

**IN THE SUPREME COURT OF MISSOURI**

**NO. SC94493**

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**MISSOURI MUNICIPAL LEAGUE,**

*Appellant,*

**v.**

**STATE OF MISSOURI,**

*Respondent.*

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**APPEAL FROM THE CIRCUIT COURT**

**OF COLE COUNTY, MISSOURI**

**Division Number 1**

**The Honorable Jon E. Beetem**

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**BRIEF OF *AMICI CURIAE***

**FILED WITH CONSENT OF ALL PARTIES**

LaMarcus Pruiett, James Moore, Aireal Walters, and Jenae Keeper

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**CONSENT OF ALL PARTIES TO THE FILING OF THE AMICUS CURIAE**

**BRIEF**

Pursuant to Missouri Supreme Court Rule 84.05(f)(2), *Amici Curiae* certify that all parties have consented to the filing of this brief.

## **THE INTERESTS OF AMICI CURIAE AND STATEMENT OF FACTS**

The Missouri Municipal League and the Missouri Attorney General have graciously consented to the *Amici* filing a friend of the court brief to submit to the Court. The *Amici* submit this brief to offer reasons in addition to those advanced by Respondent State of Missouri why the Macks Creek Law should be upheld.

The *Amici* are residents of St. Louis County and citizens of the United States who have been adversely affected by policing and municipal courts in North St. Louis County. These municipal courts have made it their primary function to raise municipal revenue through fines and court fees. *Amici* believe these municipal courts have acted outside the law and have failed in their duty to protect public safety.

The *Amici* are:

- LaMarcus Pruiett, resident of St. Louis County.
- Mr. James Moore, resident of St. Louis County.
- Ms. Aireal Walters, resident of St. Louis County.
- Ms. Jenae Keeper, resident of St. Louis County.

The *Amici* believe that these fines and fees unconstitutionally target minority and low-income citizens in St. Louis County and other counties in the State of Missouri.

LaMarcus Pruiett is a 24-year-old, African-American resident of St. Louis County. In September 2014, Mr. Pruiett was issued a ticket for speeding in Bel-Ridge during a time in which Bel-Ridge continued to prosecute traffic violations in municipal court despite the fact that it was without jurisdiction under the Macks Creek Law. His motion

to dismiss the case was denied and he was convicted of speeding. Over a period of years, Mr. Pruiett has faced numerous stops by police in St. Louis County municipalities, which has interfered with his ability to obtain an education and remain employed. He has filed two lawsuits to attempt to prevent Bel-Ridge from continuing to prosecute cases stemming from a time it did not have jurisdiction. *Lamarcus Pruiett v. Bel-Ridge*, St. Louis County Circuit Court, Case No. 14SL-CC03593; *State ex rel. Lamarcus Pruiett v. Thomas Flach*, St. Louis County Circuit Court, Case No. 14SL-CC03960.

Mr. James Moore is a homeless veteran and resident of St. Louis County. After proudly serving his country, Mr. Moore fell on hard times and eventually found himself living in a tent encampment in St. Louis County. He missed court dates in Velda City, and now he faces 15 charges from that tiny municipality. The list includes eight failure to appear charges, most of them assessed at \$140.86 each. Mr. Moore was finally able to secure pro bono legal counsel to assist him. However, the prosecutor of Velda City will only recall the arrest warrant if Mr. Moore, a homeless veteran, pays nearly \$3,000.00 in fees.

Ms. Aireal Walters, a mother of two, is homeless. Despite being homeless and having limited education, Ms. Walters works hard to provide for her two children. Ms. Walters' job requires her to drive to and from work. Ms. Walters has tickets from eight separate municipalities in St. Louis County for non-violent, "poverty crimes," such as driving without insurance, failure to register her vehicle, and having defective equipment - all of which stem from her financial difficulties. She has tickets in Pine Lawn, Moline Acres, Berkeley, Des Peres, Beverly Hills, University City, Jennings and the City of St.

Louis. Ms. Walters owes over \$5,000.00 for these various municipal tickets. She must now decide whether to forfeit her license, lose her job, and go on whatever government assistance she qualifies for or pay the exorbitant fines. The municipalities that issued her tickets have thus far refused to reduce their fees so that Ms. Walters can both pay her fines and stay licensed and employed. If Ms. Walters fails to pay these fines, she will lose her driver's license, her job, and her ability to support her family.

Ms. Jenae Keeper is a single mother who works two jobs and attends school. Ms. Keeper was previously homeless and would sleep in her car many nights. Ms. Keeper faces tickets in Ferguson, Florissant, Velda City, Jennings and the City of St. Louis for non-violent "poverty crimes." She faces fines and costs totaling more than \$2,500. Because both of Ms. Keeper's jobs require an active license, she now faces the prospect of losing her job if she does not pay these fines and costs, including failure to appear charges. No municipal officer or court employee has explained to Ms. Keeper how she will be able to pay the municipal fines and fees if she loses her jobs. She now faces the prospect of losing her driver's license and her jobs if she cannot pay her fines for these for these violations.

Mr. Pruiett, Mr. Moore, Ms. Walters, and Ms. Keeper represent just a few of the thousands of people in St. Louis County, and across Missouri, who face unjust and impossible situations arising from municipal police departments and courts which take no account of their inability to pay the full amount of these fines.

The *Amici* face exorbitant fines, often due to municipal violations that are inexorably linked to their low-income status. For those looking for employment or

housing, these excessive fees turn into warrants for arrest, which significantly, if not entirely, limit employment opportunities and housing options. For those gainfully employed and housed, these fees often prove to be impossible hurdles and cause people to leave or get fired from their jobs and force them to face eviction. A single traffic ticket, like Failure to Wear a Seatbelt, can easily spiral into thousands of dollars in municipal fines and fees.

Though common sense suggests it, *Amici* cannot emphasize enough that the practice of municipalities exacting excessive and often exorbitant fees prevents citizens from obtaining and maintaining gainful employment, encourages reliance on government assistance, and leads to the loss of jobs, housing, transportation, and even custody of children. These municipalities are restricting and, in some cases, preventing Missourians' ability to live freely, to pursue happiness and to enjoy the gains of their industry.

In response to years of documented and widespread municipal abuse of the police power, the Missouri Legislature enacted the Macks Creek Law, which seeks to curb municipal use of the police power to generate revenue. Section 302.341, RSMo. (Cum Supp. 2014). The Macks Creek Law is common sense legislation that prevents any one municipality from exploiting those who use its streets and those who travel on state and interstate highways that pass through the municipality. The Macks Creek Law contemplates exactly the type of municipal abuse of power that is the subject of this brief, and the law protects Missourians from municipalities that abuse their power to generate revenue through excessive traffic ticket issuance and collection.

The *Amici* write in support of Respondent State of Missouri and urge this Court to rule the Macks Creek Law a constitutional exercise of the legislative power. *Amici* will cite in this brief three studies – by the U.S. Department of Justice, the non-profit organization Better Together, and by the Federal Reserve Bank of St. Louis – that rely on public records to document the practices and effects of the practices *Amici* bring to the Court’s attention. *Amici* ask the Court to consider the real-life effects of the abuse of municipal power and the public police overwhelming in favor of upholding the Missouri Legislature’s common sense law and restoring the balance that the Constitution of Missouri demands and that the state’s residents deserve.

## ARGUMENT

**I. If the Court determines that the Constitution allows for municipalities to retain revenue from fines from traffic violations in cases heard in municipal courts (See Point II), the Macks Creek Law should be upheld because the Legislature has the power to adopt reasonable restrictions on municipal courts to avoid abuse of power and to instead foster trust between citizens and their government.**

**a. Policing for Profit Hurts Missourians and the State.**

The primary purpose of the *Amici*'s brief is to bring to the Court's attention the direct and severe harms being faced by Missourians from oppressive and revenue-generating policing and operation of municipal courts. The Macks Creek Law precisely addresses these harms. While the current law has not completely rectified these problems, it is part of a number of legislative measures aiming to protect Missourians against abusive practices by municipal police departments and municipal courts. Residents in St. Louis County face a unique government structure with 91 municipality governments and 81 municipal court divisions. Many municipalities in St. Louis County serve small populations and govern mere city blocks or subdivisions. For example, twenty-four separate municipalities are in the Normandy School District. Jesse Bogan, *Normandy: A Shared Fate*, St. Louis Post-Dispatch (Aug. 5, 2013), [http://www.stltoday.com/news/multimedia/special/normandy-a-shared-fate/html\\_0d95d3e6-98f8-53fb-a8fa-3cee5ea2124c.html](http://www.stltoday.com/news/multimedia/special/normandy-a-shared-fate/html_0d95d3e6-98f8-53fb-a8fa-3cee5ea2124c.html).

Some small municipalities lack sufficient property valuation to support municipal services and rely on traffic tickets fines and fees as their primary source of revenue.

Relying on traffic tickets to generate revenue is a perverse system, one which incentivizes local law enforcement to issue tickets and fines to ensure survival of municipal governments. As shown by a study by the organization Better Together, some municipalities could not survive financially without the tremendous amount of traffic ticket fines and fees. *See Public Safety - Municipal Courts*, Better Together (Oct. 2014), available at <http://www.bettertogetherstl.com/wp-content/uploads/2014/10/BT-Municipal-Courts-Report-Full-Report1.pdf>. Better Together found that revenue from St. Louis County municipal court fines and fees is the “largest single source of revenue for at least fourteen municipalities.” *Id.* at 8. This raises questions as to whether municipalities exist to primarily serve and protect their communities, or to generate revenue.

The Missouri General Assembly sought to control municipal abuse and dependence on traffic ticket fines and fees as the major source of municipal government revenue. Section 302.341 of the Missouri Revised Statutes, known as the Macks Creek Law, seeks to curb municipalities from using their police power, derived from the State, to generate revenue. By limiting the percentage a municipality’s budget may receive from traffic ticket fines and fees, the General Assembly protects Missourians by ensuring small municipal governments will not abuse their police powers to generate revenue.

Some small municipalities continue to flagrantly disregard Macks Creek’s statutory limits on the amount of traffic ticket fines and fees that may compose municipalities’ budget. Of St. Louis County’s 90 municipalities in 2013, eight municipalities collected over thirty percent of their general revenues from municipal court fines and fees, in direct violation of Macks Creek. *See id.* (citing public records

that list Calverton Park, Bella Villa, Vinita Terrace, Pine Lawn, Normandy, Saint Ann, Edmundson, and Moline Acres as collecting more than 30 percent of revenue from fines).

Fines and fees are a guaranteed and reliable source of revenue for small municipalities with little other ability to collect money. In 2013 alone, St. Louis County, which represents only 11 percent of the state's total population, brought in 34 percent of all municipal fines and fees statewide, an amount over \$45 million. *Id.* at 7-8. So reliable are these fines and fees that twenty-one of St. Louis County's ninety municipalities collect 20 percent or more of their revenues from fines and fees. *Id.* The Better Together study also shows that municipalities with high percentages of poor residents are often the same cities that generate large amounts of revenue from traffic tickets. *Id.*

*Amici* represents thousands of St. Louis County residents who face life-altering hardships at the hands of small St. Louis County municipalities. A defendant who fails to pay or appear in municipal court for a single traffic ticket will likely face a Failure to Appear charge and receive an arrest warrant. These warrants have led to the arrest of thousands. As a result, countless St. Louis County residents have gone to jail, lost their jobs and housing, and accumulated thousands of dollars in fines. These warrants and arrests prohibit citizens from enjoying the same liberties as others, notably "getting a job, housing, job training, loans or financial aid." Radley Balko, *How Municipalities in St. Louis County, Missouri Profit from Poverty*, Wash. Post (Sept. 3, 2014), <http://www.washingtonpost.com/news/the-watch/wp/2014/09/03/how-st-louis-county-missouri-profits-from-poverty>. In short, the *Amici*'s stories and objective data

demonstrate that the problem of municipal abuse of police power has devastating, real-life consequences for thousands of Missourians.

This trend is not confined to the St. Louis region, however. The Federal Reserve Bank of St. Louis conducted an empirical study and determined that, like Missouri, North Carolina's "local governments use traffic ticket revenues to replace or supplement revenue from traditional sources." Thomas A. Garrett & Gary A. Wagner, *Are Traffic Tickets Countercyclical?*, Federal Reserve Bank of St. Louis 4 (July 2007), available at <http://thenewspaper.com/rlc/docs/2006/fed-tickets.pdf>. After analyzing 13 years of traffic data, the Reserve found that significantly more tickets are issued in the year following a decline in municipal revenue. *Id.* at 15.

**b. The U.S. Department of Justice, this Court, the Governor of Missouri, and the Chief of Police of St. Louis County have all recognized the problem of policing for profit.**

*Amici's* concerns that some municipalities' police and municipal courts operate primarily to raise revenue, and not to serve the legitimate needs of public safety, have been recognized and validated by a host of national and local national government agencies and officials. Most notably, the U.S. Department of Justice has issued a report finding that the City of Ferguson, a municipality in St. Louis County, has improperly been relying on police power to generate revenue. U.S. Dep't. of Justice, Investigation of the Ferguson Police Department, (2015) [http://www.justice.gov/crt/about/spl/documents/ferguson\\_](http://www.justice.gov/crt/about/spl/documents/ferguson_)

findings\_3-4-15.pdf [hereinafter DOJ Report]. In releasing the 102 page report, Attorney General Eric Holder explained that the City of Ferguson, “relies on the police force to serve, essentially, as a collection agency for the municipal court rather than a law enforcement entity focused primarily on maintaining and promoting public safety.” U.S. Dep’t. of Justice, Attorney General Holder Delivers Update on Investigation in Ferguson, Missouri (Mar. 4, 2015), <http://www.justice.gov/opa/speech/attorney-general-holder-delivers-update-investigations-ferguson-missouri>. The DOJ Report has an entire section entitled “Ferguson Law Enforcement Efforts Are Focused On Generating Revenue,” dedicated to the concerns of the *Amici*. DOJ Report at 9.

The DOJ Report cites dozens of internal communications indicating that “[c]ity and police leadership pressure officers to write citations, independent of any public safety need, and *rely on citation productivity to fund the City budget.*” *Id.* at 10 (emphasis added). According to the Report, the City of Ferguson is so focused on raising high levels of revenue, that the City is “unconcerned with whether the police action actually promotes public safety, and unconcerned with the impact the decision has on individual lives or community trust as a whole.” *Id.* at 12.

The DOJ Report overwhelming found top-level officials in Ferguson, including the Police Chief, City Manager, Judge, Prosecutor, Court Clerk, Finance Director, and City Council adopt and endorse the policy of using law enforcement as a means of ensuring city revenue. *See id.* at 9-15. The DOJ Report found City and police leadership pressured officers to write citations, independent of any public safety need, and relied on citation productivity to fund the City budget. *Id.* “In an email from March 2010, the

Finance Director wrote to [Police] Chief Jackson that “unless ticket writing ramps up significantly before the end of the year, it will be hard to significantly raise collections next year. What are your thoughts? Given that we are looking at a substantial sales tax shortfall, it’s not an insignificant issue.”” *Id.* at 10. Chief Jackson responded that the City would see an increase in fines once more officers were hired and that he could target the \$1.5 million forecast. *Id.* The DOJ Report found no evidence that the Ferguson Police Department considered the consequences for positive community engagement. *Id.*

Unfortunately, Ferguson is not unique. The City of Ferguson is one of *many* troubled municipalities that rely on municipal courts and police power to raise revenues for the city, without regard to public safety needs. Attorney General Eric Holder confirmed “the city (sic) of Ferguson – and other surrounding municipalities [must] reform practice and establishes a public safety effort that protects and serves *all* members of the community.” U.S. Dep’t. of Justice, Attorney General Holder Delivers Update on Investigation in Ferguson, Missouri (Mar. 4, 2015), <http://www.justice.gov/opa/speech/attorney-general-holder-delivers-update-investigations-ferguson-missouri> (emphasis in original). The *Amici* urge this Court to consider the DOJ Report’s conclusions that the City of Ferguson and other St. Louis County Municipalities do not exist to “better protect the public, but to raise more revenue.” DOJ Report at 13.

The Department of Justice relied heavily on data developed by the Missouri Attorney General regarding racial disparities in traffic stops. One of that reports’ most important indices is the “disparity index.” The disparity index measures the likelihood

drivers of a given race or ethnic group are stopped based on their proportion of the residential population age 16 and over. Mo. Att’y. Gen., 2013 Annual Report, Missouri Vehicle Stops 6 (2013), available at <https://ago.mo.gov/docs/default-source/public-safety/2013analysisbykoster.pdf?sfvrsn=2>. Values greater than one indicate over-representation and values less than one indicate under-representation in traffic stops. *Id.*

The Missouri Attorney General’s report paints an alarming picture of racial inequality in police enforcement of municipal laws throughout St. Louis County and the state. For example, in Ferguson, a municipality which generated over \$1.8 million in revenue from fines and fees in 2013 alone, black residents are over 6.5 times more likely to get pulled over by a police officer than white residents. Mo. Att’y. Gen., Vehicle Stops Report, Local Results – Ferguson Police Depart. (2013), <https://ago.mo.gov/divisions/litigation/vehicle-stops-report?lea=16>. This disparity exists even though Ferguson’s black population is about double the size of the white population. Black residents are also twice as likely to get searched by police officers compared to white residents. *Id.* In 2013, Ferguson reported that blacks represented 87 percent of stops, 92 percent of searches, and 93 percent of arrests. *Id.*

The unfortunate reality, however, is that Ferguson is not an anomaly. Throughout the state of Missouri, black drivers are disproportionately targeted for traffic stops, and by consequence the traffic fines and fees that go along with those stops. *See id.*

This Court has taken decisive action in light of the DOJ Report about Ferguson’s Municipal Court, naming Appeals Court Judge Roy Richter to hear all of Ferguson’s municipal court cases and authorizing him to implement needed reforms in that system.

This Court stated that its action was designed to “help restore public trust and confidence in the Ferguson municipal court division.” Press Release, Mo. Sup. Ct., Supreme Court of Missouri Reassigns Ferguson Municipal Division Cases (Mar. 9, 2015), available at <http://www.courts.mo.gov/pressrel.nsf/fa1bcbaea6d7c117862567670079a321/7f70e2b78919dca486257e030077b4ec?OpenDocument>.

Missouri Governor Jeremiah Nixon has also voiced his concerns about the abusive practices of municipal courts. In an address to the Missouri Bar Association, Governor Nixon noted that, “Lowering the percentage of revenue that municipalities can collect from traffic tickets and court fees is a good first step... But we also need strong mechanisms for enforcement, stiff penalties for noncompliance, and clarity about the responsibility of agencies, including the judiciary, to ensure that municipalities violating the law pay the price for their actions.” Press Release, Gov. Nixon Addresses Pressing Need for Municipal Court Reform in Remarks to Missouri Bar Meeting (Mar. 6, 2015), available at <https://governor.mo.gov/news/archive/gov-nixon-addresses-pressing-need-municipal-court-reform-remarks-missouri-bar>. Governor Nixon further acknowledged that municipalities have fostered distrust amongst citizens that municipal courts can administer the rule of law fairly. He declared that restoring trust through the enactment of laws like Macks Creek “is essential.” *Id.*

In addition, St. Louis County Chief of Police Jon Belmar spoke recently at a Saint Louis University Law School symposium about his concerns that some St. Louis County municipalities take advantage of police power as a mechanism to raise city revenue, not to operate effective public safety. He explained that this phenomenon “decreases our

legitimacy in law enforcement when the only thing that the police officers are out there for is to write tickets and bring it back into their city coffers, it is immoral.” Jon Belmar, Saint Louis Cnty. Police Chief, Reflections on Policing at Saint Louis University School of Law Symposium: The Thin Blue Line: Policing Post-Ferguson 10:10-10:32 (Feb. 20 2015), <http://law.slu.edu/event/thin-blue-line-policing-post-ferguson>. Police Chief Belmar explicitly acknowledged that enforcement of the Mack’s Creek Law is the way to control outlier St. Louis County municipalities that take advantage of citizens through unnecessary issuance of traffic tickets fines and fees for the purpose of generating revenue, stating, “I hope the State Legislature gets a way to figure out how to either enforce Mack’s Creeks Law (sic) or bring that down to twenty-five, twenty, fifteen, ten percent.” *Id.* at 10:37-10:49.

Chief Belmar’s statements are supported by evidence which surfaced recently confirming the same practices in Edmundson, Missouri, a municipality in St. Louis County. In April 2014, Mayor John Gwaltney sent a memo to the entire municipal police department, included with paychecks, noting a decrease in traffic tickets issued by the department in the preceding weeks. Mayor Gwaltney described this decreased as “disappointing.” *Edmundson Mayor Letter*, St. Louis Post-Dispatch (Jan. 23, 2015), [http://www.stltoday.com/edmundson-mayor-letter/pdf\\_7a056e0d-dd8b-5980-9dba-79e95d2eeea6.html](http://www.stltoday.com/edmundson-mayor-letter/pdf_7a056e0d-dd8b-5980-9dba-79e95d2eeea6.html). Then, in a not-so-subtle threat, Mayor Gwaltney continued, “I wish to take this opportunity to remind you that the tickets that you write do add to the revenue on which the P.D. budget is established and will directly affect pay adjustments at budget time.” *Id.* Unsurprisingly, the number of tickets written in Edmundson in April nearly

doubled those from the month before. Tony Messenger, *Welfare of the People Should Drive Court Reform*, St. Louis Post-Dispatch (Jan. 23, 2015),

[http://www.stltoday.com/news/opinion/columns/tony-messenger/messenger-welfare-of-the-people-should-drive-court-reform/article\\_e278e88a-51cb-5e31-842a-d77de0acfe41.html](http://www.stltoday.com/news/opinion/columns/tony-messenger/messenger-welfare-of-the-people-should-drive-court-reform/article_e278e88a-51cb-5e31-842a-d77de0acfe41.html).

**c. The Macks Creek Law Helps Solve These Problems by Limiting Local Power Consistent with the Missouri Constitution.**

In response to years of documented and widespread municipal abuse of the police power, and the power of municipal courts, the Missouri Legislature enacted the Macks Creek Law, which seeks to curb municipal use of the police power to generate revenue. Section 302.341, RSMo. It had the power, and good reason, to do so.

Municipalities are subdivisions of the state of Missouri. Municipal government power is defined and regulated by the Missouri Constitution and the laws enacted by the state legislature. For over a century, it has been a tenet of municipal law in the United States that a municipality may only exercise the powers that have been expressly granted to it, those which are necessarily implied by those grants of power, and those which are indispensable to the declared objects and purposes of the municipal corporation. *Merrill v. Monticello*, 138 U.S. 673 (1891). The Missouri General Assembly has significant authority to control the structure, financing, and procedures of local governments. Vital to this multi-tiered power system is the ability of the state legislature to regulate police behavior and revenue generation at the municipal level.

As noted by the Missouri Constitution, when any branch or subsidiary of the government fails to secure the health, welfare and safety of the people, it fails in its chief design. Mo. Const. Art. I, Sec. 2. The Missouri Municipal League proudly asserts its representation of municipalities throughout the state. However, it fails to assert that its position does anything to protect the actual constituents of the municipalities it represents. The named *Amici* believe this is no coincidence, and instead reflects the Municipal League's concern for protecting sources of revenue for municipalities, rather than protecting the health, welfare, and safety of the people of Missouri.

The framers of the Missouri Constitution envisioned a responsive and representative government that protected the safety and desires of its citizens. Government, and its many subdivisions by extension, must "promote the general welfare of the people; that all persons have a natural right to life, liberty, the pursuit of happiness, and the enjoyment of the gains of their own industry." Mo. Const. Art. I, Sec. 2. The principal objective of government is to secure the right of the people "to live freely and to pursue happiness and enjoy the gains of their industry." *Id.*

As an extension of the government, municipalities and their police officers must protect those enshrined ideals of government. This Court has long expressed the proper function of the police power, which is "to preserve the health, welfare and safety of the people by regulating all threats harmful to the public interest." *State v. Richard*, 298 S.W.3d 529, 532 (Mo. 2009); *Craig v. City of Macon*, 543 S.W.2d 772, 774 (Mo. 1976); *See also Unverferth v. City of Florissant*, 419 S.W.3d 76, 94 (Mo. App. E.D. 2013).

Plainly stated, “when government does not confer this security, it fails in its chief design. [emphasis added].” Mo. Const. Art. I, Sec. 2.

Despite this, municipalities throughout Missouri are abusing the police authority granted to them by the Missouri Constitution and using that police power for the purpose of raising revenue. Across Missouri, municipalities are fining citizens, issuing arrest warrants, and incarcerating citizens, not for the purpose of protecting the safety of their communities, but for the purpose of padding municipal budgets.

A long line of Missouri cases dating back at least to the late 1860s has enforced this narrow view of municipal authority. *See, e.g., Ruggles v. Collier*, 43 Mo. 353 (1869); *St. Louis v. Bell Tel. Co.*, 96 Mo. 623, 10 S.W. 197 (1888); *City of Nevada ex rel. Gilfillan v. Eddy*, 123 Mo. 546, 557-58, 27 S.W. 471, 474 (1894). Missouri applies the narrow view across the board: to those municipal corporations governed under general statutory law, *City of Nevada ex rel. Gilfillan*, 123 Mo. at 557-58; to home rule cities, *Bell Tel. Co.*, 96 Mo. at 623; to special charter cities, *see, e.g., Howsmon v. Trenton Water Co.*, 119 Mo. 304, 313, 24 S.W. 784, 787 (1893); to the University of Missouri, *State ex rel. Curators of Univ. of Missouri v. McReynolds*, 354 Mo. 1199, 1205, 193 S.W.2d 611, 612 (Mo. Banc 1946); and to quasi-municipal corporations such as sewer districts, *see, e.g., Bull v. McQuie*, 342 Mo. 851, 119 S.W.2d 204 (Mo. Banc 1938).

Specifically, the police power must be granted expressly and will not be implied. *See, e.g., Allen v. Coffel*, 488 S.W.2d 671, 678 (Mo. Ct. App. 1972); *Brunner v. City of Arnold*, 427 S.W. 3d 201, 223 (Mo. Ct. App. 2013). Missouri has required municipalities to exercise their police powers only in the manner set forth in a statute.

As a corollary to the general rule of limited power, Missouri holds that “where the legislature has authorized a municipal corporation to exercise a power, and prescribed the manner in which it should be exercised, any other manner of exercising the power is denied to it.” *State ex rel. Crites v. West*, 509 S.W.2d 482, 484 (Mo. App. 1974); *Pearson v. City of Washington*, 439 S.W.2d 756, 760 (Mo. 1969); *City of Dellwood v. Twyford*, 912 S.W. 2d 58, 60 (Mo. 1995). The statutory grant of power is the charter which authorizes the city to act, and the city can exercise that authority only in the mode set out in the statute.

The Macks Creek Law represents an express statement of intent by the General Assembly to limit how municipalities exercise their police power. It exists for good reason – to protect citizens from the dangers of revenue-driven policing. Such practices are ripe for the legislative intervention evidenced by the Macks Creek Law: not only do they violate the clear mandates of the United States and Missouri Constitutions, but they also destroy the public’s confidence in the justice system and its component parts, impose heavy burdens financially and otherwise on the most burdened subset of the population, and cost the municipalities exorbitant amounts of money and human capital to deal with inefficiencies.

**d. The Macks Creek Law is Sufficiently Clear and Is Being Followed by Most Municipalities.**

Appellant Missouri Municipal League argues repeatedly in its brief that this Court should find the Macks Creek Law unconstitutional because “no one has a clear picture of how amended §302.341.2 should function.” Appellant’s Brief, p.15. It must first be noted that the Municipal League did not raise void for vagueness as an issue in this proceeding. Indeed, the Municipal has itself stated that it will abide by “thoughtful” and “practical” restrictions of the Legislature. Appellant’s Brief p. 43. That’s exactly what the Macks Creek Law is.

This Court has ruled repeatedly that “neither absolute certainty nor impossible standards of specificity are required in determining whether terms are impermissibly vague.” *Cocktail Fortune, Inc. v. Supervisor of Liquor Control*, 994 S.W.2d 955, 957 (Mo. 1999) (citing *State v. Duggar*, 806 S.W.2d 407, 408 (Mo. banc 1991)). If a law is written such that it is susceptible of any reasonably and practical construction, “it will be held valid, and. . .the courts must endeavor, by every rule of construction, to give it effect.” *Id.* (quoting from *City of St. Louis v. Brune*, 520 S.W.2d 12, 16–17 (Mo.1975)).

It should be further noted that two municipalities have already remitted money to the State under the 30 percent cap of the Macks Creek Law. Both Bella Villa and Pine Lawn, municipalities located in St. Louis County, have remitted \$139,995 and \$91,721 respectively, as fines received in excess of the laws limits, according to the Missouri Attorney General’s Office. Press Release, Mo. Att’y. Gen., *Koster Broadens Macks Creek Law Investigation* (Jan. 22, 2015), available at

[http://ago.mo.gov/newsreleases/2015/AGKoster\\_broadens\\_MacksCreekLaw\\_Investigation/](http://ago.mo.gov/newsreleases/2015/AGKoster_broadens_MacksCreekLaw_Investigation/). The municipalities of Bella Villa and Pine Lawn have demonstrated that not only is the law sufficiently and constitutionally clear, but that the law works. In addition, most cities have filed their annual reports, required by the Macks Creek Law, with the State Auditor. Some that did not file on time now face litigation from private parties and the Attorney General. *See, e.g., Lamarcus Pruiett v. Bel-Ridge*, St. Louis County Circuit Court, Case No. 14SL-CC03593; *State ex rel. Lamarcus Pruiett v. Thomas Flach*, St. Louis County Circuit Court, Case No. 14SL-CC03960.

**e. Other States Have Implemented Similar Laws With Positive Effects.**

Missouri's General Assembly is not alone in passing a law limiting revenue-driven policing. Arkansas, Connecticut, Louisiana, Massachusetts, New York, Oklahoma, Texas, and Vermont all have laws that seek to control municipal abuse of police power of excessive traffic ticketing. *See* Arkansas Speed Trap Law, A.C.A. § 12-8-403 (2001); Conn. Gen. Stat. § 51-56a (2011); La. R.S. § 32:266 (2010); M.G.L. 280 § 2 (2014); N.Y. Veh. & Traf. Law § 1803 (2007); O.K. St. T. 47 § 2-117 (2014); Tex. Transp. Code. § 542.402; 13 V.S.A. § 7251.

The Macks Creek Law is also not unique in mandating a municipality's loss of jurisdiction. Just last year, Oklahoma stripped one of its municipalities of the ability to enforce traffic laws on its state roads and highways. The municipality violated the Oklahoma statute which prohibits municipalities from collecting fifty percent or more of total revenue through collection of traffic fines. O.K. St. T. 47 § 2-117 (2014);

*Stringtown Police Kicked Off Highways For Three Months*, KTEN.com (Jan. 9, 2014 9:51 PM), <http://www.kten.com/story/24412551/stringtown-police-kicked-off-highways-for-three-months>. Prior to 2014, Oklahoma removed the jurisdiction of enforcing traffic laws from six towns for violating the statute. Andrew Knittle, *So-Called Speed Traps Appear to be Flourishing in Oklahoma*, NewsOK (Jan. 17 2014 11:00 PM), <http://newsok.com/so-called-speed-traps-appear-to-be-flourishing-in-oklahoma/article/3924572> Susan Hylton, *I-40: Traffic Enforcement: Another Town is Told to Back Off*, Tulsa World (Okla.) (Jan. 4, 2007). The Oklahoma statute’s sponsor explained the intention of the law was to provide oversight to cities and towns that “abuse” traffic citations. Legislature Targets ‘Speed Traps,’ Oklahoma House News Release (May 28, 2003). The need for legislation was clear because excessive ticketing “is not an issue of public safety. The issue has become an issue of raising revenues for local municipalities.” *House Roundup: Speed Trap Measure Races Past Chamber*, Tulsa World (Feb. 23, 2003 12:00 AM), [http://www.tulsaworld.com/archives/house-roundup-speed-trap-measure-races-past-chamber/article\\_8ec93bef-0451-5e5e-bc29-2b9399ab39a2.html](http://www.tulsaworld.com/archives/house-roundup-speed-trap-measure-races-past-chamber/article_8ec93bef-0451-5e5e-bc29-2b9399ab39a2.html).

Arkansas also removed a municipality’s jurisdiction to patrol highways under its state statute. *City in Arkansas Ordered to Stop Speed Trap Patrol*, Dallas Morning News (Aug. 3, 1997). The statute presumes an abuse of police power, and removes a municipality's jurisdiction to enforce traffic laws, when the amount of revenue produced by fines and costs from traffic violations exceeds thirty percent of the municipality’s total expenditures. *Id.*; A.C.A. § 12-4-403 (2011).

Like Missouri, Texas limits certain municipalities from recovering more than thirty percent of the municipality's total revenue from traffic tickets. Tex. Transp. Code. § 542.402. The Texas statute "was imposed to crack down on the practice of setting speed traps and financing city government with proceeds from the tickets paid by unsuspecting motorists." Tex. House Research Org., Bill Analysis H.B. 839, H.R. 74, Reg.Sess.,at1(1995),*available at* <http://www.lrl.state.tx.us/scanned/hroBillAnalyses/74-0/HB839.PDF>; Eric Hanson, *Kendleton to Revive Police Department*, Hous. Chronicle (July 3, 2001), <http://www.chron.com/news/houston-texas/article/Kendleton-to-revive-police-department-2034465.php> (explaining the law's purpose is to "deter towns from using police to generate revenue with speed traps"). Warning that because "[i]n some communities police officers may be used almost exclusively to issue traffic citations, taking them away from fighting real crime," a state law is necessary to curb the amount of traffic ticket revenue municipalities may recover. Tex. House Research Org., Bill Analysis H.B. 839, H.R. 74, Reg. Sess., at 2 (1995), *available at* <http://www.lrl.state.tx.us/scanned/hroBillAnalyses/74-0/HB839.PDF>.

In summary, the Macks Creek Law is common sense legislation that protects Missourians from abusive municipal actions. It addresses the widespread use of municipal police departments to generate revenue and comports with a growing national trend of preventing municipalities from abusing power.

**II. The Court should consider whether the statutory scheme authorizing a municipal court to collect revenue from traffic fines and transmit this revenue to the municipality in which it located is unconstitutional under Article IX, Section 7 and Article V, Section 27(16) of the Missouri Constitution, because the Constitution requires that most fines go to the School Fund.**

The *Amici* urge the Court to consider the entire scheme that the Municipal League and others believe allows municipalities in Missouri to operate municipal courts and retain the fines from traffic offenses. The Court could determine that if municipalities are not allowed to retain fines from traffic violations prosecuted in municipal court, the Macks Creek Law is invalid to the extent it allows any fine revenue to go to the municipalities. In the event the Court finds the current scheme sufficient to pass constitutional muster, then the *Amici*, under Point I, urge the Court to uphold the constitutionality of the Macks Creek Law.

Article IX, Section 7 of the Missouri Constitution unambiguously states that:

All interest accruing from investment of the county school fund, the clear proceeds of all penalties, forfeitures and fines collected hereafter for any breach of the penal laws of the state, the net proceeds from the sale of estrays, and all other moneys coming into said funds shall be distributed annually to the schools of the several counties according to law.

Mo. Const. Art. IX, Sec. 7.

That is, the “clear proceeds” of all money that is collected in the form of fines or

other penalties for violations of penal laws of the state must go to the school fund, without exception. The Legislature cannot divert money collected from the breach of state penal laws from the school fund by designating that some or all of that money go to a different fund. Accordingly, “the attempted diversion of any such penalties or forfeitures by the Legislature would nullify” any act authorizing such a diversion. *State v. St. Louis, I.M. & S. Ry. Co.*, 253 Mo. 642, 162 S.W. 144, 145 (1913). However, the Missouri statutes, Section 479.050 and Section 479.080, that authorize municipalities to keep the proceeds from traffic violations—that they be “paid into the municipal treasury”—are just such diversions and thus violations of Article IX, Section 7. Section 479.050, RSMo. (2000); Section 479.080, RSMo. (2000).

**a. The Legislature cannot designate that money from fines and penalties go to any fund other than the county public school fund.**

In the case of *State v. St. Louis, I.M. & S. Ry. Co.*, 253 Mo. 642, 162 S.W. 144, 145 (1913), the Court dealt with a state statute that specified that the penalty for a violation of Section 3158 (dealing with the delivery of railroad freight) was to pay “to the good road fund of this state the sum of ten dollars for each day” a company failed to comply. In that case, the issue considered by the Court was whether the penalty clause of the statute was void because it designated the proceeds of a penalty to go to the “good road fund” rather than the school funds of the respective county. In analyzing that question, the Court clearly laid out the principle that should govern this case:

In this case the constitutional restraint upon the Legislature is in the form of an affirmative provision of the organic law that: “The clear

proceeds of all penalties and forfeitures shall belong to the county public school fund.” Const. Mo. art. 11, § 8. Unquestionably the attempted diversion on any such penalties or forfeitures by the Legislature would nullify the act, if it was passed for that sole purpose; for the Constitution having spoken as to the proper receptacle of such funds, the power of the Legislature to speak in a contrary way is stilled and ceases to exist until the constitutional provision shall be amended or abrogated. It is evident that so much of the penalty clause of the act under review as purports to create a penalty payable to the good roads fund is void.

*State v. St. Louis, I.M. & S. Ry. Co.*, 253 Mo. 642, 162 S.W. 144, 145.

In that case, the law as a whole could not be saved, because it specified in one and the same statute that there should be a penalty and that the proceeds of that penalty should go to the good roads fund. There would be no way to preserve the statute by separating the imposition of a penalty and the specification of where that penalty should go, so that only the “diversion would be struck down.” *Id.* at 147 (Lamm, C.J., concurring). As such, the law was “void on its face.” *Id.* at 145. As a later Missouri Supreme Court decision summarized the case,

the “good road fund” law showed on its face that the Legislature was entirely oblivious of the constitutional provision that proceeds should belong to the school fund and that it was passed for the purpose of increasing the funds

of the road district, and no other, and therefore the whole act was unconstitutional.

*Washington Twp. Rd. Dist. No. 1 v. Robbins*, 262 S.W. 46, 48 (Mo. 1924).

The railroad case is perhaps the clearest example of the state attempting to divert funds, although there are many examples in Missouri case law dealing with legislative efforts to avoid the clear constitutional command that money from fines must go to the school fund.

As the Missouri Supreme Court has summarized:

A series of cases, over the years, have dealt with legislative attempts to divert monies so collected to other uses. The courts have rejected these efforts. In *State ex rel. Rodes v. Warner*, 197 Mo. 650, 94 S.W. 962 (1906), this Court invalidated a statute providing that fines for violation of the conservation laws were to be paid to a “game protection fund,” holding that the proceeds must be allocated exclusively for school purposes. The logical statutory purpose had to yield to the clear language of the constitutional mandate. To the same effect are *Skinner v. St. Louis, I.M. & S. R.R. Co.*, 254 Mo. 228, 162 S.W. 237 (1914), and *State v. Clifford*, 124 Mo. 492, 28 S.W. 5 (1894). Not in point are cases in which penalties go to the person suffering harm, *Barnett v. Atlantic and Pac. R.R. Co.*, 68 Mo. 56 (1878), and statutes authorizing payment to informers. *State ex rel. Clay Co. v. Wabash, S.L. & P.R. Co.*, 89 Mo. 562, 1 S.W. 130 (1886). But the cases consistently hold that sums payable to the state must

go for school purposes, to the exclusion of other public agencies.

*Reorganized Sch. Dist. No. 7 Lafayette Cnty. v. Douthit*, 799 S.W.2d 591, 593 (Mo. 1990).

**b. No legislative scheme may allow a city to divert money that is collected by the municipal court from the county school fund.**

Although the case was ultimately decided on other grounds, the Missouri Supreme Court applied the above principle to a case involving the diversion of money from the county school fund into the St. Louis City treasury. In *State ex. Rel Board of Education of City of St. Louis v. Nast et al.*, the Court dealt with an act that “directed to pay all fines, penalties, and forfeitures collected by [the clerk of court] into the city treasury.” *State ex rel. Bd. of Educ. of City of St. Louis v. Nast*, 209 Mo. 708, 108 S.W. 563, 564 (1908).

The state sued the city of St. Louis, arguing that the money collected by the clerk of the court (Nast) properly belonged to the school fund. The Court denied the writ, but on the grounds that the St. Louis city court itself was not a lawfully constituted court. However, the Court did deal in passing with the question of whether collection of fines into the city treasury was constitutional, and what it mentions is illuminating. The Court writes:

If the St. Louis Court of General Sessions is a constitutional and lawfully constituted court no doubt whatever can exist that the Board of Education of the city of St. Louis is entitled to the fines and penalties set forth in its application for the writ of mandamus in this case, and that section 17 of the Act of April 15, 1907 (Laws 1907, p. 212), is unconstitutional, and therefore void, inasmuch as it is a clear violation of the constitutional

mandate.

*State ex rel. Bd. of Educ. of City of St. Louis v. Nast*, 209 Mo. 708, 108 S.W. 563, 565 (1908).

The system considered in City of St. Louis case was a system in which local courts were able to keep the money they received from violations of the penal law. It was unequivocally condemned as unconstitutional because it violated what is now Article IX, Section 7.

- c. Section 479.050 and Section 479.080, in combination with Section 302.341, create a statutory scheme which diverts funds from the school county fund, in violation of the Missouri Constitution.**

The legislative delegation to municipalities of the state power to prosecute traffic violations under Section 302.341, combined with statutory authorization to retain the fines when prosecuted in municipal court, diverts revenue from the school fund. It is well settled that “[a] city has no inherent police power.” *State ex rel. Sims v. Eckhardt*, 322 S.W.2d 903, 906 (Mo.1959). However, under Section 302.341, the legislature has affirmatively conferred upon municipalities the ability to regulate traffic and enforce these regulations. Under Section 479.050 and Section 479.080, the legislature has further dictated that all proceeds from fines assessed for these violations in municipal court are retained by the municipality. In sum, this establishes a statutory scheme that allows for the collection of fines for violations of penal laws enacted pursuant to the state’s police power but allocates this revenue to municipalities. Such a scheme violates the substance and the spirit of Article IX, Section 7.

In *New Franklin School District No. 28, Howard Cnty. v. Bates*, the Missouri Supreme Court defined penal laws of the state as referring to “statutory enactments fixing or providing for penalties, forfeitures and fines and for their assessment and collection.” 774. *New Franklin Sch. Dist. No. 28, Howard Cnty. v. Bates*, 359 Mo. 1202, 1213, 225 S.W.2d 769, 774 (1950). Under this definition, Missouri Statute Section 479.050 qualifies as such a statute. It reads, in relevant part:

The municipal judge or judges, or, in those municipalities where the violations of municipal ordinances are heard and determined by an associate circuit judge, or judges, the associate circuit judge, or judges, may establish a traffic violations bureau in any municipality ...The traffic violations bureau shall operate under the supervision of the circuit court and those judges regularly hearing and determining municipal ordinance violation cases of the particular municipality and shall be operated in accordance with the rules of the supreme court and the rules of the circuit court. All expenses incident to the operation of the traffic violations bureau, including salaries of clerical personnel, shall be paid by the municipality. The municipality shall provide suitable quarters for the traffic violations bureau; and all fines and costs shall be paid into the municipal treasury ...

Likewise, Section 479.080.1, provides that “[i]n the prosecution of violations of municipal ordinances before a municipal judge, all fines and costs shall be paid to and deposited not less frequently than monthly into the municipal treasury.”

These statutes are penal in nature whether read independently, or in conjunction

with Section 302.341. Each provides for fines and (especially) for their assessment and collection. Furthermore, traffic laws generally are penal in nature, as they involve the assessment of a penalty (in the form of fines) for the violation of a public law, they are prosecuted in state court (whether in the municipal division of Associate Circuit Division), and they arise from the plenary power of the state.

This Court, in *Missouri Gaming Comm'n v. Missouri Veteran's Comm'n*, indicated that penal laws include all fines imposed by public authorities as punishment for offenses against the public. 951 S.W.2d 611 (Mo. banc 1997)

As evidence of their penal nature, this Court has held that double jeopardy protections apply to persons charged with municipal ordinance violations. *Weaver v. Schaaf*, 520 S.W.2d 58 (Mo. 1975); *Kansas City v. Bott*, 509 S.W.2d 42 (Mo. 1974).

“Because a municipality is a creature of the State, the guarantee against double jeopardy prohibits the State from prosecuting for a greater offense after the municipality has prosecuted the person for a lesser-included offense.” *State v. Clark*, 263 S.W.3d 666, 674 (Mo. App. W.D. 2008).

Assuming Section 479.050 and Section 479.080 are penal laws of the state, and because they divert money from the school fund and “into the municipal treasury,” they are in violation of the Missouri Constitution. The laws were passed with the purpose of diverting revenue into the municipalities, and as such, it does not matter if the Legislature was not aware of the relevant constitutional provision. The result is a statutory system that was explicitly condemned in the dicta to *State ex rel. Bd. of Educ. of City of St. Louis v. Nast*, one in which the city, rather than the state school fund, is able to collect the

money received from fines and penalties.

To hold otherwise would be to hold that the Missouri Legislature, simply by legislative fiat can override the Missouri constitution's provisions as to where the proceeds of fines should go. But Missouri case law is clear that the legislature may not "by mere amendments to our existing criminal laws, deplete the public school fund by drying up one of its constitutional sources of income." *State ex rel. Rodes v. Warner*, 197 Mo. 650, 94 S.W. 962, 967 (1906).

There appear to be two options for how municipalities can enforce ordinance violations in Missouri. Those options are:

1. A municipality may handle all of its traffic tickets through the Associate Circuit Court. Mo. Const. Art. V, Sec. 27(16).
2. A municipality may operate a municipal court using its own municipal judge under Article V, Section 27(16), but all fines from ordinance violations, imposed pursuant to state laws authorizing them, i.e., traffic offenses, must be turned over to the state to be distributed to the schools. Mo. Const. Art. IX, Sec. 7.

Any law which changes where the revenue flows under these options would be unconstitutional.

**d. The Effect of Revised Article V, Section 27(16)**

While Article IX, Section 7 provides that fines be turned over to the school fund, Article V, Section 27(16) of the Missouri Constitution, adopted subsequently, creates an exception to Article IX, for municipalities that enforce their ordinances in

Associate Circuit Court divisions. Article V, Section 27(16), is a transitional section which makes provision for transferring to the new judicial article, which among other things, required that judges be lawyers. The transitional section states:

A municipal corporation with a population of under four hundred thousand shall have the right to enforce its ordinances and to conduct prosecutions before an associate circuit judge in the absence of a municipal judge and in appellate courts under the process authorized or provided by this article *and shall receive and retain any fines to which it may be entitled*. All court costs shall be paid to and deposited monthly in the state treasury. No filing fees shall be charged in such prosecutions unless and until provided for by a law enacted after the adoption of this article.

Mo. Const. Art. V, Sec. 27(16). (Emphasis added.)

Under Article V then, a municipality can keep fines “to which it may be entitled” if it prosecutes ordinance violations in the Associate Circuit Court. However, there is no parallel provision that explicitly allows municipalities to keep fine assessed in their municipal courts. As stated previously, the state’s involvement with traffic laws here is plenary, and double-jeopardy provisions treat offenses as from the same government source – a driver cannot be prosecuted for an offense under a state statute if he already has been prosecuted for the same conduct as a municipal offense. By contrast, double jeopardy does not forbid the prosecution for bank robbery under federal law and under state statutes because they are different governmental jurisdictions.

But in the traffic case, the city is a subdivision of the state, and the authority of local governments to prosecute traffic offenses is authorized and governed by state law, and the enforcement is further interrelated because the state relies on local police to enforce traffic regulations on state highways that pass through municipal boundaries.

This Court will read the Constitutional provisions and statutes to harmonize them and avoid any conflict. *S. Metro. Fire Prot. Dist. V. City of Lee's Summit*, 278 S.W.3d 659, 666 (Mo. Banc 2009). This Court can avoid a conflict between Article IX, Section 7 and Article V, Section 27(16) by reading Article V as allowing municipalities to keep traffic fine revenue only if they prosecute traffic cases in Associate Circuit Court. The phrase in Article V, Section 27(16), “*any fines to which it may be entitled,*” authorizes legislation determining the extent to which, under law, a municipality may be entitled to retain proceeds of fines. But if the cases are not prosecuted in Associate Circuit Court, the only provision that apparently applies is Article IX, Section 7, which requires fines to go to the schools.

Therefore, municipalities have the incentive to handle their ordinance violations in Associate Circuit Court, where they would get to keep at least some of the fine revenue, as opposed to municipal court, where all fine revenue must go to the schools. This incentive is gone if municipalities can set up municipal courts where they keep all of the fines. This is the only way in which the constitutional provisions can be interpreted so as to avoid any conflict.

Prior to adoption of the modern Article V, there were hundreds of local courts – municipal courts, justice-of-peace courts, magistrate courts – many of which operated

under local authority, not as part of the state system. Many were small, informal and had judges who were not lawyers. For those municipalities that did not have a lawyer - and subsection 16 is written expansively to include any municipality under 400,000 population (that, is, all but Kansas City and St. Louis which have full time municipal court divisions) that did not want to maintain a municipal division - subsection 16 of Article V, Section 27 provides that the ordinances could be enforced in the Associate Circuit Court divisions and the municipalities could receive the fine revenue. Therefore, Article V, Section 27(16), the newer provision, creates an exception to the "clear proceeds" provision of Article IX, Section 7. The purpose of the exception in Article V, Section 27(16) is to create an incentive for municipalities to use the full-time professional courts for ordinance enforcement and to discourage the proliferation of part-time courts that, prior to the 1976 Article V revision, could use non-lawyers as judges.

The constitutional scheme described here created a strong incentive for municipalities, except Kansas City and St. Louis (St. Louis is now less than 400,000 in population but remains subject to the exception), to abandon their "local" courts and prosecute their ordinance violations in the Associate Circuit Court divisions, where judges are lawyers and work full time. Evidently, many municipalities have chosen to ignore the applicability of Article IX, Section 7 after the creation of the statewide court system, and have continued to use their "local" courts as major sources of revenue by enforcing traffic ordinances.

## CONCLUSION

When the Constitution of 1875 first required that the clear proceeds of fines, penalties and forfeitures be paid to the school fund, the evident purpose was and is to remove the incentives for government to use law enforcement to generate revenues in lieu of taxation. This purpose was carried forward in the current Constitution, the Constitution of 1945. The dispersion of traffic law enforcement to municipalities makes the Constitutional restriction even more relevant today than in the 1875 pre-automobile era. Of equal, or perhaps greater importance, was the modernization of the Judicial Article, Article V, which Missouri's voters approved in 1975. This revision sought to create a modern judiciary that required that judges be lawyers and that all judicial proceedings would occur in a unified court system and to rid the state of the patchwork of local and specialized courts.

In the transition to the modern judicial system in the 1970s, the interplay of Article V, Section 27(16) – whose purpose appears to be to take away the financial incentive for localized traffic courts – and Article IX, Section 7 – which has a similar purpose – was ignored. Many municipalities wanted to hire their own judges, prosecutors and court personnel and have their own courts rather than to enforce their ordinances in the fulltime professional courts established in Article V. For some municipalities, these courts have become a source of revenue that has substituted for declining property tax base, as noted in the DOJ Report.

If the Court chooses to uphold the current system of municipal courts and distribution of fine revenue, the Macks Creek Law stands as a reasonable and

constitutionally authorized restriction and should be upheld as an exercise of legislative judgment on a matter entrusted to the Legislature. The Legislature’s purpose – to keep traffic fines from becoming major revenue-generating sources to replace legitimate taxation – is the same as the purposes of Article IX, Section 7 and Article V, Section 27(16). However, this Court has the opportunity in this appeal to read the Constitution as it is written and to enforce its provisions that take away the monetary incentives that have made some of these courts, which are part of our judicial system, key actors in a system that is simply “immoral,” to use St. Louis County Police Chief Belmar’s description.

The enforcement of the traffic laws should be for public safety; directing the proceeds to the schools will ensure that goal. Or, if a municipality wishes to retain a portion of the proceeds, it should enforce its ordinances pursuant to Article V, Section 27(16) in court divisions that are fulltime professional courts and do not appear beholden in any way to the politics of the municipality.

The courts that enforce these routine traffic laws are the places where the public experiences its judiciary. These are the places where the public can either have or lose its trust and confidence in the judiciary.

WHEREFORE, *Amici* ask that the Court uphold the validity of the Macks Creek Law, or in the alternative, hold that municipalities can only retain revenue from traffic fines when cases are prosecuted in the Associate Circuit Court.

Respectfully Submitted,

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**CERTIFICATE OF COMPLIANCE AND SERVICE**

I hereby certify:

1. That the attached brief complies with the limitations contained in Supreme Court Rule 84.06(b) and contains 10,682 words, including this certification as performed by Microsoft Word software; and
2. That the attached brief includes all the information required by Supreme Court Rule 55.03; and
3. That this brief was served by the electronic filing system upon Counsel of Record for the Appellant and Respondent.

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