

ORIGINAL

IN THE SUPREME COURT OF OHIO

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

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APPELLANT REDFLEX TRAFFIC SYSTEMS, INC.'S  
MEMORANDUM IN OPPOSITION TO  
APPELLEE'S MOTION FOR RECONSIDERATION

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FILED  
JAN 08 2015  
CLERK OF COURT  
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## I. INTRODUCTION

Appellant Redflex Traffic Systems, Inc. (“Redflex”) respectfully requests the Court deny the motion for reconsideration of Appellee Bradley Walker (“Walker”). Walker has already raised all of the arguments and authorities in his motion for reconsideration—either in his merit brief or during oral argument. And all of these arguments were rejected by a majority of this Court in its well-reasoned opinion that was consistent with existing law. Walker’s motion is nothing more than a restatement of the same arguments in new packaging, and as such, should be denied.<sup>1</sup>

## II. DISCUSSION

While this Court has held that reconsideration will only be granted when the court deems its prior decision to have been made in error, *State ex rel. Huebner v. W. Jefferson Village Council*, 75 Ohio St.3d 381, 383, 662 N.E.2d 339 (1996), this Court’s rules provide that a “motion for reconsideration shall not constitute a reargument of the case.” S.Ct.Prac.R. 18.02(B).

Walker’s motion violates this rule because it does nothing but reargue the same points he raised in his Merit Brief and during oral argument, including: (1) that Toledo impaired the jurisdiction of the Toledo Municipal Court when it enacted civil photo enforcement<sup>2</sup>; (2) that *Mendenhall v. City of Akron*,<sup>3</sup> is inapposite to this case<sup>4</sup>; (3) that the case of *Cupps v. Toledo*<sup>5</sup> controls the outcome of this case and requires a finding for Walker<sup>6</sup>; and (4) that this Court failed

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<sup>1</sup> The only new argument advanced by Walker is his claim that recent legislative actions by the General Assembly support his position. This argument is addressed in the final section herein.

<sup>2</sup> Raised by Walker at pages 9-13 of his Merit Brief.

<sup>3</sup> 117 Ohio St.3d 33, 2008-Ohio-270, 881 N.E.2d 255

<sup>4</sup> Raised by Walker at pages 26-27 of his Merit Brief.

<sup>5</sup> 170 Ohio St. 144, 163 N.E.2d 384 (1959)

<sup>6</sup> Raised by Walker at pages 3 and 11 of his Merit Brief.

to analyze Article IV, § 1 of the Ohio Constitution despite its applicability.<sup>7</sup>

All of these issues were previously raised by Walker and explicitly addressed in this Court's opinion ("Opinion"). The Court's Opinion correctly decided these issues, and Walker—unhappy with the result—seeks to reargue the case anew. As discussed below, each of Walker's arguments lacks merit and the motion for reconsideration should be denied.

A. **Toledo did not impair or limit the jurisdiction of the municipal courts - the General Assembly did.**

The false premise of most of Walker's motion is that the City of Toledo "divested" the Toledo Municipal Court of its constitutional and statutory jurisdiction to hear violations of its photo enforcement ordinance. In other words, Walker contends Toledo's photo enforcement ordinance created an unlawful "detour"<sup>8</sup> around adjudication in the municipal court.

But it was not Toledo that created such a "detour"—it was the Ohio General Assembly. The General Assembly—not Toledo—enacted R.C. 2506.01, which gives any person aggrieved by a municipal board or commission's decision the *right* to have his or her day in common pleas court. The General Assembly granted this right in R.C. 2506.01 knowing that cities, like Toledo, regularly establish administrative processes and conduct administrative hearings for violations of their own civil ordinances. After all, the statute's very purpose is to instruct litigants where they should appeal rulings from administrative hearings of municipal boards or commissions.

The only thing Toledo did was to establish another administrative hearing process – this time for violations of its photo enforcement ordinance. Even Walker does not challenge a city's home rule right to enact ordinances that establish administrative hearings for ordinance violations for things such as "Vacant Foreclosed Residential Property" (Dayton Ord. § 93.01), "Property Nuisance" (Cleveland Ord. § 209.01), or "Alarm Systems, Dealers, and Users"

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<sup>7</sup> Raised by Walker at pages 6-7 of his Merit Brief.

<sup>8</sup> Redflex's term.

(Columbus Ord. § 597.01). Toledo merely established another administrative process governing another ordinance violation. The General Assembly decided that if there is such a process, any appeal from that process proceeds to the common pleas court. There is nothing unique about Toledo's photo enforcement ordinance that separates it from any other ordinance establishing administrative hearings. Walker has certainly never identified any difference.

Indeed, R.C. 2506.01 would be unnecessary and surplusage if every municipal issue was required to proceed in municipal court. The Court's Opinion correctly recognized this point, stating: "Furthermore, the fact that the General Assembly enacted R.C. 2506.01, which provided 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." *Walker v. City of Toledo*, Slip Opinion No. 2014-Ohio-5461, at ¶ 19 (citation omitted).

**B. Walker incorrectly claims that *Mendenhall* has no applicability to this case.**

Walker's motion also claims that *Mendenhall* is entitled to "no consideration whatsoever" and that this Court's reliance on *Mendenhall* is misplaced. (Motion for Reconsideration at 12-13.) Akron's home-rule authority to implement a pre-suit civil traffic enforcement ordinance – one that included an administrative hearing feature – was squarely before this Court in *Mendenhall*. Several paragraphs of the *Mendenhall* opinion discuss Akron's photo enforcement ordinance, including a lengthy multi-paragraph discussion of the administrative hearing and appeal portions of that ordinance:

[P7] Owners of vehicles receiving notices of civil liability have several options. They may pay the amount owed, sign an affidavit that the vehicle was stolen or leased to someone else, *or administratively appeal the violation. Owners choosing to appeal have 21 days to complete and return the notice-of-appeal section of the*

*notice-of-liability form.*

[P8] *Administrative appeals of notices of liability are overseen by a hearing officer, who is an independent third party appointed by the mayor of Akron.*

*After administering the oath to any witnesses and reviewing all the evidence, the hearing officer determines whether a violation of Section 79.01 of the Codified Ordinances of the city of Akron is established by a preponderance of the evidence and whether the owner of the vehicle is liable for that violation.* The images of the vehicles and their license plates, the ownership records of the vehicles, and the speed of the vehicles on the date in question are considered prima facie proof of a civil violation and are made available to the appealing party. (Emphasis added.)

*Mendenhall*, 117 Ohio St.3d 33, at ¶¶ 7-8.

After discussing the administrative hearing provisions of the Akron ordinance, the *Mendenhall* Court concluded: “*The [Akron] ordinance provides for a complementary system of civil enforcement that . . . allows for the administrative citation of vehicle owners under specific circumstances. Akron has acted within its home rule authority granted by the Constitution of Ohio.* *Id.* at ¶ 42 (emphasis added).”

*Mendenhall* blessed the entirety of Akron’s photo enforcement structure, including its administrative hearing, as a power Akron had under home rule. That is why the majority indicated that the Court of Appeals had “misread *Mendenhall*.” *Walker*, Slip Op. No. 2014-Ohio-5461, at ¶ 28. The right to maintain a “complementary system of civil enforcement of traffic laws” comes with the right to maintain “administrative procedures . . . in furtherance of this power.” *Id.* So the Court’s Opinion correctly concluded that Toledo was well within its home rule power to create a civil, administrative traffic-law-enforcement system with an

administrative hearing function—just like Akron had in *Mendenhall*. *Id.* at ¶¶ 17, 27-28.

C. **Walker incorrectly claims that this Court's Opinion implicitly overruled *Cupps v. Toledo*.**

Another faulty premise of Walker's motion is that the majority implicitly overruled this Court's prior holding in *Cupps v. Toledo*, 170 Ohio St.144, 163 N.E.2d 384 (1959). (Motion for Reconsideration at 5-6, 9.) *Cupps* was not overruled because its holding was not implicated by this case.

*Cupps* involved a case in which Toledo enacted an ordinance that attempted to make decisions of the city's civil service commission final by prohibiting any appeal of those decisions to the common pleas court. The ordinance expressly stated a city employee may not appeal to the common pleas court. This Court held that a city could not deprive an employee in a city administrative hearing of the right of judicial review to the common pleas court.

But Toledo's civil photo traffic enforcement ordinance does not deprive any participant of his right to judicial review in the common pleas court – or any other court. That language is nowhere found in the Toledo's photo enforcement ordinance. And Walker does not (and cannot) state otherwise. Moreover, *Cupps* has nothing to do with whether Toledo can maintain an administrative hearing process to further its own civil ordinances.

So the majority in this case was correct in recognizing that while a city cannot regulate the jurisdiction of the courts, *Walker*, at ¶ 20, a city's enforcement of its own civil ordinances in an administrative proceeding does not involve regulating the jurisdiction of the court. *Walker*, at ¶ 21. Again, what Toledo did was establish a pre-suit hearing process in furtherance of its own civil photo enforcement ordinance; it did not pass an ordinance that precluded individuals from appealing to common pleas court as in *Cupps*.

**D. This case does not turn on an analysis of Article IV, § 1 of the Ohio Constitution.**

Walker is also incorrect in claiming that the Court's Opinion gave short shrift to Article IV, § 1 of the Ohio Constitution. (Motion for Reconsideration at 7-10.) This case does not turn on Article IV, § 1, which unremarkably says that the judicial power in Ohio is vested in this Court, courts of appeals and common pleas courts, and "such other courts inferior to the Supreme Court as may from time to time be established by law."

There is no dispute on this point: the municipal courts are created and given their jurisdiction by the General Assembly. But so what? No one disputes the General Assembly has this power and exercised it by establishing municipal courts in R.C. Chapter 1901. R.C. 1901.20 draws the boundaries of the jurisdiction of the municipal courts as to ordinance violations. And then R.C. 2506.01 restricts those boundaries by directing administrative appeals of ordinance violations away from the municipal courts to common pleas courts. There is nothing remarkable about this. And there is certainly no constitutional violation in this.

This Court correctly held that neither Article IV, §1 of the Ohio Constitution, nor R.C. 1901.20(A)(1), strips home rule cities of their constitutional right to conduct civil administrative proceedings in furtherance of their own ordinance. *See Walker*, Slip Op. No. 2014-Ohio-5461, at ¶ 21.

**E. The General Assembly's recent amendment to R.C. 1901.20(A)(1) has no bearing on this case.**

The only new issue raised in Walker's motion for reconsideration is that the General Assembly recently amended R.C. 1901.20(A)(1) when it passed Senate Bill 342 (expected to become effective in late March 2015). In an apparent exception to R.C. 2506.01, the new Act will imbue municipal courts with exclusive jurisdiction to hear appeals from municipal administrative photo enforcement proceedings. But this change only reaffirms that the General

Assembly is always free to expand, restrict, or re-direct the jurisdiction of Ohio courts. Before Senate Bill 342, all administrative appeals from municipal boards went to the common pleas courts. It has made an exception only for administrative appeals involving photo-enforcement ordinances.

But this impending change in Ohio law is inapposite. It was not in effect when Walker violated Toledo's traffic ordinance, received his notice of liability, or filed this case. To the extent Walker contends the impending amendment to R.C. 1901.20(A)(1) suggests a legislative intent supportive of his interpretation of that statute, such cannot be the case. It is this Court—not the legislature—that determines what a statute says.

Moreover, the more plausible interpretation of Senate Bill 342 is that the General Assembly recognized that municipal courts did not have exclusive jurisdiction over administrative appeals involving ordinance violations and is attempting to carve out such an exception for photo-enforcement ordinances. Regardless, the enactment of Senate Bill 342 is irrelevant and does not change the result of this case.

### **III. CONCLUSION**

For the foregoing reasons, and for the reasons set forth in this Court's Opinion, Appellee's motion for reconsideration should be denied.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

The undersigned certifies that on January 8, 2015, a copy of the foregoing *Appellant Redflex Traffic Systems, Inc.'s Memorandum in Opposition to Appellee's Motion for Reconsideration* was served via U.S. mail, to the following:

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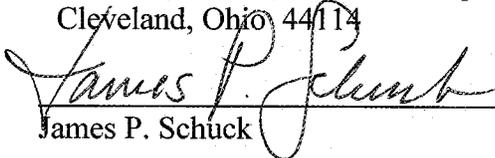
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