadly speaking, it would be highly irrational of Ohioans to grant every city council the power to take away their day in municipal court should they be charged with wrongdoing. And considering that Ohioans adopted Article IV as a special provision that supersedes Article XVIII—endowing the state legislature with absolute, exclusive power to control jurisdiction—the majority’s decision is already on shaky terrain.

And more specifically, if Ohioans truly endowed Toledo city council with the power to preemptively take away their potential day in municipal court conferred by the statewide legislature, surely such an important power could be *easily* pinpointed in this state’s constitution. And if so, the lead opinion would’ve immediately highlighted it instead of addressing non-constitutional authorities such as the Toledo taxicab ordinance and a trash ordinance. But it’s not in the opinion.

And that’s because it’s not in Article XVIII either. As shown below, the majority’s conclusory review of the constitutional text doesn’t definitively specify or analyze the exact source of the supposed municipal power to substitute-out a municipal court’s jurisdiction for selected ordinance, nor explain how that can be done in the face of *Cupps*, which the majority “acknowledges” to be the law in Ohio.

Mendenhall is entitled to “no consideration whatever.” The majority’s extrapolating in ¶23 that *Mendenhall* compels a result on a jurisdictional issue that was never presented, briefed, or decided in *Mendenhall* is unfounded, contradicts this court’s longstanding jurisprudence not to opine upon unripe issues. “It has long been the policy of this court not to address issues not raised by the parties.” *Sizemore v. Smith*, 6 Ohio St. 3d 330, 453 N.E.2d 632 (1983), fn 2. Even Toledo’s own merit brief at page fifteen acknowledges that *Mendenhall* is inapposite. (“The key issue presented in *Mendenhall* was different than the issue here—*Mendenhall* did not involve a

claim that Akron improperly infringed upon a municipal court’s jurisdiction.”) So, while the majority correctly observes in ¶17 that Akron and Toledo *ordinances* are similar, the *constitutional challenges* made here and in *Mendenhall* are apples and oranges.

Majority didn’t consider Walker’s actual claim. It’s evident that the majority didn’t fully consider Walker’s actual theory, which also recommends reconsideration. For example, the majority at ¶17 rejects “Walker’s claim” that Toledo has usurped the General Assembly’s exclusive power to “create courts.” This isn’t Walker’s claim: he’s claiming that the General Assembly created the municipal court and under its exclusive powers thoughtfully conferred it with jurisdiction of any ordinance violation, including alleged violations of TMC 313.12. But Toledo city council voted down that jurisdiction by illegally substituting Walker’s day in municipal court with a day before a political appointee.

No authority v. exceeding authority. The majority’s statement at ¶28 that Walker cited no authority that “administrative proceedings are *inconsistent* with home-rule authority” simultaneously clouds—and oversimplifies—the issue. Walker isn’t saying cities may *never* have any administrative proceedings. It’s that city council has no power to mandate administrative proceedings *to decide guilt or innocence of an alleged ordinance violation* where the municipal court “has jurisdiction.” Yet again, this isn’t an issue of being “inconsistent” with home-rule power—there is no power. Article IV, Sec. 1 is a special enumerated power that supersedes Art. XVIII. That is, the plaintiff in *Mendenhall* made no objection under Art. IV, Sec. 1. She only claimed that Akron made a crime a non-crime and that, plaintiff argued, exceeded Akron’s powers. But here, it is not argued that Toledo “*exceeded*” its authority in taking away Walker’s day in municipal court; it’s that Toledo *doesn’t have that authority*.

Logical fallacy. Similarly, the majority at ¶28 recites, “Our holding a complementary system of civil enforcement of traffic laws is within a municipality’s home-rule power acknowledges that administrative procedures must be established in furtherance of this power.” But why “*must*” it? Just seek the fine in municipal court under R.C. 1901.20. Again, the only issue certified in *Mendenhall* was whether a criminal penalty under the Revised Code could be altered by an ordinance proscribing identical conduct. It’s a fallacy to include that the answer to that issue “*must*” mean anything other than the answer given. And as overwhelming proven above, the jurisdiction issue was not raised in *Mendenhall* and it has no logical—or constitutional—connection to the penalty issue.

I. The root problem with the majority’s analysis is its frequent departure from the relevant constitutional text, structure, and precedent.

While the lead opinion uses the phrase “home-rule” eighteen times and cites *Mendenhall* over twenty times, the flaw that most justifies reconsideration is that it reaches a sweeping constitutional conclusion, yet virtually the entire opinion focuses on items other than the actual text of this state’s constitution, nor does the opinion offer much to reconcile Art. IV with Art. XVIII, which is what would normally be expected to be the focal points of any case of this constitutional dimension and magnitude.

And when the majority does address the distinct, enumerated municipal powers—the power of *self* government and the police power—it inexplicably collapses them under the generic umbrella of “home-rule.” Expanding “home rule” to now include the power of local officials to actually wade into the realm of choosing who will preside over ordinance violations and substitute its decision for the state lawmakers policy preferences is unsupported by this court’s relevant precedent—directly contradicted by the syllabus of *Cupps* and the adoption of Art. IV, Sec. 1—and not enumerated anywhere in the actual constitutional text.

A. “Self-government” has nothing to do with this case.

In addressing the sole issue certified in *Mendenhall*, this court stated that “there is no dispute that the Akron ordinance is an exercise of concurrent *police power* rather than self-government.” *Mendenhall*, ¶19 (emphasis added.) Yet here, the majority invokes “*self-government*” as significant rationale. For example, ¶19 (emphasis added) states:

Furthermore, the fact that the General Assembly enacted R.C. 2506.01, which provides for appeals from local administrative decisions, supports appellants’ claim that charter cities have constitutional and legislative authority to *self-govern in these ways* under their home-rule authority.

This passage is remarkable in at least three respects. *First*, R.C. 2506.01—a statute—does *not* support the majority’s constitutional conclusion. The common pleas courts’ generalized appellate jurisdiction begs the question of whether city council even possesses the *constitutional* power in the first instance to unilaterally substitute a political appointee for the specific original jurisdiction conferred upon municipal-court judges in ordinance violation cases, including TMC 313.12 cases. Further, R.C. 1901.20(A)(1), the parking-violation exception, and the elaborate scheme mandated for operating parking-violation bureaus set forth in R.C. Chapter 4521 in order to be exempted from the municipal courts’ jurisdiction totally and completely undermine the majority’s conclusion that cities have unilateral authority “to self-govern in these ways” with respect to ordinance-violation cases. For if that were the case, key provisions within R.C. 1901.20 would not make sense. Ordinance violation cases are governed by R.C. 1901.20 specifically and therefore R.C. 2506.01 shouldn’t even be triggered. Further, telling a municipal court judge sitting under authority of Art. IV Sec. 1 that the judge will not be hearing these particular ordinance violation cases hardly constitutes Toledo’s “*self*” government. *Second*, the case authority cited in ¶19, *Bazell v. Cincinnati*, is a pure self-government case and not an ordinance violation case—let alone an ordinance-violation case implicating a financial penalty.

Relying upon this sort of precedent to reach a result changes the course of Ohio law. For until now, it's been hornbook law that:

Section 1, Article IV of the Ohio Constitution is a special provision dealing with the creation of courts and supersedes the general power of local self-government granted in Section 3, Article XVIII. The sovereignty of the state, as to courts, extends over all the state, including municipalities, whether charter or noncharter, and municipalities thus have no power to create courts or regulate their jurisdiction. Ordinances and statutes enacted by the legislative bodies of the state or municipalities are enforced through judicial tribunals created by the state.

Baldwin's Ohio Practice, Local Government Law—Municipal, §3.20.

Third, if the majority were correct, then the General Assembly surely wouldn't have just amended R.C. 1901.20 as follows in Am. Sub. S.B. 342:

Sec. 1901.20. (A)(1) The municipal court has jurisdiction ~~of~~ to hear misdemeanor cases committed within its territory and has jurisdiction over the violation of any ordinance of any municipal corporation within its territory, unless **the violation is a civil violation based upon evidence recorded by a traffic law photo-monitoring device and issued pursuant to division (B)(3) of section 4511.093 of the Revised Code or** the violation is required to be handled by a parking violations bureau or joint parking violations bureau pursuant to Chapter 4521. of the Revised Code;

This again proves lawmakers' intent that when they confer jurisdiction upon the municipal court, only they may provide the exception. Otherwise, bothering to provide an exception would not make any sense. As just shown, the power of self government isn't implicated here. There is no power to alter the penalty for an ordinance and then dictate who will decide an alleged violation of the ordinance. It doesn't exist.

Again, in addressing the altered-penalty issue in *Mendenhall*, this court specifically noted that self-government wasn't at issue. "Self government" refers to what it says: *self* government, such as how many city council members a town will have and so forth. Jurisdiction over ordinance violations is not an issue of self-government. This leaves the police power as the only possible way for a city council to dictate who determines violations of the ordinances it enacts.

B. There is no “police power” to take away an alleged offender’s day in municipal court conferred by the General Assembly under its exclusive Article IV powers.

Like the power of self-government, the police power is also set forth in Article XVIII, Section 3. “Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.” While the majority mentions this provision in passing, it fails to specifically articulate the text that is said to possess Toledo city council with the power to substitute a political appointee for the jurisdiction of the Toledo municipal court as conferred by the state legislature under Article IV, Section 1.

As just shown above, the majority’s analysis at times invokes “self government” despite that in the chief case relied upon, *Mendenhall*, it found that the ordinance involved police power. But the police power—the power of cities “to adopt and enforce within their limits such local police....regulations, as are not in conflict with the general law”—is no answer because that’s precisely what’s held in check by Article IV, Section 1, which Cupps and other authorities acknowledge supersedes Article XVIII. Even if not, it must again be noted that nowhere in Article XVIII is there an enumerated power to confer jurisdiction.

That is, the police power does *not* include the right to police who presides over an alleged ordinance violation. Otherwise, the system of checks and balances falls apart. The legislature could except out traffic camera ordinance violations from R.C. 1901.20, just as it did for parking violation bureau cases. But the salient constitutional point is that is strictly the legislature’s call. Ohioans have not consented otherwise in their constitution.

In invoking two distinct municipal powers, the lead opinion actually articulates no constitutional rationale. And a full consideration of either of these enumerated powers fails to

reveal where Ohioans consented for jurisdiction conferred upon a municipal court by the legislature to be outsourced by city council to a local political appointee. The issue of jurisdiction is governed exclusively by the state lawmakers under Art. IV, Sec. 1.

II. The majority's rationale regarding R.C. 1901.20 should be reconsidered because it is inconsequential to the flagrant illegal substitution made by TMC 313.12(d)(4).

First, the hearing officer was given exclusive original jurisdiction. Thus, any discussion of whether the municipal court has exclusive jurisdiction is secondary, for whatever jurisdiction it did have was completely subsumed by the hearing officer. *Second*, as examined below, the municipal court is the only tribunal with jurisdiction conferred *by the General Assembly*, which is a key constitutional point the majority apparently failed to fully consider. Thus, the General Assembly had no reason to recite the word “exclusive” because it—the General Assembly—only conferred jurisdiction upon the municipal court in a single conferral of jurisdiction in R.C. 1901.20. By definition, *taking away* municipal court ‘s *original jurisdiction* to make a determination of guilt or innocence *is* impairment. It is not enough that after the fact of substituting out the municipal court that *the hearing officer’s decision* may be *enforced* in court (not a de novo review) or that there can be a supposed *appeal* to common pleas court under R.C. 2506.01. In fact, the requirement that appeals “shall be” filed with the hearing officer, who will determine guilt or innocence—and leaves the court to only “enforce” that determination—*proves* the court’s jurisdiction has been negated. Toledo claims *that it* created the alternate concurrent tribunal, but to uphold this requires reversal of *Cupps* by implication because to unilaterally create a substitute jurisdiction *is* to regulate the jurisdiction conferred by the General Assembly.

III. The majority's preoccupation with whether R.C. 1901.20 confers exclusive jurisdiction is inherently self-contradictory.

R.C. 1901.20 is secondary to the primary question of whether municipalities have an independent, enshrined Art. XVIII *constitutional* power to *take away* a person's day in municipal court as conferred under Art. IV, Sec. 1 when they are charged with violating a city ordinance. The 4-3 decision is that cities do have that power. Because that decision allows city council to exercise a power it does not possess under Article XVIII, it should be reconsidered. But there is one more crucial flaw in the majority's logic in reaching its conclusion. For the majority's conclusion recites that "Ohio municipalities have a home-rule authority to establish administrative...hearings..." ¶29. If this were true as a matter of constitutional law as applied to administrative hearings designed to decide guilt or innocence of alleged ordinance violations, then R.C. 1901.20, a statute, would not matter. For home-rule authority exists independent of statute. Indeed, Toledo maintains it has a home-rule power to dictate who presides over certain ordinance violations *in spite of* the statute. Accordingly, accepting ¶29 as correct for the sake of argument, then the General Assembly *couldn't* have legally conferred exclusive jurisdiction upon the municipal court (and couldn't prospectively amend the statute to do so) because that would impinge upon Toledo's supposed enumerated, *constitutional* power to do this. *Cite Cleveland v. State*, 138 Ohio St.3d 232, 5 N.E.3d 644, 2014-Ohio-86 (exercise of municipal constitutional powers cannot be limited by statute.) In sum, the majority's analysis of R.C. 1901.20 hinges upon a premise (the *statute* doesn't say "exclusive" jurisdiction) that the court's conclusions (Toledo has a constitutional power) wouldn't have allowed in the first place. By definition, this is illogical. Further, substituting-out the court's jurisdiction does conflict with R.C. 1901.20.

IV. The logical endpoint of the majority’s “pre-suit” administrative hearing rationale is totally untenable.

Here is a scenario permitted by Justice Kennedy’s lead opinion “pre-suit” rationale. Driver gets camera citation in Toledo. Driver “appeals” to the political appointee vested with exclusive original jurisdiction under TMC 313.12(d)(4) and has a morning hearing. Hearing officer rules for city. Under (d)(4), the “decision in favor of the City of Toledo may be enforced by means of a civil action.” Satisfied with the 4-3 decision in this case—which should be reconsidered—RedFlex funds a lawyer to be on standby to immediately sue in small claims court all drivers found guilty by the hearing officer. Lawyer diligently files boilerplate complaint in Toledo municipal court small claims division to enforce the hearing officer’s decision—liability is already established—and service is obtained almost immediately. The municipal court sets a small claims hearing in two weeks and the hearing officer’s decision is reduced to judgment in municipal court just as TMC 313.12(d)(4) requires. The driver immediately appeals to Sixth District. This all happens in less than 30 days as small claims actions by definition are designed to be quick. Plus, there is nothing for the court to do except enforce what *the hearing officer* decided.

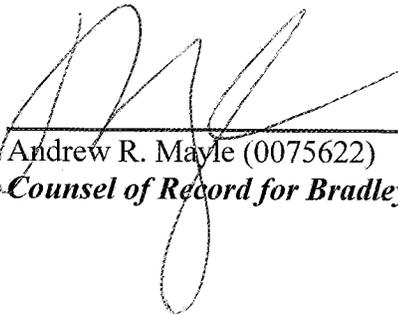
Driver then decides to appeal the hearing officer’s decision to the Lucas County court of common pleas of common pleas under R.C. Chapter 2506 within the timeframe permitted by R.C. 2505 yet after the municipal court’s decision. So now we have been before the hearing officer, the municipal court (to “enforce” the hearing officer’s jurisdiction), and are now in both the common pleas court and court of appeals.

It’s no answer that this is a hypothetical. This is logical endpoint of the majority’s analysis. And it can’t be answered by stating that Toledo won’t file suit, for this court’s justification was these are “pre-suit” hearings.

Conclusion

While Toledo and RedFlex have cleverly made things seem confusing, Walker advances a straightforward Art. IV, Sec. 1. issue correctly resolved by the dissent, the Sixth District below, and the Eighth District in *Jodka v. Cleveland*. The simplest answer is that when the General Assembly confers original jurisdiction on a single tribunal, then that tribunal (here, the municipal court)—and that tribunal alone—has original jurisdiction *unless the General Assembly provides otherwise*. Indeed, the central purpose of Article IV, Section 1 is to have a uniform, statewide check on all of the other governmental powers enumerated in the constitution. The policy is that if you are in this state and one of the municipalities charges you with wrongdoing, there is a conflict of interest for the municipality to pick and choose who will decide your case. So the matter is left to the legislature. To not reconsider, this court must be comfortable with the notion that Ohioans submitted to every city council in this state the unilateral, constitutional power to preemptively vest a local political appointee with exclusive original jurisdiction over alleged ordinance violations. This is unprecedented and effectively overrules *Cupps* with no explanation what has changed to require that.

Respectfully submitted,



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CERTIFICATE OF SERVICE

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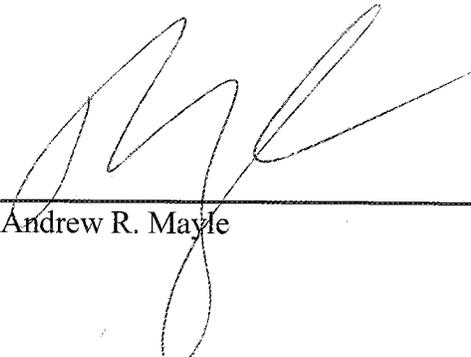
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