

IN THE SUPREME COURT OF OHIO

BRADLEY WALKER,	*	Supreme Court Case No. 2013-1277
Plaintiff-Appellee,	*	On Appeal from the Lucas
vs.	*	County Court of Appeals,
CITY OF TOLEDO, et al.,	*	Sixth Appellate District
Defendants-Appellants.	*	(Case No. L-12-1056)

APPELLANT CITY OF TOLEDO'S MEMORANDUM IN OPPOSITION TO APPELLEE'S
MOTION TO FILE SUPPLEMENTAL AUTHORITY

Adam W. Loukx (0062158)
Counsel of Record
 Eileen M. Granata (0016745)
 City of Toledo
 One Government Center, Suite 2250
 Toledo, Ohio 43604
 Tel: (419)245-1020
 Fax: 419-245-1090
adam.loukx@toledo.oh.gov
eileen.granata@toledo.oh.gov

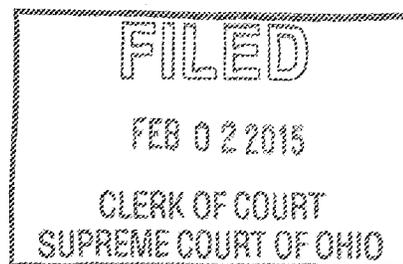
Andy Douglas (0000006)
 Larry H. James (0021773)
 Jeffrey D. Houser (0076803)
 Crabbe, Brown & James LLP
 500 South Front Street, Suite 1200
 Columbus, OH 43215
 Tel: (614) 228-5511
 Fax: (614) 229-4559
adouglas@cbjlawyers.com
ljames@cbjlawyers.com
jhouser@cbjlawyers.com

Counsel for Appellant City of Toledo

John T. Murray (008793)
 Murray & Murray Co., LPA
 111 E. Shoreline Drive
 Sandusky, Ohio 44870
 Tel: (419) 624-3125
jotm@murrayandmurray.com

Andrew R. Mayle (0075622)
Counsel of Record
 Jeremiah S. Ray (0074655)
 Ronald J. Mayle (0030820)
 Mayle, Ray & Mayle LLC
 210 Front Street
 Fremont, Ohio 43420
 Tel: 419-334-8377
amayle@mayleraymayle.com
jray@mayleraymayle.com
rmayle@mayleraymayle.com

Counsel for Appellee Bradley Walker



Quintin F. Lindsmith (0018327)
Counsel of Record
James P. Schuck (0072356)
Sommer L. Sheely (0076071)
Bricker & Eckler LLP
100 South Third Street
Columbus, Ohio 43215-4291
qlindsmith@bricker.com
jschuck@bricker.com
ssheely@bricker.com

Counsel for Appellant Redflex Traffic Systems, Inc.

Joseph A. Castrodale (0018494)
John M. Alten (0071580)
Laura C. McBride (0080059)
Ulmer & Berne LLP
1660 West 2nd Street, Suite 1100
Cleveland, Ohio 44113

Christopher R. Heekin (0042032)
Heekin & Heekin
817 Main Street, Suite 200
Cincinnati, Ohio 45202

Counsel for Amicus Curiae Optotraffic, LLC

Maurice Thompson
1851 Center for Constitutional Law
208 E. State Street
Columbus, OH 43215

Counsel for Amicus 1851 Center et. al.

Barbara A. Langenry (0038838)
Gary S. Singletary (0037329)
John Mills (0086253)
Law Department
601 Lakeside Avenue, Room 106
Cleveland, Ohio 44114-1077

Phillip K. Hartmann (0059413)
(Counsel of Record)
Yazan S. Ashrawi (0089565)
Frost Brown Todd LLC
10 West Broad Street, Suite 2300
Columbus, Ohio 43215

John Gotherman (0000504)
Ohio Municipal League
175 S. Third Street, #510
Columbus, Ohio 43215-7100

Jennifer S. Gams (0063704)
City of Columbus Law Department
Assistant City Attorney
77 North Front Street, 4th Floor
Columbus, Ohio 43215

Stephen J. Smith (0001344)
Frost Brown Todd LLC
10 West Broad Street, Suite 2300
Columbus, Ohio 43215

John C. Musto (0071512)
City of Dayton Law Department
101 W. Third Street
P.O. Box 22
Dayton, Ohio 45401

Counsel for Amicus Curiae The Ohio Municipal League, City of Columbus and City of Dayton

Freda J. Levenson
Jennifer Martinez Atzberger
Drew S. Dennis
American Civil Liberties Union
4506 Chester Ave.
Cleveland, OH 44103

Counsel for Amicus ACLU

Chris Bator (0038550)
Gregory V. Mersol (0030838)
Baker Hostetler LLP
3200 National City Center
1900 East Ninth Street
Cleveland, Ohio 44114-3485

Council for Amicus Curiae Xerox State & Local Solutions, Inc.

Richard S. Gurbst (0017672)
F. Maximilian Czernin (0087485)
Squire Sanders (US) LLP
4900 Key Tower
127 Public Square
Cleveland, Ohio 44114

*Counsel for Amicus Curiae American
Traffic Solutions, Inc.*

Ronald Riley (0018857)
City of East Cleveland
14340 Euclid Avenue
East Cleveland, Ohio 44112

*Counsel for Amicus Curiae The City of East
Cleveland*

MEMORANDUM IN OPPOSITION

This court should deny Appellee's "Motion to File Supplemental Authority". Appellant City of Toledo incorporates and agrees with the points set forth in Appellee Red Flex's Memorandum in Opposition to Appellee's Motion.

As both the Appellee and Appellant acknowledge, this court has never provided for supplementing a motion for reconsideration. The Appellee's Motion should be denied on that basis alone. However, even if this court were to permit the filing of supplemental authority to support a motion to reconsider, one would assume that the supplemental authority would have to be something that was unavailable to the movant at the time of the filing of the motion to reconsider. As Appellant Red Flex has pointed out, there is nothing novel about the claimed authority that the Appellee seeks to introduce. The fact that Appellee claims to be unaware of the so-called authority does not make it proper material for purposes of supplementing his prior motion.

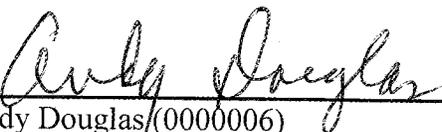
In truth, Appellee is seeking to file a reply memorandum under the guise of "supplemental authority." Just as this court's rules do not provide for supplementing a motion to reconsider, this court's rules do not provide for a reply memorandum in support of a motion to reconsider. Pertinent to this point, Appellant respectfully submits to the Court that no matter how this additional filing by Appellee is categorized, whether it be a filing of "supplemental authority" as identified by Appellee or an additional "motion for reconsideration" or a "reply" to Appellant's memorandum in response, as Appellant believes, the Supreme Court Practice Rules do not permit, and in fact prohibit, such a filing. Please see S.Ct.Prac.Rules 4.01(B)(2), 17.09(A) and (B) and 18.02(D).

Moreover, as Appellant Red Flex has pointed out, the so-called "authority" offered by Appellee is neither actual authority nor relevant to the case before this court. Brice, an unincorporated village with a population of less than 200, is not Toledo and is not a party to this case. Nor is Appellee's self-serving characterization of Brice's ordinance compelling.

As Redflex rightly points out, contrary to Appellee's suppositions, "checks" do exist. Redflex mentions R.C. Chapter 2506: but there are, as abundantly clear from the briefing in this case, other checks in place as well. For instance, and perhaps most germane to this case, Toledo's ordinance does not preclude any potential litigant from going to municipal court. Moreover, the ultimate check exists in Toledo as it does in Brice and every other governmental entity in this State. That is the check of the ballot box. All these checks and others insure against over-reaching.

Respectfully submitted,


Adam W. Loukx (0062158) *Counsel of Record*
Eileen Granata (0016745)
City of Toledo
One Government Center, Suite 2250
Toledo, Ohio 43604
Telephone: (419)245-1020
Facsimile: 419-245-1090
adam.loukx@toledo.oh.gov
eileen.granata@toledo.oh.gov


Andy Douglas (0000006)
Larry H. James (0021773)
Jeffrey D. Houser (0076803)
Crabbe, Brown & James LLP
500 South Front Street, Suite 1200
Columbus, OH 43215
Tel: (614) 228-5511

Fax: (614) 229-4559
adouglas@cbjlawyers.com
ljames@cbjlawyers.com
jhouser@cbjlawyers.com

CERTIFICATE OF SERVICE

The undersigned certifies that on February 2, 2015, a copy of the foregoing *Memorandum in Opposition* was served via U.S. mail, postage pre-paid to the following:

John T. Murray, Esq.
Murray & Murray Co., L.P.A.
111 E. Shoreline Drive
Sandusky, Ohio 44870

Andrew R. Mayle, Esq.
Jeremiah S. Ray, Esq.
Ronald J. Mayle, Esq.
MAYLE, RAY & MAYLE LLC
210 South Front Street
Fremont, Ohio 43420

Joseph A. Castrodale (0018494)
John M. Alten (0071580)
Laura C. McBride (0080059)
Ulmer & Berne LLP
1660 West 2nd Street, Suite 1100
Cleveland, Ohio 44113

Christopher R. Heekin (0042032)
Heekin & Heekin
817 Main Street, Suite 200
Cincinnati, Ohio 45202

Stephen J. Smith (0001344)
Frost Brown Todd LLC
10 West Broad Street, Suite 2300
Columbus, Ohio 43215

John C. Musto (0071512)
City of Dayton Law Department
101 W. Third Street
P.O. Box 22
Dayton, Ohio 45401

Phillip K. Hartmann (0059413)
(Counsel of Record)
Yazan S. Ashrawi (0089565)
Frost Brown Todd LL
10 West Broad Street, Suite 2300
Columbus, Ohio 43215

John Gotherman (0000504)
Ohio Municipal League
175 S. Third Street, #510
Columbus, Ohio 43215-7100

Jennifer S. Gams (0063704)
City of Columbus Law Department
Assistant City Attorney
77 North Front Street, 4th Floor
Columbus, Ohio 43215

Barbara A. Langenry (0038838)
Gary S. Singletary (0037329)
John Mills (0086253)
Law Department
601 Lakeside Avenue, Room 106
Cleveland, Ohio 44114-1077

Chris Bator (0038550)
Gregory V. Mersol (0030838)
Baker Hostetler LLP
3200 National City Center
1900 East Ninth Street
Cleveland, Ohio 44114-3485

Council for Amicus Curiae Xerox State & Local Solutions, Inc.

Richard S. Gurbst (0017672)
F. Maximilian Czernin (0087485)
Squire Sanders (US) LLP
4900 Key Tower
127 Public Square
Cleveland, Ohio 44114

Counsel for Amicus Curiae American Traffic Solutions, Inc.

Ronald Riley (0018857)
City of East Cleveland
14340 Euclid Avenue

East Cleveland, Ohio 44112

Counsel for Amicus Curiae The City of East Cleveland



Andy Douglas