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To: House Government Accountability and Oversight Committee

From: Andrew R. Mayle, Esq.

Date: January 16, 2018

Re: Testimony in support of HB 410

One proposal in HB 410 is to amend current Revised Code Section 1901.20, which concerns the jurisdiction of municipal courts throughout this state. The amendment would clarify that municipal courts have "exclusive" jurisdiction of ordinance violations. This General Assembly has the constitutional authority to amend R.C. 1901.20 to confer municipal courts with "exclusive" jurisdiction of every ordinance violation of every municipality. And it would be good public policy to do so. Here's why.

Constitutional authority. The separation-of-powers doctrine is embedded in the Ohio constitution. Relevant here, Article IV, Section 1 of this state's constitution provides that, "The judicial power of the state is vested in a supreme court, courts of appeals, courts of common pleas and divisions thereof, and such other courts inferior to the Supreme Court as may from time to time be established by law." It is settled that the phrase "established by law" means established by statute enacted by the General Assembly. Thus, the state legislature has the exclusive power to establish "inferior courts," which includes municipal courts. No municipal court exists except for its creation by the state legislature. As such, the Supreme Court of Ohio has repeatedly recognized that this power to create inferior courts necessarily includes the exclusive power to confer jurisdiction upon such courts. Thus, only the General Assembly may confer jurisdiction upon a municipal court. Lastly, it's settled constitutional law that since only the General Assembly may (1) create courts and (2) confer jurisdiction, the legislature also enjoys (3) the exclusive power to regulate the jurisdiction of the courts it creates.

I have specific expertise in this area since I litigated *Walker v. Toledo* and *Jodka v. Cleveland*, which were commenced in the Lucas and Cuyahoga county common pleas courts respectively. In each case, the intermediate appellate courts from the Sixth and Eighth districts agreed that Toledo's and Cleveland's attempts to confer jurisdiction upon a city-appointed "hearing officer" to determine traffic-camera citations violated the General Assembly's exclusive power conferred under Article IV, Section 1 because in Revised Code Section 1901.20 the legislature specifically granted municipal courts jurisdiction of the violation of any ordinance,

which necessarily includes any traffic-camera ordinance, except in parking-violation cases where the municipality established a parking-violations bureau. Of course, alleged speeding or red-light violations aren't "parking tickets" and therefore no exception to the municipal courts' jurisdiction even arguably applied.

Despite this, the Supreme Court of Ohio reversed the appellate courts in a deeply-divided 4-3 decision related in December of 2014. While the lead opinion in *Walker* mentioned municipal "home rule," that opinion actually turned on the majority's (erroneous) reading of then-existing R.C. 1901.20. The majority found that because R.C. 1901.20 did not use the word "exclusive" in front of the word "jurisdiction," Toledo and Cleveland did not interfere with the Toledo or Cleveland municipal courts' jurisdiction since those courts' jurisdiction wasn't considered "exclusive" under the statute. Hence, the court went on to hold that the municipalities also didn't usurp the state legislature's powers under Article IV, Section 1. Thus, the *Walker* decision boiled down to an issue of statutory interpretation more so than constitutional law.

While the *Walker* majority's rationale and result were both deeply flawed for reasons that need not be re-litigated in this forum, the fact is that now adding the word "exclusive" to R.C. 1901.20 would put to rest the legislative intent that these types of alleged violations should be determined in municipal court like most any other type of alleged ordinance infraction. The General Assembly is well within its special Article IV, Section 1 powers to make this policy determination. And municipalities will have no power to have unelected "hearing officers" control the outcome of these cases if R.C. 1901.20 is amended to confer exclusive jurisdiction upon local municipal courts. Municipalities will still be free to exercise their home-rule "police power" to regulate traffic using technology, but alleged violations will be indisputably within the exclusive jurisdiction of the local municipal court and their respective judges, who are elected by the local electorate. The judges are also not appointed by municipalities and hence have an oath to uphold the law and to exercise independent judgment.

Exclusive jurisdiction would create a fair playing field for Ohioans and motorists visiting Ohio. Because our firm litigated *Walker* and *Jodka*, we are regularly inundated with calls from motorists that receive what they consider strange "traffic camera" tickets in the mail. Many motorists do not recall the underlying events as the tickets are often issued weeks after the alleged wrongdoing. It is therefore difficult to mount a defense and since these matters are not filed in court, no discovery is typically permitted, no witnesses can be compelled to testify, the reliability of the camera systems is not disputable, and the hearing officer essentially acts as a witness, judge, jury, and executioner for the employer municipality. This flies in the face of traditional notions of fair play and undermines confidence in local government and is totally unfair. People feel like they don't get a fair shake at all. Further, we are regularly called by out-of-state drivers that receive camera tickets and they are shocked to hear that they won't get their day in municipal court. This leaves them with a very negative impression of justice in Ohio. Next, our experience is that cameras are often disproportionately placed in urban areas and minority communities. Finally, the general "speed limit" law of Ohio is supposed to be that the operator drives at a speed that is "reasonable" for the roadway and traffic conditions. *See*. R.C. 4511.21. Therefore, "speed limit" signs just set presumptions as to whether the driver was

operation reasonable or not—they do not set per se "limits" except on the turnpike and in construction zones and in other specialized circumstances. "Hearing officers" repeatedly fail to grasp this point and therefore never let motorists argue this point. That is, a person could be operating perfectly reasonable at 50mph on a sunny day with little traffic in a 45mph zone without breaking Ohio law. Yet hearing officers won't recognize this reality. This result is unfair and contrary to the legislature's codification of R.C. 4511.21, which sets forth the statewide "reasonableness" standard. Finally, municipalities annually issue hundreds, if not thousands, of harmless "rolling stop" citations where a motorist stops at a red light behind another car, for example, eventually creeps forward when the other car moves or turns right, and then safely makes a right on red that the camera companies cite, yet that no reasonable officer ever would.

Requiring these cases to be filed in municipal court will likely ameliorate the above concerns and bring much-needed fairness into the equation. Thank you for considering these viewpoints and for considering this bill. I'd be happy to answer any questions.

Regards, Andy Mayle