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## **FROM MACKS CREEK TO FERGUSON: HOW ILLINOIS CAN LEARN FROM MISSOURI TO PREVENT PREDATORY ENFORCEMENT PRACTICES BY MUNICIPALITIES**

### **I. INTRODUCTION**

Imagine you live and work in a larger metropolitan area. Because of the geographic layout you have to drive through many cities as part of your everyday routine of going to work, getting groceries, or just going to socialize with friends. You know that some of the communities in this area have a reputation for writing traffic violations for any reason, but you drive especially careful in these places. Your perception about what these communities do bothers you, but you do not have any proof, and even if you did, what would you do about it? Now imagine you learned that the mayor of one of these cities had informed the local police department that pay raises and the department's budget were both tied to the revenue received from citations for traffic and other municipal violations. How would you feel then?

If you live in the St. Louis, Missouri metropolitan area, then you know this scenario is not a hypothetical situation.<sup>1</sup> Several St. Louis metropolitan police departments are suspected of writing excessive traffic tickets to raise revenues for their respective cities.<sup>2</sup> One mayor wrote a letter to his police department, reminding the department that tickets “add to the revenue on which the P.D. budget is established and will directly affect pay adjustments at budget time.”<sup>3</sup> But the most shocking thing to learn from these situations may be that for the people of Missouri, the answer of how **\*514** they can respond already exists: the Macks Creek law.<sup>4</sup> Until the death of Michael Brown, and following the subsequent intense scrutiny of the municipal courts within St. Louis County, the Macks Creek law had only been used infrequently to protect people from ticketing practices previously described.<sup>5</sup> Now, Missouri legislators are re-examining the law to make it tougher on municipalities engaged in the practice of raising revenue through writing traffic tickets.<sup>6</sup>

This Comment will explain why Illinois should adopt legislation based on the Macks Creek law, analyze problems with the law to learn from its mistakes, and propose objectives that should be considered for an improved Macks Creek law in Illinois. Section II of this Comment will provide background information on the Macks Creek law, look at other states' similar statutes, and take a brief look at newly proposed Macks Creek legislation. Recent investigations of law enforcement practices in Illinois that have made headlines will also be discussed. Section III of this Comment will discuss why Illinois is in need of a Macks Creek law, and how Illinois can learn from the problems with Macks Creek law to adopt a better law.

### **II. BACKGROUND**

Several states have laws that limit the amount of money local governments can collect through law enforcement.<sup>7</sup> The Macks Creek law is one of these types of laws.<sup>8</sup> How the statutes accomplish this, and what specific areas are covered by the laws, varies by state.<sup>9</sup>

## \*515 A. The History of the Macks Creek Law

Enacted in 1995, the Macks Creek law had an interesting and almost funny beginning.<sup>10</sup> Since its inception, however, the law has been an enigma that has limited its use.<sup>11</sup>

### 1. The Original Macks Creek Law and Its Difficult Past

In 1995, the first version of the Macks Creek law took effect.<sup>12</sup> In the beginning, the law simply prohibited municipalities from receiving over forty-five percent of total annual revenue from fines for traffic violations.<sup>13</sup> After being pulled over in Macks Creek, Missouri, by the Macks Creek Police Department for his tires touching the white line along the shoulder of the road, Delbert Scott was understandably frustrated by the incident.<sup>14</sup> Unfortunately for the City of Macks Creek, Scott was a state representative.<sup>15</sup> As a result of the ticket, Scott wrote the law that would ultimately bring an end to the infamous “speed trap.”<sup>16</sup>

At its peak enforcement, the Macks Creek Police Department, while serving its population of 272 people, wrote an estimated 2,900 traffic tickets a year that resulted in 75% of its annual town revenue.<sup>17</sup> While apparently unrelated to the law being passed, the town went bankrupt three years later after an audit found that the town was in serious financial trouble.<sup>18</sup>

From its initial enactment, the law has morphed over time and has seen a reduction of the cap amount to thirty percent.<sup>19</sup> The cap amount also includes “court costs,” and there is an accounting procedure for municipalities that wish to challenge the numbers that are provided to the state revenue department.<sup>20</sup> In addition, excess money collected by a \*516 municipality is to be forwarded to the department of revenue.<sup>21</sup> The violations that count towards the cap amount also include “amended charges from any traffic violation,” and the scope of the law affects “traffic violations, including amended charges from any traffic violation, occurring within the city, town, village, or county.”<sup>22</sup> Further, an accounting of the percent of general operating revenue derived from the violations, as well as amended violations of that type, is to be sent to the state auditor in a comprehensive annual financial report.<sup>23</sup> Failure to provide this report results in the immediate suspension of the powers of the municipality to enforce traffic laws within the city.<sup>24</sup> Should a municipality fail to accurately or timely report the information, or not forward the excess money to the state, any of these failures would result in an immediate loss of jurisdiction of the municipal court on all traffic related charges until the requirements of the statute are met.<sup>25</sup>

Missouri has experienced a number of problems with the Macks Creek law.<sup>26</sup> One issue that caused problems for the statute was its initial prohibition on collecting over a certain percentage of fines from traffic violations.<sup>27</sup> Because the statutory language appeared to only cover fines from moving violations, nothing prevented a municipality from amending a moving violation to a nonmoving violation.<sup>28</sup> By making this amendment the municipality could possibly keep the fine amount without it counting towards the capped amount.<sup>29</sup> An amendment to the law that addressed this issue was not passed until 2013.<sup>30</sup>

Another problem with the statute was its initial failure to address the problem it set out to stop by ensuring compliance with the law.<sup>31</sup> The law for many years only prohibited receiving excessive fine amounts over the cap on “federal and state” roads.<sup>32</sup> This allowed municipalities to continue predatory ticketing practices on county and city roads without the fines received counting towards the cap.<sup>33</sup> Moreover, neither the municipalities nor any other entity were charged with keeping track of where the tickets \*517 were being written.<sup>34</sup> Without this information, the data did not exist to enforce the law.<sup>35</sup> Neither of these issues were fixed until an amendment was passed in 2013.<sup>36</sup>

Despite these changes, the law continues to be problematic to this day.<sup>37</sup> The law continues to confuse state authorities looking to prosecute municipalities violating the law because it's unclear who is supposed to prosecute violations.<sup>38</sup> There's even disagreements between the state and municipalities about how far removed a fine from a traffic violation can be counted towards the cap.<sup>39</sup>

## 2. *The Newly Proposed Version of The Macks Creek Law*

On December 1st, 2014, Senator Eric Schmitt pre-filled Senate Bill 5 in the Missouri State Senate that if enacted, would lower the percentage of money local governments in Missouri could collect from traffic violations as part of their annual budget.<sup>40</sup> The bill would require revenue from traffic violations exceeding 10% of the annual general operating revenue of the city to be sent to the director of the department of revenue.<sup>41</sup> This excess money would then be forwarded to the schools within the county in which the city is located.<sup>42</sup>

The proposed bill and enforcement of the current law have received widespread media coverage in the aftermath of the Michael Brown incident that occurred in August of 2014.<sup>43</sup> Some activists blame the ticketing practices of St. Louis area police departments for creating “hostile relationships” between the police and citizens.<sup>44</sup>

In October of 2014, a report by a non-profit group found that in 2013, the municipal courts of St. Louis and St. Louis County collected a total of \$61 million in fines and fees.<sup>45</sup> This accounted for 46% of all municipal \*518 fines and fees in Missouri, despite the city and county representing only 22% of the population of Missouri.<sup>46</sup> The report notes that, “on average, a municipal court in St. Louis County costs \$223,149 to operate yet brings in an average of \$711,506 in revenue from fines and fees each year, for an average net revenue of \$488,357.”<sup>47</sup>

In December of 2014, Missouri's Attorney General announced he was using the current Macks Creek law to sue thirteen St. Louis municipalities.<sup>48</sup> As demonstrated by the non-profit study's encompassing “fines and fees,” the issue of funding criminal justice systems is a broader issue than just revenue collected by traffic enforcement related practices.<sup>49</sup>

While lowering the percentage of money local governments could collect from traffic violations is a substantial change to the statute, other parts of the statute are unchanged or still up for debate.<sup>50</sup> In the current version of this bill, the penalty assessed to a jurisdiction that fails to comply with the requirements of the proposed law is unclear. However, since enforcement of this new bill is a goal of the legislation, the need for serious consequences for municipalities violating the law has been a point of discussion.<sup>51</sup>

## 3. *Ferguson Investigation and the Macks Creek Connection*

As the investigation into the Ferguson Police Department revealed, the citizens of Ferguson were unprotected from revenue generating practices of a police and court system that, according to United States Attorney General Eric Holder, “severely undermined the public trust,” and created a “tensely charged atmosphere, where people fe[lt] under assault, under siege.”<sup>52</sup> Many citizens viewed the police department as a “collection agency” that wrote tickets to generate money for the city through excessive fines and penalties for minor offenses.<sup>53</sup> For substantive proof of this, one need not look any further than the fact the City of Ferguson had “budgeted for, and achieved, significant increases in revenue from municipal code enforcement \*519 over the last several years, and these increases are projected to continue.”<sup>54</sup> This included in 2012 projecting revenues from fines and fees increasing “over 30%” from the previous year, only to achieve a higher final result.<sup>55</sup> To add injury to insult, the report further noted discussions between City of Ferguson officials in the city and police department that both were aware of the Macks Creek law.<sup>56</sup> The discussion in question cited trying to balance out revenues received from red light cameras and traffic enforcement on the highways in order to get revenue totals as “close as possible to the statutory limit of 30%.”<sup>57</sup> As recognized by the report, these discussions were had in order to develop enforcement “strategies and initiatives” that were not designed to better serve and protect its citizens, but to “raise more revenue.”<sup>58</sup>

In addition, the predatory ticketing practices in Ferguson extended beyond citations for speeding.<sup>59</sup> Examples of this are found throughout the report on Ferguson's fine and fee collection process, including the city ensuring that its fines for code violations, such as parking and “Weeds/Tall Grass” violations, were competitive with surrounding municipalities.<sup>60</sup> The fact that Ferguson's fines and fees were near the top of the list with surrounding communities was met with approval.<sup>61</sup> The report

further noted that the Ferguson city prosecutor had reviewed the city's "high volume offenses" and started recommending higher fines and fees instead of probation for non-compliance.<sup>62</sup> Although this recommendation was claimed to be due to a "large volume of non-compliance," the recommendation was actually emphasized as a way that the code enforcement system had "been honed to produce more revenue."<sup>63</sup>

Other examples demonstrate the extent of the cooperation between city branches to ensure increased revenues.<sup>64</sup> This includes the city prosecutor advising officers about ticketing people for each possible violation that arises out of a driving while intoxicated charge.<sup>65</sup> It was \*520 recommended that not only should the person be ticketed for the "DWI," but also for associated companion charges like "no seat belt," "no insurance" and failing to "maintain a single lane."<sup>66</sup> This practice was explained as being necessary to bring a proper resolution to all cases and for the city court "maintaining the correct volume for offenses occurring within the city."<sup>67</sup> However, it was found that "correct volume" had a meaning other than promoting public safety.<sup>68</sup> As discovered in City of Ferguson documents, "'correct volume' of law enforcement" was actually related to "revenue generation."<sup>69</sup> The city court clerk even went as far as writing to the city judge and Ferguson Police Chief to advise that the new city attorney was not recommending fines that were "high enough."<sup>70</sup> The case in question involved the charges of "Derelict Vehicle" and a "Failure to Comply" that resulted in \$76 in fines instead of the normally expected \$400.<sup>71</sup>

## B. Survey of Laws in Other States

Many states, including Arkansas, Oklahoma, New York, and Texas, have passed laws similar to Missouri's Macks Creek law.<sup>72</sup> Although they accomplish the same goal as the Macks Creek law, there is wide variation among the states in the way each state determines a problem exists, how the enforcement of the statute works, and what violations are counted towards the various caps.<sup>73</sup>

### 1. The Process to Determine a Problem Exists

Reviewing the laws of the selected states, their laws appear to break down into groups that either allow municipalities to self-report to the state and those where elected officials request an investigation into a municipality's practices.<sup>74</sup> As an example of a self-reporting process, New York's statute provides that funds in excess of the set amount to be \*521 collected "shall be the property of the state and shall be paid into the general fund of the state treasury."<sup>75</sup>

In states where an investigation can be requested, Arkansas' statute, for example, states that by request of the prosecuting attorney of any judicial district where an "affected municipality is located," the head of the Arkansas State Police is "authorized to investigate and determine whether any municipality is abusing police power."<sup>76</sup> The requirements of the statute further specify that the identified municipality hand over certified records of all monitored sources and the percentage of citations written for "ten miles per hour [] or less than the posted speed."<sup>77</sup> Similarly, in Oklahoma, a district attorney in the jurisdiction in question, by vote of the county commissioners, or various state officials may request the head of the Commissioner of Public Safety to investigate "traffic-related enforcement practices of a municipal law enforcement agency" that patrols portions of federally aided highways, the state highway system, or both road systems that are located within an identified municipality.<sup>78</sup> The identified official must identify the municipality and state their belief concerning the prohibited enforcement practices that are prohibited by the statute.<sup>79</sup>

### 2. What Enforcement Sources are Monitored

The statutes of the states that have been surveyed are primarily concerned with the potential abuses of the criminal justice system through traffic enforcement related revenue generation. Every one of the states surveyed contains a provision pertaining to the number of traffic related citations issued as counting towards the capped amount.<sup>80</sup> However, the statutes vary as to what specific traffic related offenses will be counted towards the set cap amount.

In Arkansas, the municipality under investigation must submit records “of all fines, costs, citations, municipal expenditures, and percentage of citations that are written for ten miles per hour ... or less than the posted speed.”<sup>81</sup> New York's statute states that “All fines penalties and forfeitures for violations ... which relate to maximum speed limits ... and all bail \*522 forfeited by the non-appearance of defendants charged with such violations” are subject to enforcement of the statute.<sup>82</sup>

In Oklahoma, the relevant area of enforcement for the investigation started by the Commissioner of Public Safety is “traffic-related enforcement practices” of a suspect municipality.<sup>83</sup> In Texas, the statutory language identifies a wide range of potential violations that will be counted against a municipality's cap.<sup>84</sup>

### ***3. Triggers and Penalties for Enforcement by the Statutes***

In Arkansas, the Director of the Department of the Arkansas State Police can presume a municipality is abusing police power if it is found that the amount of revenue produced by fines and costs from traffic offenses in violation of state or local ordinance that occurred on the municipality's highways “exceeds thirty percent ... of the affected municipality's total expenditures, less capital expenditures and debt service, in the preceding year ....”<sup>85</sup> Another presumption of an abuse of police power can be made if more than fifty percent of the summons written for speeding violations are written for violations that are ten miles per hour or less than the posted limit.<sup>86</sup> Regardless of these presumptions, once the investigation by the director is complete, the director's report is forwarded to the “prosecuting attorney of the affected municipality” to make a determination of whether the municipality abused its police power.<sup>87</sup> The prosecuting attorney has the power to issue sanctions that include ordering the municipality's police department to cease patrolling “any or all” of its highways, or ordering that some or all of future fines and court costs received from traffic violations are paid to a county fund for schools.<sup>88</sup> To ensure compliance, the statute also provides that any police officer that violates those sanctions “constitute[s] a Class A misdemeanor for each citation or summons issued or misdemeanor arrest made in violation of the ... order.”<sup>89</sup>

According to New York's statute, all “fines, penalties and forfeitures” for violations relating to speed limits must be sent to the state comptroller by the court or similar entity responsible for collecting the money.<sup>90</sup> Whenever these monies “in any year commencing July first shall aggregate \*523 in excess of five dollars for each inhabitant of the [municipality], according to the last preceding federal census, such excess shall be the property of the state.”<sup>91</sup> Essentially, by requiring these fines to be sent to the state comptroller to begin with, the municipality cannot violate the statute by collecting too much revenue because the money is sent to the state first.

In Oklahoma, the Commissioner of Public Safety for the Oklahoma Department of Safety receives a request from one of the identified officials with their stated belief that enforcement practices within a municipality are being done “for the purpose of generating more than fifty percent ... of the revenue needed for the operation of the municipality.”<sup>92</sup> The commissioner's investigation includes looking into the enforcement practices of the municipal agency in question, and also the “receipts and expenditures of the municipality.”<sup>93</sup> Once the investigation is completed, the commissioner's report is forwarded to the attorney general for a determination of whether the enforcement practices of the municipality have been conducted as stated in the request by the authorized official.<sup>94</sup> If the attorney general determines the enforcement by the municipality is being conducted in that manner, the attorney general advises the commissioner, who then designates the municipality a “special traffic-related enforcement” area for a time to be determined by the commissioner.<sup>95</sup> The Department of Public Safety is to “adopt rules to uniformly implement the procedures for initiating, investigating and reporting to the Attorney General the results” of the requested investigation, as well as for determining the criteria to ensure uniform suspension lengths for municipalities that violate the statute.<sup>96</sup>

### **C. Notable Illinois Events**

While there has not been a seismic event like the Michael Brown incident in Illinois that has spurred a discussion about Macks Creek legislation, the criminal justice system of Illinois has nevertheless made headlines recently.<sup>97</sup>

### **\*524 1. Call to Overhaul the Illinois Criminal Justice System**

In February 2015, Governor Bruce Rauner called for an overhaul of the criminal justice system in Illinois.<sup>98</sup> The Governor appointed a panel to examine sentencing laws, diversion efforts, and early release programs in order to reduce the number of adult and juvenile offenders sent to correctional facilities over the next decade.<sup>99</sup> The goals are focused both on reducing the amount of money the state spends on correctional facilities and associated costs, as well as ensuring people get a second chance to avoid returning to prison.<sup>100</sup> Governor Rauner has further indicated that he would like comprehensive change in the system, and that experts and interest groups alike should be included in this endeavor to ensure the process is organized.<sup>101</sup>

### **2. Illinois Controversies**

Despite the lack of headlines involving a controversy about abusive speeding ticket practices existing in Illinois, practices of Illinois municipalities have also made the news.<sup>102</sup>

#### **a. Chicago Red Light Controversy**

According to various news reports, the City of Chicago's red light camera enforcement program has been a source of frequent problems.<sup>103</sup> These problems include allegations that failed oversight of the program has led to the unfair ticketing of thousands of drivers, that the supposed safety effects of the cameras' installation are not scientifically supported, and that key officials involved in the program have been indicted or plead guilty to bribery charges.<sup>104</sup> In addition, it was discovered that Chicago's yellow light times were "dangerously short and out of step with other major cities," which conflicts with research and experts that claim longer yellow light **\*525** times are significant in reducing crashes and red light violations.<sup>105</sup> It was further discovered that the threshold for issuing red light tickets last year was lowered last year so that yellow light times were below federal minimum times, which resulted in an additional 77,000 citations and \$8 million in revenue.<sup>106</sup> After inquiries about this were made to the mayor of Chicago, the practice was suspended, but none of the \$8 million was refunded to the cited drivers.<sup>107</sup>

Holding the distinction of having the most red light cameras of any city, in 2014 the City of Chicago collected \$70 million in fines from using the device.<sup>108</sup> Since the program's start in 2002, the city has generated over \$500 million in revenue.<sup>109</sup> According to the proposed budget figures for 2013, the city expected to generate \$330.6 million in revenue from fines, forfeitures and penalties, which included money collected from red light cameras.<sup>110</sup> This was an increase in that same category from the 2012 year-end estimate amount, which estimated the collected amount for 2012 at \$285.6 million.<sup>111</sup> According to the proposed budget figures for 2014, the city expected another increase, with an expected revenue generation of \$413.2 million.<sup>112</sup> The 2014 amount was an increase from the 2013 year-end estimate of the collected fines of \$337.2 million.<sup>113</sup> However, the report noted that red light enforcement revenues were expected to decrease due to the reduction of the number of cameras operated in 2014.<sup>114</sup> Reviewing the 2015 budget recommendations, the city projected a collection for 2015 of \$369.5 million.<sup>115</sup> It also noted a revised expected revenue for 2014 from this source being \$414.6 million.<sup>116</sup>

**\*526** According to State Representative David McSweeney, "It's very clear that these cameras are a way for local governments to raise money."<sup>117</sup> Hoping to prevent this practice, Representative McSweeney has introduced legislation to outlaw traffic enforcement cameras throughout the state in January of 2015.<sup>118</sup>

#### **b. Driving Under the Influence Scandal**

In 2014, an investigative report found that prosecutors in the Chicago suburbs of DuPage County were "the most prolific at working out plea deals" for people arrested for Driving Under the Influence (DUI) that allowed arrestees to pay higher fines to prevent their driver's licenses from being taken away.<sup>119</sup> This practice took place despite the DUI charge mandating a license loss for the arrestee, and included arrestees with prior DUI arrests on their records.<sup>120</sup>



Under Illinois law, the suspension of a license pursuant to a DUI arrest can be overturned by a judge at a hearing if a defendant proves the police mishandled the arrest.<sup>121</sup> When the plea deal is made in these cases, the prosecutor essentially lets the defendant prevail at this hearing so that the defendant may keep their license.<sup>122</sup>

The statistics demonstrated that cities charged more in fines and fees for DUI's than county prosecutors did, with drivers that received the plea deals paying on average twelve percent more than those people who lost their licenses.<sup>123</sup> The average fines and fees for a misdemeanor DUI handled by a county prosecutor was \$1,700.<sup>124</sup> The average fines and fees for this same DUI if handled by a city in DuPage County was \$2,900.<sup>125</sup> City prosecutors were also three times as likely as a county prosecutor to allow a person charged with DUI to continue driving.<sup>126</sup>

The report also examined how prosecutions of DUI cases have been handled differently over time and based on the agency prosecuting the defendant.<sup>127</sup> In an illustrative example, the report compared the results \*527 from two separate DUI arrests of the same man that occurred years apart in DuPage County, handled by different types of prosecutors.<sup>128</sup> In 1998, the man was arrested for DUI in Lisle, Illinois, after his blood alcohol level was fifty percent higher than the legal limit.<sup>129</sup> After pleading guilty to several charges, including DUI, brought by county prosecutors, he received special probation and paid \$635 in fines and fees.<sup>130</sup> In 2011, the man was arrested in Downers Grove and charged by city prosecutors for DUI after his blood alcohol level was seventy-five percent higher than the legal limit.<sup>131</sup> After he pled guilty to reckless driving, he kept his license and paid fines and fees that, despite adjusting for inflation, were four times the 1998 amount.<sup>132</sup>

At this point, despite one municipality in DuPage County stopping their practice of cutting plea deals for DUI's due to the practice being deemed "bad public policy," other officials are hesitant to stop the practice.<sup>133</sup> The concern about this practice, as noted by a representative for an advocacy group against drunk drivers, is that the aggressive enforcement of DUI laws is not a substitute for the proper prosecution of those charges.<sup>134</sup> The advocate, observing the potential financial incentive for the plea deal, raised the possible solution of preventing the municipalities from prosecuting these cases.<sup>135</sup>

In March 2015, a state task force meeting was held in response to the findings of the above report.<sup>136</sup> A proposal from the Illinois State Bar Association would end the mandatory suspension of thirty days and would allow the defendant to continue driving if they used an ignition interlock device that tests the driver of a vehicle for alcohol on their breath.<sup>137</sup> The proponents of the latest proposal argue that it would reduce the incentive to allow the pay-to-drive plea deals while making the public safer.<sup>138</sup>

### III. ANALYSIS

Because Missouri had a law that could have prevented some of the issues that apparently led to the Ferguson reaction to the Michael Brown \*528 incident, Illinois would be wise to learn from Missouri's experiences.<sup>139</sup> Based on those experiences, and keeping in mind other states' laws that address predatory behavior by municipalities, Illinois could proactively pass a law that could prevent the issues that plagued Missouri before Illinois experiences similar problems. If being proactive is not enough reason for the Illinois legislature to act, the legislature should review recent events within the state to see that it may already have reasons to act now.

#### A. The Writing is On the Wall for Illinois to Pass Macks Creek Legislation

Although the Governor did not raise the issue of the panel examining municipal courts, ticketing practices, or other revenue generating schemes within the state, the spirit behind his call for reform provides the perfect opportunity to be both proactive and sensible in this area. By passing Macks Creek legislation, the State of Illinois could achieve two worthy results by passing one act. The Macks Creek legislation could be a part of comprehensive system reform, while simultaneously ensuring that justice is fairly administered by preventing municipalities from acting otherwise. Without even delving further into an examination of whether a Macks Creek law is needed in Illinois, the potential problems the panel could prevent by passing legislation would serve as a worthy goal even absent the abuses seen in the St. Louis metropolitan area.

If proactively passing legislation is not enough of a reason for the legislature to act, recognizing some of the startling similarities between the City of Ferguson's practices and the practices of some municipalities in Illinois should be. From 2012 to 2015, the anticipated revenue from fines and fees the City of Chicago received and budgeted for increased by \$129 million.<sup>140</sup> From the year-end collected fine estimates of 2012 and 2013, this represented an increase of eighteen percent.<sup>141</sup> From these same year-end figures from 2013 and 2014, this represented a 22.9% increase.<sup>142</sup> The \*529 total percentage increase from 2012 to 2014 was forty-five percent.<sup>143</sup> It should also be noted that according to the City of Chicago for the year 2014, red light camera collections were expected to dip due to the reduction in the amount of cameras.<sup>144</sup> However, this 2014 expectation suspiciously coincides with the lowering of the yellow light times that netted the city \$8 million. While not the budgeted 30% increase for fines over one year observed in Ferguson, the percentages budgeted for and the shell game apparently played with the red light cameras and yellow light times in the City of Chicago seem to demonstrate an equal thirst for revenue generation, with an added bit of trickery. Additionally, the municipalities within DuPage County that allow DUI drivers to keep their licenses by paying a higher fine is strikingly similar to the City of Ferguson prosecutor recommending higher fines and fees instead of probation for non-compliance.

There are other instances where it appears in Illinois some municipalities have worse practices than the City of Ferguson. This is evident in Chicago's yellow light times being below federal guidelines and resulting in increased revenues for the city despite safety concerns.<sup>145</sup> This is also evident with municipal prosecutors in DuPage County essentially circumventing DUI laws by purposely losing a court hearing to allow offenders to keep their licenses after they have paid a higher fine and fee to do so.<sup>146</sup> In the cases above, the municipalities presumably acted for the financial incentive while citizens' safety was put at risk. Drunk drivers that should have been off the road were allowed to keep their license and drive in exchange for money; and drivers, both innocent and guilty of running red lights, were equally subjected to traffic controls that were below federal guidelines and did not actually increase safety.<sup>147</sup> In these instances, these municipalities seemed to be seeking revenue like the City of Ferguson. Unlike the City of Ferguson, the Illinois municipalities were potentially placing citizens' safety at risk while generating this revenue.

### **\*530 B. The Macks Creek Law Was Doomed From the Start, Other States' Statutes Were Not**

When Delbert Scott drafted the Macks Creek law he was responding to what he believed was an abuse of power by municipalities. While his intent was in the right place, the law in practice has proved problematic. However, these problems are beneficial for the purpose of learning what not to do when drafting future legislation. When compared with other states' efforts, the indications that the Macks Creek law would fail are evident and should be learned from.

#### ***1. Ensure Someone Protects the Public and Keeps Municipalities Honest***

As discussed previously, nowhere in the Macks Creek statute does it identify who is supposed to prosecute or deal with municipalities that are in violation of the statute.<sup>148</sup> Just as ominous is the lack of oversight from the state or any other entity ensuring the municipalities comply with the law.<sup>149</sup> While a comprehensive report is supposed to be sent to the auditor annually, there have been demonstrated problems with this approach. First, there are disagreements between the state and the municipalities about what actually counts towards the cap limit.<sup>150</sup> Second, absent the scrutiny on the St. Louis County court system, nobody appeared to be monitoring whether these municipalities were in compliance. Given the problem with the disputed source funds, it is possible this effort would have been pointless anyway.

When comparing Macks Creek with the other states' statutes that were surveyed, it is obvious that ensuring the law was enforced was not a priority. Both Oklahoma and Arkansas designate elected officials to be responsible for beginning investigations into municipalities believed to be abusing enforcement powers.<sup>151</sup> This approach has several benefits. First, the officials are accountable to the public. Second, an investigation can be opened at any time by one of these officials based on their own initiative, or by a citizen directing a complaint to one of these officials.

The public officials involved in other states' statutes have important roles beyond the beginning of the investigation. In Oklahoma and Arkansas, identified public officials are responsible for ensuring a specified \*531 punishment for municipalities that



violate the statute.<sup>152</sup> Again, because public officials are identified as being responsible for ensuring the law is followed, these people can be held accountable to the citizens and can avoid handling their duties only at their own political peril. This accountability is found nowhere in the Macks Creek law.

## ***2. Make Sure the Investigation Process Into Municipalities Promotes Enforcement***

Comparing the sources of revenue monitored by the Macks Creek statute with other states' statutes, there is another revelation. In Arkansas, the statute at least identifies certain speeding tickets that would appear at face value to have very little to do with anything other than revenue generation.<sup>153</sup> In Oklahoma and Texas, the practices that the investigation can look into encompass essentially all traffic related enforcement practices based on the portions of traffic code that are covered.<sup>154</sup> The benefit of what Oklahoma and Texas have done is that a wide amount of enforcement practices can be investigated, which results in a reactive and proactive benefit from the statute. Not only will a municipality have to answer for citations it has issued, but a municipality cannot just find another traffic enforcement practice not covered by the law to substitute for a speeding violation.

Another notable difference between the Macks Creek law and other statutes is the lack of any identified process involved in an investigation into a municipality's practices. This is an important part of a statute because it goes hand in hand with ensuring enforcement actions are taken. As an example, this includes the specific records that are examined when an investigation begins.<sup>155</sup> When the steps to determine whether a municipality is in violation of the law are specified, the roadblocks to determining violations and completing investigations are minimized. This allows for an entity tasked with doling out punishment to a violating municipality to swiftly act and bring prohibited practices to an end.

### **\*532 C. The Illinois Legislature Should Consider These Objectives When Drafting New Legislation**

Based on the foregoing analysis, were Illinois to choose to write Macks Creek legislation, it would be able to improve its law based upon the shortcomings of Missouri's law. Although Missouri's law was not initially meant to prevent revenue generating practices other than those associated with traffic violations, it would seem foolish and even futile at this point to limit proposed legislation to those areas. Based on previous examples, several objectives should be kept in mind by the legislature when writing this future law.

#### ***1. Learn From History, Make a Bold Statement and Proactively Prevent Future Abuses***

The process to write new legislation in Missouri has demonstrated that preventing predatory practices that create tension between the government and its citizens is something that anyone, regardless of their political affiliation, can support.<sup>156</sup> Even people with significant ties to the police recognize and agree that law enforcement should not be in the business of revenue collection for their cities.<sup>157</sup> As recognized by one politician, to help police officers have more positive interactions with the public, they should not be told to be revenue collectors for the community.<sup>158</sup> As further demonstrated by the case of the City of Ferguson, the dangers to a community that is not protected can be catastrophic.<sup>159</sup> With so much support from a wide spectrum of people that have dealt with these consequences, Illinois legislators could cite their desire to not go down that same road to learn the dangers of predatory municipalities. Instead, this history could be used as a rallying cry for the need for legislation in Illinois.

Once the idea of generating legislation in Illinois has been broached, the legislature should not be shy about stating its goal for the legislation. A good way to start this is by naming the statute in a way that conveys its **\*533** intent.<sup>160</sup> The statute could further contain a preamble or short statement to the effect that the legislature is addressing the issue of predatory ticketing practices in an effort to improve law enforcement relations with the community. It could even go as far as citing the recent events in Ferguson as the catalyst for proactively passing legislation that aims to prevent a financial incentive playing any role in the decision of law enforcement. The objective from all of these steps should be to ensure that no one that is tasked with enforcing the law should be able to claim ignorance about the importance of the statute until bad things happen.<sup>161</sup>

#### ***2. Expand the Law's Scope, Reduce the Financial Incentive for Enforcement***

For any law to fully prevent predatory practices by municipalities, the law must extend beyond prohibiting a percentage of revenue generated solely through “traffic violations.”<sup>162</sup> A law that purports to protect citizens from revenue generating law enforcement practices must impress upon both governments and citizens alike the seriousness of the issue and the lengths to which the state will go to protect the people. This should mean not having a law that prevents only revenue from traffic enforcement while turning a blind eye to other enforcement actions that could also be abused. As seen by the example in Ferguson, the city turned to code enforcement and other fines to generate money.<sup>163</sup> Because of this behavior, any new law should seek to anticipate other potential areas of abuse, like attaching fines and fees to criminal charges.<sup>164</sup>

When thinking about removing the financial incentive, the idea of setting a cap limit, at first blush, sounds like a promising idea.<sup>165</sup> As discovered in the investigation into the practices of the City of Ferguson, having this cap amount may instead turn into a goal for a municipality to \*534 achieve.<sup>166</sup> Put another way, all the cap promotes is not going over the identified amount. It does nothing to promote staying lower than the cap. The municipality may come to view 30%, or whatever percentage is decided, as an amount to be relied on receiving every year through these practices.<sup>167</sup> Instead, limiting the total amount that may be kept per violation and tying that amount to whatever the population of the municipality is may be more effective.<sup>168</sup> This would also involve deciding on some place to forward the excess money that would be collected so that the municipal organization itself does not benefit.<sup>169</sup> This way, the process ensures the financial incentive is low, and the decision on the total amount that can be kept is out of the hands of the municipality, or even the state.

### 3. *Ensure Compliance Through Procedures*

One of the biggest failures of the Macks Creek law has been the number of demonstrated statutory failures that prevented the law from being enforced.<sup>170</sup> Although it is stating the obvious, these failures showed that even the law with the best of intentions means nothing if the procedures for enforcement are unclear.<sup>171</sup>

If the potentially prohibited practice of revenue generation through law enforcement means should extend beyond traffic enforcement, the drafters of the statute should clearly lay out all of the possible sources of revenue they intend to cover. The statute should not only identify all fines and costs from municipal code enforcement, traffic, and criminal violations, but associated charges like failing to appear or associated bail forfeitures stemming from those charges should also be specified.<sup>172</sup> Allowing any ambiguity in the law about these areas or what is associated with the charges could be a potential source of non-compliance.<sup>173</sup> Moreover, it should be clearly specified who should be responsible for tracking the type of violation and the associated fine and cost amounts to ensure that both the \*535 municipality and the state can ensure any excess funds beyond the set limit is being sent where it should be.<sup>174</sup>




Procedures should also be set up involving more safeguards to ensure compliance. This should include having yearly reports sent by the cities to the state documenting all amounts of money received from these areas.<sup>175</sup> Most importantly, it should be plainly spelled out who conducts an investigation into municipalities suspected of non-compliance, and who is responsible for prosecuting or punishing a municipality that is out of compliance.<sup>176</sup> Given that the goal of the legislation is to protect the public, including provisions for elected officials that are responsive to community concerns that can trigger an investigation could also provide a safeguard for any administrative lapse.<sup>177</sup>


## IV. CONCLUSION

The spirit of the Macks Creek law is in the right place. The letter of the Macks Creek law failed that spirit. The law was in the right place, at the right time, to prevent some of the issues that led to the frustration in the Ferguson community. Learning from how the law failed to prevent these issues, despite its apparent readiness to prevent them, could prove to be a positive result to come from a catastrophe. The State of Illinois should be the state that learns from that failure and should proactively pass legislation to prevent predatory municipalities before experiencing similar consequences. From the examples discussed, it would appear already that there are predatory practices conducted in Illinois that a Macks Creek law, if expanded and improved, could stop. Any future legislation should anticipate behaviors by municipalities to circumvent this legislation that could thwart its success by extending its scope beyond traffic violations. The ultimate goal of passing an improved Macks Creek law should

be to ensure justice is done only for justice's sake and to prevent a yet unknown scheme from affecting an Illinois community. The Illinois legislature should remove all nefarious financial incentive from enforcing municipal \*536 violations solely to generate revenue and proactively ensure positive relations between communities and law enforcement for years to come.

### Footnotes

- a1 Brian D. Scott is a 2016 graduate of the Southern Illinois University School of Law, and an Associate at Barmann, Bohlen & Jacobi, P.C. in Kankakee, IL. He thanks his faculty adviser Professor William A. Schroeder for his edits and feedback. He would like to thank his wife, Liz, and their daughter, Eve, for their love and support while writing this Comment.
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- 4 *See*  MO. REV. STAT. § 302.341(2014).
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- 21 *Id.*
- 22 *Id.*
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- 24 *Id.*
- 25 *Id.*
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- 59 Deere et al., *supra* note 52.
- 60 FERGUSON REPORT, *supra* note 54, at 10.
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- 67 *Id.*
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- 70 *Id.* at 14-15.







- 71 *Id.*
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- 74 Compare  N.Y. VEH. & TRAF. LAW § 1803 (self-reporting), and TEX. TRANSP. CODE ANN. § 542.402 (self-reporting), with ARK. CODE ANN. § 12-8-404 (requiring elected official to start investigation), and OKLA. STAT. tit. 47, § 2-117 (requiring elected official to start investigation).
- 75  N.Y. VEH. & TRAF. LAW § 1803(e)(5).
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- 108 See Op-Ed., *Chicago's Red Light Rip-Off*, WASH. TIMES, Mar. 11, 2015, <http://www.washingtontimes.com/news/2015/mar/11/editorial-chicagos-red-light-camera-rip-off/>.
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- 141 *Compare* 2014 CHICAGO BUDGET, *supra* note 112, at 12 (estimating the year-end collection of fines at \$337.2 million), *with* 2013 CHICAGO BUDGET, *supra* note 110, at 14 (estimating the year-end collection of fines at \$285.6 million).
- 142 *Compare* 2015 BUDGET RECOMMENDATIONS, *supra* note 115, at 1 (funding from fines collected \$414.6 million), *with* 2014 CHICAGO BUDGET, *supra* note 112, at 12 (estimating the year-end collection of fines at \$337.2 million).
- 143 This percentage was calculated by using the expected fine revenues collected in 2012 of \$285.6 million subtracted from the year-end revenues collected in 2014 of \$414.6 million, then divided by the same 2012 fine revenues.
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- 163 FERGUSON REPORT, *supra* note 54, at 14-15.
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- 167 *See id.*
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- 169 *See*  MO. REV. STAT. § 302.341(2014) (sending excess money to county fund for schools);  N.Y. VEH. & TRAF. LAW § 1803(e)(5) (sending excess money to state).
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- 172 *See*  N.Y. VEH. & TRAF. LAW § 1803(e)(5).
- 173 *See* Mann et al., *supra* note 39.
- 174 *See* Frankel, *supra* note 10.
- 175 *See* Mann et al., *supra* note 39 (discussing that until change in law, municipalities were not forced to account for excess revenue from fines to the state).
- 176 *See* Rosenbaum, *supra* note 1 (discussing confusion about who prosecutes violations of the law); OKLA. STAT. tit. 47, § 2-117(E)(1)(a)-(e) (2013) (who investigates alleged violations of statute);  ARK. CODE ANN. § 12-8-403 (2014) (identifying what the potential penalties of non-compliance are).
- 177  ARK. CODE ANN. § 12-8-403(a)(1)-(2)(A) (identifying the district attorney in the jurisdiction of alleged violating municipality as someone who can trigger and investigation); OKLA. STAT. tit. 47, § 2-117(e)(3) (identifying several elected officials that may trigger an investigation).

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