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Cover Page Footnote

I would like to thank my grandfather, a former County Court judge in Ohio, my father, a mayor's court judge in Ohio, and my mother, a former juvenile court magistrate in Ohio, for inspiration in choosing this topic. I would also like to thank my fiancé Robyn for her help while writing this comment, as well as her love and support in my everyday life.

NOTHING BUT TROUBLE: THE OHIO LEGISLATURE'S FAILED ATTEMPTS TO ABOLISH MAYOR'S COURTS

*Paul Revelson**

I. INTRODUCTION

In the movie *Nothing but Trouble*, Chevy Chase and Demi Moore are caught speeding in a small town in the middle of nowhere. Instead of paying a fine and going on their merry way, the two are imprisoned by a corrupt judge in a crooked court.¹ Due to movies like *Nothing but Trouble*, the public often has a nasty view of local court systems. Unfortunately, such a perception has found its way to Ohio. Recently, the Ohio legislature has attempted through legislation to rid Ohio of its own alleged *Nothing but Trouble* court: the mayor's court.² Since its creation in the mid-nineteenth century, the mayor's court has thrived in small communities all across Ohio. Through these years, the mayor's court has been greatly restricted by both statutory and common law. As a result, the mayor's court has withstood numerous changes that have restricted much of its authority. However, recent attempts by the Ohio General Assembly have gone one extreme step further by attempting to completely rid the Ohio court system of all mayor's courts.³ While the mayor's court may be flawed, this Comment will ultimately demonstrate that the mayor's court is an important part of the Ohio court system, and the attempted legislation to abolish mayor's courts deserves the label of *Nothing but Trouble*.

To further understand the impact of the attempt to abolish mayor's courts in Ohio, it is important to first become acquainted with the background of mayor's courts. Section II of this Comment explores the creation of mayor's courts in Ohio, as well as their development in the context of the evolving law. Section II will also discuss the recent attempts by the Ohio legislature to abolish mayor's courts.

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¹ *NOTHING BUT TROUBLE* (Warner Bros. 1991).

² The mayor's court is currently regulated by Ohio Revised Code chapter 1905. OHIO REV. CODE ANN. §§ 1905.01-1905.37 (West 2005). For an in-depth description of the mayor's court today, see *infra* Part II.B.

³ The 127th Ohio General Assembly, whose term of office spanned 2007 and 2008, tried on three separate occasions to either abolish or significantly limit the mayor's court in Ohio. All three attempts failed to be enacted into law. See *infra* Part II.E.

Section III then explains the supposed reasoning for the abolishment of mayor's courts, followed by the havoc that the numerous bills would have wreaked on the Ohio court system. Specifically, this section will dispel the myths surrounding mayor's courts, explain their economic importance for communities in Ohio, and demonstrate their significance in the Ohio court system. Lastly, the final section will discuss alternative options for the General Assembly to consider that might satisfy all parties' interests.

II. BACKGROUND

A. History of the Lower Court System in Ohio

Beginning with the Northwest Ordinance of 1787, the inferior court system⁴ in Ohio has undergone repeated changes. Before Ohio's entrance into the Union in 1803, Ohio's court system consisted of a territorial governor, a secretary, and three judges, all of whom were appointed by Congress.⁵ The governor and the judges created common pleas and justice of the peace courts in 1788.⁶ Originally, common pleas courts could only hear civil cases, and justice of the peace courts could only hear criminal cases.⁷ The passage of the Ohio Constitution of 1803 changed the judicial system significantly, creating more structure and the establishment of the Ohio Supreme Court.⁸ Article III, section 1 stated "the judicial power of the state, both as to matters of law, and equity, shall be vested in a supreme court, in courts of common pleas for each county, in justice of the peace, and in such other courts as the legislature may, from time to time, establish."⁹ With the passage of Article III, justice of the peace courts had jurisdiction over both criminal and civil matters.¹⁰ Soon after, the first

⁴ The inferior court system consists of all courts below the Ohio Supreme Court. See OHIO CONST. art. IV, § 1. Currently in Ohio, examples of courts within the inferior court system include county courts, municipal courts, and common pleas courts. See *id.*

⁵ 1 CARRINGTON T. MARSHALL, A HISTORY OF THE COURTS AND LAWYERS OF OHIO 181 (1934).

⁶ *Id.* at 183.

⁷ *Id.* Both of these local courts personified early Ohio lawmaker's emphasis for having local matters, especially criminal and civil cases, adjudicated on the local level. Andrew R. L. Cayton, *Law and Authority in the Northwest Territory*, in 1 THE HISTORY OF OHIO LAW 22 (Michael Les Benedict & John F. Winkler eds., 2004). Further, early Ohio citizens desired a form of government that would grant them the authority to resolve local matters without the interference of state or national governments. *Id.* at 27.

⁸ MARSHALL, *supra* note 5, at 186-87.

⁹ *Id.* at 186. The Ohio Supreme Court in 1803 consisted of three judges "who were required to hold court once a year in each county in the State." *Id.* The Supreme Court had original jurisdiction over civil cases exceeding one-thousand dollars in controversy and all criminal cases outside of the justice of the peace courts' jurisdiction. *Id.* Additionally, the Supreme Court had appellate jurisdiction for the common pleas courts. *Id.* at 186-87. Supreme Court Justices served seven-year terms "if so long they behave well." *Id.* at 186.

¹⁰ *Id.* at 187. A justice of the peace court, established in each township in Ohio, had the jurisdiction to "act as conservators of the peace" with criminal jurisdiction ending at "fighting" and civil jurisdiction limited to matters under thirty-five dollars. *Id.* Should a case fall outside of the justice's jurisdiction, the Court of Common Pleas would hear the case, as well as any appeals from the justice of the peace court. *Id.*

mayor's court was in Cincinnati, Ohio.¹¹

While the mayor's court did not receive official recognition until 1851, a similar form of court originated in Cincinnati in 1815.¹² In 1815, with the incorporation of Cincinnati as a city came the authority of the mayor to be the conservator of peace.¹³ His duties were identical to those of a justice of the peace at the time, but were limited to the boundaries of Cincinnati.¹⁴ In 1819, the mayor's powers were better defined and extended.¹⁵ Upon the growth of urban areas all around Ohio, the Ohio legislature in 1838 authorized mayors of municipal corporations to hold the same powers as the justice of the peace within their municipalities.¹⁶

In 1851, in an effort to reform the judicial system, the Ohio legislature passed a new Constitution.¹⁷ The new Constitution added a new appellate court between the common pleas court and Supreme Court and changed the power of the Supreme Court.¹⁸ The 1851 Constitution also codified a new form of mayor's court.¹⁹ Mayor's courts now only could be created in "second class" cities with populations between five thousand and twenty thousand, and in incorporated villages with populations less than five thousand.²⁰ Further, the Constitution expanded the mayor's courts' jurisdiction to all violations of city or village ordinances and all criminal and civil matters that the justice of peace could hear.²¹ The 1851 Constitution also allowed the establishment of police courts, which heard cases in cities

¹¹ 2 CARRINGTON T. MARSHALL, A HISTORY OF THE COURTS AND LAWYERS OF OHIO 505 (1934).

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* In 1815, justice of the peace courts had criminal jurisdiction over "arrests, preliminary hearings, recognizances, [and] affrays." MARSHALL, *supra* note 5, at 189. Justice of the peace courts had civil jurisdiction up to seventy dollars, and in cases of voluntary confessions of judgment, up to two-hundred dollars. *Id.* at 190.

¹⁵ MARSHALL, *supra* note 11, at 505. After this date, the mayor in Cincinnati adjudicated, along with three aldermen, criminals who had violated Ohio or municipal laws that did not mandate jail sentences. *Id.*

¹⁶ *Id.* at 507. In 1838, the justice of the peace courts retained the same jurisdiction as they did in 1815, except their civil jurisdiction increased to one-hundred dollars. MARSHALL, *supra* note 5, at 191.

¹⁷ MARSHALL, *supra* note 5, at 194. The Supreme Court had fallen behind significantly due to its wide original and appellate jurisdiction. Barbara A. Terzian, *Ohio's Constitutional Conventions and Constitutions*, in 1 THE HISTORY OF OHIO LAW 50 (Michael Les Benedict & John F. Winkler eds., 2004). In addition, the requirement that the Supreme Court hold court in each county once a year had grown extremely difficult, as Ohio had eighty-four counties by the late 1940s. *Id.* at 51.

¹⁸ MARSHALL, *supra* note 5, at 195. After the 1851 constitutional amendments, the Supreme Court had original jurisdiction in "*quo warranto*, *mandamus*, *habeas corpus*, and *procedendo*, and such appellate jurisdiction as might be provided by law." *Id.* The new appellate court, named the District Court, consisted of one Supreme Court justice and several common pleas courts judges. *Id.* Originally, there were nine District Courts, each having jurisdiction over several counties with the exception of Hamilton County, which had its own district. Terzian, *supra* note 17, at 59.

¹⁹ MARSHALL, *supra* note 5, at 198.

²⁰ *Id.*

²¹ *Id.* The justice of the peace's jurisdiction had changed since 1803, as these courts could only hear cases involving "arrests; preliminary hearings, . . . [and] affrays" for criminal matters and "in certain cases up to \$100.00; voluntary confession up to \$200.00" for civil matters. *Id.* at 191.

with populations over twenty thousand.²²

The inferior court system did not undergo significant changes again until the 1910s with the creation and growth of the municipal court.²³ Beginning in 1910 in Cleveland, Ohio, municipal courts replaced most police courts.²⁴ Over time, municipal courts also limited the power of justice of the peace courts.²⁵ By 1951, with the passage of a “uniform law governing the powers and subject matter jurisdiction of municipal courts,” nearly all police courts were replaced by municipal courts.²⁶ Soon after, the Ohio legislature also created county courts, which entirely replaced justice of the peace courts.²⁷ Therefore, by the 1950s, any semblance of the original inferior court system in Ohio had been erased, with the exception of mayor’s courts.

Today, the Ohio court system consists of four levels.²⁸ The Supreme Court is the court of last resort for constitutional issues and “questions of public or great general interest.”²⁹ Below the Supreme Court sit the courts of appeal, which hear appeals from lower courts and have original jurisdiction in some cases.³⁰ Below the courts of appeal lie the common pleas, county, and municipal courts.³¹ Common pleas courts have original jurisdiction over felonies and civil matters over five-hundred dollars.³² County and municipal courts only have jurisdiction over criminal misdemeanor cases and civil cases with claims of ten-thousand dollars or less and three-thousand dollars or less, respectively.³³ County courts’ jurisdiction covers all areas of a county in which a municipal court does not

²² *Id.* at 198 n.10. Police courts were only allowed to hear criminal matters, including all ordinance violations and any charge not involving indictment. *Id.* at 197. As a result of these changes, the police courts, justice of the peace courts, and mayor’s courts all operated simultaneously. *Id.* at 199.

²³ *Id.* at 211. It appears that members of the court system became motivated by their lack of control over their own courts. *Id.* at 207. According to Marshall, members attending the Constitutional Convention of 1913 had a “distrust of the Legislature,” and wished to “make the intermediate court a court of last resort in most cases.” *Id.*

²⁴ *Id.* at 211.

²⁵ MARSHALL, *supra* note 11, at 482. Municipal courts in essence became “a mere substitute for the courts of the justices of the peace.” *Id.*

²⁶ OHIO LEGIS. SERV. COMM’N, THE OHIO COURT SYSTEM: ITS ORGANIZATION AND CAPACITY, STAFF RESEARCH REPORT NO. 47, at 9 (1961).

²⁷ *Id.*

²⁸ MELANIE K. PUTNAM & SUSAN M. SCHAEFGEN, OHIO LEGAL RESEARCH GUIDE 125 (1997).

²⁹ *Id.*

³⁰ *Id.* The Courts of Appeal, which are spread over twelve districts, have original jurisdiction over matters of “quo warranto (an allegation of misuse of corporate or public office), mandamus (requiring that a public official perform an act), habeas corpus (release of prisoners unlawfully incarcerated), prohibition (ordering a judge or court to cease an unlawful act), and procedendo (requiring a lower court to proceed to judgment).” *Id.* at 127-28. Additionally, these courts have the power to “review and affirm, modify, or reverse judgments or final orders of the courts of record inferior to the court of appeals within the district, except . . . a judgment that imposes a sentence of death.” OHIO CONST. art. IV, § 3(B)(2).

³¹ PUTNAM & SCHAEFGEN, *supra* note 28, at 125.

³² *Id.* at 128. The Courts of Common Pleas, consisting of one in each of Ohio’s eighty-eight counties, also can have separate probate, juvenile, and domestic relations divisions. *Id.* at 128-130.

³³ *Id.* at 130.

have jurisdiction.³⁴ Lastly are the mayor's courts, the topic of this Comment and the court targeted for abolishment by the 127th Ohio General Assembly.

B. Today's Mayor's Court: Ohio Revised Code § 1905

Currently, mayor's courts have the authority to adjudicate under Ohio Revised Code chapter 1905.³⁵ Through this section, the Ohio General Assembly authorizes mayor's courts to adjudicate specific matters and sets forth requirements for mayor's courts to follow in order to stay active. The first requirement involves the prerequisites for establishing a mayor's court in a certain area.

Section 1905.1 presents several requirements for the establishment of a mayor's court. First, the municipal corporation in which the mayor's court is created must have a population over one hundred.³⁶ Second, the municipal corporation in which the mayor's court is created must not be the same site where an existing municipal court hears cases.³⁷ If these two requirements are met, then a mayor's court may be established. However, the right to establish a mayor's court does not necessarily have to be invoked.³⁸ The statute does not require a municipality to establish a mayor's court, but rather, it grants the option to create one.³⁹

Next, section 1905 restricts the type of cases that mayor's courts can hear. Mayor's courts can hear cases involving violations of municipal ordinances, violations of parking ordinances, and any moving traffic violations that occur on state highways within the municipality's borders.⁴⁰ Additionally, mayor's courts have jurisdiction over individuals who are accused of operating a vehicle under the influence ("OVI").⁴¹ This authority comes with some restrictions though. The mayor's court may not hear an OVI case if the accused has been charged, convicted, or has pled guilty to a different OVI violation within the past six years.⁴² Similarly, the statute places the same restrictions on cases concerning the adjudication of

³⁴ *Id.* For an example of the structure of the current judicial structure in a specific county in Ohio, see Warren County Ohio Court Directory, <http://www.courtreference.com/Warren-County-Ohio-Courts.htm> (last visited Mar. 3, 2010). Warren County has a Court of Common Pleas, which also has separate juvenile, probate, and domestic relations divisions. *Id.* Warren County also contains three municipal courts, located in Lebanon, Mason, and Franklin. *Id.* Additionally, seven mayor's courts sit Warren County, including courts in Carlisle, Harveysburg, Maineville, Morrow, South Lebanon, Springboro, and Waynesville. *Id.* Criminal or civil matters not occurring in any of the jurisdictions of the municipal or mayor's courts are heard in Warren County Court, located in Lebanon. *Id.*

³⁵ See OHIO REV. CODE ANN. ch. 1905 (2005 & Supp. 2008).

³⁶ *Id.* § 1905.01(A) (2005).

³⁷ *Id.* Take Warren County for an example again. While the mayor's court in Maineville may be in the same county as the municipal court in Lebanon, they are not within each other's municipal limits. See Warren County Ohio Court Directory, *supra* note 34.

³⁸ *State ex rel. Boston Heights v. Petsche*, 499 N.E.2d 1250, 1251 (Ohio Ct. App. 1985).

³⁹ *Id.*

⁴⁰ OHIO REV. CODE ANN. § 1905.01(A).

⁴¹ *Id.* § 1905.01(B)(1).

⁴² *Id.* § 1905.01(B)(1)(a)-(d).

individuals driving with a suspended license.⁴³

Despite this seemingly wide jurisdiction, section 1905 does place some significant limits on the types of cases mayor's courts can hear. Specifically, mayor's courts cannot try cases involving claims of domestic violence;⁴⁴ violations of protection orders;⁴⁵ and, if the victim is a family or household member, claims of felonious assault, aggravated assault, misdemeanor assault, menacing, or aggravated trespassing.⁴⁶

While the mayor's court as a whole has jurisdiction over these matters, who runs the court is another question. Section 1905 permits either the mayor or an appointed magistrate to run the court.⁴⁷ With the numerous restrictions now placed on mayor-run mayor's courts, as discussed *infra*, the practice of appointing a magistrate has become much more prevalent.⁴⁸ If a magistrate is appointed, the magistrate must be admitted to the bar in Ohio and have practiced in Ohio for at least three years before he or she can accept the appointment.⁴⁹ The magistrate carries the same power as the mayor in deciding cases.⁵⁰ However, the appointment of a magistrate does not preclude a mayor from still hearing cases; rather, he or she can hear cases concurrently with the magistrate.⁵¹ Additionally, the principle of judicial immunity applies to mayors who run mayor's courts, even though most mayors perform duties that are not shielded from civil liability.⁵² This "cloak of immunity" is lost however if the mayor "knows he lacks jurisdiction, or acts in the face of clearly valid statutes or case law"⁵³

To ensure mayor's courts are operating properly, section 1905 also requires mayors or magistrates to follow regulations and complete educational training determined by the Ohio Supreme Court.⁵⁴ If the Supreme Court establishes such rules and training sessions, then the mayor or magistrate must comply or the mayor's court will cease to operate.⁵⁵

⁴³ *Id.* § 1905.01(C)(1).

⁴⁴ *Id.* § 1905.01(E)(1)(a).

⁴⁵ *Id.*

⁴⁶ OHIO REV. CODE ANN. § 1905.01(E)(1)(b).

⁴⁷ *Id.* § 1905.05(A).

⁴⁸ For example, only one in seven trials were heard by mayors in mayor's courts. THE SUPREME COURT OF OHIO: 2007 MAYOR'S COURT SUMMARY 16, available at <http://www.sconet.state.oh.us/Publications/mayorscourt/mayorscourtsummary07.pdf> [hereinafter MAYOR'S COURT SUMMARY].

⁴⁹ OHIO REV. CODE ANN. § 1905.05(A).

⁵⁰ *Id.*

⁵¹ *Id.* § 1905.05(B).

⁵² *State ex rel. Fisher v. Burkhardt*, 610 N.E.2d 999, 1001-1002 (Ohio 1993). Judicial immunity is a rule that immunizes judges from civil liability as long the judge's decision is within his judicial capacity and jurisdiction is proper. *Wilson v. Neu*, 465 N.E.2d 854, 856 (Ohio 1984). This rule is used "to preserve the integrity and independence of the judiciary and to insure that judges will act upon their convictions free from the apprehensions of possible consequences." *Id.*

⁵³ *Schorle v. City of Greenhills*, 524 F. Supp. 821, 828 (S.D. Ohio 1981).

⁵⁴ The regulations are split between two types of cases that a mayor's court can hear. Mayors or magistrates who wish to hear OVI cases must follow certain rules. OHIO REV. CODE ANN. § 1905.03. All other cases (misdemeanors, traffic violations, etc.) have different standards. *Id.* § 1905.031.

⁵⁵ *Id.* § 1905.031(B)-(C).

Following the statute's lead, the Supreme Court adopted specific rules and training requirements in 1991.⁵⁶ These rules require mayors and magistrates to perform twelve total hours of training before running mayor's courts.⁵⁷ This training includes instruction on governing substantive law, discovery, evidentiary issues, sentencing, and ethical issues.⁵⁸ In addition to the twelve hours, mayors and magistrates must complete another three hours of training each year to maintain their certification.⁵⁹

Even if the mayor's court has jurisdiction and has been certified through completion of training by its mayor or magistrate, it can still cease to exist if the court does not register with the Supreme Court.⁶⁰ Mayors must complete a form detailing all cases "filed, pending, or terminated in the mayor's court" four times a year and send it to the Supreme Court.⁶¹ According to the Supreme Court, such reporting "serve[s] the public interest" by ensuring the "fair, competent, and efficient operation of mayor's courts"⁶²

Should a defendant not agree with his conviction at the mayor's court level, he has a right to appeal the decision to either the municipal court or county court within the municipal corporation.⁶³ All appeals from mayor's courts are heard de novo at either the municipal court or county court.⁶⁴ Therefore, defendants receive significant deference in challenging mayor's courts convictions; if they are dissatisfied, they can simply start all over again at the municipal or county court level. Moreover, appeals from mayor's courts do not violate the Fifth Amendment's Double Jeopardy Clause.⁶⁵ The United States Supreme Court protected such two-tier systems from double jeopardy claims, reasoning that these systems do not promote re-prosecution of defendants.⁶⁶ Rather, these systems provide a defendant

⁵⁶ MAY. R. 1, available at <http://www.sconet.state.oh.us/LegalResources/Rules/mayor/mayors.pdf> (Mayor's Court Education and Procedure Rules).

⁵⁷ *Id.* at 3(B)(1), 4(B)(1).

⁵⁸ *Id.* at 3(A)(1)(a)-(f), 4(A)(1)(a)-(h).

⁵⁹ *Id.* at 3(C), 4(C).

⁶⁰ OHIO REV. CODE ANN. § 1905.033(C).

⁶¹ *Id.* § 1905.033(B)(1).

⁶² MAY. R. 1(A), *supra* note 56.

⁶³ OHIO REV. CODE ANN. § 1905.022. Mayor's court appeals are not taken to the Courts of Appeal because the Courts of Appeal only take appeals from courts of record, and mayor's courts are not courts of record. MARK P. PAINTER & ANDREW S. POLLIS, OHIO APPELLATE PRACTICE § 1.11 (2008-2009 ed.). Municipal and county courts have concurrent original jurisdiction with mayor's courts. *Id.* Therefore, it follows that if appeals cannot be taken to the Courts of Appeal, they should be taken to the municipal or county court that could have heard the case had the mayor's court not existed. *Id.*

⁶⁴ OHIO REV. CODE ANN. § 1905.25. In a de novo appeal, "the appellate court uses the trial court's record but reviews the evidence and law without deference to the trial court's rulings." BLACK'S LAW DICTIONARY 106 (8th ed., 2004).

⁶⁵ *Village of Portage v. Belcher*, 689 N.E.2d 1032, 1033 (Ohio Ct. App. 1996). The Fifth Amendment of the United States Constitution states "nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb" U.S. CONST. amend. V.

⁶⁶ *Ludwig v. Massachusetts*, 427 U.S. 618, 631 (1976). The court in question in *Ludwig* was similar to the current mayor's court in Ohio. *Id.* at 620-621. If the defendant pleaded not guilty and was convicted, he could appeal to a court that could conduct jury trials, and the appeal was heard de novo. *Id.*

“two opportunities to avoid conviction and secure an acquittal.”⁶⁷ The Double Jeopardy Clause does not prohibit this second chance.⁶⁸

C. Constitutional Challenges to the Mayor's Court

Several cases over the years have significantly challenged the constitutionality of the mayor's court. A 1959 amendment to section 1905.06 abolished a defendant's right to a jury trial in mayor's court.⁶⁹ A mayor's court also is not a court of record within the Ohio court system.⁷⁰ Given these two facts, a defendant who pleads not guilty at the mayor's court level has two options: (1) waive his right to a jury trial and remain in the mayor's court, or (2) demand a jury trial and be transferred to a court of record that can hold jury trials.⁷¹ In 1988, in *City of Brunswick v. Giglio*, the defendant argued that he should not have to waive his right to a jury to remain in the mayor's court.⁷² The municipal court disagreed with this assertion, stating that according to section 2937.08, the mayor's court was not “competent” to hear jury trials, and that the defendant had the option of a jury trial upon transfer to the municipal court.⁷³

Another line of cases, beginning in 1927 and lasting over seventy years, challenged the constitutional due process implications of having a neutral and detached mayor acting as a judge in the mayor's court.⁷⁴ Beginning with *Tumey v. Ohio* in 1927, the mayor's power to run his or her court has become significantly limited.⁷⁵ In *Tumey*, the United States Supreme Court established a test to determine if a mayor was neutral and detached: “[e]very procedure which would offer a possible temptation to the average man as a judge to forget the burden of proof required to convict the defendant . . . denies . . . due process of law.”⁷⁶ Additionally, mayors who have a “direct, personal, substantial pecuniary interest” in convicting the defendant also violate an individual's due process rights.⁷⁷ Further, mayors with broad executive powers and judicial duties create “two practically . . . inconsistent positions, one partisan and the other judicial,” and accordingly

at 621. The Supreme Court reasoned that this type of appeal was no different from “a convicted defendant who successfully appeals on the basis of the trial record and gains a reversal of his conviction and a remand of his case for a new trial.” *Id.* at 631.

⁶⁷ *Id.* at 632.

⁶⁸ *Id.* at 631.

⁶⁹ OHIO REV. CODE ANN. § 1905.06 (repealed 1959).

⁷⁰ *Pettiford v. Village of Yellow Springs*, 176 N.E. 587, 588 (Ohio Ct. App. 1930). “A court of record is a court that maintains a permanent record of its acts and judicial proceedings.” 22 OHIO JUR. 3D *Courts and Judges* § 9 (2008).

⁷¹ OHIO REV. CODE ANN. § 2937.08 (2005).

⁷² *City of Brunswick v. Giglio*, 39 Ohio Misc. 2d 5, 6-7 (Medina Mun. Ct. 1988).

⁷³ *Id.* at 7.

⁷⁴ Defendants are entitled to an “impartial and disinterested tribunal” in criminal cases. *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980).

⁷⁵ *Tumey v. Ohio*, 273 U.S. 510, 532, 535 (1927).

⁷⁶ *Id.* at 532.

⁷⁷ *Id.* at 523.

violate an individual's due process rights as well.⁷⁸ The mayor in *Tumey* failed all of these tests: his salary increased with every conviction, and his executive powers were expansive.⁷⁹ While this ruling seemed to sound a death knell on the mayor's court in Ohio, one year later the Court would approve of a mayor's court in *Dugan v. Ohio*.

In 1928, the Court in *Dugan* used the facts and law in *Tumey* to distinguish its decision.⁸⁰ Unlike the mayor's salary in *Tumey*, the mayor's salary in *Dugan* was not dependent on convictions.⁸¹ Further, the mayor in *Dugan* did not have broad executive powers like the mayor in *Tumey*.⁸² Therefore, the defendant's due process rights were not violated because the relationship between the mayor's judicial duties and his interest in the village's financial standing was too "remote."⁸³

Surprisingly, it took the United States Supreme Court over forty years to address the neutrality of a mayor in the mayor's court, which it did in *Ward v. Village of Monroeville*.⁸⁴ In *Ward*, the Court used the *Tumey* "possible temptation test" to hold that the mayor of Monroeville was biased while operating the mayor's court.⁸⁵ The mayor in *Ward* held extensive executive powers, including the authority to break ties at council meetings, the power to appoint police officers, and the right to control the village's finances.⁸⁶ Additionally, the mayor's court in *Ward* generated nearly half of the village's revenues annually.⁸⁷ The mayor's broad executive powers, in conjunction with the vast amount of revenues generated by the mayor's court, led the Court to conclude that the mayor "might be more concerned with the financial stability of the village more than with the guilt of the defendant"⁸⁸

Twenty years later in 1985, the United States District Court for the Northern District of Ohio, in *Rose v. Village of Peninsula*, further limited the ability of the mayor to act as a judge in the mayor's court.⁸⁹ The court in

⁷⁸ *Id.* at 534.

⁷⁹ *Id.* The mayor's powers in *Tumey* were mandated by Ohio statute at the time, and included: "the chief conservator of the peace . . . president of the council . . . see[ing] that all ordinances, by-laws and resolutions [of the council] are faithfully obeyed and enforced . . . communicat[ing] to council from time to time a statement of the finances of the municipality, and such other information relating thereto and to the general condition of the affairs of the municipality as he deems proper or as may be required by council." *Id.* at 519.

⁸⁰ *Dugan v. Ohio*, 277 U.S. 61, 63-65 (1928).

⁸¹ *Id.* at 65.

⁸² *Id.* The mayor in *Dugan* only held mostly judicial duties. *Id.* at 63. The mayor was a member of a city commission consisting of five members that handled all legislative functions, and all executive duties were performed by the commission and a city manager. *Id.*

⁸³ *Id.* at 65.

⁸⁴ *Ward v. Village of Monroeville*, 409 U.S. 57, 59 (1972).

⁸⁵ *Id.* at 60.

⁸⁶ *Id.* at 58.

⁸⁷ *Id.*

⁸⁸ Linda Lucille Griggs, Recent Case, *Ward v. Village of Monroeville*, 409 U.S. 57 (1972), 42 U. CIN. L. REV. 367, 371 (1973).

⁸⁹ *Rose v. Village of Peninsula*, 875 F. Supp. 442 (N.D. Ohio 1995).

Rose stressed an established component into the “possible temptation test”: substantiality of revenues generated from the mayor’s court.⁹⁰ While the substantiality of revenues generated from the mayor’s court is not dispositive of an impartial judge, it is a significant step in determining impartiality.⁹¹ Specifically, “[t]he more substantial the amount (or percentage) of revenue produced from a mayor’s court, the more reasonable it is to question the impartiality of a mayor who has *any* executive authority.”⁹² Accordingly, a mayor who has significant executive power but collects little revenue likely will be biased as well.⁹³ The revenue generated by the mayor’s court in *Rose* only comprised between eleven and fourteen percent of the entire budget.⁹⁴ Nevertheless, the mayor had broad executive powers, thus limiting the importance of the small amount of revenue generated.⁹⁵

Several years later in 1999, the United States Court of Appeals for the Sixth Circuit, in *DePiero v. City of Macedonia*, dealt another blow to the mayor’s court by affirming the *Rose* ruling, but on fewer facts.⁹⁶ The mayor in *DePiero* had similar broad executive powers as the mayor in *Rose*, but the revenue generated by the mayor’s court in *DePiero* comprised only four percent of the city’s budget.⁹⁷ Further, the court held that the actual temptation to ignore the burden of proof in favor of generating income for the municipality does not need to be found; a possibility of temptation is all that a defendant must show to demonstrate bias.⁹⁸

From *Tumey* to *DePiero*, the ability of the mayor to act as a judge in the mayor’s court has become extremely limited. Now, mayors with any sort of executive power likely will be deemed partial if even a small percentage of the municipality’s revenue comes from the mayor’s court. This trend has likely led to the appointment of magistrates in most municipalities with a mayor’s court.⁹⁹ Despite this trend, some mayors still run mayor’s courts throughout Ohio. If future legislatures follow the attempts by the 127th General Assembly though, mayors might not have this power any longer, as mayor’s courts will be abolished.

⁹⁰ *Id.* at 450, 452.

⁹¹ *Id.*

⁹² *Id.* (emphasis added).

⁹³ *Id.*

⁹⁴ *Id.* at 450.

⁹⁵ *Rose*, 875 F. Supp. at 453. The mayor in *Rose* had the same powers as the mayor in *Ward*: “‘president of the village council, presides at all meetings, votes in case of a tie, accounts annually to the council respecting village finances, fills vacancies in village offices and has general overall supervision of village affairs.’” *Id.* at 450.

⁹⁶ *DePiero v. City of Macedonia*, 180 F.3d 770, 781-82 (6th Cir. 1999).

⁹⁷ *Id.* at 780-81. The mayor in *DePiero* was the “‘chief conservator of the peace’” and was the primary enforcer of all laws in the village. *Id.* at 780. The mayor had broad hiring and firing authority over every department, excluding the City Council but including police officers. *Id.* at 781. He also had the power to introduce legislation and veto the City Council’s proposed legislation. *Id.* at 780.

⁹⁸ *Id.* at 782.

⁹⁹ See MAYOR’S COURT SUMMARY, *supra* note 48.

D. Home Rule in Ohio

To better understand the development of Ohio's courts, a review of how local government is established in Ohio is necessary. Originally in Ohio, municipalities had a difficult time being recognized by the legislature.¹⁰⁰ If a municipality wanted to be incorporated, it had to petition the Ohio legislature to pass a special act to adopt the municipality's charter.¹⁰¹ Upon vehement outcry from municipalities desiring an easier way to incorporate themselves and form their own laws, the Ohio legislature amended the Ohio Constitution in 1912.¹⁰² The 1912 Amendments created home rule in Ohio municipalities, thereby allowing municipalities to form their own local governments.¹⁰³ Specifically, the Amendments stated, "[m]unicipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws."¹⁰⁴ Additionally, "[a]ny municipality may frame and adopt or amend a charter for its government and may, subject to the provisions of section 3 of this article, exercise thereunder all powers of local self-government."¹⁰⁵ These provisions were intended to allow local governments to have "control over those things peculiar to the cities."¹⁰⁶

This principle of home rule has also been extended to other levels of organization in Ohio. Counties also have the ability to adopt home rule charters of local self-government.¹⁰⁷ Additionally, townships also can adopt limited home rule charters of local self-government.¹⁰⁸ These home-rule charters, with some deviation over time, allow local laws to "prevail over state laws in matters of purely local concern."¹⁰⁹

Home rule creates numerous advantages for government at both the local and state level. Home rule prevents state governments from meddling in local concerns, concerns that are best resolved by individuals who best understand them.¹¹⁰ Additionally, home rule "encourages civic responsibility among residents" by making them the lawmakers.¹¹¹ Last, home rule reinforces community interests that have been a part of Ohio

¹⁰⁰ FRANCIS R. AUMANN & HARVEY WALKER, *THE GOVERNMENT AND ADMINISTRATION OF OHIO* 410 (W. Brooke Graves ed., 1956).

¹⁰¹ *Id.* at 410-11.

¹⁰² George D. Vaubel, *Municipal Home Rule in Ohio*, 3 OHIO N.U. L. REV. 1, 13 (1975).

¹⁰³ *Id.* at 14-15. The goal of home rule is to "make each municipality as nearly autonomous locally as possible." *Id.* at 17.

¹⁰⁴ OHIO CONST. art. XVIII, § 3.

¹⁰⁵ *Id.* § 7.

¹⁰⁶ Vaubel, *supra* note 102, at 14.

¹⁰⁷ OHIO CONST. art. X, § 4.

¹⁰⁸ OHIO REV. CODE ANN. ch. 504 (2005).

¹⁰⁹ Stephen Cianca, *Home Rule in Ohio Counties: Legal and Constitutional Perspectives*, 19 U. DAYTON L. REV. 533, 533 (1994).

¹¹⁰ *Id.* at 533-34.

¹¹¹ *Id.* at 534.

since its inception.¹¹² All of these factors demonstrate the importance of local self-governance in Ohio and are further reasons to demonstrate the significance of the mayor's court in Ohio as well. If Ohio law authorizes municipalities to make their own laws, then it follows that local courts should be allowed to adjudicate matters that are of purely local in nature.

E. Recent Attempts by the Ohio Legislature to Abolish or Significantly Limit Mayor's Courts

During the term of the 127th General Assembly, Ohio lawmakers made three attempts to either abolish or severely limit mayor's courts in Ohio. One such attempt, House Bill 154 ("H.B. 154"), tried to abolish all mayor's courts and replace them with new courts called community courts.¹¹³ H.B. 154 proposed that if a municipal corporation with a mayor's court had a population over 1,600, it could either create a new community court or have its cases transferred to a corresponding municipal or county court within its territorial jurisdiction.¹¹⁴ Cases in mayor's courts within municipal corporations with a population under 1,600 were automatically transferred to the corresponding municipal or county court within its territorial jurisdiction.¹¹⁵ These proposed community courts greatly resembled current mayor's courts.¹¹⁶ The only significant differences between the community court and the mayor's court were that non-attorneys could not operate mayor's courts and that community courts would be courts of record subject to supervision by the Ohio Supreme Court.¹¹⁷ H.B. 154 made it to committee during the 127th General Assembly's term, but was never voted on by the Ohio House of Representatives.¹¹⁸

A similar bill to H.B. 154 was introduced in the Senate by representatives of the 127th General Assembly.¹¹⁹ This bill, Senate Bill 252 ("S.B. 252"), contained similar provisions abolishing mayor's courts and replacing them with community courts.¹²⁰ S.B. 252 did not have as much

¹¹² *Id.*

¹¹³ OHIO LEGIS. SERV. COMM'N, 127TH GEN. ASSEM., BILL ANALYSIS, SUB. H.B. 154 (as reported by H. Judiciary), Reg. Sess., at 1 (2008), available at <http://www.lsc.state.oh.us/analyses127/h0154-rh-127.pdf> [hereinafter BILL ANALYSIS, SUB. H.B. 154].

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ Community courts had the same jurisdiction as mayor's courts, with the addition of matters involving forcible entry and detainer, agricultural marketing, township resolutions, and some public utilities. *Id.* at 9. Further, the community court had the same de novo appeal process and could not preside over jury trials. *Id.* at 9-10.

¹¹⁷ *Id.* at 8.

¹¹⁸ Ohio Legis. Serv. Comm'n, House Bill Status Report of Legislation, 127th Gen. Assem., H.B. 154. <http://lsc.state.oh.us/coderev/hou127.nsf/2f0987e36eb4ddf85256bf90053f601/2404ed1d2ad55dcc852572c10063d18a?OpenDocument> (last visited Mar. 8, 2010).

¹¹⁹ OHIO LEGIS. SERV. COMM'N, 127TH GEN. ASSEM., BILL ANALYSIS, S.B. 252 (as introduced), Reg. Sess. (2008), available at <http://www.lsc.state.oh.us/analyses127/s0252-i-127.pdf>.

¹²⁰ *Id.* at 1-3. A major difference between S.B. 252 and H.B. 154 was that in S.B. 252, the municipal court judge who shared jurisdiction with the mayor's court would appoint the magistrate of the

success as its counterpart in the House, as it was sent to the Judiciary - Civil Justice Committee but was never reported on by that group.¹²¹

Finally, the 127th General Assembly last attempted to significantly change the mayor's court with House Bill 267 ("H.B. 267"). The House passed H.B. 267 as a means to reform the Correctional Institution Inspection Committee in Ohio.¹²² However, the Senate attached a rider¹²³ to the bill with several significant changes to the mayor's court. First, the rider placed a different population limit on municipalities who could have mayor's courts.¹²⁴ Further, and more significant, the bill prohibited non-attorneys from hearing cases in mayor's courts.¹²⁵ The amended bill passed in the Senate, but because it was in a different form than the one passed by the House, the House had to approve the changes. On reintroduction, the House did not vote on the bill.¹²⁶

As seen from the 127th General Assembly's actions, many Ohio lawmakers supported the abolishment of mayor's courts in Ohio. However, the proposed bills never were written into law because of their own inherent flaws and the problems they would cause to numerous groups in Ohio. The rest of this Comment will show that while the mayor's courts may be flawed, actions like those taken by the 127th General Assembly are not the appropriate way to remedy the situation.

III: ADVANTAGES AND DISADVANTAGES OF ABOLISHING THE MAYOR'S COURT

This section will first present the current criticisms of the mayor's court. While these drawbacks may be significant, this Comment will provide ways other than abolishment to resolve these weaknesses. Next, this section will show why mayor's courts should not be abolished and will

community court as opposed to the mayor. S.B. 252, 127th Gen. Assem., Reg. Sess. (Ohio 2007), available at http://www.legislature.state.oh.us/BillText127/127_SB_252_I_Y.pdf.

¹²¹ Ohio Legis. Serv. Comm'n, Senate Bill Status Report of Legislation, 127th Gen. Assem., S.B. 252, <http://lsc.state.oh.us/coderev/sen127.nsf/e16bcd54ff380ee5852560f20055a7f0/1e47195e5e76c96b8525738d0074629c?OpenDocument> (last visited Mar. 8, 2010).

¹²² OHIO LEGIS. SERV. COMM'N, 127TH GEN. ASSEM., BILL ANALYSIS, AM. H.B. 267 (as passed by the House), Reg. Sess., at 1 (2008), available at <http://www.lsc.state.oh.us/analyses127/h0267-ph-127.pdf>.

¹²³ A rider is "[a]n attachment to some document, such as a legislative bill or an insurance policy, that amends or supplements the document." BLACK'S LAW DICTIONARY 1347 (8th ed., 2004).

¹²⁴ The bill stated that municipalities with populations less than 200 could not have mayor's courts. OHIO LEGIS. SERV. COMM'N, 127TH GEN. ASSEM., BILL ANALYSIS, SUB. H.B. 267 (as reported by S. Health, Human Services, & Aging), Reg. Sess., at 3 (2008), available at <http://www.lsc.state.oh.us/analyses127/h0267-rs-127.pdf> [hereinafter BILL ANALYSIS, SUB. H.B. 267]. The bill also prohibited Cuyahoga Falls, near Cleveland, Ohio, from having a mayor's court. Am. Sub. H. B. 267, 127th Gen. Assem., Reg. Sess., at 1 (Ohio 2008), available at http://www.legislature.state.oh.us/BillText127/127_HB_267_PS_Y.pdf.

¹²⁵ BILL ANALYSIS, SUB. H.B. 267, *supra* note 124, at 1, 3.

¹²⁶ Ohio Legis. Serv. Comm'n, House Bill Status Report of Legislation, 127th Gen. Assem., H.B. 267, <http://lsc.state.oh.us/coderev/hou127.nsf/2f0987e36eb4ddfe85256bf90053f601/0383120153b1f150852572fb0061e761?OpenDocument> (last visited Mar. 8, 2010).

present the significant chaos that would ensue from abolishment of mayor's courts.

A. Advantages of Removing the Mayor's Court in Ohio

1. Abolishing the Mayor's Court in Ohio Eliminates Conflicts of Interest

As seen from the case law placing limits on mayor's courts in Ohio, critics of mayor's courts point to the problems associated with a neutral and detached judge adjudicating criminal cases. A leading proponent of the abolishment of the mayor's court, Ohio Supreme Court Chief Justice Thomas J. Moyer, points to this problem as the main reason for the closure of all mayor's courts in Ohio.¹²⁷ "That is my only goal, to ensure that all court decisions in Ohio are free of conflict and just as importantly, they are perceived by the general public to be decisions influenced solely by the rule of law."¹²⁸ Chief Justice Moyer questions the ability of a mayor to provide a fair trial when his city or village depends on fines acquired from the mayor's court.¹²⁹ Ohio State Representative Larry Wolpert, the official who introduced H.B. 154 into the Ohio House of Representatives, puts it simply: "Lady justice [sic] is always blindfolded. In mayor's court that blindfold is only on one eye."¹³⁰ These opponents of mayor's courts outline a visible flaw for future Ohio legislatures to correct: the potential bias of a judge whose municipality depends on fines collected from the mayor's court. If this bias can be eliminated, for example through the appointment of an objective magistrate, then this flaw could be eliminated.

2. Mayors Who Operate Mayor's Courts Are Unqualified

Other critics of mayor's courts point to the lack of legal training possessed by mayors who operate mayor's courts. Courts in other states have addressed the competence of part-time judges untrained in the law.¹³¹ While Ohio courts have not limited the mayor's court by requiring an attorney-judge, critics still point to problems associated with an untrained

¹²⁷ *Mayor's Court Testimony: Before the S. Judiciary Comm. on Civil Justice*, 127th Gen. Assem. (2008) (statement by Thomas J. Moyer, Chief Justice of Ohio Supreme Court), available at http://www.supremecourt.ohio.gov/PIO/Speeches/2008/mayorscts_120208.asp.

¹²⁸ *Id.*

¹²⁹ *Id.* It should be noted that the authority of the mayor to operate a mayor's court has been significantly limited. See *supra* Part II.C.

¹³⁰ Carrie Whitaker, *Mayor May Not Remain Judge?*, CINCINNATI ENQUIRER, July 20, 2008, at 1B, available at 2008 WLNR 26278143.

¹³¹ Compare *Gordon v. Justice Court*, 525 P.2d 72, 76 (Cal. 1974) (holding that although judges in justice of the peace courts had to pass a three-hour examination to operate the court, the chances of having a fair criminal trial with a "non-attorney judge . . . would be substantially diminished"), with *Ditty v. Hampton*, 490 S.W.2d 772, 775 (Ky. Ct. App. 1972) (holding that "[t]he inescapable conclusion is that traditional concepts of fundamental fairness do not require that an accused be tried by a lawyer judge . . .").

mayor operating a mayor's court.¹³² Specifically, untrained mayors likely do not comprehend the importance of advising a criminal defendant of his rights, have difficulty applying complex rules of evidence, and fail to realize the significance of legal precedent in making their decisions.¹³³ These critics argue that if all other judges in Ohio must complete significant legal training,¹³⁴ then why should mayor's court judges be permitted to bypass all of this training.¹³⁵

This problem of legal training can be solved easily by future legislatures. By requiring more training than is already mandated by law, mayors can become more informed of the law to ensure a fair trial for defendants. While mayors may never reach the level of legal education possessed by other judges, increased training requirements would go a long way in improving the mayor's court. Should future legislatures choose to further eliminate the problem of uneducated judges, they could enact something similar to H.B. 267, which prohibited mayors from operating mayor's courts.¹³⁶ Such a restriction would be a significant change to the current system, but would ensure the mayor's courts' survival.

3. Eliminating Mayor's Courts Will Prevent Corruption

“The end of an era? . . . It should be the end of an era. Frontier justice is what we have here.”¹³⁷ Quotes like this summarize the views of many other critics of the mayor's court in Ohio. Often, the mayor's court is viewed like the court in *Nothing but Trouble*: a court rampant with corruption practicing a form of vigilante justice. Critics point to mayor's courts like the one in Linndale, Ohio, a court whose jurisdiction happens to cover a quarter-mile stretch on Interstate I-71 near Cleveland, Ohio.¹³⁸ Linndale, with a population of only 117, managed to introduce 4752 new cases in its mayor's court in 2007.¹³⁹ In comparison, Strongsville, a city of

¹³² John J. Chernoski, *The “Right” to a Neutral and Competent Judge in Ohio's Mayor's Courts*, 36 OHIO ST. L.J. 889, 896-902 (1975).

¹³³ *Id.* at 896, 898, 900. This article was published in 1975 when the only requirement for a mayor to operate a mayor's court was to be elected. *Id.* at 896 n. 38. Today, the requirements are much more stringent. See *supra* Part II.B.

¹³⁴ In order for a municipal court judge to be elected in Ohio, he or she must have been admitted to practice law or been a judge in a court of record, or both, for a minimum of six years. OHIO REV. CODE ANN. § 1901.06. County court and common pleas judges also have this six-year requirement. *Id.* §§ 1907.13, 2301.01.

¹³⁵ Chernoski, *supra* note 132, at 903.

¹³⁶ BILL ANALYSIS, SUB. H.B. 267, *supra* note 124, at 1, 4.

¹³⁷ Francis X. Clines, *Tradition of Local Justice Ends in Ohio*, N.Y. TIMES, Aug. 10, 1999, at A10. This quote was given by the attorney, Augustin O'Neil, who argued against the mayor's court in *Depiero v. City of Macedonia*. See *supra* Part II.C.

¹³⁸ Kelly Lecker, *Ohio's Mayor's Courts Do Fine*, July 20, 2003, <http://www.toledoblade.com/apps/pbcs.dll/article?AID=/20030720/NEWS24/107200103>.

¹³⁹ MAYOR'S COURT SUMMARY, *supra* note 48, at 7. The Village of Linndale collected over \$520,000 in fines, licenses, and permits in 2007. MARY TAYLOR, AUDITOR OF STATE, VILLAGE OF LINNDALE CUYAHOGA COUNTY REGULAR AUDIT FOR THE YEARS ENDED DECEMBER 31, 2007-2006 at 12 (2008), available at http://www.auditor.state.oh.us/AuditSearch/Reports/2008/Village_of_Linndale_07_06-Cuyahoga.pdf.

43,858, only introduced 4415 new cases in 2007.¹⁴⁰ Others point to mayor's courts that reduce charges for criminals, like the mayor's court in Sharonville, located in Hamilton County near Cincinnati.¹⁴¹ Twenty-nine percent of OVI charges were reduced in the Sharonville mayor's court in 2006, as compared to a one percent overall reduction in Hamilton County Municipal Court.¹⁴² A particularly alarming reduction occurred for an individual charged with an OVI offense who previously had eighteen prior driving violations and tested above the legal limit on his breath test when arrested.¹⁴³

Despite these examples, there are other ways to remedy the problem of corruption without resorting to outright abolishment. Instead of eliminating all mayor's courts, the legislature could pass measures that give the Supreme Court greater authority to punish reckless courts. Such authority could include the power to place suspect courts under probation or to completely bar them from adjudicating cases. This approach would not only allow mayor's courts to live on, but would also improve its reputation. Instead of punishing all mayor's courts because of a few "bad apples," future legislatures should pass laws that reprimand specific instances of unethical conduct.

B. Disadvantages of Abolishing the Mayor's Court in Ohio

1. Abolishing the Mayor's Court Violates Ohio's Long-Standing Tradition

Not only does the abolition of mayor's courts undermine the honored tradition of local government in Ohio, but it also might directly conflict with the Ohio Constitution. If a municipality adopts a home rule charter pursuant to Ohio law,¹⁴⁴ and that home rule charter specifically authorizes the mayor to adjudicate cases within the mayor's court of the municipality, then any abolition of the mayor's court would seem to conflict directly with the home rule charter that the Ohio Constitution permits. However, an Ohio Supreme Court case in 1925 specifically rejected this argument, holding that a municipality cannot create its own court.¹⁴⁵

¹⁴⁰ MAYOR'S COURT SUMMARY, *supra* note 48, at 9.

¹⁴¹ *Some Courts Allowing Drunken Drivers Back Behind the Wheel*, Nov. 15, 2006, <http://www.wlwt.com/news/10318483/detail.html> (last visited Mar. 4, 2010).

¹⁴² *Id.* The Arlington Heights mayor's court, also located in Hamilton County, reduced eight of the twelve OVI cases presented in 2006, a sixty-six percent reduction. *Id.* Hamilton County Municipal Court, whose jurisdiction includes the city of Cincinnati, heard over 320,000 cases in 2007, over 5,000 of which were OVI cases. THE SUPREME COURT OF OHIO, 2007 OHIO COURTS SUMMARY 191, 207 (2007), available at <http://www.sconet.state.oh.us/publications/annrep/07OCS/2007OCS.pdf> [hereinafter OHIO COURTS SUMMARY].

¹⁴³ *Some Courts Allowing Drunken Drivers Back Behind the Wheel*, *supra* note 141.

¹⁴⁴ OHIO CONST. art. X, § 4.

¹⁴⁵ *State ex rel. Cherrington v. Hutsinpillar*, 147 N.E. 647, 649 (Ohio 1925). In the 1851 Ohio Constitution, the respective section regarding the creation of courts stated "such other [inferior] courts . . . as the General Assembly may, from time to time, establish . . ." *Id.* The 1912 Ohio Constitution

Despite this opposing view, abolishing the mayor's court would strike against the long-standing belief in Ohio that local matters should be solved locally.

Local courts have been a part of the Ohio court system for over two-hundred years.¹⁴⁶ Whether it was the justice of the peace or police courts in the nineteenth century, or today's municipal and county courts, local courts have been a mainstay in the constantly evolving political and social history of Ohio. As represented by the presence of local courts, Ohioans favor a system where they have a voice in deciding political matters.¹⁴⁷ Mayor Richard Ellison of Elmwood Place, a village located in Hamilton County, feels that his mayor's court provides this type of justice.¹⁴⁸

“There's more opportunity for compassion. It gives you a good feeling to go home and say I think I got the message across and didn't have to wipe out some family's fortune.”

. . . .

“It's not the criminal factor so much as that personal, that family, that social and emotional value. . . . A family I know might stand before me heartbroken over some dirt-bag son or brother or cousin. They talk directly to me”¹⁴⁹

As these quotes state, a mayor is sometimes the best individual to operate a local court, as he or she likely is more aware of a defendant's past or family history and can best decide a sentence that is fair to the defendant. Abolishing the mayor's court will result in the transfer of cases to a judge in a larger city that likely lacks this kind of knowledge. Thus, while critics of mayor's courts view this factor of local justice negatively, mayor's courts fit both the ideals contained in the Ohio Constitution concerning local government and the values held by many citizens of Ohio.

removed the language conferring the power specifically on the General Assembly, and replaced it, as it is today, with “such other courts inferior to the courts of appeals as may from time to time be established by law.” *Id.* The municipality argued that by removing the specific language concerning the power to establish courts, the General Assembly intended to strip itself of the power to create inferior courts. *Id.* The Ohio Supreme Court did not agree with this construction, as it stressed the importance of creating courts and the dangers involved when granting the right of creation to someone other than the legislature. *Id.*

¹⁴⁶ See *supra* Part II.A.

¹⁴⁷ This notion of self-governance can be traced back to the late eighteenth century, as early Ohioans “valued the power to resolve disputes and determine law within their own neighborhoods.” Cayton, *supra* note 7, at 32.

¹⁴⁸ Clines, *supra* note 137.

¹⁴⁹ *Id.*

2. Eliminating the Mayor's Court Would Create a Substantial Strain on Other Courts, Police, and Defendants

In 2007, mayor's courts numbered 335 across Ohio.¹⁵⁰ If the Ohio legislature ultimately decides to abolish the mayor's court, then almost 300,000 cases would have to be transferred to another court.¹⁵¹ Such a transfer would cause a significant backlog in trial courts all across Ohio. Even if some municipalities with larger populations were able to retain a local court, but not a mayor's court, the transfer would still be immense. For example, H.B. 154's attempt to abolish mayor's courts in municipalities with populations less than 1,600 would cause, according to 2007 figures, a transfer of over 50,000 cases alone.¹⁵² While a lot of these cases are traffic related offenses,¹⁵³ nearly 5,000 OVI cases¹⁵⁴ and over 40,000 other misdemeanor cases¹⁵⁵ were filed in mayor's courts in 2007. These cases likely take more effort to adjudicate and thus would place a bigger stress on other courts. For example, H.B. 154's restructuring would cause some extreme increased caseloads for several courts, including Cuyahoga Falls Municipal Court (approximately a nineteen percent increase), Parma Municipal Court (a thirty-two percent increase), and Lawrence County Court (an alarming fifty percent increase).¹⁵⁶

Another concern with the elimination of mayor's courts is the far distances both police and defendants will have to travel to attend court proceedings. For example, the abolition of two mayor's courts with significant caseloads, Addyston in Hamilton County and Hanging Rock in Lawrence County¹⁵⁷, would cause police and defendants to travel

¹⁵⁰ MAYOR'S COURT SUMMARY, *supra* note 48, at 1.

¹⁵¹ This number reflects the amount of new cases filed in mayor's courts in 2007: 296,674. *Id.* at 4. Such an alarming number itself reflects the importance of the mayor's court.

¹⁵² OHIO LEGIS. SERV. COMM'N, 127TH GEN. ASSEM., FISCAL NOTE & LOCAL IMPACT STATEMENT, SUB. H.B. 154, 16-20 (2008), available at <http://www.lbo.state.oh.us/fiscal/fiscalnotes/127ga/pdfs/HB0154HR.pdf> [hereinafter FISCAL NOTE, SUB. H.B. 154].

¹⁵³ The amount of new traffic cases filed in mayor's courts in 2007 was over 250,000. MAYOR'S COURT SUMMARY, *supra* note 48, at 41.

¹⁵⁴ *Id.* at 34.

¹⁵⁵ *Id.* at 22.

¹⁵⁶ Two mayor's courts' caseloads would be transferred to the Cuyahoga Falls Municipal Court if these courts are abolished: Boston Heights Mayor's Court (5,285 cases in 2007) and Peninsula Mayor's Court (760 cases). FISCAL NOTE, SUB. H.B. 154, *supra* note 152, at 22. The Cuyahoga Falls Municipal Court heard 32,219 in 2007. OHIO COURTS SUMMARY, *supra* note 142, at 190. Two mayor's courts' caseloads would be transferred to the Parma Municipal Court if these courts are abolished: Brooklyn Heights Mayor's Court (810 cases) and Linndale Mayor's Court (5,013 cases). FISCAL NOTE, SUB. H.B. 154, *supra* note 152, at 20. The Parma Municipal court heard 18,025 cases in 2007. OHIO COURTS SUMMARY, *supra* note 142, at 192. Three mayor's courts' caseloads would be transferred to the Lawrence County Court if these courts are abolished: Chesapeake Mayor's Court (873 cases), Hanging Rock Mayor's Court (1,906 cases), and Proctorville Mayor's Court (428 cases). FISCAL NOTE, SUB. H.B. 154, *supra* note 152, at 21. The Lawrence County Court heard 6,023 cases in 2007. OHIO COURTS SUMMARY, *supra* note 142, at 191.

¹⁵⁷ The Addyston mayor's court filed 1,215 new cases in 2007. MAYOR'S COURT SUMMARY, *supra* note 48, at 5. The Hanging Rock mayor's court filed 1,480 new cases in 2007. *Id.* at 6.

approximately thirty minutes to be heard in court.¹⁵⁸ Instead of being swiftly adjudicated in a court much closer to home, defendants would be forced to wait significant times in unfamiliar surroundings. Additionally, police would be drawn away from their jurisdictions, causing both an increase in transportation and salary costs and reducing the police's role in protecting the community.¹⁵⁹ If one of these small communities with a mayor's court has but a few police officers, and they are called away to contest a court matter, the security of the community is put at risk. Further, forcing police to drive to far-away courts may encourage police to reduce their desire to ticket individuals, therefore creating a system of inept police forces all across rural Ohio. As these numbers show, the abolishment of mayor's courts would create an unnecessary hassle for different groups across Ohio. Before jumping to harsh decisions, legislators should consider these groups, including other courts, police, and defendants, when choosing to regulate mayor's courts in the future.

3. Abolishing the Mayor's Court Will Cause a Financial Crisis for Municipalities

Perhaps the most alarming effect of abolishing mayor's courts in Ohio is the sizeable financial strain it will place on communities. Should all mayor's courts be abolished, 335 courts will be closed,¹⁶⁰ therefore forcing communities to replace significant revenue formerly obtained from their mayor's courts. For example, North Hampton, located in Clark County, acquired nearly eighty-five percent of its revenue in 2007 by collecting funds from fines, licenses, and permits.¹⁶¹ As a result of a reduction in revenue, other programs, such as law enforcement, will see a significant decrease in funds.¹⁶² Along with the reduction in revenue is an increase in

¹⁵⁸ Defendants and police officers with cases in the Addyston Mayor's Court would have to travel to the Hamilton County Municipal Court. FISCAL NOTE, SUB. H.B. 154, *supra* note 152, at 20. The travel time between these two courts is about twenty-eight minutes. *Google Maps*, <http://maps.google.com/maps?hl=en&tab=wl> (select Get Directions, search "235 Main Street, Addyston, Ohio, 45001" & "1000 Main Street, Cincinnati, Ohio, 45202") (last visited Feb. 5, 2010). Defendants and police officers with cases in the Hanging Rock Mayor's Court would have to travel to the Lawrence County Court. FISCAL NOTE, SUB. H.B. 154, *supra* note 152, at 21. The travel time between these two courts is about twenty-eight minutes. *Google Maps*, <http://maps.google.com/maps?hl=en&tab=wl> (select Get Directions, search "100 Scioto Avenue Hanging Rock, OH 45638" & "10916 County Road 1, Chesapeake, OH 45619 (Lawrence County Municipal Court)") (last visited Feb. 5, 2010).

¹⁵⁹ OHIO LEGIS. SERV. COMM'N, FISCAL NOTE & LOCAL IMPACT STATEMENT, 127TH GEN. ASSEM., SUB. H.B. 154, 10 (2008), *available at* <http://www.lbo.state.oh.us/fiscal/fiscalnotes/127ga/pdfs/HB0154HR.pdf>.

¹⁶⁰ MAYOR'S COURT SUMMARY, *supra* note 48, at 1.

¹⁶¹ MARY TAYLOR, AUDITOR OF STATE, VILLAGE OF NORTH HAMPTON FINANCIAL STATEMENTS DECEMBER 31, 2007 AND 2006 at 1 (2008), *available at* http://www.auditor.state.oh.us/AuditSearch/Reports/2008/Village_of_North_Hampton_07_06-Clark.pdf. In addition, the Village of Linndale collected approximately fifty percent of its revenue from fines, licenses, and permits. *See* AUDITOR, *supra* note 139, at 16. More examples of significant collections from mayor's courts include Arlington Heights (twenty-five percent of income) and Maineville (\$9,000 profit). Whitaker, *supra* note 130, at 1B.

¹⁶² FISCAL NOTE, SUB. H.B. 154, *supra* note 152, at 10. While these numbers are difficult to calculate, it is estimated that increased costs will "exceed minimal." *Id.*

transportation and salary costs for police officers' travel to distant courts.¹⁶³ Abolishing mayor's courts will also force employees from the 335 mayor's courts to find new employment.¹⁶⁴

Communities that lose their mayor's courts are not the only groups that will be affected though. Municipal or county courts also will see increased costs due to the significant influx of cases transferred from abolished mayor's courts.¹⁶⁵ This increase in costs is more probable in urban areas where the transfer of cases is likely higher than in rural areas.¹⁶⁶ In addition, defendants must also incur more costs to travel further distances to attend court proceedings.

Attempts by the Ohio legislature to offset this crisis have created additional problems. H.B. 154's suggested solution of creating a community court for municipalities with a population over 1,600¹⁶⁷ generated numerous problems. First, it did nothing to help those mayor's courts with a population lower than 1,600; all of these mayor's courts were automatically abolished, therefore creating the same problems as stated above. For those municipalities that could have switched to a community court, additional costs incurred for creating a new court would have been significant.¹⁶⁸ These costs included acquiring and maintaining larger office space, changing to a new docket system, providing a new magistrate with an office, and paying for a magistrate's salary.¹⁶⁹ Even the Ohio Supreme Court, whose own Chief Justice Moyer publicly supported the bill, would have encountered increased expenses and hassle through supervising entirely new local courts.¹⁷⁰ As these drastic effects show, previous attempts by the Ohio legislature have not solved anything, but rather caused even more problems. Therefore, future legislators who wish to regulate mayor's courts should consider the drawbacks of past attempts and recognize the significant financial impact that abolishment creates.

4. Mayor's Courts Already Are Restricted Significantly, So Why Abolish Them?

Since its official creation in 1851, the mayor's court has undergone significant changes that have limited its powers in numerous ways. First,

¹⁶³ *Id.*

¹⁶⁴ For example, the Minerva Park mayor's court, located in Franklin County, employs a magistrate, law director, and a clerk of courts. Minerva Park Mayor's Court, <http://www.minervapark.org/mayor/court.htm> (2009). For another example, consider the Maineville mayor's court, located in Warren County, who employs a magistrate, a prosecutor, and a clerk of courts. Village of Maineville Mayor's Court, <http://www.mainevilleoh.com/Court.htm>. (last visited Mar. 5, 2010).

¹⁶⁵ FISCAL NOTE, SUB. H.B. 154, *supra* note 152, at 8.

¹⁶⁶ *Id.*

¹⁶⁷ BILL ANALYSIS, SUB. H.B. 154, *supra* note 113, at 1.

¹⁶⁸ FISCAL NOTE, SUB. H.B. 154, *supra* note 152, at 6.

¹⁶⁹ *Id.* at 7.

¹⁷⁰ *Id.* at 1.

mayor's courts are subject to population¹⁷¹ and numerous subject-matter jurisdiction limitations.¹⁷² Next, the Ohio legislature requires, albeit for good reason, all individuals (mayors or appointed magistrates) who operate mayor's courts to complete training provided by the Ohio Supreme Court.¹⁷³ Also, mayor's courts must register and provide case data to the Ohio Supreme Court.¹⁷⁴

If the Ohio Revised Code has not restricted the mayor's court enough, then case law has surely done its part in limiting the authority of the mayor to operate his or her own mayor's court. From *Tumey* in 1927 to *DePiero* in 1999, the authority of the mayor who has executive powers as well as judicial powers has diminished considerably.¹⁷⁵ Of the 7113 trials conducted in mayor's courts in 2007, only fifteen percent were heard by mayors.¹⁷⁶ Another attempt by the Ohio legislature, H.B. 267, tried to eliminate this statistic completely. H.B. 267 required that all mayors who wished to operate their mayor's court have the same education requirements as an appointed mayor's court magistrate, specifically that they be lawyers with a minimum of three years experience.¹⁷⁷

Lastly, critics of the mayor's court overlook a key individual in their attempt to abolish the mayor's court: the defendant. If the entire goal of the justice system is to provide a fair opportunity for defendants to defend themselves in court, then eliminating mayor's courts would radically weaken this recognized right. As already discussed, defendants would be required to travel longer distances for court dates if mayor's courts were abolished.¹⁷⁸ Further, mayor's courts essentially offer defendants a "do-over" by allowing them to appeal de novo their decision to the municipal or county court within the mayor's court's territorial jurisdiction.¹⁷⁹ By closing mayor's courts, the Ohio legislature will be removing a long-established right of defendants. All of these restrictions beg the question: If the mayor's court is already restricted significantly, then why abolish it?

IV. ALTERNATIVE OPTIONS FOR FUTURE GENERAL ASSEMBLIES

While the mayor's court may have some weaknesses, its role in the Ohio judicial system is far too important for it to be completely abolished. The mayor's court enables local matters to be solved locally by not clogging larger municipalities' courts with minor offenses. Further, not only does

¹⁷¹ OHIO REV. CODE ANN. § 1905.01(A).

¹⁷² See *supra* Part II.B, paras. 2-3.

¹⁷³ OHIO REV. CODE ANN. § 1905.031(A)(1-6), (B), (C).

¹⁷⁴ *Id.* § 1905.033.

¹⁷⁵ See *supra* Part II.C.

¹⁷⁶ MAYOR'S COURT SUMMARY, *supra* note 48, at 16.

¹⁷⁷ BILL ANALYSIS, SUB. H.B. 267, *supra* note 124, at 9.

¹⁷⁸ See *supra* Part III.B.2.

¹⁷⁹ OHIO REV. CODE ANN. § 1905.025.

abolishment violate longstanding political tradition, but it also places a significant financial strain on municipalities and other courts. While abolishment is entirely unfeasible, there are other options for future General Assemblies to consider that would eliminate many of the weaknesses of mayor's courts.

One way to solve several of the mayor's court's flaws entails further restricting the mayor's role as a judge. The Ohio Senate tried this route with a late amendment to H.B. 267 to no avail.¹⁸⁰ By prohibiting the mayor from acting as a judge, several criticisms of the mayor's court will be remedied. First, almost all conflicts of interest will be eliminated, as judges will no longer have the opportunity to impose higher fines for their respective municipalities. Further, preventing mayors from adjudicating would ensure that a legally educated individual would sit on the bench.

Even with the bar on mayors acting as judges, the question of how to choose the replacement judge raises more concern. According to statute, the mayor has authority to appoint a magistrate to hear cases in the mayor's court of his or her municipality.¹⁸¹ Such an appointment raises some concern about the loyalty of the appointed magistrate to the mayor who selected him or her for the position. However, this problem easily can be corrected if the General Assembly simply shifts the hiring authority to another entity. For example, the legislature could vest this power in the citizens of the municipality¹⁸² or with the Supreme Court. Such a shift would remove any possible bias for magistrates and remove all remaining conflicts of interest. Moreover and most importantly, these small changes would allow municipalities to retain their mayor's courts and all of the political, social, and economic advantages that come with them.

Perhaps future Ohio lawmakers could consider New York's approach to solving a similar situation. Similar to Ohio's mayor's courts, New York's court system includes an inferior court called a town or village court.¹⁸³ While the two courts have similar jurisdictional capabilities,¹⁸⁴ New York seems to have a much bigger problem on its hands in terms of corruption.¹⁸⁵ A study by the New York Times revealed countless examples

¹⁸⁰ See *supra* part II.E, para. 3.

¹⁸¹ OHIO REV. CODE ANN. § 1905.05(A).

¹⁸² Municipal court judges in Ohio are elected in a nonpartisan election every six years. OHIO REV. CODE ANN. § 1901.07(A). County court judges are also elected by voters in each respective county court district. *Id.* § 1907.13.

¹⁸³ N.Y. CRIM. P. LAW § 10.10 (McKinney 2003). New York presently has approximately 1300 town or village courts. N.Y. State Unified Court System, City, Town & Village Courts, <http://www.courts.state.ny.us/courts/townandvillage/introduction.shtml>, (last visited Mar. 5, 2010). These courts handle over two million cases a year. *Id.*

¹⁸⁴ N.Y. CRIM. P. LAW § 10.30. For a review of the Ohio mayor's court's jurisdiction, see *supra* Part II.B, paras. 2-3.

¹⁸⁵ William Glaberson, *In Tiny Courts of New York, Abuses of Law and Power*, N.Y. TIMES, Sept. 25, 2006, at A1. This might be attributable to the overwhelming number of non-lawyers who sit on town or village court benches. Currently, seventy percent of town or village court judges are non-lawyers. Joel

of town or village court judges denying criminal defendants the most basic fundamental rights.¹⁸⁶ For example, one judge, when asked for the court's compassion during sentencing, threatened to pull out a nine-inch violin to demean the defendant's plea for sympathy.¹⁸⁷ In another shocking move, one judge who heard a spousal abuse case remarked, "[e]very woman needs a good pounding every now and then."¹⁸⁸ In 2008, a commission appointed by a high-ranking New York judge provided numerous recommendations to combat the widespread corruption within town and village courts.¹⁸⁹ Some of these recommendations are similar to current regulations placed on Ohio mayor's courts.¹⁹⁰ Despite these changes, the commission did not recommend an outright abolishment of town or village courts.¹⁹¹ Outright abolishment was not an option, as lawmakers and citizens alike defended the town or village court system.¹⁹² Instead, the commission proposed a plan to support the administration of the town or village courts through increased funding.¹⁹³

Ohio lawmakers can learn a good lesson from New York officials. In a system ridden with corruption, New York did not recommend abolishing its town or village courts. Instead, New York officials acknowledged the significance of these local courts and took action to improve them. Hopefully future Ohio lawmakers will heed the actions taken by New York officials and choose not to make the drastic move of abolishment. Ohio lawmakers should instead make changes to ensure the continued existence of the mayor's courts.

V. CONCLUSION

Abolishing mayor's courts in Ohio would end 150 years of tradition and established jurisprudence. Simply put, the mayor's court is imperative to an efficient Ohio court system, as it provides the ability to prevent minor offenses from reaching courts with significant caseloads. As this Comment has shown, mayor's courts afford defendants the opportunity to have local criminal matters solved locally. Further, they allow municipalities to retain

Stashenko, *Study Supports Elimination of Hundreds of N.Y. Courts*, N.Y. LAW JOURNAL, Sept. 19, 2008, <http://www.law.com/jsp/article.jsp?id=1202424634983>.

¹⁸⁶ Glaberson, *supra* note 185.

¹⁸⁷ *Id.*

¹⁸⁸ *Id.* The article is an excellent exposé on what can happen if local courts go unsupervised and lack regulation from a superior authority. The article contains numerous appalling examples of judges performing unimaginable actions, including blatant racism.

¹⁸⁹ Stashenko, *supra* note 185.

¹⁹⁰ For example, the commission recommended setting age and educational limitations on judges, as well as promoting a similar appeals process. *Id.*

¹⁹¹ *Id.* While the commission did recommend the closing of several hundred town or village courts, the closing was attributed to financial reasons. *Id.*

¹⁹² *Id.*

¹⁹³ Press Release, N.Y. Unified Court Sys., Special Commission Charged with Scrutinizing New York's Justice Court System Releases Landmark Report (Sept. 17, 2008) (available at http://www.courts.state.ny.us/press/pr2008_6.shtml).

significant control over local criminal justice, thus creating a well-structured court system that promotes Ohio's longstanding tradition. Mayor's courts are not without their flaws though. Critics of mayor's courts point to the possibility of corruption, conflict of interest, and unqualified judges as reasons to abolish them. However, through nearly one hundred years of case law and statutory regulations, mayor's courts have undergone significant changes that have greatly limited their authority.

Despite these criticisms and restrictions, abolishment is not the best approach to resolving the mayor's court's imperfections. First, closing all mayor's courts violates principles of local justice that have been part of Ohio's judicial system since its inception. Second, abolishing mayor's courts creates a significant hassle for other courts, police forces, and defendants. Lastly, closing mayor's courts would cause a financial crisis for municipalities all across Ohio. While the 127th General Assembly attempted to abolish mayor's courts with H.B. 154 and S.B. 252, the defeat of these bills implicitly shows that lawmakers do not support abolishment.

Instead of extreme measures like H.B. 154 and S.B. 252, future Ohio lawmakers should endeavor to improve the mayor's court with minor changes that can cure some of its ailments. Future legislatures should consider changes like those made by New York and H.B. 267—changes that confronted specific weaknesses instead of promoting complete abolishment. By taking these steps, future Ohio lawmakers can avoid the *Nothing but Trouble* label and the mayor's court can continue to prosper in communities all across Ohio.