

IN THE SUPREME COURT OF OHIO

Case No. 2014-0636

Sam Jodka,)	
)	On appeal from the Cuyahoga
)	County Court of Appeals,
)	Eighth Appellate District
Plaintiff-Appellee/Cross-Appellant,)	Case No. CA-13-099951
)	
v.)	
)	
City of Cleveland, <i>et al.</i> ,)	
)	
Defendants-Appellants/Cross Appellees.)	

Sam Jodka's motion for reconsideration

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This court held in *Walker* that a city council has a constitutional right to tell a person accused of violating an ordinance that the person cannot defend their case before an elected judge *until the person first loses their case before a local political appointee*—and that they can *never* defend themselves in municipal court.

Jodka knows reconsideration is a long-shot but since it's imperative that the constitutional issue is resolved properly, the shot is worth taking. *Walker* is upside down: the constitution right belongs to the alleged wrongdoer to defend themselves in court in the first instance—not to have to wait until city council says they can go to court.

Boiled down, this court's jurisprudence announced in *Walker* is that a city council can effectively dictate to citizens, **"If our city alleges that you violated one of our ordinances, then you may not see a judge until we let you."** This is untenable. This court should reconsider the dismissal of the appeals here and overrule *Walker v. Toledo* because where a case **begins** in this state's judicial system is perhaps more important than where it **ends** because if a case doesn't begin in court, then a neutral judge doesn't decide the case under the rules of evidence and procedure, which shades everything that comes afterwards no matter how many subsequent "appeals."

This *Walker* majority's failure to pinpoint the constitutional justification for its rationale demonstrates the problem. Regulating traffic is not a "self government issue" but falls under the distinct "police power." Conferring exclusive jurisdiction over an alleged ordinance violation is not part of the police power. Yes, holding hearings on matters of self government—such as

personnel and other decisions—is legitimate. But deciding whether a citizen violated an ordinance is not a job for a local political appointee unless the General Assembly says so, which is the entire point of R.C. 1901.20 and Art. IV, Sec. 1.

The fact that an expensive, protracted administrative appeal may theoretically correct an injustice does *not* mean that a hearing officer had original jurisdiction in the first place. Holding that appellate jurisdiction implies that the lower tribunal had valid original jurisdiction is a logical fallacy. Anyway, R.C. 2506 begs the constitutional issue:

This statutory right may be revoked at any time by the Ohio General Assembly's repealing the statute. Certainly the majority would not support the proposition that the General Assembly can revoke a constitutionally granted right that can be repealed at any time.

State v. Brown, 99 Ohio St.3d 323, 2003-Ohio-3931, ¶26 (O'Connor, dissenting)

In *Cupps v. Toledo*, this court held that no municipality has the power to pre-ordain where cases end. Yet in *Walker v. Toledo*, it held that every municipality may dictate where cases begin. But if this were true, several absurdities obtain. For example, why did the General Assembly just enact the following amendments to R.C. 1901.20(A)(1) from Am. Sub.H.B. 342, which are, remarkably, effective today, March 23, 2015?:

(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...

These amendments are textbook illustration of the very separation of powers that *Walker* upsets. The powers Ohioans have delicately allotted within this state's constitution are that (1) cities have police power to enact ordinances and prescribe the penalty, (2) the General Assembly controls who determines alleged violations (not the cities), and (3) the appropriate court

determines the violation (not a hearing officer unless that's permitted by the General Assembly.) Otherwise, the new exception in R.C. 1901.20 makes no sense. Many cities have recently sued the state over Am. Sub. H.B. 342,¹ which is best understood to exempt certain “photo-monitoring” cases from the municipal court’s jurisdiction provided those cases are handled in a certain manner.

Yes, the General Assembly may not be able to “ban” cameras, but to the extent that cameras are used in connection with enforcing alleged ordinance violations, the role of the separation of powers is that where the General Assembly perceives potential abuse of police powers, then it may check the perceived abuse by ensuring that a court has jurisdiction in the first instance subject to any exceptions that the General Assembly enacts. If a municipality can override that check by conferring exclusive original jurisdiction on its own political appointed, the entire system breaks down. Thus, when the General Assembly dictates that the municipal court has jurisdiction, it ends the matter. It doesn’t matter whether it uses the word “exclusive.”

Thus, *Walker* is untenable: Toledo city council cannot dictate where a case ends—or where it begins—because those decisions are within the exclusive province of the General Assembly. Neither “self government” nor the “police power” are on point. Nor is *Mendenhall*, which addressed a wholly different, discrete issue.

Similarly, this court is considering a jurisdictional appeal in *State v. Linndale*, where several small municipalities challenged the elimination of local mayor’s courts with H.B. 606.² *Linndale v. State*, 10th Dist. No.14-AP-21, 19 N.E.3d 935, 2014-Ohio-4024, pending appeal in

¹ <http://www.toledoblade.com/local/2015/03/23/City-gets-stay-of-red-light-camera-law.html>

² <http://www.dispatch.com/content/stories/local/2012/12/15/state-law-stops-mayors-court-in-tiny-brice.html>

Case, No. 2014-1883. The point of the bill was to check perceived abuse of mayor's courts. Thus, eliminating the mayor's courts was meant ensure that any local ordinance violations would be within the local municipal court. But under *Walker*, what's the point of that fight? For these small municipalities—any municipality—may now confer exclusive original jurisdiction upon a local political appointee and bypass a mayor's court and even the municipal court altogether! Indeed, that's what has been done in Brice, Ohio for virtually all of its ordinances, not just "camera" ordinances.³ And if *Walker* isn't overruled, an explosion of similar ordinance will be enacted across Ohio.

That is, each city will control where a case begins, who decides the case, and what rules apply—every town could have its own unique system where the cases begin. How could this be? Where is it engrafted in the constitution? This is neither a police power nor self-government issue but squarely an issue for the General Assembly under Art. IV, Sec. 1. Otherwise, neither the recent amendments to R.C. 1901.20 nor enactment of the elimination-provisions with H.B. 606 make any sense. The constitution is designed to ensure uniform justice procedures across this state no matter where the alleged wrongdoing is alleged. *Walker* defeats that goal.

This court should overrule reconsider its summary dismissal here and overrule *Walker* under the three-part test developed in *Westfield Ins. Co. v. Galatis*:

Thus, in Ohio, a prior decision of the Supreme Court may be overruled where (1) the decision was wrongly decided at that time, or changes in circumstances no longer justify continued adherence to the decision, (2) the decision defies practical workability, and (3) abandoning the precedent would not create an undue hardship for those who have relied upon it.

100 Ohio St.3d 216, 2003-Ohio-5849, ¶48.

³ <http://www.dispatch.com/content/stories/local/2015/01/01/brice-just-keeps-on-ticketing.html>

Walker was wrongly decided at the time and no undue hardship would be created for those who have relied upon it because, for now, the cities that have “camera” programs created them prior to *Walker*. To the extent other cities will prospectively get more creative as to how they deny persons their day in the municipal court, it’s worth overruling *Walker* now.

Further, *Walker* defies practical workability because, as mentioned, each city can have its own unique system. And several systems have already been shown to be wrought with problems. For example, in Cleveland, it was decided to ticket “lessees” when the city and the hearing officers knew that lessees were not covered by the ordinance. *Lycan v. Cleveland* is before this court now. While a lawyer’s appeal ultimately corrected, justice delayed is justice denied and that appeal hardly confirms that the underlying hearing officer had jurisdiction. *Lycan* underscores why it’s the municipal court that should be exercising jurisdiction under normal courtroom rules in the first instance rather than flipping polarity an putting the onus on the accused to “appeal” to the city’s own employee and then again to the common pleas court. In Toledo, as discussed in *Walker* itself, the city’s ordinance stated that the police department was to establish procedures for the appeal but then the city went ahead and issued tickets when it knew the procedures were never established. And in Columbus, the ordinance states that appeals are to the municipal court, not common pleas court. In *Brice*, the city prosecutor decides guilt. In Southwest Ohio, in New Miami “drivers are not entitled to call witnesses and evidence, civil procedure and traffic rules don’t apply.”⁴

⁴ <http://www.journal-news.com/news/news/another-judge-declares-new-miami-speed-cameras-unc/nkNng/>

And that's the whole point: the cities have discarded the rules of evidence, the rules of procedure, evidentiary privilege rules, etc. for the city's own benefit. It makes no sense to hold that Ohioans codified this in their constitution in Article XVIII. Why would they?

Jodka anticipates that Cleveland and others will urge that the remedy is at the ballot box. That is political remedy, but not the legal remedy. While voters have the ultimate check on misuse of power, many voters, including Jodka, don't live in Cleveland or Toledo or Columbus or Dayton. Further, when elected officials are in office, they are bound to uphold the constitution. The constitution does not permit this. *Walker* is wrong and should be overruled.

Lastly, as a technical matter, the Eighth District's "judgment" was in favor of Cleveland and the camera company due to a standing issue. Of course, Jodka did have standing just as did Walker, or else there could be no merits determination because standing is a prerequisite. Thus, this court's recent order summarily "reversing" the Eighth District's "judgment" actually reinstates Jodka's case. Jodka presumes that this wasn't intended in light of *Walker*, but as argued above, *Walker* should be overruled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 23, 2015 a true and accurate copy of the foregoing was sent by U.S. Mail, postage prepaid to the following:

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