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## Small Town Justice in the Twenty-First Century: Opportunities and Challenges for Mayor's Courts in Ohio

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Small Town Justice in the Twenty-First Century:  
Opportunities and Challenges for Mayor's Courts in Ohio

A thesis submitted in partial fulfillment of the requirement  
for the degree of Bachelor of Arts in Government from  
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by

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Alexander Nocks

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# Abstract

This thesis provides a primer on mayor's courts in Ohio, assesses common claims about the problems they create and the benefits they provide, and recommends reforms to improve mayor's courts throughout the state. These local courts suffer from two primary problems: money's perverse and pervasive influence and a lack of transparency and oversight that makes identifying misbehavior difficult. But they also have the potential to provide a more personal, flexible adjudication process. Mayor's courts are also much closer to the communities they serve than alternative courts would be; that fact is proven by geospatial analysis that, for the first time, estimates the actual extent of mayor's courts' proximity advantage. Instead of abandoning a system with so much potential, the Ohio General Assembly should 1) divorce fundraising and justice, 2) raise education requirements for presiding mayors, 3) standardize record-keeping, 4) increase transparency, and 5) bolster oversight to ensure that mayor's courts better serve all users.

# Introduction

Mayor's courts are a special type of local court that gives broad discretion to local political actors. Run by the community's mayor—who need not be an attorney or even have a high school degree—or the mayor's designee, these courts are designed to dispense convenient, personal justice for low-level offenses.<sup>1</sup> While mayor's courts were once common, only Louisiana and Ohio still use them. Despite dwindling popularity across the country, business is booming for Ohio's mayor's courts; the 295 mayor's courts across the state processed more than 263,000 cases in 2017.<sup>2</sup>

Unlike most courts, mayor's courts are subject to negligible oversight, have minimal training requirements for those running the court, and are not even part of the judicial branch. As these hyper-local courts process hundreds of thousands of cases, they generate enormous sums of money for the community governments that run them. Along the way, certain mayor's courts have become notoriously unfair while others are more convenient and provide greater procedural justice than many non-mayor's courts.

The stakes are high. While mayor's courts only have jurisdiction over relatively minor cases, even cases for picayune offenses can have outsized effects for those involved.<sup>3</sup> The severe problems with certain mayor's courts and the danger of money's influence in the system at large undermine justice and ruin lives.

Ohio mayor's courts have been the subject of legislative debate and academic analysis since their early days. Recently, mayor's court debates have gained renewed traction in popular discourse too. This heightened focus on mayor's courts locally coupled with the growing awareness about the harm done by small claims courts nationally may ultimately fuel much-needed change in the way mayor's courts are governed. Informed reforms, rather than reactionary bans, are necessary to optimize the system.

Current debates about mayor's courts, however, suffer from a dearth of nuanced information. They instead turn on generalizations—alleged problems and benefits backed by, at best, flimsy support. This paper evaluates those oft-repeated and rarely tested claims, exploring what risks mayor's courts carry and what benefits they actually provide.

The paper also challenges the misleadingly monolithic portrayal of mayor's courts commonly deployed by other reviews.<sup>4</sup> Inferring uniformity among mayor's courts where none exists tricks critics and supporters into using the behavior of certain courts to condemn or endorse all mayor's courts. No mayor's court is representative.

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<sup>1</sup> Sri Thakkilapati, "What is a Mayor's Court," *Commentary* (blog), *ACLU Ohio*, February 22, 2018, <https://www.acluohio.org/archives/blog-posts/what-is-a-mayors-court>.

<sup>2</sup> The most recent summary data offered by the Ohio Supreme Court is from 2017. See The Supreme Court of Ohio, Court Services Division, *Mayor's Courts Summary*, 2017, <http://www.supremecourt.ohio.gov/Publications/mayorscourt/mayorscourtreport17.pdf>

<sup>3</sup> Alexandra Natapoff, *Punishment Without Crime* (New York: Basic Books, 2018).

<sup>4</sup> "Abolish Mayor's Courts in Ohio: Editorial," *Cleveland.com*, January 28, 2018, [https://www.cleveland.com/opinion/index.ssf/2018/01/abolish\\_mayors\\_courts\\_in\\_ohio.html](https://www.cleveland.com/opinion/index.ssf/2018/01/abolish_mayors_courts_in_ohio.html).

By design, each court enjoys significant discretion to operate as community leaders see fit, so long as it stays within the broad constraints set by Ohio law. Rather than being fundamentally similar like municipal and county courts are, mayor's courts are independent and unique.

Problems and benefits in a given mayor's court are primarily the result of either structural factors or discretionary decisions. Structural factors are created by the rules that govern all mayor's courts. For example, complaints about the mayor's unilateral authority to choose whether or not to operate a court would apply to all mayor's courts. Similarly, elements that are common to all mayor's courts can be said to be an inherent part of the form—the ability for communities to collect fines and fees, using a court to generate revenue for the community budget, for example.

Most of the benefits mayor's courts provide and problems they cause, however, are the result of a single court making a series of discretionary choices. While some courts may make similar types of decisions, the discretionary outcomes—positive or negative—of any given court will not necessarily be reflected in other courts. For example, communities that use their mayor's court to generate far more revenue than they receive from taxes have the same discretionary authority as other courts, but use it to reach a very different outcome. The same is true for certain courts' assets—a court known for its flexible, personal, and compassionate operations is the result of it choosing to use its discretion in a way that other courts do not.

This distinction is critical to developing policies to maximize the benefits and mitigate the risks of mayor's courts. Structural problems demand a system-wide policy change. On the other hand, problems that arise only when certain courts use their discretion poorly are better fixed by either tweaks to the governing rules or greater enforcement efforts to bring the rogue court back into line

Common all-or-nothing critiques and endorsements overlook opportunities for politically-viable compromises. This paper is in response to reviews that parrot common assertions without pausing to assess their validity and the ungrounded debates they produce.

# Chapter 1

## Mayor's Courts: Shared Background, Different Outcomes

Most Ohio communities with more than 200 citizens and no municipal court can create a mayor's court.<sup>5</sup> Keeping with Ohio's strong home-rule tradition, communities make most decisions about their mayor's court—including whether or not to open it. Theoretically that devolution makes the courts more responsive to local values, making the adjudication process more flexible and personalized.

Some courts indubitably deliver those promised benefits, healing the communities they serve in the process. Others, however, exploit their residents. Few deny the existence of effective mayor's courts or ineffective mayor's courts; rather, critics and proponents dispute whether the benefits the courts collectively provide justify the system's existence given the problems it also creates. While prominent Ohio politicians have made it their mission to eliminate all mayor's courts, they have been deterred by the collective power of local leaders.

Longtime Ohio legislator and four-term Ohio Supreme Court Justice Paul E. Pfeifer, for example, famously called mayor's courts more fit for a spaghetti western than modern Ohio, evoking the worst stereotypes of small-town justice.<sup>6</sup> Former Ohio Supreme Court Justice Thomas Moyer made it his mission to get the General Assembly to ban mayor's courts, but he too was thwarted.

Presently mayor's courts are spread throughout the state, but especially common around Cincinnati, Columbus, and Cleveland. They are far more common than the next-most local court, Ohio's municipal and county court.

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<sup>5</sup> Ohio Revised Code §1905.01. Exceptions include:

1. The following municipal corporations are exempted from the 201-person-minimum population threshold: Georgetown in Brown county, Mount Gilead in Morrow county, and any municipal corporation located entirely on an island in Lake Erie. (citation). While the law allows Georgetown and Mount Gilead to operate a mayor's court regardless of their population, that clause is not used since both communities have populations well in excess of 200 people. In 2017 Georgetown had a population of 4,331 and Mount Gilead had a population of 3,660 (citation 2017 mayor's court summary). Only the village of Put-in-Bay takes advantage of this exception. In 2017 its population was just 138, but it was still authorized to conduct a mayor's court since it is located entirely on an island in Lake Erie. (citation 2017 mayor's court summary)
2. The following municipal corporations are prohibited from having a mayor's court regardless of their population: Batavia in Clermont county and any municipal corporation where a judge of the Auglaize county, Crawford county, Jackson county, Miami county, Montgomery county, Portage county, or Wayne county municipal court sits.

<sup>6</sup> Justin Conley and Rebecca McKinsey, "Ohio's Mayor's Courts, Big Business," *The Columbus Dispatch*, July 22, 2012, <https://www.dispatch.com/article/20120722/NEWS/307229922>.

# Local Courts in Ohio

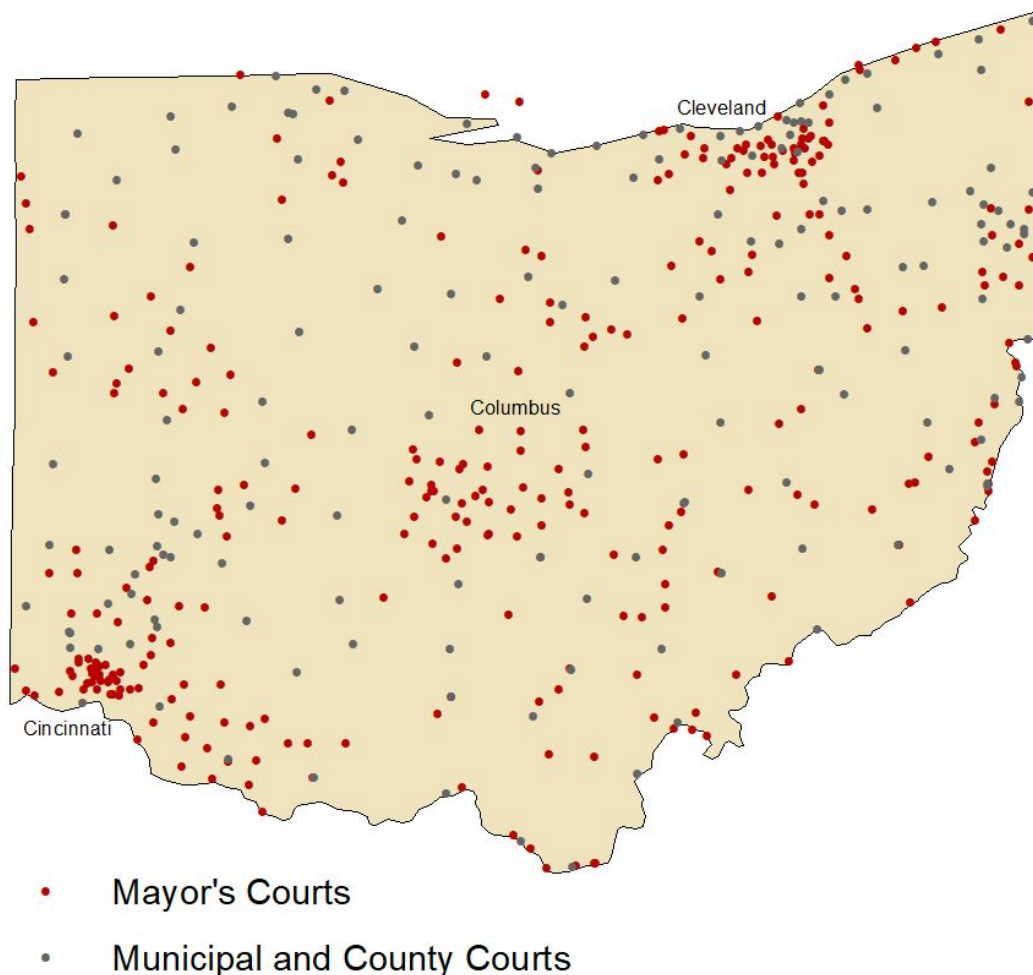


Figure 1: Ohio Court Map

Mayor's courts rest at the bottom of Ohio's judicial system and have concurrent jurisdiction with the nearest municipal or county court.<sup>7</sup> Some see the redundancy as an advantage—a key pressure valve relieving the strain on municipal and county courts—while critics characterize the courts as backwards vestiges from a bygone era.

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<sup>7</sup> When cases from a mayor's court are appealed, they go to the alternative municipal or county court. If a mayor's court were eliminated, cases would be filed in the municipal or county court alongside those from nearby communities that never had mayor's courts.



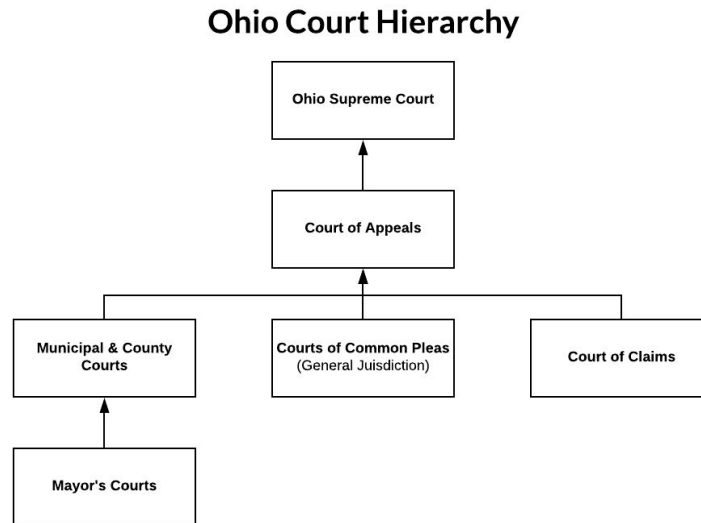


Figure 2: Ohio Court Hierarchy<sup>8</sup>

Fixing low-level courts, however, should not be a low-priority. Mayor's courts touch many lives, all of which deserve justice. Reforming mayor's courts is hindered by fuzzy understandings of mayor's courts. Since most courts produce little documentation and each court can vary significantly from its peers, many citizens struggle to learn the system's nuances.

## Making a Mayor's Court

Despite its name, most cases a mayor's court handles do involve the mayor or judge directly. Instead, these cases are processed by a violations bureau, which allows defendants to "pay out" their "waiverable citation" without setting foot in a mayor's court.

While each mayor's courts is unique, they tend to share several general attributes:

- *Negligible Oversight.* No Ohio institution has a robust mandate to oversee mayor's courts. Each court is required to submit basic case statistics to the Ohio Supreme Court each quarter, but some courts skirt that expectation without facing any consequences.<sup>9</sup> Knowing they operate with impunity, courts are free to not report data whenever they please.<sup>10</sup> The state auditor's office is empowered to monitor mayor's courts and their millions of dollars of revenue, but lacks any enforcement power. Misbehavior must be reported to local prosecutors who can choose whether or not to bring a case. The close political and social ties common in small towns make it challenging for local prosecutors to hold fellow community elites accountable, further neutering official oversight. The state

<sup>8</sup> Chart derived from: "Judicial System Structure," *The Supreme Court of Ohio & The Ohio Judicial System*, <http://www.supremecourt.ohio.gov/JudSystem/>.

<sup>9</sup> See "Mayor's Court Education and Procedure Rules," *The Ohio Supreme Court*, Rule 15 for reporting requirements.

<sup>10</sup> Justin Conley and Rebecca McKinsey, "Ohio's Mayor's Courts, Big Business," *The Columbus Dispatch*, July 22, 2012, <https://www.dispatch.com/article/20120722/NEWS/307229922>.

auditor's office has repeatedly identified misspending and related errors, but little has come of its reports.<sup>11</sup>

A *Columbus Dispatch* study found that nearly twenty percent of the 318 mayor's court audits conducted in 2009 found a problem, including erroneous accounting, lack of records, and absence of documentation supporting tickets.<sup>12</sup> The limited documentation makes investigating claims of errors or misbehavior difficult. The extensive barriers to transparency and state officials' inaction allows the mayor's court system to continue operating in the shadows with impunity.<sup>13</sup>

Additionally, mayor's courts' minimal record-keeping and reporting requirements severely limit the opportunities private citizens and advocacy organizations have to evaluate their work. Unlike municipal courts, mayor's courts are not courts of record, meaning that they lack court reporters and are not required to audio- or video-record court proceedings.<sup>14</sup> That lack of transparency severely hinders the ability of advocates and researchers to identify discriminatory, exploitive, or otherwise defective tendencies in a given court. Further, the norm of limited record keeping denies mayor's courts, city councils, and state legislators the information to make data-based adjustments to improve courts' quality and efficiency. While older technology may have once made such record-keeping and data-tracking cost prohibitive, or at the very least ill-advised, modern technology makes transparency achievable. With no institutionally-mandated oversight and potential private watchdogs hobbled by the lack of transparency, mayor's courts are free to operate as they see fit without meaningful supervision.

- *Non-judicial Court.* Unlike many other courts, mayor's courts are part of the executive branch.<sup>15</sup> Although the Ohio Supreme Court reports data from and makes some rules for mayor's courts, they are technically more akin to administrative bodies than they are to other courts.<sup>16</sup> For example, the General Assembly controls the responsibilities, salary, and jurisdictions of other Ohio judges, but largely stays away from regulating mayor's courts.<sup>17</sup> That task falls to communities' mayors, whose power over their court is only checked by the scant state rules and any restrictions imposed by their community's legislature.

Most other courts also have greater separation between judges and the prosecutors and police departments that argue before them. Mayor's courts, conversely, are run by the mayor or mayor's appointee, the prosecutor (if used) is generally appointed by the

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<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

<sup>13</sup> The 127th General Assembly introduced legislation to eliminate the mayor's court system entirely, but it fell well short of passing. See Paul Revelson, "Nothing But Trouble: The Ohio Legislature's Failed Attempts to Abolish Mayor's Courts," *University of Dayton Law Review* 35, no. 2 (Winter 2010): 223-246, [https://udayton.edu/law/\\_resources/documents/law\\_review/nothing\\_but\\_trouble.pdf](https://udayton.edu/law/_resources/documents/law_review/nothing_but_trouble.pdf).

<sup>14</sup> Ibid.

<sup>15</sup> "Judicial System Structure," *The Supreme Court of Ohio & The Ohio Judicial System*, <http://www.supremecourt.ohio.gov/JudSystem/>.

<sup>16</sup> Ohio Revised Code §1905.031(A).

<sup>17</sup> Tony Glazer, "Ohio Mayor's Courts: Are They 'Courts' at All?," *Ideastream*, April 7, 2017, <http://www.ideastream.org/news/ohio-mayors-courts-are-they-courts-at-all>.

mayor, and in strong-mayor communities the police department ultimately answers to the mayor too.<sup>18</sup>

- *Limited Training.* Mayors only need six hours of training to run their court, followed by an additional three hours of annual continuing education.<sup>19</sup> Prior experience, a law degree, and even a high school diploma are all unrequired. Ohio teachers,<sup>20</sup> cosmetologists,<sup>21</sup> tanning facility operators,<sup>22</sup> school district business managers,<sup>23</sup> and lifeguards<sup>24</sup> all face more stringent licensing and education requirements. To also hear cases involving alcohol or drug-related traffic offenses, mayors need just six more hours of initial classroom training followed by an additional three each year. Those limited education programs are the full extent of requirements for a mayor to preside over a mayor's court—a remarkably small portion of the job they were elected to.<sup>25</sup>

Requirements are slightly more rigid for magistrates, should a mayor choose one to serve in his or her place.<sup>26</sup> In addition to the mayor's court-specific education requirements noted above, the Ohio Revised Code requires that a mayor's court magistrate be admitted to the Ohio bar and practiced law in Ohio and/or served as a judge of a court of record in any United States jurisdiction for at least three years before serving as a mayor's magistrate.<sup>27</sup> Unlike mayors, magistrates are all lawyers.

The regulatory framework that provides for negligible oversight, places mayor's courts in the executive branch, and demands only limited training governs all mayor's courts. Individual communities, however, also have broad authority to shape their court as they see fit.

Mayor's courts generally convene weekly or a few times each month depending on how busy the court is, oftentimes in the evenings to reduce conflicts with work schedules. At court defendants are entitled to be represented by an attorney, but many mayor's courts do not

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<sup>18</sup> Generally speaking, the strong-mayor form of government empowers the mayor to exercise broad executive authority. Weak-mayor forms of government, on the other hand, delegate most executive power to an apolitical city manager.

<sup>19</sup> Must be done within 60 days of assuming office or exercising the jurisdiction. See "Mayor's Court Education and Procedure Rules," *The Ohio Supreme Court*, Rule 4. These rules do not apply to a presiding officer who is also 1) "a retired judge eligible for assignment by the Chief Justice of the Ohio Supreme Court to active duty in the general division of the court of common pleas, a municipal court, or a county court," or 2) "A court magistrate who serves on a fulltime or parttime basis in the general division of the court of common pleas, a municipal court, or a county court pursuant to the Rules of Criminal or Civil Procedure or the Ohio Traffic Rules."

<sup>20</sup> "Teacher License Overview," Ohio Department of Education, <http://education.ohio.gov/Topics/Teaching/Licensure/Apply-for-Certificate-License/Educator-License-Types-and-Descriptions>.

<sup>21</sup> Ohio Administrative Code §4713-1-06.

<sup>22</sup> *Ibid.*

<sup>23</sup> Ohio Revised Code §3301.074.

<sup>24</sup> Ohio Administrative Code §901:9-1-12.1.

<sup>25</sup> Even when judges are exclusively overseeing courts, limited training can leave them ill-prepared for their jobs. Some Texas judges, for example, were recently exposed for not knowing that they were legally required to assess defendants' ability to pay before incarcerating them. Alexandra Natapoff, *Punishment Without Crime* (New York: Basic Books, 2018), 141.

<sup>26</sup> While the Ohio Supreme Court's rules for mayor's courts treats magistrates and mayors as interchangeable actors, the law does not. See Rule 2.B Definitions: "'Mayor' means a duly elected or appointed executive of a municipal corporation includes a municipal official who is authorized by statute, charter, or municipal ordinance to conduct mayor's court in the absence of the mayor, and a magistrate appointed pursuant to section 1905.05 of the Revised Code." See "Mayor's Court Education and Procedure Rules," *The Ohio Supreme Court*.

<sup>27</sup> Ohio Revised Code §1905.05(A).

provide public defenders. If a defendant requests a public defender, the case would have to be transferred to the municipal court. Court is generally more casual environment than busier, more structured courts. Oftentimes cases proceed more as conversations among the mayor or magistrate, the prosecutor, and the defendant. Since court sessions are infrequent, a large backlog of cases may accrue. Long court sessions incentivizes defendants to pay out and be on their way rather than waiting in the queue to challenge their case.<sup>28</sup>

These similarities among mayor's courts should not be taken to suggest they are a unified class. They are not.

## Monolithic Mirage

All mayor's courts are subject to the same rules, but each court is unique. The discretion in setting a court's jurisdiction and determining how it sanctions alone produces many different court experiences. The many discretionary outcomes possible demonstrate just how inaccurate the monolithic mirage is.

## Jurisdiction: Commonalities and Discretion

While state law prohibits mayor's courts from hearing a wide range of cases, there are no positive jurisdictional requirements—mayor's courts have full discretion to decline to exercise a portion of the jurisdiction they are authorized to exercise. As a result, different mayor's courts are free to self-define differing jurisdictions so long as they stay within the maximum bounds set by the Ohio Revised Code (ORC).

Aside from certain exceptions, state law authorizes mayor's courts to hear cases involving violations of their municipality's ordinances and criminal moving traffic violations that occur on a state highway within their municipality's borders—including vehicle parking or standing violations and violations related to operating a vehicle under the influence of a controlled substance (OVI).<sup>29</sup>

Mayor's courts are not, however, allowed to hear any felony cases or cases in which the defendant is a juvenile. Additionally, mayor's courts are explicitly denied jurisdiction over the following three types of cases:

- *Jury Trials.* Mayor's courts are not authorized to conduct jury trials.<sup>30</sup> In the relatively rare instance that a mayor's court defendant requests a trial, they must waive their right to a jury trial pursuant to ORC 2937.08 and accept a bench trial in the mayor's court or the case will be transferred up to the appropriate municipal court.<sup>31</sup>
- *Successive OVI and License Suspension Cases.* Defendants who have been convicted of or pled guilty to an OVI within the past ten years cannot have their case heard in a

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<sup>28</sup> The Reynoldsburg Mayor's Court, for example, advised defendants to plan on being at court for "a couple of hours" for certain sessions. See "Court: What to Expect," *Reynoldsburg Mayor's Court*, <http://www.ci.reynoldsburg.oh.us/uploads/documents/departments/courts/what-to-expect.pdf>.

<sup>29</sup> Ohio Revised Code §1905.01 A and B.

<sup>30</sup> Ohio Revised Code §2938.04.

<sup>31</sup> Ohio Revised Code §2937.08.

mayor's court.<sup>32</sup> Similarly, mayor's courts cannot hear cases in which the defendant is charged with either 1) a violation of Revised Code §4510.16 or a substantively similar law, or 2) a violation of Revised Code §4510.14 or a substantively similar law, and has been previously convicted of or pled guilty to a comparable offense within the six years prior to the most recent incident.<sup>33</sup>

- *Interpersonal Violence.* Mayor's courts are barred from hearing cases involving domestic violence (ORC §2919.25), violating protective orders (ORC §2919.27), felonious assault (ORC §2903.11), aggravated assault (ORC §2903.12), assault (ORC §2903.13), menacing by stalking (ORC §2911.211), or matters involving protective orders generally (ORC §2919.26).<sup>34</sup>

While the jurisdictional rules mayor's courts face do put meaningful limitations on the the types of cases mayor's courts can hear, they do not have the last word. Instead, they types of cases a mayor's court hears are fully decided by two things: 1) the ordinances the community's legislature passes for the mayor's court to enforce, and 2) the mayor's decision over what type of cases its court will hear.<sup>35</sup>

Many courts limit their jurisdiction. The three types of jurisdictional limitations below highlight how much individual mayor's courts can differ.

- *Waiverable Citations Only.* Some courts only hear waiverable citations, or cases for which the community has set a predetermined fine that defendants can paid instead of appearing in court. While each court approaches waiverable citations differently, most courts require appearances for defendants with multiple offenses in a short period of time, more severe offenses (typically criminal charges require appearances relative to traffic citations), and charges the defendant wishes to contest. For example, in the Yellow Springs Mayor's Court, defendants accused of violating the right of way of a funeral procession, wearing earphones while driving, or making a prohibited left from US Bank can generally all pay a \$105 fine to settle the case without appearing in court.<sup>36</sup> However any defendants accused of passing bad checks, street racing, or assault all must appear before the mayor.<sup>37</sup>

Courts that only process waiverable citations, however, push cases requiring appearances off onto their respective municipal or county court. The Chagrin Falls Mayor's Court, for example, only hears waiverable citations meaning cases including speeding charges in excess of twenty miles-per-hour above the limit, a third or higher number violation within the past 12 months, or those in which the defendant seeks to contest the charges are automatically transferred out. If it were truly a working mayor's

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<sup>32</sup> Per Ohio Revised Code §1095.01 B, this includes violations of municipal OVI ordinances, violations of state OVI laws in Revised Code §4511.19, and violations of federal or other state or local statutes that are substantially similar to Revised Code §4511.19. Once the presiding officer of the mayor's court becomes aware of the previous such offense, that officer must immediately transfer the case to the municipal court pursuant to Revised Code §1905.032.

<sup>33</sup> Ohio Revised Code §1905.01 C.

<sup>34</sup> Ohio Revised Code §1905.01 E.

<sup>35</sup> The Ohio Revised Code notes that mayor's *may* operate a mayor's court, but only the mayor can choose the extent to which he or she exercises that jurisdiction—if at all. *State ex rel. Boston Heights v. Petsche*, 27 Ohio App. 3d 106.

<sup>36</sup> Yellow Springs Fine Schedule, last revised 2009.

<sup>37</sup> *Ibid.*

court—like most of the other mayor’s courts—the mayor or magistrate would hear many of the cases that are transferred.<sup>38</sup>

- *Arraignment Court.* Arraignment courts, like the Geneva-on-the-Lake Mayor’s Court, do not conduct trials—any defendant who pleads not guilty to the charges has their case automatically transferred to their municipal court.<sup>39</sup> Unlike courts that only hear waiverable citations, arraignment courts process cases that require a court appearance. The case only has to be transferred if the defendant pleads not guilty. Since only three defendants pled not guilty in the Geneva-on-the-Lake Mayor’s Court in 2017, the court transferred fewer cases than it would have had it been exclusively a waiverable citations court; the Chagrin Falls Mayor’s Court would have had far more transfers.<sup>40</sup>
- *Declining Certain Case Types.* While many mayor’s courts process cases of those who are accused of driving with a suspended license, the Avon Mayor’s Court does not. Instead, those cases are automatically transferred to the Avon Lake Municipal Court.<sup>41</sup> Similarly, the Minster Mayor’s Court does not hear any cases relating to driving under suspension, license forfeiture, or OVIs.<sup>42</sup> Instead the Minster Police Department files those cases directly with the local municipal court meaning that mayor’s court never interacts with them.<sup>43</sup>

Even though all mayor’s courts are subject to the same jurisdictional laws, they do not all exercise the same jurisdiction. This is by design—mayor’s courts are given significant discretion to serve their community’s needs and values in the most tailored way possible. While municipal and county courts also provide somewhat localized justice, individual courts have less flexibility, serve more people, and are more insulated from (and thus less responsive to) the preferences of the people they serve.

## Sanctioning

The presiding officer of a mayor’s court—whether a mayor or appointed magistrate—has broad authority to decide cases, sentence defendants, and compel attendance and decorum at court. By issuing bench warrants (which some jurisdictions call *capias* warrants) and suspending defendants’ driver’s licenses for failing to appear at their appointed court time, the presiding officer can have a profound effect on defendants’ lives even if they are ultimately found not guilty.<sup>44</sup>

As with most court functions, the presiding officer has significant discretion. Several illustrative mayor’s courts’ approaches are highlighted below:

- *Limited Sanction Use.* The Geneva-on-the-Lake Mayor’s Court is a small court overseen by a part-time magistrate. She issues warrants to get around a bug in the court’s

<sup>38</sup> Patricia Chambers, email message to author, December 27, 2018.

<sup>39</sup> Alicia Boothe, email message to author, December 20, 2018.

<sup>40</sup> Geneva-on-the-Lake Mayor’s Court Transfer Records, 2017.

<sup>41</sup> Monica Argenti, email message to author, January 31, 2019.

<sup>42</sup> Rachel Ranly, email message to author, December 20, 2018.

<sup>43</sup> Rachel Ranly, email message to author, December 20, 2018.

<sup>44</sup> See “Off the Record: Profiteering and Misconduct in Ohio’s Mayor’s Courts,” *ACLU Ohio*, April 2019, [https://www.acluohio.org/wp-content/uploads/2019/04/Report\\_OffTheRecordProfiteeringAndMisconductInOhiosMayorsCourts\\_FINAL\\_2019-0415.pdf](https://www.acluohio.org/wp-content/uploads/2019/04/Report_OffTheRecordProfiteeringAndMisconductInOhiosMayorsCourts_FINAL_2019-0415.pdf).

software, but never acts on them.<sup>45</sup> Other courts, like the New Knoxville Mayor's Court rarely, if ever, use bench warrants or license forfeitures.<sup>46</sup>

- *Sanctions for Failure to Pay.* The Canfield Mayor's Court issues bench warrants for defendants who fail to appear in court, but uses license suspensions differently. All defendants there are offered a payment plan for their fines and costs, which requires a payment be made every 30 days. If the defendant fails to pay, a bill is sent to them. If the defendant still does not respond, they receive another 30-day notice and the license forfeiture process starts.<sup>47</sup> Unless the issue is resolved after the second warning, the defendant's license is immediately suspended at the end of the third, thirty-day period.<sup>48</sup> At the Canfield Mayor's Court, however, defendants' licenses are not suspended for failing to appear in court.
- *Frequent Sanctioning.* Other courts use bench warrants frequently. In 2017 nearly 16% of all cases heard in the Westerville Mayor's Court are hearings for failure-to-appear charges.<sup>49</sup> These aggressive practices can cause significant harm to those affected, but are by no means representative of all mayor's courts.<sup>50</sup>

Individual courts have wide discretion to determine what justifies harsher punishments and presiding officers are free to make whatever policy decisions they feel are best for their court. If local communities disagree, they can vote the mayor out at the next election.

Differing jurisdiction and sanctioning outcomes show that structural factors are usually just a point of departure. Understanding the uniqueness of individual mayor's courts is critical to appropriately tailoring reforms.

## Discussing Reforms

Current debates about the future of mayor's courts perpetuate the myth that mayor's courts are a singular, monolithic entity. In failing to appreciate the effects of discretion, we likewise fail to target critiques to a specific source—either bad actors or truly systemic factors.

Reformers must identify the precise cause of injustice, inefficiency, and other shortcomings, then regulate accordingly. Instead, current discussions carelessly create an artificial dichotomy: keep mayor's courts or abandon them.

More pragmatic advocates can promote nuanced reforms in two primary ways:

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<sup>45</sup> Alicia Boothe, email message to author, December 20, 2018.

<sup>46</sup> Abigail Homan, email message to author, December 21, 2018.

<sup>47</sup> Lynda Seabrook, email message to author, January 11, 2019.

<sup>48</sup> Lynda Seabrook, email message to author, January 11, 2019.

<sup>49</sup> Westerville Mayor's Court Daily Filing Reports, 2017.

<sup>50</sup> "Off the Record: Profiteering and Misconduct in Ohio's Mayor's Courts," *ACLU Ohio*, April 2019, [https://www.acluohio.org/wp-content/uploads/2019/04/Report\\_OffTheRecordProfiteeringAndMisconductInOhiosMayorsCourts\\_FINAL\\_2019-0415.pdf](https://www.acluohio.org/wp-content/uploads/2019/04/Report_OffTheRecordProfiteeringAndMisconductInOhiosMayorsCourts_FINAL_2019-0415.pdf).

- *Enforcement of Current Rules.* Courts sometimes continue prohibited practices.<sup>51</sup> Prior rulings highlight litigation opportunities for defendants suffering through illegal procedures.<sup>52</sup>
- *Advocacy for new Rules.* In courts, town halls, and the statehouse reformers can assert that certain practices should be disallowed. New evidence and heightened awareness about the societal dangers introduced by low-level courts make the environment ripe for change.

Hardly anyone thinks the current mayor's court arrangement is perfect, but the debate over whether or not the whole system should be eliminated deprives more nuanced reform efforts of oxygen. At the end of the twentieth century, the Ohio Supreme Court's Chief Justice, Thomas Moyer, created The Futures Commission to review how Ohio's judicial system should operate over the next twenty-five years. As the Commission's Organization and Structure Task Force Director Laralyn Sasaki reflected in 1998, "It's not that the current [mayor's court] system has serious flaws, but I defy anyone to say that if there'd been a blank slate when Ohio was established that our system is what would have been designed."<sup>53</sup>

As more critics begin to argue that the system does, in fact, have serious flaws, the reform conversation has shifted from asking how to improve mayor's courts to asking how to get rid of them. The failed efforts to block Cuyahoga Fall's mayor's court show just how difficult it is to strike some mayor's courts, let alone all of them. Since many mayor's courts provide their communities critical funding streams, eliminating them carries high costs for state legislators. Political feasibility aside, many mayor's court critics fail to even distinguish between problems with individual courts and problems inherent or likely to appear in any mayor's court.

Systemic problems require wide-reaching reforms, whereas problems with the way a particular court is using its discretion can be resolved with a lighter touch. When legislators realized that the fiscal pressures in small communities were corrupting nearly all the mayor's courts in communities with fewer than 100 residents, they banned only those affected. Upon realizing the impulse toward revenue-generation was also too strong in communities with fewer than 200 residents, they barred mayor's courts there too. It is an easy, but costly mistake to cite three assorted mayor's courts that appear to be pursuing revenue at the expense of justice as evidence that all mayor's courts are infirm.

Some mayor's courts use their discretion to offer greater personalization, flexibility, and compassion than other courts, advantages that would be lost if mayor's courts were eradicated.

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<sup>51</sup> In perhaps the most striking example of disallowed rules being continued, Chief Justice of the South Carolina Supreme Court, Jean Hoefer Toal, did not believe in the constitutional right to counsel in low-level cases and so "simply told my magistrates that we just don't have the resources to do that. So I will tell you straight up we [are] not adhering to" that rule. See Alexandra Natapoff, *Punishment Without Crime* (New York: Basic Books, 2018), 192.

<sup>52</sup> Mayor's courts' limited transparency makes it difficult to discover when and where rules are being broken. Limited training for court staffs can make it difficult for them to know when longstanding practices are no longer allowed. The combination creates an environment ripe for rules going unenforced. Even non-mayor's courts sometimes deviate from the rules. For example, the Ohio Supreme Court banned incarcerating people for failing to pay criminal court costs, but courts routinely do anyways. Alexandra Natapoff, *Punishment Without Crime* (New York: Basic Books, 2018), 142.

<sup>53</sup> "Task-force Proposal Would Shake Up Courts," *Associated Press Newswires*, March 23, 1998, <https://global.factiva.com/redir/default.aspx?P=sa&NS=16&AID=9VIV000400&an=aprs000020010915du3n04ee2&cat=a&ep=ASI>.



Proposing to resolve bad-apple problems by banning large cohorts of valuable, just mayor's courts is a net loss for society.

Mayor's courts' alleged problems and benefits fall into one of two general categories:

- *Systemic.* Systemic problems and benefits come from the rules that set the bounds for all mayor's courts' behavior. These systemic factors include the extent or nature of the discretion given to individual courts, the types of behavior expressly encouraged or allowed (like having a non-lawyer preside over contested trials), or other structural factors like the extent of oversight, reporting requirements, and training mandates. These elements inherently shape the behavior of every mayor's court.
- *Bad Apples.* Individual critiques target unique behavior, for example a specific court or small group of courts using their discretion in an unsavory way. While constraining discretion may stop this sort of behavior, the discretion itself is not inherently the problem. In other words, many courts that enjoy the same discretion do not reach the same outcomes; bad behavior can be stopped without eliminating the discretion. For example, the same discretion may enable valuable personalization in some mayor's courts while enabling gross favoritism in others. Eliminating the discretion would eliminate both outcomes, but the negative outcome could also be eliminated by a more robust oversight and enforcement regime to ensure the rogue court behaved appropriately.

Understanding the role of discretion is important for designing sound reforms; enlightened and despotic courts alike enjoy the same discretion. But the discretionary context is only part of the equation. As mayor's courts have evolved, the problems they create have changed too. To best reform mayor's courts, advocates must also evaluate the validity of both systemic and bad apple complaints.

## Evolution of Mayor's Courts

Mayor's courts trace their roots back to the oldest court of England: The Court of Our Sovereign Lady the Queen, Holden before the Mayor and Aldermen of the City of London.<sup>54</sup> These local courts were embraced in the colonies too, perhaps most prominently in New York City.<sup>55</sup> Few records survive from early mayor's courts, but litigation records refer to now defunct mayor's court systems operating in Alabama, Arkansas, Delaware, Florida, Georgia, Iowa, Indiana, Kansas, Kentucky, Michigan, Maryland, Missouri, Mississippi, North Carolina, New Jersey, New York, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, Utah, Virginia, and West

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<sup>54</sup> Floyd A. Buras, III, *The Louisiana Mayor's Court: An Overview and Its Constitutional Problems* (Bloomington: Author House, 2015), 2.

<sup>55</sup> *Ibid.*, 3.

Virginia.<sup>56</sup> While somewhat similar courts exist in other states today, true mayor's court systems only still exist in Louisiana and Ohio.

Ohio's first version of a mayor's court was founded in Cincinnati in 1815.<sup>57</sup> By 1851, the state's new constitution codified the form of mayor's court that exists today.<sup>58</sup> They could only operate in "second class" cities with populations between 5,000 and 20,000 and in incorporated villages with populations below 5,000 and heard cases involving local ordinance violations and matters that justices of peace could hear: The jurisdictions covered all violations of city or village ordinances and matters that justices of peace could hear: cases involving "arrests; preliminary hearings, . . . [and] affrays" for criminal matters and "in certain cases up to \$100.00; voluntary confession up to \$200.00" for civil matters.<sup>59</sup> At the time, justice of the peace courts and police courts (which only heard criminal matters in cities with populations over 20,000) also provided local judicial services.

Today, mayor's courts are the only component of the 1851 judicial system that remains. By the 1950s, police and justice of the peace courts had been replaced by municipal and county courts. Mayor's courts, however, have evolved significantly since then. The most recent reforms have progressively adjusted the population requirements for communities to operate a mayor's court.

In recent years, there have been several major attempts to change the population threshold:

- *Fewer than 100 Residents.* In May of 2003, Ohio passed a law barring mayor's courts from operating in communities with fewer than 100 residents. It had become clear that the limited number of mayor's courts operating in communities that small were almost uniformly exploiting their discretion, collecting immense sums to fund tiny communities. The Village of New Rome (population 60) ran one of the courts targeted by the reform. Known for its history of fiscal mismanagement, questionable elections practices, and extensive traffic fines, the community made hundreds of thousands of dollars each year by issuing speeding tickets, primarily on the 1,000-foot stretch of U.S. 40 within its jurisdiction. Its secret? The speed limit of that stretch was 10 miles per hour slower than it was outside New Rome.

By running a mayor's court that kept fine revenue within the community, New Rome was able to easily monetize its speed trap. The reform that took away its financial lifeline split

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<sup>56</sup> Example cases include *Withers v. State*, 36 Alabama 252 (1860); *Williams v. State*, 63 Arkansas 307 (1896); *Bates v. Porter*, 74 California 224 (1887); *Gray v. State*, 2 Delaware 76 (1836); *State ex rel. Duke v. Wills*, 49 Florida 380 (1905); *W. & A. R. Co. v. Atlanta*, 113 Georgia 537 (1901); *Finch v. Marvin*, 46 Iowa 384 (1877); *Bryan v. Bates*, 15 Illinois 87 (1853); *Waldo v. Wallace*, 12 Indiana 479 (1859); *Prell v. McDonald*, 7 Kansas 426 (1871); *Shinkle v. Covington*, 83 Kentucky 420 (1885); *Welles v. City of Detroit*, 2 Doug. 77 (Michigan 1845); *Dulaney on Behalf of Lord Proprietary v. Jennings*, 1 H. & McH. 92 (Maryland 1738); *Leonard v. Sparks*, 63 Missouri App. 585 (1890); *Griffin v. State*, 127 Mississippi 315 (1921); *Scott v. Fishblate*, 117 North Carolina 265 (1895); *State v. Gratz*, 86 New Jersey 483 (1914); *Simson v. Hart*, 14 Johns. 63 (New York 1816); *Baker v. Marcum & Toomer*, 22 Oklahoma 21 (1908); *Commonwealth ex rel. Attorney-Gen. V. Conyngham*, 65 Pennsylvania 76 (1870); *Greenville v. Spencer*, 77 South Carolina 50 (1907); *Newbern v. McCann*, 105 Tennessee 159 (1900); *Ex parte Schwartz*, 2 Texas Ct. App. 74 (1877); *Young v. Cannon*, 2 Utah 560 (1880); *Brooks v. Potomac*, 149 Virginia 427 (1928); *Rowlesburg v. Zelano* 74 West Virginia 142 (1914).

<sup>57</sup> Paul Revelson, "Nothing But Trouble: The Ohio Legislature's Failed Attempts to Abolish Mayor's Courts," *University of Dayton Law Review* 35, no. 2 (Winter 2010): 223-246, [https://udayton.edu/law/\\_resources/documents/law\\_review/nothing\\_but\\_trouble.pdf](https://udayton.edu/law/_resources/documents/law_review/nothing_but_trouble.pdf).

<sup>58</sup> *Ibid.*

<sup>59</sup> Carrington T. Marshall, *A History of the Courts and Lawyers of Ohio*, 1934, 90.

the community. A councilman who had previously led a failed effort to dissolve the village celebrated that “justice is going to be served instead of [the mayor’s court] just being a revenue-producing business for New Rome.” The lawyer who served as the court’s magistrate for several months in 2001 was more glum, reflecting that the loss could be “the death knell of New Rome.” While losing an estimated two-thirds of its revenue could indeed cripple New Rome, his concern for the village’s survival highlights how critical court revenue can become for communities, raising troubling questions about the impartiality of those courts, the role of police in that community, and the appropriateness of uniting justice and fundraising.

- *Fewer than 200 Residents.* In December 2012, the Ohio General Assembly banned mayor’s courts in communities with fewer than 200 residents. As with the ban on mayor’s courts in communities with fewer than 100 residents, it was clear to lawmakers that nearly all small mayor’s courts had gone rogue. One of the courts closed—the Linndale Mayor’s Court—highlights the lengths these communities go to to maintain funding flows.

Efforts to eliminate Linndale’s (population 178) aggressive ticketing practices go back decades. Linndale tickets heavily on its 442-yard strip of Interstate 71 despite not having any ramps on or off of the freeway, casting doubt on the tickets’ safety justifications. State Representative Edward F. Kasputis, for example, argued that since Linndale roads were wholly disconnected from the freeway, there were only financial incentives to ticket so heavily. After he led efforts to outlaw Linndale’s ticketing processes in 1994, the community fought back, eventually getting the Ohio Supreme Court to overturn the ban for violating Linndale’s home-rule authority. In 2009, the Linndale Mayor’s Court collected \$490,320, nearly six times the amount of revenue it generated in taxes.<sup>60</sup>

Revenue continued to grow until the court was closed again in 2013. Since the mayor’s court had been backstopping an obscene ticket rate, losing it caused annual ticket revenue to plummet from about \$866,000 to around \$10,000.<sup>61</sup> If all of Ohio ticketed with the same rate as Linndale, it would have issued 531,140,644 driving citations in 2012. Instead, the State Highway Patrol issues fewer than 1/1000 of that many tickets.<sup>62</sup> The reality that losing the revenue produced by a high ticketing rate poses an existential threat to communities shows how dependent small communities can become on non-tax revenue.

That dependency forced Linndale to search for an alternative. Quickly. On December 13, 2013, less than a year after losing its mayor’s court, Linndale bounced back with a traffic camera-administrative hearing scheme. Over the first 65 weeks of the system, Linndale brought in more than \$1 million.<sup>63</sup>

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<sup>60</sup> Justin Conley and Rebecca McKinsey, “Ohio’s Mayor’s Courts, Big Business,” *The Columbus Dispatch*, July 22, 2012, <https://www.dispatch.com/article/20120722/NEWS/307229922>.

<sup>61</sup> In 2007, it generated even more revenue—nearly \$1 million. See: Robert Higgs, “How Ohio Lawmakers Tried to Shut Down Linndale Traffic Enforcement—And How Linndale Fought Back,” *Cleveland.com*, February, 2016, [https://www.cleveland.com/metro/2016/02/how\\_ohio\\_lawmakers\\_tried\\_to\\_sh.html](https://www.cleveland.com/metro/2016/02/how_ohio_lawmakers_tried_to_sh.html).

<sup>62</sup> Rex Santus, “Linndale, Other Villages Thwarted in Effort to Save Mayor’s courts,” *The Plain Dealer*, March 20, 2013, [https://www.cleveland.com/open/2013/03/linndale\\_other\\_villages\\_thwart.html](https://www.cleveland.com/open/2013/03/linndale_other_villages_thwart.html).

<sup>63</sup> Robert Higgs, “How Ohio Lawmakers Tried to Shut Down Linndale Traffic Enforcement—And How Linndale Fought Back,” *Cleveland.com*, February, 2016, [https://www.cleveland.com/metro/2016/02/how\\_ohio\\_lawmakers\\_tried\\_to\\_sh.html](https://www.cleveland.com/metro/2016/02/how_ohio_lawmakers_tried_to_sh.html).

- *Failed Efforts.* Even if population floors failed to eliminate communities' aggressive fundraising tactics, they did eliminate their mayor's courts. Other bills did not make it that far. Many versions of a 1,000-resident population floor, for example, have failed.<sup>64</sup> Court supporters, especially local power brokers who depend on mayor's court revenue, have presented a potent political force to retain their financial lifelines. Their lobbying allows financially-dependent communities to continue operating their mayor's court. The Hanging Rock Mayor's Court, for example, reported \$401,218 of revenue in 2009 about 95 times the amount its 221 residents paid in local taxes.<sup>65</sup>

Other reforms have tried to set population ceilings for mayor's court communities. The most prominent such reform attempt targeted the Cuyahoga Falls Mayor's Court, which had the third highest caseload of all Ohio mayor's courts in 2010 (7,619 cases), about a 75% increase from its 4,354 cases in 2009. Cuyahoga Falls, population 49,652, was also the largest community running a mayor's court.

Notorious for promoting frequent traffic stops, Cuyahoga Falls Police Chief Thomas Pozza cites a story of two people being arrested for burglarizing a restaurant as evidence his methods work. As the offenders see the officers' uniforms, one says to the other "Had I known we were in Cuyahoga Falls, we wouldn't have done this. We thought we were in Akron."<sup>66</sup> The story's veracity matters less than the pride with which the chief shares it, showing how deeply narratives of autonomous safety are ingrained in mayor's court models. Of course, the money does not hurt either. Mayor Don Robart made a point of comparing the mayor's court, which grossed \$750,000 in 2012, to the municipal court that once sat in Cuyahoga Falls and cost the community about \$250,000 each year.<sup>67</sup> The roughly \$1 million swing into the black gave powerful Cuyahoga Falls politicians strong incentives to fight to keep their court, allowing them to outlast state politicians and avoid the ban.

Since the latest failed reforms, much of the reform debate has focused on whether or not to eradicate mayor's courts wholesale. Facially sound, but substantively fuzzy complaints portray the mayor's court system as a singular, monolithic entity. Not only is that an inaccurate representation, but it also leads to a debate that directs too much attention to unduly extreme positions: to keep mayor's courts largely as they are or to eliminate all or many of them. By recognizing the variation in mayor's courts, reformers can better improve mayor's courts and, more importantly, the lives of the people who interact with them. As the political debacle over the Cuyahoga Falls Mayor's Court demonstrates, mayor's courts' strong local support has created a robust political gridlock. There may be room for the General Assembly and local communities to create mutually-beneficial and meaningful reforms to improve mayor's courts statewide and check the behavior of bad actors, but that reform potential is going unrealized as attention is instead focused on the false dichotomy of the eradication debate.

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<sup>64</sup> Jim Siegel, "House Bill Targets Mayor's Courts," *The Blade*, November 27, 2012, <https://www.toledoblade.com/Politics/2012/11/27/House-bill-targets-mayor-s-courts.html>.

<sup>65</sup> Ibid.

<sup>66</sup> Rick Armon, "Cuyahoga Falls Mayor's Court Bustling, but Numbers Statewide Fall," *The Akron Beacon Journal*, July 30, 2012, <https://global.factiva.com/redir/default.aspx?P=sa&an=KRTAK00020120730e87u00031&cat=a&ep=ASE>.

<sup>67</sup> Ibid.

Present-day mayor's court problems are largely the result of systemic financial incentives leading officials astray, individual courts operating unjustly, and a general lack of transparency that denies citizens, legislators, and other watchdogs the opportunity to identify when a problem arises. Their benefits are the fruit of the trust and discretion each court receives. While many courts do not reap the full benefit they could, those that use their discretion wisely make their communities safer and more just. With so little information about mayor's courts available, alleged problems and benefits abound even as evidence of them remains scarce. Careful analysis of individual mayor's court's records, summary data, and local reporting from throughout the state, however, reveals a robust representation of how the mayor's court system actually works and how it actually affects the many lives it touches.

## Chapter 2

# An (Ohio) Spaghetti Western: High Profit, Low Transparency

Current critics claim that conflict of interest, biased outcomes, and skimming undermine mayor's courts' value. As a result, they argue, mayor's courts should be eliminated.

That recommendation is misguided and incompletely supported. Conflict of interest exists, to an extent, but not as fully as critics assert. For example, many contend that systemic classism and racism produces biased outcomes in mayor's courts. But these insidious tendencies affect other courts too, so eliminating mayor's courts just pushes defendants to suffer in a different forum.

The most salient claims turn on money. Communities addicted to mayor's court funding cannot claim justice as their lodestar. When fundraising becomes the dominant motivation, it skims revenue away from municipal and county courts and prevents the court from operating fairly. Money may assert too much influence in many courts, but its role is especially problematic in mayor's courts. Perverse financial incentives, however, can be corrected without eliminating all mayor's courts.

To reach sound policy improvements, we must evaluate the validity of major critiques of mayor's courts.

## Conflict of Interest

For nearly a century, officials and laypeople alike have questioned the impartiality of mayor's courts. The most egregious arrangements—like those that only pay the mayor for convictions—have been struck by the courts and largely rejected by the public. Worries about conflicting interests corrupting the fairness of mayor's court outcomes, however, remain.

Many critiques imprecisely identify the source of the conflict they allege. While the name “mayor's courts” lends itself to skepticism, criticisms that seek to promote change must go beyond raising general skepticism. Instead, reform-sparking criticisms ought to cite specific errors and articulate why they represent a real or perceived conflict of interest that is severe enough to undermine the credibility of the court or the fairness of its decisions.

Conflicts of interest, or the perception thereof, can arise in three general ways in mayor's courts.

- *Dual-hatted Mayors.* When the mayor presides over the court and conducts other responsibilities as mayor, conflicts of interest may arise between his or her judicial and executive duties.<sup>68</sup> Mayors throughout Ohio have varying degrees of both judicial and partisan responsibilities, so dual-hatted conflicts are individualized problems—they arise

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<sup>68</sup> In extreme cases, mayor's run a court that tries defendants arrested by “their guys” in the police department. There partisan duties stopping crime, monitoring finances, and managing the police in the community clash with running a fair and neutral court.

in a specific set of courts, as operated. Dual-hat problems are also the most heavily litigated; mayor's court litigation has overwhelmingly focused on the appropriate balance of judicial and partisan responsibilities that a normal mayor can handle.

- *Mayor-appointed Magistrates.* Many mayors appoint a magistrate to run the court in their place. Mayor-magistrate relationships often escape scrutiny based on the untested assumption that there is a wall of separation between the two offices. Given the broad discretion some mayors have to replace the magistrate, the mayor's ability to hear cases even if a magistrate has been appointed, and the close personal and professional relationships between many mayors and magistrates, that assumption is dubious. At the very least, potential for conflicts of interest should be studied.
- *Financially-motivated Courts.* The worry that mayor's courts sacrifice justice for profit is not unique to them, but is especially relevant. Since mayor's courts enforce community ordinances, city councils have wide discretion to determine a) the offenses the court adjudicates, b) the punishments and fines the court issues, and c) the fees charged for using the court.<sup>69</sup> Further, the mayor (or city manager depending on the community) oversees the police department which orders defendants to the mayor's court. Mayor's court cases (as in most other courts) are hardly ever contested or go to trial, meaning that nearly all citations the police issue result in convictions and fines and fees being collected.

Much of the revenue from fines and fees returns to the community's general fund, which the mayor and city council can then spend as they see fit. The ability to collect significant funds for community initiatives without raising taxes introduces meaningful electoral incentives to maximize mayor's court revenue. Fundraising under the guise of correcting deviant behavior makes collection more socially palatable than taxation. Further, mayor's courts collect revenue from residents (read: potential voters) and non-residents, spreading the "tax burden" to non-constituents.

Police departments also have their own reasons to boost court activity. Many departments' budgets are sustained or supplemented by mayor's court revenue. In small communities with small budgets, convictions, generally speaking, are the most reliable way to meet salary and afford new equipment.

Individual courts can experience conflicts of interest through some, all, or none of those channels.

## Dual-hatted Mayors

Mayorship entails different responsibilities in different communities—from largely ceremonial roles to powerful executive functions. A specific mayor's role—and a specific mayor's court's role in its government—are critical factors in evaluating potential dual-hatted conflicts of interest. Several landmark court cases have attempted to define the extent to which mayors can wear both judicial and partisan hats.

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<sup>69</sup> Legislatures in communities without city councils enjoy the same discretion.

## *Tumey v. Ohio* 1927<sup>70</sup>

To better equip communities to enforce the Eighteenth Amendment, Ohio passed the State Prohibition Act. Among other things, it authorized communities to allocate a portion of the fines collected from prohibition violators to those doing the enforcement.<sup>71</sup> With that authority, the Village Council of North College Hill passed Ordinance No. 125, Section V of which provided: “That the mayor of the village of North College Hill, Ohio, shall *receive or retain the amount of his costs* in each case, in addition to his regular salary, as compensation for hearing such cases.” Since the costs the mayor retained were only paid when the defendant was found guilty, the mayor got paid when he convicted and earned nothing when he found the defendant not guilty. Like the Fugitive Slave Act, Ordinance No. 125 also allocated costs paid by convicted defendants to the mayor’s marshals, inspectors, and detectives.<sup>72</sup> In other words, every conviction lined the pockets of those involved in the convicting; every acquittal left the courts’ agents empty-handed.

Ordinance No. 125 was, unsurprisingly, controversial. In fact, a petition opposing the ordinance and signed by a majority of the village’s voters was presented to Mayor Pugh (who took office after the ordinance’s passage). Mayor Pugh was unmoved, however, noting that he would carry on the “Liquor Court” so long as the village was in need of finances. From May 11, 1923 to December 31, 1923 alone, the court provided significant revenue to the village and its key stakeholders, including \$696.35 to Mayor Pugh (in addition to his regular salary).

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<sup>70</sup> *Tumey v. Ohio*, 273 U.S. 510 (1927).

<sup>71</sup> In relevant part, §6212-37 allows that “*The council of any city or village may be ordinance, authorize the use of any part of the fines collected for the violation of any law prohibiting the manufacture and sale of intoxicating liquors, for the purpose of hiring attorneys, detectives, or secret service officers to secure the enforcement of such prohibition law.* And such council are hereby authorized to appropriate not more than five hundred dollars annually from the general revenue funds, for the purpose of enforcing the law prohibiting the manufacture and sale of intoxicating liquors, when there are no funds available from the fines collected for the violation of such prohibitory law.” Ohio General Code quoted in *Tumey v. Ohio*, 273 U.S. 510 (1927).

<sup>72</sup> Fugitive Slave Act, 9 Stat. §462 (1850).



<b>Figure 3: North College Hill Mayor's Court Revenue Allocations (May 11, 1923-December 31, 1923)</b>		
<b>Expense</b>	<b>Amount (1923 dollars)</b>	<b>Amount (2019 dollars)</b>
Court Expenses	\$438.50	\$6,518.68
<b>TOTAL EXPENSES</b>	<b>\$438.50</b>	<b>\$6,518.68</b>
<b>Benefactor</b>	<b>Amount (1923 dollars)</b>	<b>Amount (2019 dollars)</b>
<b>Mayor Pugh</b>	<b>\$696.35</b>	<b>\$10,351.84</b>
Liquor Court Prosecutor	\$1,796.50	\$26,706.51
Deputy Marshals, Inspectors, Detectives, & Other Employees	\$2,697.75	\$40,104.37
North College Hill: Village Safety Fund	\$2,697.25	\$40,096.94
North College Hill: General Uses	\$4,471.25	\$66,468.97
State	\$8,992.50	\$133,681.23
<b>TOTAL PAYOUTS</b>	<b>\$21,351.60</b>	<b>\$317,409.86</b>

These perverse incentives confronted Mr. Tumey when he was arrested, charged with unlawfully possessing intoxicating liquor, and brought before the North College Hill Mayor's Court, presided over by Mayor Pugh. Mayor Pugh denied Tumey's motion to dismiss the case, conducted the trial, convicted Tumey of the original charge, fined him \$100, and ordered his imprisonment until the fine and costs were paid.

On appeal, the United States Supreme Court struck down the Village of North College Hill's system, ruling that "a system by which an inferior judge is paid for his service only when he convicts the defendant has not become so embedded by custom in the general practice either at common law or in this country that it can be regarded as due process of law, unless the costs usually imposed are so small that they may be properly ignored as within the *maxim de minimis non curat lex*."<sup>73</sup>

The mayor's pecuniary interest, however, was not the only violation of Tumey's due process rights. The authorizing state statute was explicitly designed to incentivize municipalities to pursue prohibition cases, so that the prohibition laws might be enforced more uniformly across the state, even in smaller, more rural communities. Since the mayor was both tasked with looking out for the financial interests of the village and determining guilt and sentencing of defendants, the Court held that the Mayor Pugh could not be considered an impartial judge in Mr. Tumey's cases. He was disqualified both because of "his direct pecuniary interest in the outcome, and because of his official motive to convict and to graduate the fine to help the financial needs of the village."<sup>74</sup>

<sup>73</sup> *Tumey v. Ohio*, 273 U.S. 510 (1927).

<sup>74</sup> *Ibid.*

While the Court was clear that any meaningful, personal pecuniary interest was cause for disqualification, it did not specify the extent of official motive that warranted disqualification. Rather than striking all dual-hatted mayoral arrangements, the Court reflected that:

*It is, of course, so common to vest the mayor of villages with inferior judicial functions that the mere union of the executive power and the judicial power in him can not be said to violate due process of law. The minor penalties usually attaching to the ordinances of a village council, or to the misdemeanors in which the mayor may pronounce final judgment without a jury, do not involve any such addition to the revenue of the village as to justify the fear that the mayor would be influenced in his judicial judgment by that fact.*<sup>75</sup>

The Court's reasoning was colored by the frequency with which executive and judicial roles were merged and the perceived irrelevance of the fines collected by mayor's courts relative to the community's total budget. Today dual-hatted mayors are uncommon and mayor's courts often produce so much revenue relative to the community's budget that the courts alone can keep communities solvent.

In sum, *Tumey* established two guiding principles for evaluating potential due process violations in local courts.

- Situations "in which an official performs two practically and seriously inconsistent positions, one partisan and the other judicial."
- Procedures which "would offer a possible temptation to the average man as a judge to forget the burden of proof required to convict the defendant, or which might lead him not to hold the balance nice, clear and true between the State and the accused."

The Court left to future cases determinations of what beyond the facts in *Tumey* constitutes "two practically and seriously inconsistent positions" and what constitutes "a possible temptation."

### *Dugan v. Ohio* 1928<sup>76</sup>

Just over a year after deciding *Tumey*, the United States Supreme Court heard a similar conflict of interest case.

In 1928, M.J. Dugan was convicted of unlawfully possessing intoxicating liquor, his second such offense, and was fined \$1000 by the mayor's court in Xenia, Ohio.<sup>77</sup> He asserted that, like Mr. Pugh, the mayor who presided over his trial had a conflict of interest that violated his due process rights.

Unpersuaded, the Supreme Court concluded that the level of conflict was insufficient to render the process infirm. It drew two distinctions between Dugan's case and *Tumey*'s.

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<sup>75</sup> Ibid.

<sup>76</sup> *Dugan v. Ohio*, 277 U.S. 61 (1928).

<sup>77</sup> The same offense from General Code of Ohio §6212-15 as was discussed above. He pled guilty to the initial offense in February 1924 and was fined \$400, just under \$6,000 in 2019 dollars. The \$1000 fine is worth roughly \$14,000 in 2019 dollars.

- *No Personal Pecuniary Interest.* The mayor in *Tumey* received a bonus in excess of his ordinary salary for presiding over the mayor's court. Since that bonus was funded by court costs, which were only paid by defendants found guilty, Mayor Pugh had a personal, pecuniary interest in convicting more defendants. Each conviction brought him an average of \$12 and each acquittal brought him nothing.

Xenia's mayor received no such "conviction bonus." The mayor's salary did come from a general fund, which fines were paid into; however, since other funding streams contributed to the account too, there was no evidence to suggest any close relationship between the mayor's decision to acquit or convict and his salary.

- *Lesser Executive Authority.* Mayor Pugh was the chief executive and chief conservator of the peace for North College Hill. He was responsible for the financial state of the village and he exercised significant control over the liquor court and those who ran it. As a result, a mayor of that nature may be especially tempted to issue fines to grow his official reserves to pay the operating expenses of the village, make improvements, and reduce taxes.

The Xenia mayor was no such powerful chief executive. Rather, the city was run by five commissioners who exercised the city's legislative power and selected a manager, with whom they exercised the city's executive power. One of the commissioners served as mayor and had no individual, executive responsibilities. While fines and fees from convictions did go to the general fund, the Court held that the mayor's role as merely one of five commissioners meant that his connection to the "executive or financial policy of the city, [was sufficiently] remote" to prevent any meaningful conflicts of interest.<sup>78</sup>

The North College Hill Mayor's Court model—in which a strong mayor also personally profited from convictions he issued—was more unfair than the weak-mayor setup, with no such personal stake, that the Xenia Mayor's court used. In *Dugan*, the alleged conflict of interest was further removed. The mayor undeniably had incentives to convict, but based on the evidence and the best assumptions of the time, the Court deemed those incentives insufficient to create a conflict of interest.

### *Ward v. Monroeville* 1972<sup>79</sup>

In the roughly forty-four years between *Dugan* and *Ward* reached the United States Supreme Court, Ohio's state laws were overhauled. The Ohio General Code that was at issue in earlier cases was replaced by the Ohio Revised Code still in force. Most meaningfully for mayor's courts, this change also added the guaranteed right to *de novo* review for all mayor's court cases. That right assured defendants that their case could be heard anew at a higher court if they were dissatisfied with their mayor's court outcome.

The facts in this case are much closer to those of *Tumey* than those of *Dugan*. The first prong of *Tumey's* test for due process violations—having a "direct, personal, substantial, pecuniary

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<sup>78</sup> The Court's conclusion here is a premised on an assumption: that a mayor who is one of five legislators and has no personal executive authority is not so connected to financial policy or executive decisions to preclude serving as a judge. That assumption leaves the door open for future courts to strike a structurally similar arrangement if there is evidence that, as applied for that community, the remoteness assumption made in *Dugan* does not hold.

<sup>79</sup> *Ward v. Village of Monroeville*, 409 U.S. 57 (1972).

interest in reaching a conclusion against the defendant in his or her case”—was not at issue in *Ward*. Rather, the mayor’s broad executive authorities and the significant role mayor’s court revenues played relative to the community’s total revenue led the plaintiff to assert that his due process rights were violated.

The Supreme Court of Ohio held that those potentially conflicting temptations did not violate a defendant’s due process rights, because the defendant’s right to *de novo* review allowed a fresh start. The United States Supreme Court did not give as much weight to the guaranteed appeal, overturned the lower court’s decision, and struck the system in question.

Under the authority of new ORC §1905.01, the Mayor of Monroeville convicted Ward of two traffic violations and fined him \$50 for each.

In striking the process, the Court differentiated the Monroeville mayor’s role from that in *Dugan* for two reasons.

- *Broad executive authority.* The Mayor of Monroeville’s significant executive powers included being the chief conservator of the peace, presiding over the village council and its meetings, voting in the case of a tie on the council, and filling vacancies of village offices. Unlike in *Dugan*, where the city was largely run by a city manager and five commissioners, the mayor here played a meaningful executive and judicial role.
- *Close financial relationship.* The mayor reported annually on the village finances to the council and had general supervision of village affairs, including finances. The mayor and his staff recognized the role the mayor’s court, if used cleverly, could play in the village’s financial situation. Monroeville’s Police Chief (who was appointed by the mayor), for example, testified that he regularly charged suspects under a village ordinance rather than a state statute whenever the choice arose—*per the mayor’s orders*. That decision is especially colored by Ohio Revised Code §733.40, which ordered that fines and fees the mayor collected in state cases went to the county treasury, while those collected in ordinance and traffic cases paid into the municipality’s treasury.

Perhaps as a result of those policies, the mayor’s court revenue—from fines, forfeitures, costs, and fees, all imposed by the mayor—were critical to Monroeville’s overall fiscal wellbeing. The funds were so important that when the 102nd General Assembly passed the County Court law, reducing jurisdictional powers of mayor’s courts as of January 1, 1960, Monroeville hired a management consultant to help guide the village’s response. The result was Ordinance No. 59-9, which in part opined that the legislation “may cause such a reduction in revenue to this village that an additional burden may result from increased taxation and/or curtailment of services essential to the health, welfare and safety of this village.” Despite the new legislation, mayor’s court revenue still composed a large share of Monroeville’s annual revenue.

**Figure 4: Monroeville Mayor's Court Revenue as Percent of Total Village Revenue (1964-1968)<sup>80</sup>**

Year	Dollars Spent		2019 Dollars		% Mayor's Court
	Mayor's Court Revenue	Total Village Revenue	Mayor's Court Revenue	Total Village Revenue	
1964	<b>\$23,589.50</b>	<b>\$46,355.38</b>	<b>\$191,794.85</b>	\$376,893.24	50.89%
1965	<b>\$18,508.95</b>	<b>\$46,752.60</b>	<b>\$149,040.35</b>	\$376,467.82	39.59%
1966	<b>\$16,085.00</b>	<b>\$43,585.13</b>	<b>\$127,078.08</b>	\$344,340.34	36.90%
1967	<b>\$20,060.65</b>	<b>\$53,931.43</b>	<b>\$153,188.37</b>	\$411,834.50	37.20%
1968	<b>\$23,439.42</b>	<b>\$52,995.95</b>	<b>\$173,709.61</b>	\$392,753.14	44.23%

Together, the mayor’s executive powers and close connection to the communities’ financial stake in the court violated the defendant’s due process rights. While both indicators of bias were present, the court intimated that due process rights may still be violated without a mayor’s court failing both tests. Importantly, it observed: “Plainly that ‘possible temptation’ may also exist when the mayor’s executive responsibilities for village finances may make him partisan to maintain the high level of contribution from the mayor’s court.”

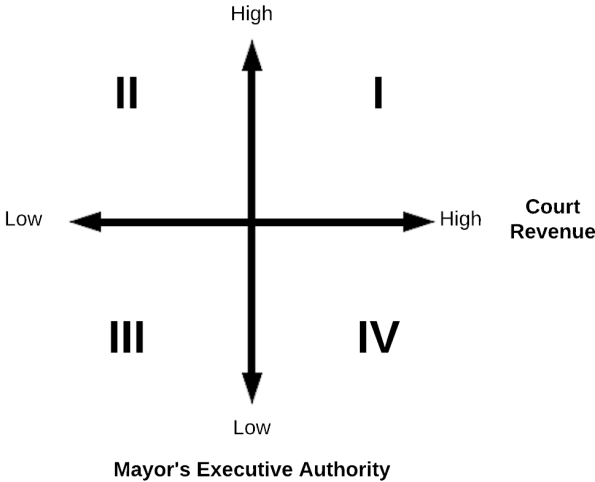
Clearly the Court’s thinking had evolved since *Tumey*. In affirming the general C=constitutionality of the mayor’s court system then, the Court reported that the minor penalties at stake in mayor’s courts “do not involve any such addition to the revenue of the village as to justify the fear that the mayor would be influenced in his judicial judgment by that fact.”

The possible temptation test is not be treated as a two-part binary evaluation. Instead, individual mayor’s courts may be evaluated on two spectra: the breadth of executive power held by the mayor and the mayor’s proximity to community’s finances. The specific facts and nuances of a given court’s arrangement will determine its Constitutionality, but, generally speaking, those courts that fall in quadrant one are more liable to be violating defendant’s due process rights than those in quadrant four.

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<sup>80</sup> In considering this data in its opinion, the Court did not note the percentage of total revenue represented by mayor’s court revenue, only that a “major part” of the village’s income came from the mayor’s court, as evidenced by the absolute dollar counts.

Figure 5: Mayor's Conflicting Influences



Together, *Tumey*, *Dugan*, and *Ward* set the broad constraints for what is a permissible connection between the judge of a mayor's court and other, potentially conflicting interests. These cases still govern the mayor-run trials.

**Analysis: Dual-hatted Mayors Today**

For a dual-hatted conflict of interest to arise, the mayor in question must hold a meaningful judicial role, overseeing trials in the mayor's court. Most mayors do not. Of Ohio's 295 mayor's courts active in 2017, only fifteen actually conducted trials overseen by a mayor. Altogether only 538 cases were tried by a mayor or acting mayor, just 0.2 % of the 263,330 total terminations reported.

**Figure 6: Trials Conducted by Mayor/Acting Mayor (2017)**

Court	Number of Trials
Belpre	15
Blue Ash	14
Bridgeport	397
Buchtel	23
Canfield	1
Hubbard	1
Moraine	15
Morrow	1
Murray City	2
North Randall	5
Oakwood	2
Port Washington	1
Senecaville	23
Waynesburg	22
Worthington	16

Of those fifteen courts, two are now clearly devoid of dual-hatted conflict of interests. Waynesburg claims to transfer all cases in which the defendant pleads not guilty to the Canton Municipal Court.<sup>81</sup> Assuming the information on their website is true and applicable in all cases, they do not conduct mayor-run trials. In Worthington, Ohio, the council elects a Mayor and Vice-Mayor from among the citizens of the municipality. Those selected must be qualified to serve on the council, but not a current member; an attorney admitted to the Bar of Ohio; and in

<sup>81</sup> William Bath, "Information on the Citation Process and Waynesburg Mayor's Court," last updated April 28, 2016, <http://www.waynesburgpd.com/home/mayor-s-court-information/mayorscourtinformation-sheet>.

good-standing with the Supreme Court of Ohio. In serving their two-year terms, the Mayor (or the Vice-Mayor in his or her absence) serves two roles: 1) the ceremonial head of the municipality, and 2) judge of the Mayor's Court. In other words, the mayor has no administrative, executive, or legislative duties. Thus, only thirteen courts are truly susceptible to dual-hat conflict of interest claims.

Of the remaining 13 courts, four have assorted weak-mayor systems akin to those approved by earlier court cases. As in *Dugan*, all four communities' executive branches are truly run by a city manager who oversees the budget and personnel, leaving negligible executive powers to the mayor.

- *Blue Ash*. Each December, the Blue Ash City Council elects one of its members to serve as mayor for the upcoming year. The mayor presides over council meetings, votes on council matters, is the judge of the mayor's court, and is the official head of the city for ceremonial and legal purposes.<sup>82</sup>
- *Canfield*. The citizens of Canfield elect their mayor, but his or her powers are roughly equivalent to those of any member of the City Council. The mayor is a member of the council with a right to vote on any matter except one relating to the mayor's removal or absence, but can neither veto council decisions nor preside over the council. For ceremonial, military, and civil litigation purposes, the mayor is the head of the community and the mayor presides over the mayor's court, but the mayor has no meaningful executive powers.<sup>83</sup>
- *Moraine*. The Moraine mayor is elected by the community to be a voting and presiding member of the City Council (without veto authority). The mayor has purely ceremonial executive powers and the judicial authority to preside over the mayor's court. His or her salary reflects the added responsibility of running the mayor's court, by providing an extra \$25 for each pre-scheduled court session he or she attends, up to \$1,300 per year. What happens at that session, however, has no bearing on the mayor's payment.<sup>84</sup>
- *Oakwood*. As in Blue Ash, the Oakwood City Council selects one of its own to be Mayor. The mayor presides over council meetings and votes as a regular council member, but has no veto power. While he or she is the ceremonial head of the city and presides over the mayor's court, the mayor is explicitly denied administrative authority.<sup>85</sup>

While the limited executive powers wielded by these four mayors likely do not violate defendant's due process rights in and of themselves, they are not the only relevant factor. Money, too, plays a role in determining whether a "possible temptation" arises that may pressure the judge to overlook the burden of proof. Here, the *Ward* court's observation that a possible temptation may exist when the mayor's responsibilities for the community's finances render him partisan by pressuring him to "maintain the high level of contribution from the mayor's court" is particularly salient.

Absent clear evidence of financial influences, however, it is highly unlikely that those four courts could be said to suffer from dual-hatted conflicts of interest. The same, however, cannot be said

<sup>82</sup> Charter of the City of Blue Ash, Ohio, last revised November 8, 2016.

<sup>83</sup> Codified Ordinances of Canfield, Ohio, last revised July 1, 2018.

<sup>84</sup> Charter of the City of Moraine, Ohio, last revised May 19, 2015.

<sup>85</sup> Charter of the City of Oakwood, Ohio, last revised April 25, 2007.



for the remaining nine communities: Belpre, Bridgeport, Buchtel, Hubbard, Morrow, Murray City, North Randall, Port Washington, and Senecaville. The mayors in those communities are empowered with the default authorizations from the Ohio Revised Code, a strong-mayor system.

For the mayors of cities (Belpre and Hubbard), the first half of ORC §733.03 is most apposite.

The mayor shall be the chief conservator of peace within the city. He may appoint and remove the director of public service, the director of public safety, and the heads of the subdepartments of public service and public safety, and shall have such other powers and perform such other duties as are conferred and required by law.<sup>86</sup>

For the mayors of villages (Bridgeport, Buchtel, Morrow, Murray City, North Randall, Port Washington, and Senecaville), ORC §733.24, controls.

Such mayor shall be the chief conservator of the peace therein and shall have the powers and duties provided by law. He shall be the president of the legislative authority and shall preside at all regular and special meetings thereof, but shall have no vote except in case of a tie.

The powers conferred in these strong-mayor systems are strikingly similar to those in *Ward*. In these nine communities and in the system struck down in *Ward*, the mayor has significant executive authorities including being the chief conservator of the peace, presiding over council meetings, and overseeing executive functions of the community. Unlike the facts in *Dugan* and the weak mayor communities detailed above, the mayor, not the city manager, is the chief executive. Thus, the mayors in these communities are engaged in two meaningfully different positions, one judicial and the other partisan.

Despite dual-hatted conflicts of interest receiving great attention, they could only arise in these fifteen courts. Although fact patterns like that in *Tumey* are the most sensational and intuitive forms of conflict of interest, they are not the only option. While dual-hatted conflicts of interest are impossible for all but fifteen courts, and unlikely for six of those fifteen, other conflicts of interest may be denying defendants due process in Ohio's mayor's courts.

## Mayor-appointed Magistrates

Precedents governing conflict of interest allegations in mayor's courts focus on mayors holding both executive and judicial power. While magistrates clearly do not play both a partisan and judicial role, that does not mean that they are immune from conflict. After all, the courts also held that a process which offers a "possible temptation to the average man as a judge" to tilt the balance of justice for the cases before him or her would violate a defendant's due process rights. Magistrates could surely encounter such a temptation.

Unlike mayors who receive a personal bonus for finding defendants guilty or mayors with broad executive authority whose budgets are funded by their court, the magistrate system does not pose prima facie structural risks. That said, magistrate arrangements should not be overlooked. Despite receiving more discussion and study, mayor-run trials only represented 39.4% of the

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<sup>86</sup> Ohio Revised Code §733.

1364 mayor's court cases that actually went to trial in 2017; magistrates oversaw nearly three out of every five trials.

Magistrate-Run Trials (2017)

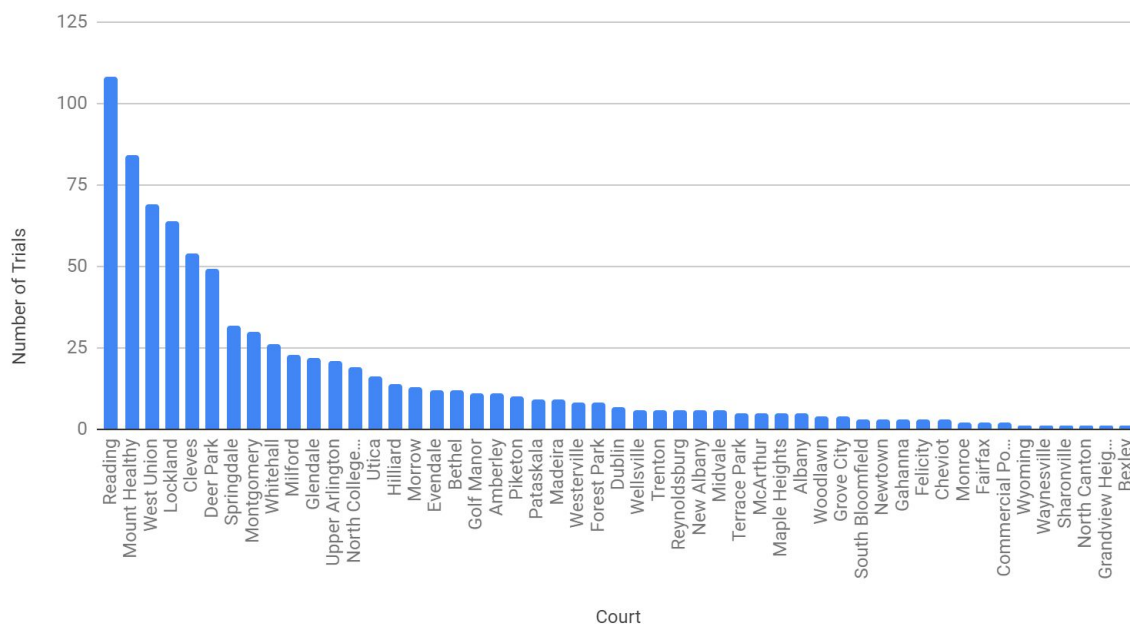


Figure 7: Number of Trials Run by a Magistrate in each Mayor's Court, 2017

Like any presiding judge, mayor's court magistrates are influenced by their environment and vulnerable to human error. Two main factors, however, make mayor's courts especially susceptible to undetected conflict of interest issues:

- *Intimate System.* Intimate communities and professional settings lessen magistrates' independence. State judges are rarely appointed, and when they are, they are far more removed from their appointers.<sup>87</sup> Even Supreme Court Justices, who enjoy the greatest independence from their appointers and strong institutional pressures toward independence, show signs of loyalty.<sup>88</sup> Magistrates overseeing small courts in small communities enjoy little insulation from political pressures. Political pressures are compounded when the court's revenue is critical to the community's financial health.
- *Limited Transparency.* Data about what happens in mayor's courts is sparse, but data about what happens behind the scenes is even harder to come by. The lack of transparency makes it especially difficult to detect impropriety that the intimacy of the environment makes more likely. A magistrate's contract or relationships could place

<sup>87</sup> A 2012 study found that about 90% of state judges in the United States are elected. In Ohio, nearly all judges are elected. Jeri Zeder, "Elected vs. Appointed?" *Harvard Law Today*, July 1, 2012, <https://today.law.harvard.edu/book-review/in-new-book-shugerman-explores-the-history-of-judicial-selection-in-the-u-s/>.

<sup>88</sup> Lee Epstein and Eric A. Posner, "Supreme Court Justices' Loyalty to the President," *The Journal of Legal Studies* 45, no. 2 (June 2016): 401-436, <https://doi.org/10.1086/688395>.

meaningful pressures on him or her to act in the financial interests of the community government without anyone knowing. If magistrates were subject to perverse pressures to the point of constituting an unconstitutional (or otherwise unsavory) conflict of interest, the public may never know because of mayor's courts' opacity.

The nature of their work environment may expose magistrates to especially robust political pressures. Magistrates are likely to face conflicts from two sources: institutional pressures and professional pressures.

## Institutional Pressure

Magistrates serve at the pleasure of the appointing mayor. Their compensation can be a) a fixed annual salary set by the legislature of the municipality they serve, b) a different fixed annual amount, or c) fees for their services based on a set contract.<sup>89</sup> This largely unregulated relationship between municipalities and their agents creates a risk that the pressures that would subvert a mayor's judgement are indistinguishable from those magistrates feel.

The magistrate may face a institutional conflict of interest from two fronts.

- **Official Channels.** State law grants extensive leeway on the types of contracts that magistrates receive. In *Tumey*, the Court knew that the mayor received more compensation when convicting defendants, because the compensation arrangement was statutorily defined. A defendant before a magistrate, on the other hand, would likely have no idea that the presiding judge had pecuniary incentives to convict her. Even if the base contract does not inject conflict, performance incentives may. For example, a magistrate whose contract's renewal or bonuses were contingent on raising a certain amount of money for the municipality would face pressure to consider factors beyond the facts in a given case when deciding whether to convict and considering how to sentence the defendant. Since a mayor is authorized to hear cases even after appointing a magistrate, a magistrate who gets paid by the session is structurally incentivized to decide cases in the mayor's interest lest the magistrate find himself or herself replaced by the mayor, losing out on pay as a result.<sup>90</sup>
- **Unofficial Channels.** Even if corrupting influences are not written into the magistrate's contract, they may still be at hand. The intimate nature of small communities introduces the possibility that mayors appoint their close friends, business partners, or other associates to the magistrate position. Alternatively, an otherwise neutral magistrate may be swayed by pressures to serve the mayor's political and financial interests by virtue of the closeness between the mayor and magistrate. Be it a result of social loyalty, political interest, and/or occupational preservation, magistrates with a neutral formal contract may still be swayed or appear to be swayed by other impermissible conflicts of interest.

Appellate courts reviewing mayor's court procedures and structures have long worried that mayors would be moved by pressures other than that of justice, namely money. On the other hand, magistrates have largely been assumed to be immune from the pressures a mayor would face. While that may be true for many pressures and many magistrates, there are still

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<sup>89</sup>Ohio Revised Code §1905.05.

<sup>90</sup> These situations have not necessarily arisen, but could.

meaningful channels through which the unique facets of mayor's courts and the communities they serve could allow impermissible influence to affect the magistrate.

## Professional Conflicts

Since mayor's courts are in session so infrequently, magistrate positions are part-time jobs. Part-time judges are subject to more stringent ethical requirements, but many jurisdictions have still been forced to confront both conflicts and perceived conflicts of interest that undermine the judicial process. Part-time judges who also practice law (as many do) face further ethical issues—especially in attempting to keep the two roles distinct.<sup>91</sup>

Communities preparing to hire a magistrate should consider that lawyer's other commitments before hiring him or her. More importantly, that information should be shared broadly with the community. Since the opportunities for conflict of interest to arise—via institutional pressures or professional engagement—exist, magistrates must be acknowledged as a source of potential trouble in mayor's court systems.

Practitioners and mayor's court scholars alike need to consider the meaningful possibility of magistrate arrangements violating defendants' due process rights instead of taking the facial lack of conflict as the full story. After all, far more defendants face trials presided over by magistrates than by mayors.

## Financially-motivated Courts

Courts have long considered the risk that a municipality's financial reliance on its mayor's court would lead corrupt it. A growing body of evidence, however, suggests that courts have underestimated money's role in courts throughout the country, especially low-level misdemeanor courts.

## Incentives to Generate Revenue

Concerns about biased trials focus on merely a small tip of the caseload and potential conflict icebergs. In reality, most cases never make it to trial. Most potential conflicts arise before trial too.

These potential conflicts are unlike those at trial—where the person deciding the case and determining the sentence allegedly make a decision for reasons beyond the record—because they cannot necessarily be traced so clearly to a single, key moment in a given case. Rather, these are upstream decisions that create a mayor's court enforcement environment that, on average, reaches certain types of people in certain volumes, in certain ways—and for the wrong reasons. The worry here is that policymakers and their agents generate revenue at the expense of justice.

We assume that criminal justice policy is made and enacted to maximize public safety, not bolster budgets. That assumption is tenuous. The Conference of State Court Administrators

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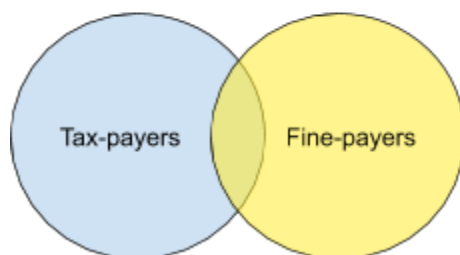
<sup>91</sup> Cynthia Gray and Nancy Biro, "An Ethics Guide for Part-Time Lawyer Judges," *American Judicature Society*, 1999, <https://www.ncsc.org/~media/Files/PDF/Topics/Center%20for%20Judicial%20Ethics/Publications/Part-Time-Lawyer-Judges-Ethics-Guide.ashx>.

claims that “courts are not revenue centers.”<sup>92</sup> They should say, more accurately, that “courts *should* not be revenue centers.” Some mayor’s courts undeniably have become revenue centers. The question is just how pervasively courts are being used with the intent to generate revenue.

Mayor’s courts allow communities to collect more revenue than they otherwise would. This money, which usually accrues to the community’s general fund, allows community leaders to provide services and undertake improvement projects that would otherwise be unaffordable.

Perhaps more important than the sum of the money that mayor’s courts collect is who provides it. While some of a jurisdiction’s taxpayers are brought before the mayor’s court to pay fines and fees, many of the people paying in to the mayor’s court pay their taxes elsewhere. In 2006, for example, notorious speed trap town North Hampton issued 1,300 tickets, including more to motorists from Indiana (13) than from North Hampton (6).<sup>93</sup> Since a mayor’s court can collect revenue from non-taxpayers, it shifts some of the community’s revenue-providing burden onto outsiders.

Figure 8: Community Funders



The electoral incentives are present even when mayor’s courts are charging taxpaying, voting members of the community. By dressing up the expense as retribution for illicit behavior, mayor’s courts lend legitimacy and political cover to revenue collection that would either come from taxpayers or be unavailable to the community’s leaders.

Together, these two incentives combine strong electoral and community pressures to lean more heavily on the mayor’s courts to provide funding than they would a court solely focused on crime and justice. Perhaps most alarmingly, mayor’s courts’ limited transparency and negligible oversight make it easy for policy-makers to fall victim to these incentives to abuse mayor’s courts without anyone noticing.

<sup>92</sup> Alexandra Natapoff, *Punishment Without Crime* (New York: Basic Books, 2018), 205.

<sup>93</sup> Village officials suggest that the discrepancy is the result of residents being a small minority of the motorists on the main thoroughfares where most of the ticketing is done. Whether intentional or not the North Hampton mayor’s court provided its leaders with revenue from 1,294 people who are neither voters nor tax payers. The only other way to get that funding would have been to tax voters more. See “Small Town has a Reputation for Handing Out Traffic Citations. Village Officials, Residents Say Safety is a Top Concern,” *Cox News Service*, March 9, 2010, <https://global.factiva.com/redir/default.aspx?P=sa&an=COXNS00020100310e639000mn&cat=a&ep=ASE>.

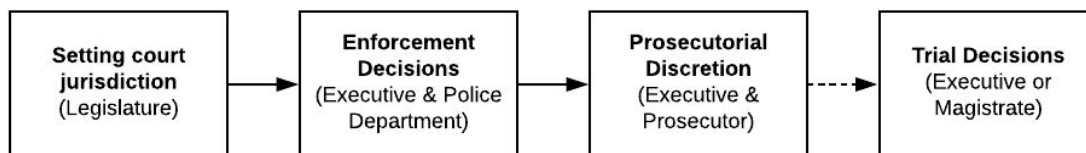
## Channels for Money's Influence

While the perverse influence of money can arise in any court, the risk of financial pressures becoming meaningful conflicts of interest is especially high in smaller ecosystems, like those where mayor's courts operate, for two primary reasons.

- *Limited Formal Separation of Powers.* Consider a locality in which, a few city council members set the court's jurisdiction, the mayor hires and directs police officers and prosecutors, and the same mayor hears cases and decide guilt. Where most court officials are further removed from executive and legislative affairs, mayor's court leaders can set enforcement and prosecution practices and then preside over the court that decides the outcomes of those enforcements and prosecutions. Rarely does court leadership overlap so extensively with the financially-minded elements of a government. With mayor's courts, however, politicians seeking funding are very close to the court and broader criminal justice system that can produce it.
- *Significant Funding at Stake.* Since small communities have a more limited tax base than their larger brethren, funds from mayor's courts often represent a comparatively more significant share of the community's total revenue. When mayor's court revenues are not only large in absolute magnitude, but also relative to a communities' other funding streams, communities become especially reliant on the court and are thus especially susceptible to setting justice aside in pursuit of much-needed revenue. Communities that know they are dependent on mayor's court funding will go to great lengths to preserve it.

Once a mayor decides to create a mayor's court, various actors in the municipality make a number of discretionary decisions that shape how the court operates. The decisions at each step have profound implications for the amount of revenue the court will generate.

**Figure 9:** Mayor's Court Decision Makers



The jurisdiction the court embraces and the way it enforces that jurisdiction determines who is drawn into the court process. Unlike most felonies where a victim starts the enforcement process, there are a virtually unlimited number of people who can be cited for speeding, trespassing, or disorderly behavior—and even more who can be cited for following too closely, failure to signal a turn, and barking dogs.<sup>94</sup> Thus, a more robust enforcement approach will

<sup>94</sup> All six offenses can be heard in the Enon Mayor's Court and also carry default bonds of \$180 (speeding 1-20 miles per hour over the limit), \$150 (criminal trespassing and disorderly conduct), \$125 (following too closely, failing to signal a turn and barking dogs). See Enon Bond Schedule, last modified 2015.

necessarily lead to more people entering the court, and, by extension, more revenue for the municipality.

Since many mayor's courts use violations bureaus to process a large number of citations, many cases never reach the third stage: prosecutorial discretion. Even fewer cases, however, are affected by trial decisions. Despite most critiques of mayor's courts focusing on the trial phase of judicial decision-making, trials are a rarity in mayor's courts—as they are in other courts.

This section highlights potential conflicts of interest that happen before the trial. They affect those cases that go to trial, and the much larger balance of the unseen caseloads that never make it to the courtroom.

1. *Jurisdiction.* In defining the nuances of a mayor's court's jurisdiction and setting the cost schedule, legislators shape the money-making potential of the court from beginning.
2. *Enforcement.* As executive branch leaders set enforcement policy and culture, they determine the rate at which civilians are cited and arrested—the shared entry point for mayor's court defendants.
3. *Prosecution.* Tasked with checking over-policing and bringing charges, prosecutors are charged with preventing abuse. Mayor's courts frequently limit or eliminate prosecutors and the safeguards they provide.

For some municipalities, deciding to create a mayor's court is principally a financial decision.<sup>95</sup> For others, the lure of easy money comes later. If the obsession with money begins, it is difficult to shake. Money's corruptive influence emerges in all three phases of pre-trial decisions.

## Jurisdiction

State law provides a general framework for mayor's court jurisdictions. But the way in which the municipality's legislature fills in the details can lead to disparate outcomes. Legislatures have two primary avenues to influence the amount of money the mayor's court generates, where it goes, and who pays it.

- *Passing Ordinances.* A large portion of a mayor's court's jurisdiction comes from municipal ordinances. Thus, in determining what behavior is outlawed by municipal ordinances, community legislatures have significant control over what cases can come before a mayor's court. Legislatures can prohibit otherwise licit behavior; they can also proscribe behavior already barred by state law. Making the behavior illicit with a municipal ordinance allows the mayor's court to hear cases about that behavior and retain the fines collected from those convicted of violating that ordinance.

Municipal ordinances need not widen the mayor's courts' net evenly. While many cases in mayor's courts involve common behavior, other types of "crimes" are disproportionately committed by certain types of people. By criminalizing certain activity, the legislature can—even inadvertently—punish those who are more likely to engage in that activity. The disparate effect of criminal behavior is seen most prominently in laws

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<sup>95</sup> Peter Krouse, "Case Against Mayor's Courts Evidenced in North Olmsted," *Cleveland.com*, December 7, 2017, [https://www.cleveland.com/metro/2017/12/case\\_against\\_mayors\\_courts\\_evi.html](https://www.cleveland.com/metro/2017/12/case_against_mayors_courts_evi.html).

that “punish poverty.” Laws against trespassing, camping, loitering, and begging, for example, criminalize nearly everything someone without a home does.

- *Setting Court Fines and Fees.* Many courts are feeling financial pains from their broad criminalization efforts. Too many cases for poor people’s picayune behavior lead to expensive jail sentences and many unpaid fines. Mayor’s courts are unique, because they rarely jail defendants and frequently collect the fines they charge. While collection rates are certainly not 100%, mayor’s courts are more profitable than similar courts, many of which end up costing their communities’ money.

As a result of higher revenue rates, setting fines and fees is an especially relevant component of the mayor’s court ATM process. Its significance is further compounded by the large share of cases that are paid out. Rather than dealing with the hassle of contesting a case or even going into court to negotiate a plea deal, defendants can simply pay online or mail a check to the mayor’s court and settle the case at a fixed rate. Paying out is easier and also generally less expensive since it allows the defendant to avoid paying court costs. Especially when mayor’s court revenue composes a significant role in a community’s budget as it does for many Ohio communities, it is hard to believe that earnings potential does not, at the very least, tempt legislators when determining the fines and fees their community will charge.

The legislature’s ability to widen the net of possible cases its mayor’s court can hear and to set default fines and fees for defendants convicted in those cases gives it a significant role in determining how much revenue a mayor’s court will produce. While the executive manages the budget and reports back to the legislature, it is the legislature who passes the laws that truly define the mayor’s court’s jurisdiction and ultimately controls the community’s pursestrings.

Although a legislature determining the revenue-setting capacity of a court is hardly unique to mayor’s courts, smaller mayor’s court communities may exacerbate money’s corrupting influence.

## Enforcement

Most municipalities criminalize behavior so broadly that virtually the entire population could be cited or arrested in the course of going about their normal business.<sup>96</sup> So-called “quality of life” crimes are prevalent enough that they are also described as the “power of arrest.”<sup>97</sup> Police departments, which in strong-mayor governments without magistrates report to the same person who runs the mayor’s court, are the the front-line operatives influencing the amount of cash that will flow to a mayor’s court.

Even if ordinary officers do not consider their department’s budget while patrolling the streets, financial considerations can still shape their work.<sup>98</sup> By creating quotas, citation-heavy cultures, or other performance measures that incentivize arrests and citations, police leadership and their

<sup>96</sup> Stephen L. Carter, “Law Puts Us All in Same Danger as Eric Garner,” *Bloomberg*, December 4, 2014, <https://www.bloomberg.com/opinion/articles/2014-12-04/law-puts-us-all-in-same-danger-as-eric-garner>.

<sup>97</sup> Post Editorial Board, “Why ‘Quality of Life’ Offenses Must Remain Crimes,” *New York Post*, April 27, 2015, <https://nypost.com/2015/04/27/why-quality-of-life-offenses-must-remain-crimes/>.

<sup>98</sup> It is important to remember that small-town police departments are little like their big-city counterparts with legions of recruits and complex hierarchies. Some police departments consist of a few part-time officers, blurring the line between department leader and beat officer.



political bosses can increase the flow of defendants into the mayor's court and, by extension, revenue for the community (much of which often returns to their own budget).<sup>99</sup>

The Richfield Mayor's Court, for example, demonstrates how police priorities shape court revenue. Case numbers were more than halved between 2006 and 2007, a change Police Chief Keith Morgan attributed to fewer available officers, a mild winter, and the department's increased focus on dealing with neighborhood calls instead of traffic enforcement.<sup>100</sup> For police officers surrounded by technically illicit behavior, organizational pressure to create more cases will get results.

Financial incentives for overzealous policing hijacks the role of the police. Police are forced to pursue money alongside, or, in some cases, ahead of justice and safety. Rather than being enforcers of order, they become fundraisers. This corruption of the police is, of course, not unique to mayor's courts. While mayor's courts may be marginally more susceptible to these problems since they exist in such intimate environments, getting rid of mayor's courts will certainly not eliminate the influence that money can and often exert over the police.

Further, police departments can often decide whether to issue charges for a state offense or a municipal offense. Fines from the former primarily go to the state while a much larger share of the fines from the former go to the community. Even beyond choosing whom to cite or arrest, police can and do increase the community's revenue by choosing how they cite or arrest someone.

## Prosecution

Prosecutors exercise wide discretion and are often considered the most powerful player in a court system.<sup>101</sup> In deciding what charges to bring and how to do so, they serve as a key check against unfounded or otherwise illegitimate cases. After the police arrest someone, prosecutors generally make the decision on whether to "decline" the case and end the process before it goes any further. Alternatively, the prosecutor can issue charges, beginning the criminal process and making the arrestee a defendant.

The two-step verification process before a case begins can be weakened or eliminated in mayor's courts by a combination of the following three factors:

- *Less Prosecutorial Independence.* When the mayor is the chief executive of the community, he or she is also the prosecutor's boss. The close relationships common among political leaders in small communities prevents mayor's court prosecutors from enjoying the same degree of insulation from political pressures that other prosecutors enjoy. The close ties allow mayoral and/or councilor desires to increase community revenues via the mayor's court to more readily affect the prosecutor's decisions. Revenue should be the last thing on a prosecutor's mind when evaluating whether or not to bring a case, but when the mayor's office is trying to increase its funds (or has already

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<sup>99</sup> Arrest and citation rates can also determine officers' ability to get raises or promotions in some police departments. See Alexandra Natapoff, *Punishment Without Crime* (New York: Basic Books, 2018), 232.

<sup>100</sup> Rick Armon, "Cuyahoga Falls Mayor's Court Bustling, But Numbers Statewide Fall," *The Akron Beacon Journal*, July 30, 2012, <https://global.factiva.com/redir/default.aspx?P=sa&NS=16&AID=9VIV000400&an=KRTAK00020120730e87u00031&cat=a&ep=ASI>.

<sup>101</sup> Alexandra Natapoff, *Punishment Without Crime* (New York: Basic Books, 2018), 66..

budgeted for a certain income from its mayor's court), prosecutors may fall to the siren song of fiscal realities when evaluating cases.

- *Additional Pressure to Plead.* Plea bargains—in which the defendant faces significant pressure to plead guilty—are a common trial alternative throughout U.S. courts. The dangers of plea bargaining, well documented elsewhere, may be exacerbated in mayor's courts where the prosecutor works for the mayor, works closely with the magistrate, or has other connections that make going to trial a surefire win. The defendant may also conclude that the trial's outcome is preordained. Additionally, some mayor's courts do not conduct trials. In those cases, defendants have to choose pleading guilty—and potentially only suffering what seem like relatively minor sanctions—or asserting their innocence and enduring the case hanging over them as they enter a new court and process at a later date once their case gets transferred to the local municipal or county court.
- *Absent Prosecutors.* Some mayor's courts lack prosecutors altogether. In those situations, there is no prosecutorial discretion, which means that no one is reviewing the police's decision to decide whether or not to bring a case. For example, a 2016 observer of the Yellow Springs Mayor's Court reported a court session with only three others in the room: then-mayor Dave Foubert, presiding, the police officer who issued the citation and discussed the facts in the sentencing phase, and an unnamed defendant who pled guilty to driving under suspension, claiming he lacked the resources to reinstate his license.<sup>102</sup> Removing a critical safety valve from the conviction process means that any policing errors—induced by rent-seeking, arrest-heavy quotas, for example—will pass through unchecked.<sup>103</sup>

The Supreme Court has reflected that the prosecutor's interest is “not that it shall win a case, but that justice shall be done.”<sup>104</sup> Prosecutors may lose sight of that interest when their boss wants to use the convictions they generate to raise funds, but it is certainly lost when prosecutors are removed from the situation entirely. Other courts separate police officers' citing discretion and prosecutors' prosecutorial discretion for a reason. In certain South Carolina courts, for example, defendants have been found almost three times more likely to plead guilty or no contest when confronted by a police officer-prosecutor than when facing anyone else (or even nobody).<sup>105</sup>

With strong incentives for key mayor's court players to be swayed by the perverse incentive to maximize revenue and ample opportunities for those unsavory influences to infiltrate the

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<sup>102</sup> Yellow Springs uses a council-manager form of government, meaning the mayor has negligible executive power. He or she does not even have a vote on the council. If the mayor did also serve as the chief executive, he or she would be the police officer's boss several times removed. For mayor's power, see Charter of Yellow Springs, Ohio, Article III, §29.

For story, see Dylan Taylor-Lehman, “How Mayor's Courts Work,” *Yellow Springs News*, February, 4, 2016, <https://ysnews.com/news/2016/02/how-mayors-court-works>.

<sup>103</sup> This structural omission is not unique to mayor's courts, but can also be found in select low-level courts throughout the country. Courtrooms in South Carolina, New Mexico, and New Hampshire feature police officers doing double duty as prosecutors and witnesses. That means that defendants oftentimes work out plea deals with the same officer who arrested them and chose to file charges. See: Alexandra Natapoff, *Punishment Without Crime* (New York: Basic Books, 2018), 71.

<sup>104</sup> *Berger v. United States*, 295 U.S. 78, 88 (1935).

<sup>105</sup> Alisa Smith, et. al., “Rush to Judgement: How South Carolina's Summary Courts Fail to Protect Constitutional Rights,” *National Association of Criminal Defense Lawyers*, 2017, <https://www.nacdl.org/RushToJudgement/>.

process of justice, there is a large risk that certain mayor's courts take their eye off justice or, worse, that their vision is clouded by the prospect of fundraising success. While community officials may not intend to make such a tradeoff or even realize the implications of doing so, benevolent ignorance is little consolation for those who have to pay what amount to extra taxes under guise of reconciling criminality, safety, and justice.

## Evidence of Money's Influence

Financial factors weigh heavily on court leaders' minds. While the theories above suggest that money is more influential than the evidence proves, that is to be expected. Despite the limited data availability, several courts have produced clear records of financially-motivated operations.

Brice, Ohio demonstrates the theory perfectly: it became dependent on money from its mayor's court and sacrificed justice to sustain that funding.<sup>106</sup> As soon as funding that was once dependable is threatened, communities realize how much they have come to depend on it.

When the Ohio legislature forbade mayor's courts in communities with fewer than 100 residents, Mayor David Welling kept the Brice Mayor's Court open anyways. His defiance persisted even after receiving notice that his court was not allowed.<sup>107</sup> That was the Summer of 2003.

In 2004, the Brice Mayor's Court (operating without jurisdiction) posted Ohio's fifth-highest ticket rate: about 7.6 tickets per resident. Those 529 tickets funded 40% of the village's court and part-time police department costs, a critical portion of the village's less-than-\$120,000 budget.<sup>108</sup> The mayor's court seemed to be funding a police force whose primary job was fundraising, for itself.

Citing his own records, Mayor Welling claimed that Brice had 122 residents. The 2000 census counted 70. The facially simple dispute over how many people lived in Brice took nearly three years to resolve, allowing the illicit mayor's court operate until 2006. Most defendants convicted during those years had no way to reverse convictions that, again, were secured in a court without jurisdiction. These people, like so many others, had waived their rights upon accepting plea deals and paying out.

Local powerbrokers opposed the closure. Mayor Welling lamented how out of touch state legislators were: "They was (sic) born with a spoon in their mouth and they forget about the little people. Leave us alone."<sup>109</sup> He also argued that Brice's two part-time police officers were needed to keep residents safe beyond the sporadic support the local sheriff provided.

One might question how much protecting the police officers did when they were so busy issuing fundraising tickets, but that overlooks the deeper problem: communities depend on court

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<sup>106</sup> While some communities are better able to withstand financial pressures, and larger communities with more diverse funding sources face less pressure, most courts face at least some pressure. After all, every initiative funded by mayor's court revenue would need alternative resources if the court closed or caseloads fell.

<sup>107</sup> Mayor Welling has no legal background and worked primarily in construction—a classic example of mayors running a court, hearing arguments from a trained prosecutor, and deciding cases with no legal background. See Stephen Majors, "Mayor's Courts on Another Quest to Survive the Law," *Associated Press Newswires*, September 23, 2007, <https://global.factiva.com/redir/default.aspx?P=sa&an=APRS000020070923e39n002mj&cat=a&ep=ASE>.

<sup>108</sup> "Central Ohio Village Eliminates Mayor's Courts," *Associated Press Newswires*, May 4, 2006,

<https://global.factiva.com/redir/default.aspx?P=sa&an=APRS000020060504e254001bb&cat=a&ep=ASE>.

<sup>109</sup> Stephen Majors, "Mayor's Courts on Another Quest to Survive the Law," *Associated Press Newswires*, September 23, 2007, <https://global.factiva.com/redir/default.aspx?P=sa&an=APRS000020070923e39n002mj&cat=a&ep=ASE>.

revenues to fund core services. Faced with losing their court, Brice considered raising the local income tax from 1% to 2%—a politically dangerous proposal. What mayor would prefer to raise taxes on residents (and voters) when the same funds could be readily generated under the guise of promoting safety?

The Ohio Municipal League agreed, arguing that abolishing mayor's courts would take police officers off the street—a compelling talking point for tough-on-crime politicians. Their pro-court rhetoric reveals two troubling realities: mayor's courts provide a core funding pipeline and politicians are acutely aware of that.

Population growth before the 2010 census allowed the Brice Mayor's Court to return—only to get eliminated again when the new 200-person population floor went into effect in March of 2013. Brice made the most of its mayor's court while it lasted, raising \$104,000 of its \$135,000 budget in 2012.<sup>110</sup>

Within two months of losing the mayor's court again, the community and its now one-member police department had a new judicial fundraising process. By July 2013, it was running a robust civil violation system. Ticketed motorists could choose to pay out, challenge the charge at monthly administrative hearings, request a separate hearing with the village's law director, demand the case be transferred to Franklin County, or get turned over to a credit bureau.

Not only was the civil violation system suspect, but so were the sums charged. Some of the fines Brice created for traffic violations exceeded \$750, far above the base fine under Ohio or Columbus law of \$97.<sup>111</sup> For expired tags alone, the *average* ticket in Brice was \$750.<sup>112</sup> Others of the thousands of citations were for as much as \$1,500. While transferring may be wise for defendants facing large fines, others, like Consuela Floyd who got her \$75 dollar ticket for a 4% window tint dismissed in Franklin County, just end up paying more. Despite winning and not having to pay \$75 to Brice, she paid \$90 in court costs for the appeal.<sup>113</sup>

Brice's civil violation system was only banned in 2016, despite the Brice prosecutor defending its "good intentions."<sup>114</sup> Franklin County Municipal Judge Michael T. Brandt, on the other hand, noted that the system seemed "like a way to circumvent the law to keep the money influx into the community."<sup>115</sup>

Most troubling is how easily both comments are reconciled. The community leaders' good intentions *were* to keep money flowing into the community. It allowed them to continue the basic services residents had come to depend on. Allowing communities to profit so directly from courts creates potent and perverse incentives to lean on those courts—even circumventing the law if necessary—to fund the communities' needs.

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<sup>110</sup> Rex Santus, "Linndale, Other Villages Thwarted in Effort to Save Mayor's courts," *The Plain Dealer*, March 20, 2013, [https://www.cleveland.com/open/2013/03/linndale\\_other\\_villages\\_thwart.html](https://www.cleveland.com/open/2013/03/linndale_other_villages_thwart.html).

<sup>111</sup> "Bill Would Restrict Some Ohio Villages' Ticketing Practices," *Associated Press Newswires*, November 26, 2015, <https://global.factiva.com/ga/default.aspx>.

<sup>112</sup> "Ohio House Passes Bill to Curb 'Abusive' Traffic Ticketing," *Associated Press Newswires*, April 17, 2016, <https://global.factiva.com/redirect/default.aspx?P=sa&an=APRS000020160417ec4h005my&cat=a&ep=ASE>.

<sup>113</sup> Lori Kurtzman, "No Mayor's Court? Fine!," *The Columbus Dispatch*, February 22, 2014, <https://www.dispatch.com/article/20140222/NEWS/302229853>.

<sup>114</sup> *Ibid.*

<sup>115</sup> *Ibid.*

Brice is hardly alone in its heavy reliance on mayor's court revenue.<sup>116</sup> When another community's court was threatened, it passed a resolution protesting that the closure "may cause such reduction in revenue to this village that an additional burden may result in increased taxation and/or curtailment of services essential to the health, welfare and safety of this village."<sup>117</sup>

Even mayor's courts run by magistrates can create financial dependencies. The magistrate-run North Hampton Mayor's Court, for example, generated \$135,697 in revenue in 2011—more than sixty-percent of the village's general fund.<sup>118</sup> Much of that money sustained the police department, meaning that if police officers failed to issue enough citations and the court failed to issue enough convictions, the police department would be forced to downsize or even close its doors. Given its small population, 478 in the 2010 census, North Hampton relies on non-tax revenue to provide expensive community services.<sup>119</sup>

Records of other community officials intentionally pursuing money at the expense of justice would surely be condemning. Far less sensational evidence, however, should also be sufficient to cast serious doubt over the system. Communities' dependence on court revenue and their demonstrated commitment to sustain it, highlights how influential money actually is in Ohio's mayor's courts.<sup>120</sup> At the very least, it is clear that the pursuit of revenue creates an impression of impropriety.

## Conclusion

The mayor's courts the Supreme Court reviewed in 1927 and the world in which they operated are very different from those today. Roads have improved, transportation has quickened, and Ohio's population has grown. While the "backcountry" may once have needed to rely on judges without legal training, there is no such dearth of lawyers eager to serve today.

As the world changes, we must critically evaluate both the normative judgements that were made decades ago and the assumptions that justified them. As the Court reasoned in *Tumey*:

*It is, of course, so common to vest the mayor of villages with inferior judicial functions that the mere union of the executive power and the judicial power in him can not be said to violate due process of law. The minor penalties usually attaching to the ordinances of a village council, or to the misdemeanors in which the mayor may pronounce final judgment without a jury, do not involve any such addition to the revenue of the*

<sup>116</sup> John F. Pfiffner, "The Mayor's Court and Due Process," *Iowa Law Review* 12, no. 4 (1927): 393-405, <https://heinonline.org/HOL/LandingPage?handle=hein.journals/ilr12&div=35&id=&page=>

<sup>117</sup> John J. Chernoski, "The 'Right' to a Neutral and Competent Judge in Ohio's Mayor's Courts," [https://kb.osu.edu/bitstream/handle/1811/69638/OSLJ\\_V36N4\\_0889.pdf](https://kb.osu.edu/bitstream/handle/1811/69638/OSLJ_V36N4_0889.pdf)

<sup>118</sup> Michael Cooper, "Mayor's Courts Lucrative—and Controversial," *Springfield News-Sun*, June 23, 2012, <https://www.springfieldnewssun.com/news/crime—law/mayor-courts-lucrative-and-controversial/SDgnazv0OHZ3IBtoeHGzFI/>.

<sup>119</sup> North Hampton's population (478) being larger than usual for prominent financially-dependent communities, mayor and lifelong resident Emory Harrod calls the mayor's court revenue "vital" to the police department continuing to run. See *Ibid.*

<sup>120</sup> "Off the Record: Profiteering and Misconduct in Ohio's Mayor's Courts," *ACLU Ohio*, April 2019, [https://www.acluohio.org/wp-content/uploads/2019/04/Report\\_OffTheRecordProfiteeringAndMisconductInOhiosMayorsCourts\\_FINAL\\_2019-0415.pdf](https://www.acluohio.org/wp-content/uploads/2019/04/Report_OffTheRecordProfiteeringAndMisconductInOhiosMayorsCourts_FINAL_2019-0415.pdf).

*village as to justify the fear that the mayor would be influenced in his judicial judgment by that fact.*<sup>121</sup>

The absence of inter-branch checks and balances creates an environment ripe for conflict of interest: the mayor oversees the police department that charges defendants, the court that adjudicates those charges, and the budget that benefits from guilty verdicts. Unlike the 1920s, vesting the mayor with inferior judicial functions is not “so common.” Neither can we reasonably conclude that mayor’s court cases do not involve enough money to “justify the fear that the mayor would be influenced in his judicial judgment by that fact.”

In sum, money is part of many decisions in many mayor’s courts. Even when defendants pay out or plead guilty, their perceptions of a deck stacked against them undermines mayor’s courts’ legitimacy. Seeing the political fervor behind keeping mayor’s courts, knowing how important case revenue is to those collecting it, and accepting the close social ties among the community elites running the show, defendants have plenty of reason to question whether or not they are receiving a fair shake or just experiencing a shake down. That doubt alone is enough to mandate an improved system.<sup>122</sup>

## Disparate Effect

The criminal justice system in general falls disproportionately harshly on people of color.<sup>123</sup> Mayor’s courts’ informality and flexibility, coupled with their lack of transparency and oversight make them *especially* prone to hosting undetected institutionalized racism. The juvenile justice system also has heightened informality and flexibility, which researchers have traced to an increased potential for abuse of discretion.<sup>124</sup>

National statistics have shown that drivers of color are more likely to be pulled over than white drivers, despite being no more likely to break traffic laws.<sup>125</sup> After getting pulled over, people of color are also more likely to be issued a citation. For example, after being pulled over for speeding, Hispanic drivers are thirty percent more likely to get a ticket than white drivers, while

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<sup>121</sup> *Tumey v. Ohio*, 273 U.S. 510 (1927).

<sup>122</sup> As the Supreme Court notes, “the requirement of due process of law in judicial procedure is not satisfied by the argument that men of the highest honor and the greatest self-sacrifice could carry it no [sic] without danger of injustice” (*Tumey v. Ohio*, 273 U.S. 510 (1927)). Likewise the mere possibility that a system could function justly should not be the standard by which we determine what needs to be reformed. Systems that rely on being run by the greatest and most just among us are hardly sustainable. It is difficult to say what level of attenuation is sufficient, but current levels of conflict are clearly inappropriate.

<sup>123</sup> Radley Balko, “There’s Overwhelming Evidence that the Criminal-Justice System is Racist. Here’s the Proof,” *The Washington Post*, September 18, 2018, <https://www.washingtonpost.com/news/opinions/wp/2018/09/18/theres-overwhelming-evidence-that-the-criminal-justice-system-is-racist-heres-the-proof/>.

<sup>124</sup> American Sociological Association, *Department of Research and Development, Race, Ethnicity, and the Criminal Justice System*, September 2007, 10, <http://www.asanet.org/sites/default/files/savvy/images/press/docs/pdf/ASARaceCrime.pdf>.

<sup>125</sup> Christopher Ingraham, “You Really Can Get Pulled Over for Driving While Black, Federal Statistics Show,” *The Washington Post*, September 9, 2014, [https://www.washingtonpost.com/news/wonk/wp/2014/09/09/you-really-can-get-pulled-over-for-driving-while-black-federal-statistics-show/?utm\\_term=.09fc548ba98](https://www.washingtonpost.com/news/wonk/wp/2014/09/09/you-really-can-get-pulled-over-for-driving-while-black-federal-statistics-show/?utm_term=.09fc548ba98). See also Michael A. Fletcher, “For Black Motorists, a Never-ending Fear of Being Stopped,” *National Geographic Magazine*, April 2018, <https://www.nationalgeographic.com/magazine/2018/04/the-stop-race-police-traffic/>.

black drivers are twenty percent more likely than white drivers to have the same result.<sup>126</sup> Some studies even allude to the police officers' intent, including a 2017 study in Connecticut that found that police disproportionately pull over black and Hispanic drivers during daylight hours—when they can more easily see the race of the driver.<sup>127</sup> Together, these studies clearly suggest that people of color may enter the mayor's court system at a disproportionate rate.<sup>128</sup> With limited prosecutorial checks, police errors can quickly become court errors.

Further, the wide-ranging discretion and lack of oversight enjoyed by the presiding officer of mayor's courts gives plenty of room for implicit bias to enter the process unnoticed and unchecked. Unnoticed categorical assumptions can have a profound effect on a decision maker's analysis.<sup>129</sup> When it comes to criminality, those assumptions are racially charged, tending to link black people with crime.<sup>130</sup> In other words, once the presiding officer sees the defendant's race, implicit racism will almost certainly influence his or her decisions on both guilt and sentencing. While other court systems employ transparency, oversight, and multiple decision makers to mitigate the risk of implicit bias's harm, mayor's courts do not. Since other court systems have been shown to be affected by implicit bias despite those safeguards, mayor's courts are especially vulnerable.<sup>131</sup>

Mayor's courts generally only sentence defendants to pay relatively small fines, but for people of limited means—who are disproportionately people of color—those fees can escalate quickly.<sup>132</sup> In mayor's courts, being wealthy makes cases far easier to handle; impecunious defendants can face jail time.<sup>133</sup> As these outstanding debts accumulate and grow, entire subsets of the population can be crippled.<sup>134</sup> That was the situation in Ferguson, Missouri, where the Justice Department concluded African American residents were unlawfully targeted for fines for the purpose of generating revenue rather than public safety interests.<sup>135</sup> While Ferguson's injustices came to light only after significant tragedy, they would be even harder to detect in a mayor's court system. Given the potential societal costs that lurking racial injustice in the mayor's court

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<sup>126</sup> Stanford Open Policing Project, "Findings," 2018, <https://openpolicing.stanford.edu/findings/>.

<sup>127</sup> Matthew B. Ross, et. al., "State of Connecticut Traffic Stop Data Analysis and Findings, 2015-2016," *Racial Profiling Prohibition Project*, November 2017, <http://www.ctrp3.org/app/download/766619976/November+2017+Connecticut+Racial+Profiling+Report.pdf>.

<sup>128</sup> Other arbitrators have found these and similar studies less compelling. Judge Ivan L.R. Memelle recently dismissed a 2017 suit brought in the U.S. District Court for the Eastern District of Louisiana alleging that the mayor's court in Gretna targets African Americans and the poor for financial gain. See Sandra Lane "Judge Rejects Class Action Lawsuit Against Mayor's Court of Gretna," *Louisiana Record*, October 4, 2018, <https://louisianarecord.com/stories/511586561-judge-rejects-class-action-lawsuit-against-mayor-s-court-of-gretna>.

<sup>129</sup> Andrew J. Wistrich and Jeffrey J. Rachlinski, "Implicit Bias in Judicial Decision Making How it Affects Judgement and What Judges Can Do About It," *Cornel Legal Studies Research Paper No. 17-16*, March 16, 2017, [https://papers.ssrn.com/sol3/Delivery.cfm/SSRN\\_ID2951400\\_code43904.pdf?abstractid=2934295&mirid=1&type=2](https://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID2951400_code43904.pdf?abstractid=2934295&mirid=1&type=2).

<sup>130</sup> Anna Roberts, "Reclaiming the Importance of the Defendant's Testimony: Prior Conviction Impeachment and the Fight against Implicit Stereotyping," *The University of Chicago Law Review* 83, no. 2 (2016): 835-891.

<sup>131</sup> *Ibid.*

<sup>132</sup> Mike Maciag, "Skyrocketing Court Fines Are Major Revenue Generator for Ferguson," *Governing*, August 22, 2014, <http://www.governing.com/topics/public-justice-safety/gov-ferguson-missouri-court-fines-budget.html>.

<sup>133</sup> Kala Kachmar, "Municipal Courts Slam the Poor Hardest," *Asbury Park Press*, December 9, 2016, <https://www.app.com/story/news/investigations/watchdog/government/2016/12/09/municipal-courts-hit-poor-hardest/94735926/>.

<sup>134</sup> Betsey Bruce, "Court Study Shows Fines Weigh Heavily on Towns with Larger African American Population," *Fox 2 St. Louis*, October 15, 2014, <https://fox2now.com/2014/10/15/study-many-north-st-louis-county-towns-balance-budgets-with-court-fees/>.

<sup>135</sup> Michael Martinez, "Policing for Profit: How Ferguson's Fines Violated Rights of African-Americans," *CNN*, March 6, 2015, <https://www.cnn.com/2015/03/06/us/ferguson-missouri-racism-tickets-fines/index.html>.

system could create and the high likelihood that it exists, further investigation is urgently needed.

Prior research on other facets of the criminal justice system and the theoretical frameworks they created all suggest that the mayor's court system disproportionately harms people of color, but there has been no thorough examination of unfair treatment in Ohio's mayor's courts.<sup>136</sup> The American Civil Liberties Union (ACLU) recently conducted a cursory study on the topic, offering some preliminary support for claims of racial discrimination.<sup>137</sup> A follow-up study confirmed many initial fears: mayor's courts, especially through failure to appear warrants and license suspensions, disproportionately harm people of color and those who cannot afford pay the price of admission to meaningful mayor's court plea-bargaining.<sup>138</sup>

Critics allege that most mayor's courts only exist for their ability to generate revenue for the community.<sup>139</sup> In courts facing strong incentives to fundraise, wealthy defendants have a clear advantage. The court wants money and the defendants want their cases to disappear—the sooner the better. Trying to avoid license points, keep a clean criminal record, or stay on track for an elite college education inspires defendants to sacrifice more than they otherwise would. Oftentimes, the easiest sacrifice is to pay more money—a win-win for cash-hungry courts and relief-desperate defenders.

Prosecutors, for example, commonly allow defendants to plead guilty to a lesser traffic violations, avoiding points on their licenses or other unsavory sanctions in exchange to paying more in court fines or fees.<sup>140</sup> Similarly, sanctions for operating a vehicle under the influence are reportedly often reduced in exchange for paying a larger fine.<sup>141</sup> Reduced charges keep records clean and futures bright, but that second chance is only available to those who can afford it.

Regrettably, these racist and classist policies are hardly unique to mayor's courts. While they are likely to arise in mayor's courts, as they do in all other types of courts, further research is needed to definitively identify where inequalities arise in which courts. Even as that research is developed, practitioners must acknowledge that injustices may exist outside the traditional conflict of interest complaints. Mayor's courts are especially vulnerable since transparency and oversight are so limited. To date, their opacity has focused scholars and reformers alike on other, more obvious concerns.

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<sup>136</sup> Peter Krouse, "ACLU Analysis of 14 Mayor's Courts Finds Evidence of Bias and Profiteering," *Cleveland.com*, August 15, 2018, [https://www.cleveland.com/metro/index.ssf/2018/08/aclu\\_analysis\\_of\\_14\\_mayors\\_cou\\_1.html](https://www.cleveland.com/metro/index.ssf/2018/08/aclu_analysis_of_14_mayors_cou_1.html).

<sup>137</sup> "Mayor's Courts Maps," *ACLU Ohio* 2018, <https://www.acluohio.org/mayorscourts/maps>.

<sup>138</sup> "Off the Record: Profiteering and Misconduct in Ohio's Mayor's Courts," *ACLU Ohio*, April 2019, [https://www.acluohio.org/wp-content/uploads/2019/04/Report\\_OffTheRecordProfiteeringAndMisconductInOhiosMayorsCourts\\_FINAL\\_2019-0415.pdf](https://www.acluohio.org/wp-content/uploads/2019/04/Report_OffTheRecordProfiteeringAndMisconductInOhiosMayorsCourts_FINAL_2019-0415.pdf).

<sup>139</sup> Mike Cunningham, "Unfair Ohio Mayor's Courts Favor Defendants Who Can Pay," *Cleveland.com*, December 9, 2016, [https://www.cleveland.com/opinion/index.ssf/2016/12/unfair\\_ohio\\_mayors\\_courts\\_skir.html](https://www.cleveland.com/opinion/index.ssf/2016/12/unfair_ohio_mayors_courts_skir.html).

<sup>140</sup> See, for example, James Tramel's 2014 experience in Woodville, Ohio. Ryan Dunn, "Welcome to Woodville: You're Busted," *Toledo Blade*, February 8, 2015,

<https://www.toledoblade.com/Police-Fire/2015/02/08/Welcomes-to-Woodville-You-re-busted.html>.

<sup>141</sup> Dylan Taylor-Legman, "How Mayor's Court Works," *Yellow Spring News*, February 4, 2016, <https://ysnews.com/news/2016/02/how-mayors-court-works>.



## Skimming

It is not a coincidence that mayor's courts are far more profitable than their counterparts. By disproportionately handling quick, simple, and inexpensive cases, mayor's courts keep costs low. Mayor's courts tend to operate less frequently and with lower overhead expenses than other courts. With smaller, more standardized dockets, no jury trials, and negligible record-keeping obligations, mayor's courts avoid or reduce many of the expenses that other courts face.

Perhaps more importantly, mayor's courts have greater discretion over their docket. If cases or classes of cases become more hassle than they are worth, mayor's courts are free to punt them to their county or municipal court, which enjoy no such buck-passing privilege.

In essence, mayor's courts get the first pass at many cases, take those that are the easiest and most profitable, and stick the costly cases on downstream courts. Mayor's courts thereby "skim" choice cases off the top.<sup>142</sup> The skimming effect highlights how deeply ingrained the pursuit of money is in the calculations community leaders make when thinking about their courts. Indeed, case selection points out, once again, the nefarious effects of the large sums at stake, some communities' heavy-reliance on court revenue, and the extensive capacity leaders have to influence revenue outcomes of their mayor's court.

Debates around skimming provide an unusually transparent view into how important money is for mayor's courts and how much it weights on the minds of court decision-makers.

While the extent of skimming varies from court to court, it is hard to imagine a mayor's court-municipal court or mayor's court-county court relationship that does not suffer from skimming to some extent. Mayor's courts' design ensures that only outlier courts would fail to be more profitable, by virtue of skimming, than their downstream counterparts. After all, mayor's courts are legally prohibited from handling many of the more expensive criminal justice processes. This leech-like arrangement violates a fundamental sense of fairness among communities and their courts.

The unfairness of skimming is troubling, but the painful realities it exposes about money in mayor's courts are more alarming still. Many court leaders have shown themselves to be acutely aware of the money they can collect from mayor's courts and how their decisions and other factors affect that funding. However, what is on the record may be just the tip of the iceberg of financial considerations some, if not many, of the people making decisions about mayor's courts and communities' budgets make. At the very least, we must consider the risk that money's influence is far more significant and pervasive than many assume. While we cannot know what lies below the waterline, recent research on other courts, especially misdemeanor courts, suggests that it is ominous.<sup>143</sup>

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<sup>142</sup> In doing so, courts act like police officers who choose to write citations but eschew felony arrests and the bureaucratic burdens they bring. See Peter Moskos, *Cop in the Hood* (Princeton: Princeton University Press, 2008).

<sup>143</sup> Alexandra Natapoff, *Punishment Without Crime* (New York: Basic Books, 2018).

## Conclusion

Exploring the accuracy of mayor's court critiques reveals a less discussed problem: opacity. The lack of information about mayor's courts makes it challenging to prove specific cases of misbehavior.

Mayor's courts' have structural risks and opportunities, and sometimes those structural features are problematic. Most problems, however, are the result of discretionary decisions a certain court makes. Aggregated state data and opaque local processes are insufficient to monitor potentially severe abuse.<sup>144</sup> Only by increasing transparency can mayor's courts maintain legitimacy and the public's faith that they truly are operating as they should.

Although it may seem ironic at first blush, acknowledging mayor's courts' problems and their causes can demonstrate that they are not irremediable; far from it. It would be a mistake to give up on a system about which we know so little, for in doing so we would forego the considerable potential it holds for citizens.

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<sup>144</sup> Most mayor's court data comes from an annual report from the Ohio Supreme Court, which only shows high-level data across courts. Each mayor's court is presented as an interchangeable part, when in reality some mayor's courts operate very differently from the rest. The limited data sharing leads to a lack of individual contextualization, which does mayor's courts a major disservice. For example, the Chagrin Falls Mayor's Court has one of the highest transfer rates in the data set. At first that looks highly suspicious, but upon recognizing that it does not hold a full court, the high transfer rate makes perfect sense since every single cases that cannot be paid out will automatically be transferred.

# Chapter 3

## Justice As It Could Be: Flexible, Personal, & Convenient

Contrary to common caricatures, mayor's courts can provide meaningful benefits. Their broad discretion creates opportunities for flexibility, personalization, and mercy that are harder to come by in other courts, even similar, "near-peer" local courts.

Like most alleged problems in mayor's courts, their benefits are often cited without proof. It is critical to note that all mayor's courts have the potential to produce significant benefits (even if they do not currently outweigh the costs) and that some do. If reformed, far more mayor's courts could deliver similar benefits.

Two main groups benefit from mayor's courts.

- *Government.* As we have seen, city governments and their leaders receive critical funding streams from mayor's courts. These benefits help governments better serve their people and help leaders achieve their political ambitions. The benefits governments and politicians receive gives them a strong incentive to keep mayor's courts open.
- *Court users.* While user benefits are not as robust as some promoters suggest, they do exist. Mayor's courts are often more convenient and can be more personalized and more flexible than other courts. The best mayor's courts provide defendants a less onerous judicial experience and a greater senses of procedural justice.

Other actors may benefit from mayor's courts—non-court users who enjoy a safer community, for example—but the benefits they receive are beyond the scope of this analysis.

### Government Benefits

Money is such a problem for mayor's courts because they increase communities' profits so much. After all, the danger is not the money itself, but rather the chance that mayor's court stakeholders are bastardizing the courts' leverage over society to fill their coffers rather than focusing on promoting justice and safety.

Beyond shifting the community's financial burden from exclusively taxpayers to taxpayers and court defendants, mayor's courts also increase government's total revenue and decrease their operating costs.

### Revenue-Increasing

When a defendant pays a fine, that money is split among a variety of eager stakeholders. Who gets how much, however, is determined by the type of charge and the court that is collecting. By citing defendants with violating municipal ordinances in a mayor's court, rather than charging

them under a state statute, communities claim revenue they would not otherwise receive. In other words, creating a mayor's court ensures that a community will receive a bigger piece of the correctional pie.

Mayor's court funding allows community leaders to provide services and fund programs that would otherwise require unpopular tax dollars. In other words, mayor's court let community leaders spend more and shift a large part of the added bill to outsiders rather than voters. Even when mayor's courts charge residents, community leaders are shielded from political costs.

Police departments are often even bigger beneficiaries of mayor's court revenue. Police budgets are often the foremost recipient of mayor's court support with departments receiving resources to round out, or in some cases, fully sustain their budgets. Many police departments rely on court revenue to pay salaries and purchase big-ticket items like squad cars. Depending so heavily on revenue generated downstream of their arrests and citations creates incentivizes over-policing.

Launching a mayor's court unlocks a whole new realm of funding that, based on other decisions about the court, can be quite significant. Those sometimes immense sums provide community leaders a strong incentive to fight to keep mayor's courts and police departments incentives to keep them humming. For better or worse, mayor's courts undeniably provide their operators' with more revenue than they would otherwise have.

## Cost-Saving

Mayor's courts are much less expensive to operate than municipal or county courts, which handle complex cases, require large staffs and overhead, and sit more frequently. By adding a mayor's court, however, communities can still save money even if they were never footing the bill for a municipal or county court.

Police officers spend an appreciable amount of their time in court, which can be an expensive endeavor. Using a mayor's court instead provides police departments two general cost-saving opportunities.

- *Less Frequent Appearances.* Since many mayor's court cases pay out without even negotiating a plea deal, police officers do not have to make court appearances for most cases. Further, the intimate connection between the mayor's court and police departments reduces the risk that an officer shows up in court only to find out that the trial was pled out, continued, or otherwise did not require the officer's presence. With mayor's courts only sitting a few times a month, officers can handle all their few remaining cases at once.
- *Less Costly Appearances.* When officers are testifying in court they are not patrolling the community. Oftentimes traveling to courthouses warrants overtime pay, further spending communities' budgets and officers' time. County and municipal courts are often farther afield, less efficient, and sit at less convenient times.<sup>145</sup> Even when officers have to show up, mayor's court appearances are far less costly than the alternative.

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<sup>145</sup> For examples of police officers spending much of their time in court, see Peter Moskos, *Cop in the Hood* (Princeton: Princeton University Press, 2008).

Together, these cost-saving measures further enhance the advantages of mayor's courts. Convenience and flexibility, after all, are not just relevant considerations for defendants.

Given the many problems that can arise in mayor's courts, the benefits that accrue to the government alone may be insufficient to justify their operation. Court users, however, also receive significant benefits.

## Court User Benefits

Mayor's courts are touted as far more convenient, personal, and flexible than other court offerings. Here proponents often fall into the same trap as their counterparts in assuming that just because all courts have the opportunity to do something, all or even most will. Most of mayor's courts' potential benefits are discretionary, meaning that courts must act to create them. Here, the same discretion that enables the worst excesses detailed in Chapter 2 also enables the greatest value-add that mayor's courts can offer.

While mayor's courts' advantages are sometimes painted too broadly, the claims are not unfounded. On the contrary, at least some courts have demonstrated each of the following advantages.

### More Convenient

Mayor's courts are more convenient than other courts. This underrated advantage can significantly reduce a case's burden for its defendant. By reducing collateral consequences related to missing work, covering childcare, and finding a way to travel long distances to attend each court appearance, mayor's courts' convenience is a big advantage over municipal and county courts.

Defendants can oftentimes pay out online or mail a check instead of ever entering the mayor's court. Paying when convenient without having to make time to travel to or sit in a court makes the judicial process easier for defendants. While many courts offer payout options, few do so as extensively as mayor's courts.

Even when defendants have to appear in court, mayor's courts are more convenient on two accounts.

- *Convenient Scheduling.* Mayor's courts sit less frequently than municipal and county courts and can be more creative with their limited hours. Oftentimes that discretion leads to courts sitting in the evenings—or whenever the mayor feels is best for their community.
- *Proximity.* Mayor's courts exist within the communities they serve. Unlike county and municipal courts, which tend to serve larger populations, mayor's courts are structurally closer to local users. While some courts are inconsequentially closer, others' proximity can be the difference between, for example, fitting a court appearance into a lunch break or not.

Unlike most alleged benefits, which are frequently overstated, even proponents underestimate the convenience of mayor's courts.<sup>146</sup> The chart below quantifies mayor's courts' effect on Ohioans' travel times to the nearest local court.<sup>147</sup> Currently, nearly 75% of Ohioans live within 10 minutes of the nearest local court and 90% live within 15 minutes. Without mayor's courts, however, about 45% of Ohioans would live within 10 minutes and only 70% would live within 15 minutes. That means that eliminating mayor's courts would leave about 3.2 million fewer Ohioans within 10 minutes of their local court.

**Figure 10: Drive-time to Nearest Local Court**

Driving Time	With Mayor's Court		Without Mayor's Court	
	Population Count	Percent of Population	Population Count	Percent of Population
0-5 Minutes	<b>3,212,362</b>	<b>27.84%</b>	<b>1,854,043</b>	<b>16.07%</b>
5-10 Minutes	<b>5,254,601</b>	<b>45.55%</b>	<b>3,441,754</b>	<b>29.83%</b>
10-15 Minutes	<b>1,990,573</b>	<b>17.25%</b>	<b>2,859,897</b>	<b>24.79%</b>
15-20 Minutes	<b>646,177</b>	<b>5.60%</b>	<b>2,041,838</b>	<b>17.70%</b>
20-30 Minutes	<b>374,269</b>	<b>3.24%</b>	<b>1,175,248</b>	<b>10.19%</b>
30-45 Minutes	<b>70,559</b>	<b>0.61%</b>	<b>165,880</b>	<b>1.44%</b>
<b>2010 Population</b> <sup>148</sup>	<b>11,536,757</b>	<b>100.10%</b>	<b>11,536,757</b>	<b>100.02%</b>

Mayor's courts are significantly more convenient than their counterparts, placing all but 1.1 million Ohioans are within 15 minutes of the nearest local court. Without them, that number triples. Court systems should be accessible and eliminating convenient mayor's courts is a step backward. Further, eliminating mayor's courts would sacrifice their procedural benefits, too.

## Better Court Experiences

Procedural justice—the sense of fairness that defendants have about the process of their case being adjudicated—can be a more important factor in determining defendant's impressions of a

<sup>146</sup> While further analysis is important to refine our understanding of the travel-time implications of eliminating mayor's courts, this geospatial analysis is, to the best of my knowledge, the first attempt to estimate the effect at all.

<sup>147</sup> I created drive-time rings that are 0-5, 5-10, 10-15, 15-20, 20-30, and 30-45 minutes away from each mayor's, municipal, and county court. When the rings overlapped, I split them so users would go to the nearest court.

I assigned census blocks (using 2010 U.S. Census Counts) to the ring that included the center point of that block. I then summed the population of the blocks assigned to each ring to estimate how many people lived in each ring for each court. By grouping rings by drive distance, I was able to calculate how many people lived within a certain driving distance of the nearest mayor's, municipal, or county court.

Repeating the analysis as if mayor's courts did not exist produced a counterfactual of how long it would take Ohioans to drive to the nearest municipal or county court.

<sup>148</sup> Total percentages only sum to approximately 100% due to slight estimate imprecision.

court than even the outcome of their case.<sup>149</sup> Mayor's courts routinely fall short on initial impressions of fairness.

Nonetheless, mayor's courts *can* offer defendants better experiences than other courts—especially the municipal and county court alternatives. Three structural features of mayor's courts create an environment ripe for greater court user satisfaction. While some factors are common among certain types of low-level courts, the combination of all three is not.

- *Homogenous Cases.* Mayor's courts can only hear a narrow range of cases, which means their cases are all similar and almost always simple. With a routine, steady workflow, mayor's courts can specialize in handling the cases they hear the most. Those economies of scale allow them to best help lots of similarly situated defendants.
- *Lower Trialloads.* Since mayor's courts handle far fewer trials than their municipal or county court counterparts, they have more time to work with defendants on each case. With less pressure to churn through cases, they can afford to go slowly.
- *Heightened Emphasis on Personalization.* By design, mayor's courts offer personal interactions. Unlike other courts where raised benches and formal procedures can be the norm, mayor's courts are less hierarchical and structured. When the presiding officer takes advantage of the personalization to connect with the defendant, make them feel heard, and better explain the court's process, the system can be far more restorative than cookie-cutter trials elsewhere.

While all mayor's courts benefit from these advantages, discretionary factors are ultimately determinative. Procedural justice is the result of how courts treat people, and no structural factors can guarantee how people will treat each other. They can, however, make it easier (or harder) to treat people better. In busy courts struggling to maintain clearance rates, judges are hard pressed to find time to step back and explain processes and court staff are strained in ways that mayor's court staffs are not.

The Yellow Springs Mayor's Court, for example, demonstrates the benefits of a more personalized experience. The mayor makes a point of following up with defendants with multiple offenses in the same year or those who fail to show proof of insurance when being charged to make sure that they are back on track. She also visits locations where incidents occurred to better understand the case and advocate for new, clearer traffic signs when needed. Because of those benefits and because local fines tend to be lower than municipal fines, the Yellow Springs Village Council and its Justice System Task Force (which is comprised of concerned citizens) passed a resolution in October 2018 requiring that all cases eligible for the mayor's court be filed there.<sup>150</sup>

Court records also demonstrate defendants enjoying mayor's courts' greater flexibility. The Indian Hill Mayor's Court, for example, frequently works with defendants to work court processes around their availability and means. Several examples of flexibility stand out from 2017 cases.

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<sup>149</sup> Sarah Bennett, Lorelei Hine, and Lorraine Mazerolle, "Procedural Justice," *Oxford Bibliographies*, April 26, 2018, <http://www.oxfordbibliographies.com/view/document/obo-9780195396607/obo-9780195396607-0241.xml>.

<sup>150</sup> Elise Burns, email message to author, January 14, 2019.

- In case 9-5-17, the defendant called the court to explain that she had no transportation to get there. The mayor granted her a continuance and the defendant agreed to pay out before the next court session. Similarly, the defendant in case 17C-20578 was granted a continuance because she had a meeting the same night as her initial court session.
- The defendant in case 36-5-17 was charged with driving with expired tags. The mayor dismissed the case at the police officer's request, because the defendant had obtained new Ohio plates.
- The mayor granted the defendant's request to continue case 43-1-17 until April. She wanted the delay because she was working during the February court and traveling for spring break during the March court.
- The defendant in case 103-1-17 told the court he would be a few minutes late and the court extended deadlines to accommodate him. Likewise, the defendant in case 53-5-17 called a few hours before court to explain that her flight was delayed, so she would not be in court. The mayor continued his case another month.
- When the mayor ordered a *capias* with a \$150 bond and a license forfeiture for a defendant failing to appear in court, the police officer on the case followed up personally. He called the defendant after the 1800 court session and left a voicemail allowing her to pay out the citation before 0900 the next day to avoid the warrant being served.<sup>151</sup> In another case, a police officer realized he incorrectly told a defendant his court appearance was on July 18th, not July 16th. The officer then corrected his error in a voicemail at 2100 on July 5 and again on a call with the defendant that night at 2310.<sup>152</sup>

These discretionary acts are hard to reconcile with common narratives of mayor's courts being purely extortive. The challenge, then, is to empower mayor's courts to offer these advantages while mitigating the risk that misguided officials use the same discretion for less noble purposes—either failing to treat defendants well or treating certain classes of defendants well and others poorly. While eliminating discretion eliminates the risk that it is abused, it also eliminates the opportunity for benevolent mayor's courts to provide their users a better experience than they would have had at a county or municipal court.

That said, the experiences of defendants in a single court may vary—such is the nature of personalized human interactions. For example, the Linndale Mayor's Court magistrate George Sadd (before General Assembly passed a law discontinuing the court ) described his work in 2013: "I go over their cases; I establish a little friendship with them. I find out what's their concern and what the charges are against them. Often I reduce the charges against them and give them breaks and help them out as much as I can."<sup>153</sup> The freedom to have trials as "discussions" is difficult to replicate in busier, more structured municipal and county courts. Nonetheless, while some defendants note they appreciate Sadd's kindness others describe him as "devious" and with "no respect for anyone."<sup>154</sup>

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<sup>151</sup> Indian Hill Mayor's Court Incident report 25-17-03.

<sup>152</sup> Indian Hill Mayor's Court Incident report 25-17-11.

<sup>153</sup> M.L. Schultze, "Last Days for Linndale Mayor's Court?," *WKSU*, March 19, 2013, <https://www.wksu.org/news/story/34974>.

<sup>154</sup> *Ibid.*



Those mixed reviews highlight the trouble of mayor's courts personal advantages: they can be delivered inconsistently across courts and across cases. Given the risks, these procedural benefits are not justifications for maintaining the status quo, but rather an indication of the good mayor's courts could do if reformed to better track discretionary outcomes and ensure that all mayor's courts deliver for all their users.

Not all alleged benefits of mayor's courts, however, are nearly as considerable as they are chalked up to be. Most problematic, is the over-reliance on a faulty failsafe: the guaranteed right to de novo review.

## Faulty Failsafe: *De Novo* Review

If a defendant wants a new trial for any reason, all she has to do is appeal within ten days of the initial trial and the case will be referred to the municipal or county court.<sup>155</sup> Once the case is transferred, it is legally as though the mayor's court process never happened—the case starts afresh. Defenders of mayor's courts argue that the right to appeal wipes out any problems with their work.<sup>156</sup> For example, a prominent pro-mayor's court review naively describes the process as “if [defendants] are dissatisfied, they can simply start all over again at the municipal or county court level.”<sup>157</sup>

Reality is not so simple. Rather, most defendants never realize the full promise of the right to appeal. The promise that a guaranteed retrial absolves mayor's courts of any wrongs they may commit misses two key components of the right to appeal:

- *Limited Eligibility.* While every defendant enters the mayor's court with the right to appeal, few leave without waiving that right. Pleading guilty, paying out, or otherwise avoiding a trial sacrifices the right to appeal. For example, defendants who believe that the mayor who would preside over their trial would be too biased to adjudicate it fairly and plead no contest to make the issue go away also sacrifice their right to appeal. Only after losing a trial can a defendant actually enter the 10-day window to request a new trial. With roughly 0.5% of mayor's court cases even reaching trial, hardly anyone makes it to the appeal window.
- *Costly Litigation.* The new trial is not the fresh start it pretends to be. Even though mayor's courts are often scheduled at convenient times, no day in court is free or without opportunity cost. Further, hearing a case in a municipal court carries costs (often higher than mayor's court costs) and hassle, compounded by being the second court engagement in quick succession.<sup>158</sup>

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<sup>155</sup> Jackie Borchardt, “What is a Mayor's Court and How Can You Challenge its Decision? At Any (Court) Cost,” *Cleveland.com*, November 29, 2016, [https://www.cleveland.com/metro/index.ssf/2016/11/what\\_is\\_a\\_mayors\\_court\\_and\\_how.html](https://www.cleveland.com/metro/index.ssf/2016/11/what_is_a_mayors_court_and_how.html).

<sup>156</sup> Justin Conley and Rebecca McKinsey, “Ohio's Mayor's Courts, Big Business,” *The Columbus Dispatch*, July 22, 2012, <https://www.dispatch.com/article/20120722/NEWS/307229922>.

<sup>157</sup> Paul Revelson, “Nothing But Trouble: The Ohio Legislature's Failed Attempts to Abolish Mayor's Courts,” *University of Dayton Law Review* 35, no. 2 (Winter 2010): 223-246, [https://udayton.edu/law/\\_resources/documents/law\\_review/nothing\\_but\\_trouble.pdf](https://udayton.edu/law/_resources/documents/law_review/nothing_but_trouble.pdf).

<sup>158</sup> In most cases, that is. Speedy trial statutes do not apply to municipal court cases appealed from a mayor's court, so defendants have fewer assurances that their trial will be nearly as speedy as they might like and as they would have received if their case went straight to the municipal court. See Timothy E. Pierce, “Franklin County Criminal Law

Although the cost of a court appearance might be irrelevant for some defendants, that is not always the case. For some defendants, this second trial may mean taking a second day off work or further fees that they cannot afford. The significant burdens making it to court can carry—covering child care, finding transportation, and enduring heightened risk of losing one’s job among others—are redoubled when the process must be completed again soon after the initial day in a mayor’s court.

While defendants wait for retrial, they may also have to cope with the consequences of the mayor’s court’s decision; for example many mayor’s courts suspend licenses, which disrupts defendants lives even if they win their appeal. Needing to get to work to earn money for legal fees or avoid getting fired puts defendants in a precarious position—do they risk driving despite their suspended license, skip work at the risk of getting fired, or try to find a more time-consuming, more expensive, mode of transportation that does not involve their driving? Thus, for the most vulnerable defendants, a guaranteed appeal is little consolation compared to the significant consequences a mayor’s court decision can have, even when it is overturned on appeal.

Accounting for appeals from mayor’s courts is very difficult, because cases can also be transferred for many other reasons. While transfers are tracked and rare, data is not readily available to conclude just how many are appeals cases. For example, the Chagrin Falls Mayor’s Court has an unusually high transfer rate. At first that looks highly suspicious, but upon recognizing that it only processes waiverable citations, the high transfer rate makes perfect sense. Every case that cannot be paid out will automatically be transferred. The limited data sharing leads to a lack of individual context, which does mayor’s courts a major disservice. That said, the transfer data alone is sufficient to conclude that appeals uptake is low. Although unlikely, the lack of appeals could suggest widespread satisfaction. Regardless of its cause, the lack of appeals demonstrates that the right is not used as a failsafe nearly as frequently as many mayor’s court supporters would suggest.

As society becomes more aware of the threats to justice and society that small claims courts can pose, mayor’s courts will fall under the microscope even more. With mayor’s courts preparing to face heightened scrutiny, proponents must make sure that they properly define the scope of mayor’s courts’ benefits just as much as critics must do the same with their critiques. Exaggerated accounts of benefits corrode productive discourse and needlessly stall reform efforts.

## Conclusion

Even as the right to *de novo* review frequently fails to deliver on its promise, mayor’s courts do offer meaningful advantages. Granted greater convenience, more personalized justice, and heightened flexibility may sound like smoke and mirrors designed to mask quid-pro-quo arrangements, favoritism, and courts taking advantage of power dynamics. Nonetheless, the evidence from illustrative courts across the state suggest that at least some courts realize their lofty aspirations to the benefit of the members of the communities they serve. Is it really better to

foreclose an entire realm of benefits just to reduce the risk that a few elites cannot get out of a speeding ticket?

Since mayor's courts offer meaningful benefits, abandoning them carries more costs than critics usually acknowledge. In addition to differentiating between structural problems and problems only with certain rogue actors (or classes of actors), and accurately accounting for the benefits mayor's courts provide, policymakers must also consider the alternative to mayor's courts. Low-level courts are notoriously flawed across the country—often times they are critiqued for the same issues that are said to plague mayor's courts. Eradicating mayor's courts will not necessarily solve many of the problems reformers might hope. In fact, it might further compromise the judicial system.

# Chapter 4

## Making it Right: Recommended Repairs

Mayor's courts have been a feature of the Ohio judicial scene for more than 200 years. As the state and its people have changed, its mayor's courts have evolved as well. Too many mayor's courts, however, still fall short. As society's knowledge about mayor's courts grows, the environment they operate in shifts, and standards of justice evolve, court systems must change too.

Current policy debates have forgotten the value of that maintenance. As reform conversations become hyperpolarized fights over the existence of mayor's courts at large, they miss important reform opportunities. My own critical look at alleged problems created by and benefits flowing from mayor's courts reveals a system in need of reform, not gridlock. No one expects perfection from our courts, thoroughly human institutions that they are. Rather, policymakers should seize opportunities to improve the system, even if one change alone is not a panacea.

The current mayor's court system needs improvement, but it should not be eliminated. Three main drawbacks to blanket eliminations make it an unwise policy, even if it was politically viable.

- *Lose Mayor's Court Advantages.* All mayor's courts have a theoretical capacity to provide benefits that other courts do not. More importantly, there is clear evidence that some courts deliver on that potential. While many local politicians fight to keep mayor's courts for the money they provide, their arguments about benefits their courts provide users can be sound. Those benefits should only be sacrificed if absolutely necessary.
- *Experience Imperfect Alternatives.* Since some of the problems in mayor's courts—for example discriminatory outcomes—are, to some extent, problems in nearly all U.S. courts, eliminating mayor's courts will not eradicate the problem.
- *Incur Transaction Costs.* Shifting several hundred thousands of cases from mayor's courts to municipal and county courts would be a major undertaking. Even if the ban allowed mayor's courts to finish their cases for a year and only transfer those that are outstanding at the end of the transition period, the case surge would be a strain on already stressed county and municipal courts.

Mayor's courts are notoriously bad at keeping records, which further compounds the challenges of mass-transfers. Record incompatibility between mayor's court and receiving courts' systems, missing records, and other communication disconnects will hurt both defendants and enforcement initiatives. Even though the ban on mayor's courts in communities with fewer than 200 residents only affected a few courts, it still created significant transaction costs. The Brice Mayor's Court, for example, merely posted a sign on the door that once led to the mayor's court instructing defendants to go to the Franklin County Municipal Court to access case files.<sup>159</sup> When Cheryl, a defendant

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<sup>159</sup> Matthew John Pandy, "What If? Issues in Assuming Mayor's Court Jurisdiction," *Institute for Court Management*, May 2015,

cited for driving under suspension just before the Brice Mayor's Court closed, followed up with her presumably transferred case, the Franklin County Municipal Clerk's office told her that it had not received her files.<sup>160</sup> Days later Cheryl's records and those for other missing cases were delivered and she was finally able to get her case added to the docket in the municipal court. All that hassle just to get in line to wait more. A bulk transfer from all mayor's courts would only be worse than the pain created by a small number of courts transferring.

Further adjusting population thresholds to eliminate mayor's courts in certain communities is a short-term solution at best. That piecemeal approach does well to eliminate specific classes of courts. Since the most significant remaining problems with mayor's court affect all types of mayor's courts, there are no suspect classes to eliminate. The political capital required to eliminate any number of mayor's courts would be better spent on a more tailored solution.

A natural, but misguided alternative to eliminating mayor's courts wholesale is to replace them with a different type of local court. Community courts are the most promising substitute, but they are not a wise replacement.

Many states have recently devolved adjudication back to communities that once hosted mayor's courts. These so called "community courts" are touted as keys to better justice outcomes for countless low-level offenders. Their flexible, personalized touch promises to provide better senses of procedural justice alongside more restorative outcomes. With decisions made close to the community of those affected, the community courts hope to increase buy-in from locals and stay responsive to local customs and values.<sup>161</sup>

Facially, community courts offer three primary advantages over mayor's courts.

- *Commitment to Data Transparency.* Mayor's courts are required to report limited data to the Ohio Supreme Court each quarter. Despite the negligible scope of the requirement, some courts still fail to satisfy it. Many courts are hamstrung by their records software, denying them access to meaningful data analytics even if they wanted it. Community courts, on the other hand, are born from data-based decision making and routinely share that data with the communities they serve.<sup>162</sup> That data allows courts to make informed decisions to best deliver justice and helps their communities be confident that the court is working effectively and fairly. Unlike mayor's courts where ineffectiveness, abuse, and exploitation may never be discovered, in a transparent and data-rich environment like community courts, those shortcomings would be revealed in short order.

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<https://www.ncsc.org/~media/Files/PDF/Education%20and%20Careers/CEDP%20Papers/2015/PendyWhat%20If-Is%20sues%20in%20Assuming%20Mayors%20Court%20Jurisdiction.ashx>.

<sup>160</sup> Name changed.

<sup>161</sup> In an attempt to find a more convenient and less stigmatized environment, some community courts are even leaving the courtroom. The Spokane, Washington mayor's court, for example, is held in a library community room. The presiding judge there supported the unorthodox location because "the folks we were focusing on have been coming in and out of the system for years, and we wanted to let them know we were approaching this in a new way." That sort of choice, while seemingly novel, actually mirrors mayor's courts, many of which are held in community buildings. See "Downtown Library Welcomes Spokane Community Court with Open Arms," *Center for Court Innovation*, December 28, 2017,

<https://www.courtinnovation.org/articles/downtown-library-welcomes-spokane-community-court-open-arms>.

<sup>162</sup> Julius Lang, "What is a Community Court?," *Center for Court Innovation*, 2011,

<https://www.courtinnovation.org/sites/default/files/documents/What%20is%20a%20Community%20Court.pdf>.

- *Meaningful Community Oversight.* Voters electing their mayor is often the full extent of citizens' oversight over their court. The absence of oversight allows mayor's courts to operate with impunity—much of what they do will never be detected and, if it is, no formal recourse awaits. Community courts, conversely are often integrated into the community from the outset with the community leveraging focus groups and surveys to best set up the court and then ensure its actions meet the ongoing needs of the community's residents.
- *Restorative Sanctions.* While mayor's courts can sentence defendants to jail, community service, or other consequences, the vast majority of cases result in the defendant being fined. The community court model is somewhat different. Instead of using fines to punish behavior, it leverages threat of jail and connections with social service providers to induce defendants to commit to restorative activities like addressing drug addiction or anger control issues.<sup>163</sup> Community courts tend to have more touchpoints with defendants within a given case than mayor's courts do.

Policymakers would be wise to learn from community courts' successes, especially in their use of data analytics. Ultimately, however, community courts fall short of being a worthwhile replacement. Despite being the remedy du jour to balance personalization and fairness in low-level courts, community courts are a poor fit to replace Ohio's mayor's courts for two primary reasons.

- *Heightened Financial Conflict.* Community courts are more vulnerable to private influence than mayor's courts and can face similar financial pressures to mayor's courts. Despite the hype, community courts fail to resolve the most pressing issue with mayor's courts and no amount of community oversight can compete with the pressure to keep a community solvent.<sup>164</sup>
- *Incompatible Histories.* Community courts often represent a new system filling the longstanding vacuum that in some cases has been present since mayor's courts were eradicated decades ago. Being new, community courts have been designed with the benefit of decades of procedural justice, data analytics, and effective oversight research that did not exist when mayor's courts were created.

The new community courts are modern actors designed for the present context with the benefit of the best thinking on how to produce just outcomes that heal society. They offer lessons for mayor's courts to learn, but the history of communities' experience with mayor's courts suggest that directly importing community courts is unwise. While community courts fill a service vacuum in other states, in Ohio they would compete with or replace longstanding mayor's court infrastructure, processes, and norms. Large, decentralized, sprawling bureaucracies cannot be swapped out like lightbulbs.

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<sup>163</sup> Eric Lee, "Community Courts: An Evolving Model," *Community Justice Series* (no. 2), October 2000, <https://www.ncjrs.gov/pdffiles1/bja/183452.pdf>.

<sup>164</sup> Michael Zuckerman, "The Experience of Dignity: Community Courts and the Future of the Criminal Justice System," *Pacific Standard*, May 3, 2017, <https://psmag.com/news/experience-dignity-community-courts-future-criminal-justice-system-95646>.

Trendiness alone does not make community courts the right choice for Ohio. Other near-peer courts, however, would be even worse. The following near-peer arrangements currently used by other states have their own deep flaws that preclude their being suitable replacements.

- *Summary Courts.* Summary courts have much in common with mayor's courts: arresting officers often act as prosecutors, defense attorneys are rare, and judges do not need a law degree (although unlike mayor's courts, they must have at least a baccalaureate degree).<sup>165</sup> Common in South Carolina, the summary court model is higher-stakes than mayor's courts, frequently hustling defendants through court and straight to jail.<sup>166</sup> Whereas many traffic offenses are decriminalized in Ohio (making them exclusively civil matters), they still constitute criminal acts in South Carolina, giving summary courts even more leverage over vulnerable citizens.<sup>167</sup> Since summary courts resolve few of the issues with mayor's courts while introducing several more problems, they would be a poor replacement for mayor's courts.
- *Justice Courts.* Justice courts are notorious in New York for many of the same reasons that mayor's courts are. Like mayor's courts, the 1,250 some odd justice courts handle traffic offenses and small claims and are run by justices who need no prior education. While justice courts are subject to slightly more active oversight than mayor's courts are—an average of 40 justices have been reprimanded or removed each year over the past three decades—they also handle more significant cases including those with multi-year jail sentences and domestic violence cases.<sup>168</sup> Justice courts suffer from the same influence of money as mayor's courts—the New York network collects over \$200 million in fines and fees annually—and carry a far darker reputation for abusive justices.<sup>169</sup> Justice courts are hardly an improvement over Ohio's current system.
- *Magistrate Courts.* Ohio eliminated its magistrate courts, which are also known as police courts, nearly 150 years ago. Their former role is now played by municipal and county courts, which are basically more structured, better regulated magistrate courts. While some magistrate courts do not require judges to have legal training and they generally tend to handle low-level cases like mayor's courts, they are a poor fit for how the Ohio judicial system has evolved since they were last a part of it.<sup>170</sup> They would overlap too much with municipal and county courts.

Above all, replacing mayor's courts directly leaves their biggest problem unresolved: money's perverse influence. Justice ought not be a fundraising exercise. When the two are allowed to mix, however, money's corrupting influence is hard to deflect. To lift the cloud of impropriety from Ohio's mayor's courts, they must be divorced from revenue-generating schemes. The

<sup>165</sup> Diane DePietropaolo Price, et. al., "Summary Injustice: A Look at Constitutional Deficiencies in South Carolina's Summary Courts," *National Association of Criminal Defense Lawyers*, 2016, [https://www.aclu.org/sites/default/files/field\\_document/summaryinjustice2016\\_nacdl\\_aclu.pdf](https://www.aclu.org/sites/default/files/field_document/summaryinjustice2016_nacdl_aclu.pdf).

<sup>166</sup> The average hearing time in South Carolina summary courts is about 3.29 minutes—a number skewed high by a few outlier hearings. See Alisa Smith, et. al., "Rush to Judgement: How South Carolina's Summary Courts Fail to Protect Constitutional Rights," *National Association of Criminal Defense Lawyers*, 2017, <https://www.nacdl.org/RushToJudgement/>.

<sup>167</sup> Ibid.

<sup>168</sup> William Glaberson, "In Tiny Courts of N.Y., Abuses of Law and Power," *The New York Times*, September 25, 2006, <https://www.nytimes.com/2006/09/25/nyregion/25courts.html>.

<sup>169</sup> Granted if mayor's courts were subject to comparable oversight, there might be evidence of a comparable number of abusive judges too. Nonetheless, the many stories of exploitation, racism, and abuse are deeply troubling.

<sup>170</sup> "Magistrates' Court," *Encyclopaedia Britannica*, <https://www.britannica.com/topic/magistrates-court>.

mayor in *Tumey* was believed to be influenced by money since he personally was paid extra only when convicting defendants. Today, police departments and communities depend on judicial fundraising to remain solvent. Even if no single case is resolved based on a financial decision, the broader environment that produced and resolved that case was built with a strong pressure to preserve revenue flows. The most noble public servant may overcome these temptations, but a system that depends on personal greatness cannot endure.<sup>171</sup> Those officials who withstand the pressure to sacrifice justice for funding still face unshakeable perceptions of impropriety.

## Five General Reforms

By pursuing five general types of reforms, Ohio can significantly improve its mayor's courts.

- *Divorce Fundraising and Justice.* Too much of the misbehavior in mayor's courts (and many other courts) can be traced to money's influence. Fundraising and justice are two fundamentally conflicting pursuits: acquitting when appropriate advances justice and harms fundraising efforts. The pressure to boost revenue is far more pervasive than the trial-level conflicts most court cases have worried about. Mayor's courts' potential to produce funding streams, which in turn keep communities solvent, weighs on all court actors from the legislature to police department leadership. It encourages policing resources to focus on traffic offenses instead of responding to residents' calls. Since so few cases go to trial, judge-based conflict of interest is a miniscule fragment of money's conflict-inducing reach.

An ideal system would fully eliminate financial pressures from judicial actors. Since small communities and their police departments need to get funded in some way, it is impractical to prevent fines and fees from ever reaching community coffers. Rather, policymakers should attenuate the connection between money from a case and its end user. Right now, every fine paid goes largely to the community that compelled it. By having court fines instead go to a centralized repository to then be redistributed to communities based on population, much of the incentive to produce large numbers of high-revenue cases disappears. Communities can retain their lifeline of funding, but it will be far less of a factor when making court-related decisions. Halving a mayor's court's caseload because the police department is focusing on less profitable concerns will no longer halve a large portion of that community's budget.

- *Raise Education Requirements.* Mayor's court trials should be required to be run by a lawyer.<sup>172</sup> Allowing a mayor without a legal education to adjudicate trials is a necessary evil where lawyers are prohibitively rare. It once made sense for Ohio to allow that flexibility to resolve low-level disputes without making the relevant parties travel long distances to appear before a trained judge. Now reaching county and municipal courts is easier and lawyers are far more prevalent. In fact, many mayor's courts employ a lawyer as a prosecutor. When the only lawyer in the room is arguing one side of a case, the

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<sup>171</sup> After all, governance systems are only necessary because people are liable to fall short of those angelic ideals. James Madison, "The Structure of the Government Must Furnish the Proper Checks and Balances Between the Different Departments," *Federalist No. 51*, February 8, 1788.

<sup>172</sup> At the very least, those communities that employ a lawyer as the prosecutor in their mayor's court should be required to also employ a lawyer as judge. The ability to find a lawyer to fill the prosecutorial role is a strong indication that there are plenty of lawyers about.



less-well-trained judge is in a dangerous position. Likewise when a wealthy defendant utilizes the high-powered, private DUI defense bar in a court where the presiding judge has no legal background.

- *Standardize Record-Keeping.* Mayor's courts rely on inconsistent and often flawed data systems. While some courts deftly use their system, many others suffer devastating record deletions, use handwritten records, or otherwise utilize unnecessarily risky record-keeping processes. By centralizing the record keeping process management, courts can benefit from collective negotiating power with private vendors and the shared knowledge created by a wide user base. Further, the standardization will help court users interact with case management systems more smoothly and researchers understand courts' behavior more fully.
- *Increase Transparency.* The public deserves access to more information about what happens in mayor's courts that touch so many lives each year. Mayor's courts casual approach to justice can give defendants the mistaken impression that the stakes do not warrant a rigorous defense or fair treatment—there is a reason why so many challenges to mayor's courts are brought by lawyers. With recording technology more accessible than ever, mayor's courts should record their proceedings—and make them available to the public—even if they do not go so far as to become full courts of record.<sup>173</sup> Any record of what happened allows defendants to review their experience, show it to others if they worry they were treated unfairly, and provide stronger evidence of abuse in challenges to the ways that mayor's courts operate.<sup>174</sup> Transparency increases accountability. Even if no one ever watches the recordings, being recorded and the threat that someone could watch the recordings will check the worst excesses of abusive courts.
- *Bolster Oversight.* Even when evidence of mayor's courts misbehaving emerges, little comes of that information. Overseeing mayor's courts slips between the state Supreme Court and local prosecutors with neither picking up the oversight burden. Local prosecutors are often too close to the mayor's courts they are supposed to oversee, which makes it unnecessarily difficult for them to be a meaningful watchdog. Transparency alone allows the public, researchers, and other concerned parties to offer a degree of oversight. Institutional oversight, however, is far more effective because it is a more direct check on mayor's courts. Under the new model, rogue courts would not only face public outrage, but also quick sanction from the Ohio state government. While any oversight body is a major and worthwhile improvement, empowering the Ohio Supreme Court to oversee mayor's courts—as it does all other Ohio courts—makes the

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<sup>173</sup> For a discussion of how courts can successfully leverage falling recording costs, see Jan McMillan and Lee Suskin, "Digital Court Recording Makes the Record Effectively," *Trends in State Courts*, 2015, [https://www.ncsc.org/~media/Microsites/Files/Trends%202015/DigitalCourtRecording\\_McMillan\\_Suskin.ashx](https://www.ncsc.org/~media/Microsites/Files/Trends%202015/DigitalCourtRecording_McMillan_Suskin.ashx).

<sup>174</sup> Keeping more extensive records and making them more accessible creates a risk that those records haunt defendants later in life, even long after their case is resolved. A high schooler charged with driving under the influence and drinking underage, for example, may currently arrange a deal to plead to lesser charges, pay a large fine, and complete community service hours. That child's night of egregious errors will have virtually no effect on college plans, career aspirations, or anything else more than a few months beyond the incident. That situation would be far less likely with more extensive and pervasive transparency. Those who favor the current capacity to make cases disappear will likely resist attempts to increase transparency. If needed, those concerns could be allayed by a compromise that allows defendants opportunities to restrict access to their records. Already local media coverage and even police department Facebook pages publicize incident reports without undermining societal stability. See Hamden Police Departments' Facebook page, accessed April 15, 2019, <https://www.facebook.com/pg/HamdenPolice/posts/>.

most sense. The current oversight regime is so meek that even partial oversight from the Supreme Court would be significantly more robust.

These reforms will likely have many opponents—change often seems daunting. To maximize fairness and justice while still enjoying the benefits of delegating broad discretion to local courts, policymakers must be willing to spend political capital on compromises to improve the current system. While all five reform axis are important, movement along even one is a step in the right direction that will improve Ohioans' judicial experience.

# Conclusion

By trading oft-parroted assumptions about mayor's courts for hard facts about how they all actually operate, policymakers can make more informed policy. Mayor's courts cause more problems than they should, but not as universally as some allege. They also offer more benefits than they get credit for, but not as many as they could. Those realities mean the system needs to be reformed, not eliminated or replaced. Even if elimination was politically viable, it would sacrifice meaningful benefits merely to trade some problems for others.

No matter how bad a single mayor's court is, others may add immense value to their communities by administering justice with discretion, fairness, and humility. The worst excesses, however, demand an answer. Right now the lack of transparency and oversight allows mayor's courts to exploit defendants without the public being any wiser.

Delegating power to local governments has been successful for Ohio in many situations. Problems with some—or even many—mayor's courts are insufficient to abandon that approach. Instead, policymakers should tweak the environment to help all mayor's courts deliver on their promises. Severely curtailing the role of money in judicial processes, better equipping mayor's court staffs to succeed, and bolstering transparency and oversight to limit the damage done by rogue courts will hold mayor's courts more accountable and restore faith in a much maligned system.