

IN THE SUPREME COURT OF OHIO

City of Dayton,)	Case No. 2015-1549
)	
Plaintiff/Appellant,)	On Appeal from the Montgomery County
)	Court of Appeals, Second Appellate District
v.)	
)	Appellate Case No. 26643
State of Ohio,)	
)	
Defendant/Appellee.)	

BRIEF OF AMICUS CURIAE CUSTOM SEAL, INC. SUPPORTING APPELLEE STATE OF OHIO

Andrew R. Mayle (0075622)
Jeremiah S. Ray (0074655)
Ronald J. Mayle (0030820)
MAYLE RAY & MAYLE LLC
210 South Front Street
Fremont, Ohio 43420
419.334.8377
Fax: 419.355.9698
amayle@mayleraymayle.com
jray@mayleraymayle.com
rmayle@mayleraymayle.com
Counsel for Amicus Curiae Custom Seal, Inc.

Eric E. Murphy (0083284)
Michael J. Hendershot (0081842)
Jordan Berman (0093075)
Michael DeWine (0009181)
Hannah C. Wilson (0093100)
Ohio Attorney General's Office
30 E. Broad Street, 17th Floor
Columbus, Ohio 43215
Counsel for Appellee

Barbara Doseck (0079159)
John C. Musto (0071512)
City of Dayton Law Department
101 W. Third Street
Dayton, Ohio 45401
937.333.4116
Counsel for Appellant

Under this court's recent decision in *State v. Ruff*, *Walker v. Toledo* is an "incomplete" decision because it gives conflicting rationales and fails to pinpoint the section of the Ohio Constitution granting municipalities the "authority" to confer jurisdiction upon a city employee to adjudicate alleged ordinance violations once the General Assembly has already conferred such jurisdiction upon a municipal court. .11

The powers enumerated in Article XVIII relate to two *distinct* powers: one relates to the power of *self*-government and the other to the *police* power and therefore both cannot justify the result in *Walker*. .12

Mendenhall v. Akron is irrelevant because that case only decided the penalty issue under the police power; not who adjudicates liability or under what circumstances and rules. .12

The "exclusive" jurisdiction issue discussed throughout the majority's opinion was not argued by Walker or addressed by the Sixth District and is inherently self-contradictory. .13

Conclusion .14

Certificate of service .15

The first paragraph of Dayton's merit brief states that the sole effect of Am. Sub. S.B. 342 is "to restrict municipal police authority." Not so.

In truth, the legislature enacted the bill to protect the rights of *private* motorists and vehicle owners and to give them their day in municipal court if a municipality alleges that they broke the law. Notably, such persons are entirely unrepresented in this litigation. Thus, Custom Seal, which owns multiple vehicles within Ohio and has had to pay for offenses that it never committed, wishes to be heard.

STATEMENT OF CUSTOM SEAL INC.'S INTEREST

Custom Seal is an Ohio corporation holding several patents for techniques and methods for manufacturing roofing systems for flat and low-sloped roofs designed for industrial, manufacturing, medical, retail and other commercial establishments. From its headquarters in Ohio, Custom Seal manufactures custom-made roofing systems for installing throughout the United States and Canada. Custom Seal has issued warranties on millions of square feet of roofing systems within Ohio, within virtually every county of this state. Therefore, Custom Seal employees or employees of its affiliates regularly travel "in company vehicles" to inspect or repair roofs throughout this state.

On occasion, Custom Seal or its affiliates have received "traffic camera Notices of Liability" from municipalities in Ohio informing the company that it is liable and may "appeal" to a "Hearing Officer." Sometimes by the time the ticket is received or processed, the deadline for responding has either lapsed or it is difficult for the company to identify who was driving at the time or determine whether a violation even occurred. The net result is that Custom Seal

typically pays the citation and incurs the loss even though the company itself had done nothing wrong. Custom Seal therefore welcomes enactment of Am. Sub. H.B. 342 and has retained counsel to explain (1) why Dayton lacks standing, or alternatively, (2) the bill is constitutional and should be upheld because the bill amends R.C. 1901.20 to protect peoplesø day in municipal court.

STATEMENT OF THE FACTS

The General Assembly Enacted Am.Sub.S.B. 342 as a compromise to protect peoples' day in municipal court unless certain circumstances mentioned in amended R.C. 1901.20(A)(1) applied and to simultaneously permit cities to issue traffic camera tickets outside of municipal court if an officer was present.

The General Assembly enacted Am.S.B. 342 in 2015 as a compromise between protecting the rights of private motorists and loosening up municipal court jurisdictional requirements after the Sixth and Eighth Districtsø respective opinions in *Walker v. Toledo* and *Jodka v. Cleveland* issued in 2014.

Both opinions held that ordinances conferring exclusive original jurisdiction upon city employees to adjudicate whether a violation occurred was an affront to prior R.C. 1901.20(A)(1) and therefore the General Assemblyø exclusive powers under Ohio Const. Art. IV, Sec. 1. The amendments confirm the General Assemblyø intent that alleged traffic-camera offenses must be adjudicated in municipal court ðunless 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.ö See amended R.C. 1901.20, eff. 3/23/2015. The amendment to R.C. 1901.20 is tied to the other provisions within the bill. The amendments were democratically enacted after much public debate and publicity and are presumed to be and are in fact constitutional.

ARGUMENT

- I. Dayton has no standing to sue to “enjoin” the “State” from “enforcing” Am. Sub. S.B. 342 because the “State” does *not* “enforce” that law in the first place. Hence, what Dayton really seeks is an advisory opinion—the very thing the standing doctrine exists to prevent.**

However tempting it may be to issue constitutional decisions in all cases, this court's duty is to *refrain* from doing so unless it is satisfied that any judgment could be carried into effect:

It has become settled judicial responsibility for courts to refrain from giving opinions on abstract propositions and to avoid the imposition by judgment of premature declarations or advice upon potential controversies.

Kincaid v. Erie Ins. Co., 128 Ohio St.3d 322, 944 N.E.2d 207, 2010-Ohio-6035, ¶9, (emphasis added), quoting *Fortner v. Thomas* (1970), 22 Ohio St.2d 13, 14, 51 O.O.2d 35, 257 N.E.2d 371. See also Section 4(B), Article IV, of the Ohio Constitution.

Here, Dayton states in its own merit brief that the trial court “permanently enjoined the State from enforcing the Contested Provisions.” This shows the problem: the judgment can never be carried into effect because “the State” does *not* “enforce” Am.Sub.S.B. 342 in the first place.

Rather, it contemplates *private* enforcement by ticketed motorists—the persons legitimately affected by the legislation. Because the relief Dayton seeks cannot be carried into effect, Dayton has no standing in this particular case. *Allen v. Totes/Isotoner Corp.*, 123 Ohio St.3d 216, 915 N.E.2d 622, 2009-Ohio-4231, ¶10. (“It has been long and well established that it is the duty of every judicial tribunal to decide actual controversies *between parties legitimately affected by specific facts and to render judgments which can be carried into effect.*”) (italics added). Hence, any “opinion” issued in connection with relief that cannot be carried into effect is a classic “advisory opinion.”

This court may *not* issue advisory opinions nor review the merits of advisory opinions issued by appellate courts. In fact, “The established policy in Ohio *prohibits* appellate courts from rendering advisory opinions.” *State v. Arnett*, 22 Ohio St.3d 186, 489 N.E.2d 284, fn 1. The standing doctrine exists to prevent courts from issuing advisory opinions.

As just shown, Dayton’s own merit brief conveys the problem with its own lawsuit: the city seeks to cherry-pick certain so-called “Contested Provisions” and have the judiciary opine upon them in isolation without considering Am.Sub.S.B. 342 as a whole. It then asks the courts to deem the Contested Provisions “unconstitutional” and therefore enjoin the “State” from “enforcing” them even though the bulk of the bill— including the *Un*Contested Provisions— are meant to be *privately* enforced by motorists.

For example, Dayton mentions on pages four and six of its merit brief that Am. Sub. S.B. 342 amends R.C. 1901.20, which is vital to understanding the entire bill.

Yet Dayton fails to address the amendment to R.C. 1901.20 and omits it from its list of so-called “Contested Provisions.” This is no doubt because the fact that the General Assembly amended R.C. 1901.20 to loosen up municipal court jurisdictional requirements in certain traffic-camera cases unravels Dayton’s lawsuit and the rationale of *Walker v. Toledo*. As will be explained on the merits in Section II below, the General Assembly amended R.C. 1901.20 because in the same bill it enacted as a compromise numerous *other* provisions that are tethered to the amendment to R.C. 1901.20. Hence, the amendments to R.C. 1901.20— an “*Un*Contested Provision”— cannot be divorced from the rest of the bill since it’s tethered to the other amendments. But before addressing the merits of this case, this court must first confirm whether the plaintiff (Dayton) has standing to sue. The standing issue is addressed below. Unfortunately, neither the litigants nor the courts below addressed the problem of a judgment

that cannot be carried into effect. But since standing is jurisdictional it is always at issue and therefore can never be waived.¹

A. Because the “State of Ohio” has no true stake in the outcome of this case, this lawsuit is *not* forged in a “hot controversy” and therefore the litigants are *not* “vigorously” representing the interests of the private parties that the legislature protected by enacting Am.Sub.S.B. 342.

The standing doctrine serves a major jurisprudential purpose⁶ it ensures that “judicial decisions which may affect the rights of others are forged in hot controversy, with each view fairly and vigorously represented.” *Moore v. Middletown*, 133 Ohio St.3d 55, 975 N.E.2d 977, 2012-Ohio-3897, ¶47. (underline added).

This case could decide the rights of others⁶ i.e., motorists and vehicle owners. Their complete lack of presence in this lawsuit, and therefore the non-presentation of issues that affect them, illustrates the standing problem. Without the motorists, the court does *not* hear from those who have an actual stake in the outcome. An actual controversy implicating Am.S.B. 342 is triggered only when Dayton or another municipality issues a ticket to a private vehicle owner.

The requirement that an actual controversy exists between the parties as opposed to what is presented to the court here⁶ a *theoretical* constitutional dispute between a city and the state⁶ is that actual adversity “sharpens the presentation of issues upon which the court so largely depends for illumination.” *Racing Guild of Ohio v. Ohio St. Racing Comm’n.*, 28 Ohio St.3d 317, 321, 503 N.E.2d 1025. No concrete adversity exists here and therefore Dayton lacks standing.

¹ *Kincaid v. Erie Ins. Co.*, 2010-Ohio-6035, ¶9. (“Standing is a preliminary inquiry that must be made before a court may consider the merits of a legal claim.”) Standing is a “jurisdictional requirement.” *Federal Home Mortgage Corp. v. Schwartzland*, 134 Ohio St.3d 13, 979 N.E.2d 1214, 2012 -Ohio- 5017, ¶22. See also *New Boston Coke Corp. v. Tyler*, 32 Ohio St.3d 216, 218, 513 N.E.2d 302 (1987) (“the issue of standing, inasmuch as it is jurisdictional in nature, may be raised at any time during the pendency of the proceedings”); Steinglass & Scarselli, *The Ohio State Constitution: A Reference Guide* 180 (2004) (noting that the jurisdiction of the common pleas court is limited to justiciable matters).

B. The Declaratory Judgment Act does *not* create standing.

Dayton might argue it is entitled to a “declaratory judgment.” Not so. A court cannot sweepingly declare a statute “constitutional” or “unconstitutional” without an actual case or controversy between the parties. *ProgressOhio.org. Inc. v. JobsOhio*, 139 Ohio St.3d 520, 13 N.E.3d 1101, 2014 -Ohio- 2382, ¶19. (“declaratory relief available only when there is a real, justiciable controversy” ö). *See also, Arnott v. Arnott*, 132 Ohio St.3d 401, 972 N.E.2d 586, 2012-Ohio-3208, ¶10. (“Although broad in scope, the declaratory judgment statutes are not without limitation. Most significantly, in keeping with the long-standing tradition that a court does not render advisory opinions, they allow the filing of a declaratory judgment only to decide an actual controversy, the resolution of which will confer certain rights or status upon the litigants. Not every conceivable controversy is an actual one.”ö)

Dayton does not have standing in this case. But in case this court disagrees, Custom Seal addresses the merits below.

II. If this court is satisfied that the litigants have standing, then it should affirm the Second District and simultaneously overrule *Walker v. Toledo* because Am.Sub. S.B. 342 is constitutional and illustrates that *Walker* was wrongly decided.

In truth, the General Assembly enacted Am.Sub. S.B. 342 in response to the Sixth and Eighth District’s respective decision in *Walker v. Toledo* and *Jodka v. Cleveland*. Both cases held that municipalities in ordinance-violation cases may *not*, in lieu of a municipal-court judge, confer a city employee or agent with jurisdiction to decide whether the defendant is guilty of the very violation the municipality alleges. This result is supported by Ohio Const. Art. IV, Sec. 1 and prior settled precedent, but also by common sense: a municipality cannot be the plaintiff and simultaneously control who decides its own allegations and how. Thus, after the Sixth and

Eighth District decisions, municipalities and camera companies lobbied the General Assembly to loosen up the jurisdictional requirements in R.C. 1901.20 for traffic-camera ordinance violations because the only exception at the time was for certain parking-violation tickets if the city had established a parking-violations bureau under the terms of R.C. Chapter 4521. *See* former R.C. 1901.20(A)(1).

Others opposed the bill on the grounds that the practices at issue in *Walker* and *Jodka* cities self-adjudicating their own alleged traffic-camera violations came with a stacked deck since no discovery, rules of evidence or procedural rules existed. Critics found this unfair, self-serving, abusive, and discriminatory. They therefore urged that no amendment to R.C. 1901.20 should be made because the cases belonged in municipal court as a check and balance upon runaway relationships between municipalities and private, for-profit camera companies.

After much debate and publicity, the General Assembly enacted the challenged legislation as a compromise: the legislature excepted certain "traffic-camera" violations from municipal court jurisdiction under certain specific conditions exactly like how certain parking-violation cases were already exempt as long as the relevant municipality established a parking-violation bureau under the terms of R.C. Chapter 4521.

This is precisely how the separation of powers embedded in the constitution and manifested in Art. IV, Sec. 1 is supposed to work. Under prior R.C. 1901.20, all municipal violations were to be in municipal court except parking violations. And then after litigation and lobbying, the General Assembly, as its constitutional and democratic prerogative, made limited exceptions.

Somewhat ironically, this legislation was signed the same week this court decided *Walker v. Toledo*, which reversed the intermediate appellate court decisions in *Jodka* and *Walker* in a 4-3

vote. Notably, this court's majority decision in *Walker* relied heavily upon the prior version of R.C. 1901.20(A)(1), which has since been amended by Am. Sub. S.B. 342 as follows:

(A)(1) The municipal court has jurisdiction 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. However, the municipal court has jurisdiction over the violation of a vehicle parking or standing resolution or regulation if a local authority, as defined in division (D) of section 4521.01 of the Revised Code, has specified that it is not to be considered a criminal offense, if the violation is committed within the limits of the court's territory, and if the violation is not required to be handled by a parking violations bureau or joint parking violations bureau pursuant to Chapter 4521. of the Revised Code.

(2) A municipal court has jurisdiction over an appeal of a written decision rendered by a hearing officer under section 4511.099 of the Revised Code if the hearing officer that rendered the decision was appointed by a local authority within the jurisdiction of the court.

The majority opinion in *Walker v. Toledo* at ¶19 stated that "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." But this cannot be right because if it were, then the General Assembly would not have amended R.C. 1901.20 in the manner it did within Am. Sub.S.B. 342.

A. The amendments to R.C. 1901.20 in Am. Sub.S.B. 342 show that *Walker v. Toledo* was decided wrong and that Dayton's approach makes little sense since the Contested Provisions revolve around the amendment to R.C. 1901.20, which are UnContested.

The amendments to R.C. 1901.20 within Am.Sub.S.B. 342 create an additional exception to the municipal court's jurisdiction in division (A)(1) that did not exist at the time this court

decided *Walker*. And then (A)(2) creates appellate jurisdiction in municipal court if an exempt ticket is issued and adjudicated by a hearing officer under the statewide framework enacted within newly created R.C. 4511.096-4511.099.

These provisions are directly analogous to the existing parking-violation exception in R.C. 1901.20 and the parallel provisions within R.C. Chapter 4521 regarding the adjudication of parking tickets. And so the amendments to R.C. 1901.20, which are promulgated under the General Assembly's exclusive Art. IV, Sec. 1 powers confirms exactly what Mr. Walker argued in *Walker v. Toledo* and what the three-Justice dissent would have adopted: that the exception proves the rule:

It is evident under this statute that the General Assembly has vested the municipal court with jurisdiction over the violation of *any* ordinance generally and any misdemeanor specifically, other than parking violations. The term "any ordinance" does not need interpreting. It is clear on its face. Other than the specifically mentioned parking-violation ordinances, "any ordinance" covers "any ordinance," which includes Toledo Municipal Code ("TMC") 313.12. This is the only logical interpretation of this statute. Clearly, the legislature understands how to make exceptions to a general rule, as it did in R.C. 1901.20(A)(1) with parking violations. One principle of statutory construction is that "if a statute specifies one exception to a general rule or assumes to specify the effects of a certain provision, other exceptions or effects are excluded." *Thomas v. Freeman*, 79 Ohio St.3d 221, 2246225, 680 N.E.2d 997 (1997), quoting *Black's Law Dictionary* 581 (6th Ed.1990). Hence, the "any ordinance" language in this statute covers TMC 313.12, since there is no specific exception set forth for ordinance violations captured by traffic cameras.

Walker, supra, ¶31 (O'Neill, J, dissenting and joined by Pfeiffer and French, JJ.)

That is, but-for a statutory exception crafted by the Ohio General Assembly as opposed to a city council conferring jurisdiction upon a city employee as alleged ordinance violation must be adjudicated in municipal court since the legislature has conferred municipal courts with jurisdiction of the alleged violation of "any ordinance" of "any municipal corporation."

1. This court just held that “any” means “all” in *Risner v. ODNR*, which contradicts the majority’s rationale in *Walker v. Toledo*.

Without explanation, the *Walker* majority read the term “any” in R.C. 1901.20(A)(1) narrowly, that is meant “one” or “some,” which yields an odd result if the terms “one” or “some” were substituted for any into the statute.

Yet less than a year later in *Risner v. ODNR*, 2015-Ohio-3731, ¶18, this court correctly stated that, “Any” means “all.” The court then held that “Because R.C. 1531.201(E) is phrased in broad, sweeping language, we must accord it broad, sweeping application.” *Id.*, quoting *State ex rel. Mager v. State Teachers Retirement Sys. of Ohio*, 123 Ohio St.3d 195, 2009-Ohio-4908, 915 N.E.2d 320, ¶ 16. The same is true here, the municipal court jurisdiction of all ordinance violations unless an exception crafted by the legislature applies. No other logical reading of R.C. 1901.20 especially newly enacted R.C. 1901.20 possibly exists.

2. Striking the Contested Provisions would not make any sense because they revolve around the amendments to R.C. 1901.20 that the parties fail to address.

The recent amendments to R.C. 1901.20 which are UnContested Provisions contradict the *Walker* majority’s rationale and reading of the statute. Further, striking the “Contested Provisions” of Am.Sub.S.B. 342 as Dayton suggests would *not* make any sense because those provisions revolve around the amendment to R.C. 1901.20, which are uncontested.

It would be like striking Chapter 4521 governing how municipalities must operate parking-violations bureaus but leaving intact the jurisdictional exception concerning such bureaus mentioned in R.C. 1901.20. Doing so would be nonsensical since the exception is tethered to the other provisions. Yet that is essentially what Dayton advocates here.

3. The Contested Provisions are similar to the parking-violation bureau provisions in R.C. Chapter 4521.

If a motorist is cited outside of municipal court without a police officer present, then it would be up to the motorist to use Am.Sub.S.B. 342 to the motorist's benefit. And that's the whole point: the General Assembly wants these cases in municipal court unless a police officer was present just as it wants parking tickets in municipal court unless certain other statutory prerequisites under Chapter 4521 are fulfilled. Of course, nobody would contend that the requirements of Chapter 4521 are unconstitutional. Here, the analogous requirements of Am.Sub. S.B. 342 enacted in connection with the amendment to R.C. 1901.20 are constitutional and beyond challenge and designed to be privately enforced by cited vehicle owners.

B. Under this court's recent decision in *State v. Ruff, Walker v. Toledo* is an "incomplete" decision because it gives conflicting rationales and fails to pinpoint the section of the Ohio Constitution granting municipalities the "authority" to confer jurisdiction upon a city employee to adjudicate alleged ordinance violations once the General Assembly has already conferred such jurisdiction upon a municipal court.

In *Walker* this court held that a city could force a person to submit to a city employee to decide liability as part of a so-called pre-suit administrative proceeding that would be given preclusive effect. The majority held that this complimented the municipal court system. In reality, it replaces the municipal court with respect to the most important issue: deciding liability.

Here is what *Walker v. Toledo* says at ¶21 about its rationale:

“We therefore reaffirm that Ohio Constitution, Article XVIII, Sections 3 and 7 grant municipalities the authority to protect the safety and well-being of their citizens by establishing automated systems for imposing civil liability on traffic-law violators. *Mendenhall* is dispositive on the constitutionality of municipalities' civil administrative processes for enforcement of red-light and speeding violations captured by automated systems.”

In *State v. Ruff*, this court held that its decisions that are “incomplete” in their analysis are subject to being overruled. 143 Ohio St.3d 114, 2015-Ohio-995, ¶16. This court also followed the *Ruff* “incomplete” rationale in *State v. Earley* in overruling other precedent. 145 Ohio St.3d 281, 2015-Ohio-4615, ¶11.

Walker has an incomplete holding and rationale for at least three reasons.

- 1. The powers enumerated in Article XVIII relate to two *distinct* powers: one relates to the power of *self-government* and the other to the *police* power and therefore both cannot justify the result in *Walker*.**

Walker at ¶19 hints that conferring jurisdiction of ordinance violations and forcing alleged wrongdoers to submit to the “jurisdiction” of a city appointee relates to “self-government.” But *Mendenhall*, the majority’s chief rationale, related to the police power as discussed below. Anyway, conferring jurisdiction away from a court with elected judges and onto an appointed bureaucrat is neither a police power nor presents a self-government issue. Indeed, the *Walker* majority does *not* explain why either power would possibly justify upholding of Toledo council conferring exclusive original jurisdiction upon a city employee to adjudicate an alleged violation that falls within the municipal court’s jurisdiction conferred by the General Assembly under Art. IV, Sec. 1. Thus, the decision is “incomplete” and therefore subject to reversal.

- 2. *Mendenhall v. Akron* is irrelevant because that case only decided the penalty issue under the police power; not who adjudicates liability or under what circumstances and rules.**

Mendenhall, on its face, had absolutely nothing to do with R.C. 1901.20 or the jurisdictional issue. The certified question went to whether a municipality could provide a different *penalty* than provided by a state statute— not who would adjudicate the allegation of an infraction before a penalty were imposed. This court in *Mendenhall* expressly stated that, “We

will therefore confine our analysis to comparing the ordinance with the state statute dealing with speed regulationsí ö 2008-Ohio-270, ¶2. The court also said that “there is no dispute that the Akron ordinance is an exercise of concurrent police power *rather than* self-government.” *Id.*, ¶19. Thus, *Walker’s* reliance upon self government and the police power makes no sense.

3. The “exclusive” jurisdiction issue discussed throughout the majority’s opinion was not argued by Mr. Walker or addressed by the Sixth District and is inherently self-contradictory.

The majority’s decision in *Walker* is also incomplete because it engaged in a lengthy analysis as to whether “any” means “exclusive” upon an incorrect assertion that Mr. Walker or the Sixth District insisted that “any” meant “exclusive.” But the opposite is true as shown by ¶29 of the Sixth District’s opinion:

In his brief to this court, appellant characterizes the question of whether R.C. 1901.20 confers exclusive jurisdiction on a municipal court a “red herring.” Even if the statute confers only concurrent jurisdiction on the municipal court, a municipality has no power whatsoever to place any regulation on the jurisdiction of the court. Moreover, appellant insists, for any local administrative body to have concurrent jurisdiction with the court, such jurisdiction must be conferred by the General Assembly. Since the legislature has provided no enabling legislation for a municipal traffic-camera agency, Toledo Municipal Code 313.12 is ultra vires and monies collected in reliance of the ordinance were wrongfully taken. (italics added).

Walker’s argument was that once the municipal court had jurisdiction of any ordinance including the traffic-camera ordinance, then the Toledo city council was powerless to grant exclusive jurisdiction upon the hearing officer, which is in fact what the ordinance does and is in essence a power grab prohibited by Ohio Const. Art. IV, Sec. 1. Otherwise, the parking-violation bureau exceptionô and now the narrow traffic-camera exceptionô enumerated within R.C. 1901.20 would make absolutely no sense, as the three dissenting Justices appreciated in *Walker*.

Lastly, the majority's analysis contradicts its conclusion because the very fact that the majority mentioned the "exclusive jurisdiction" analysis suggests that had R.C. 1901.20 included the word "exclusive" then the court would have reached a different result.

But this is odd because if municipalities truly had a constitutional "right" or "power" to confer jurisdiction upon a city employee then the General Assembly could not ever confer exclusive jurisdiction upon the municipal court for that would impinge upon the city's power to confer jurisdiction, which, as held by the Sixth and Eighth districts and as noted by a strong dissent in *Walker*, does not actually exist in the Ohio constitution.

Indeed, the majority's failure to pinpoint a provision that is the source of this power, the inconsistent mentions of distinction Article XVIII powers, and the over-reliance upon the irrelevant case of *Mendenhall* strongly suggests that *Walker v. Toledo* is incomplete, wrong, and should be overruled.

Conclusion

This court should either vacate the trial court and appellate decision on standing grounds. Alternatively, if this court reaches the merits, this court should overrule *Walker v. Toledo* and recognize that R.C. 1901.20 and recent amendments within Am.Sub.S.B. 342 represent the General Assembly's legitimate and constitutional statewide policy choice to protect everyone's day in municipal court if they are cited for violating a municipal ordinance unless an exception applies. Finally, this court may overrule *Walker* without engaging in the *Galatis* test for overruling precedent since this case involves a constitutional issue. *State v. Bodyke*, 2010-Ohio-2424, ¶35.

Respectfully submitted,

/s Andrew R. Mayle

Andrew R. Mayle (0075622)

Counsel for amicus curiae Custom Seal, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on May 31, 2016 a true and accurate copy of the foregoing was sent via e-mail to all counsel of record including all amicus counsel and the following counsel for the parties:

Eric E. Murphy (0083284)
Michael J. Hendershot (0081842)
Jordan Berman (0093075)
Michael DeWine (0009181)
Hannah C. Wilson (0093100)
Ohio Attorney General's Office
30 E. Broad Street, 17th Floor
Columbus, Ohio 43215
Counsel for Appellee

Barbara Doseck (0079159)
John C. Musto (0071512)
City of Dayton Law Department
101 W. Third Street
Dayton, Ohio 45401
937.333.4116
Counsel for Appellant

/s/ Andrew R. Mayle

Andrew R. Mayle