

**NO. 18-30955**

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

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**ALANA CAIN; ASHTON BROWN; REYNAUD VARISTE; REYNAJIA  
VARISTE; THADDEUS LONG; VANESSA MAXWELL,**

Plaintiffs-Appellees,

v.

**LAURIE A. WHITE, Judge Section A of the Orleans Parish Criminal District  
Court; TRACEY FLEMINGS-DAVILLIER, Judge Section B of the Orleans  
Parish Criminal District Court; BENEDICT WILLARD, Judge Section C of  
the Orleans Parish Criminal District Court; KEVA LANDRUM-JOHNSON,  
Judge Section E of the Orleans Parish Criminal District Court; ROBIN  
PITTMAN, Judge Section F of the Orleans Parish Criminal District Court;  
BYRON C. WILLIAMS, Judge Section G of the Orleans Parish Criminal  
District Court; CAMILLE BURAS, Judge Section H of the Orleans Parish  
Criminal District Court; KAREN K. HERMAN, Judge Section I of the  
Orleans Parish Criminal District Court; DARRYL DERBIGNY, Judge  
Section J of the Orleans Parish Criminal District Court; ARTHUR HUNTER,  
Judge Section K of the Orleans Parish Criminal District Court; FRANZ  
ZIBILICH, Judge Section L of the Orleans Parish Criminal District Court;  
HARRY E. CANTRELL, Magistrate Judge of the Orleans Parish District  
Court,**

Defendants-Appellants.

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On Appeal from the United States District Court  
for the Eastern District of Louisiana  
USDC No. 2:15-cv-4479-SSV

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**BRIEF OF *AMICUS CURIAE* INSTITUTE FOR JUSTICE  
IN SUPPORT OF PLAINTIFFS-APPELLEES**

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Jeffrey Rowes (TX Bar #24104956)  
*Lead Counsel*  
Institute for Justice  
816 Congress Avenue, Suite 960  
Austin, TX 78701  
Telephone: (512) 480-5936  
Facsimile: (512) 480-5937  
jrowes@ij.org

Joshua A. House  
Institute for Justice  
901 N. Glebe Road, Suite 900  
Arlington, VA 22203  
Telephone: (703) 682-9320  
Facsimile: (703) 682-9321  
jhouse@ij.org

January 4, 2019

*Counsel for Amicus Curiae*  
*Institute for Justice*

## **SUPPLEMENTAL STATEMENT OF INTERESTED PARTIES**

Pursuant to Fifth Circuit Rule 29.2, the undersigned counsel certifies that the following listed persons and entities, in addition to those already listed in the parties' briefs, have an interest in the outcome of this case.

*Amicus Curiae*  
Institute for Justice

Counsel for *Amicus Curiae*  
Jeffrey Rowes (Institute for Justice)  
Joshua House (Institute for Justice)

Undersigned counsel further certifies, pursuant to Federal Rule of Appellate Procedure 26.1(a), that *amicus curiae* Institute for Justice is not a publicly held corporation, does not have any parent corporation, and that no publicly held corporation owns 10 percent or more of its stock.

Dated January 4, 2019

/s/ Jeffrey Rowes  
*Counsel for Amicus Curiae*  
*Institute for Justice*

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## INTEREST OF *AMICUS CURIAE*<sup>1</sup>

The Institute for Justice (“IJ”) is a nonprofit, public interest law firm committed to defending the essential foundations of a free society by securing greater protection for individual liberty and restoring constitutional limits on the power of government. A central pillar of IJ’s mission is to protect the right to own and enjoy property. Property rights are jeopardized, however, where fines, fees, and forfeitures deprive individuals of their personal and real property. IJ litigates cases to defend property rights and also files *amicus curiae* briefs in important property-rights cases. *See, e.g., Timbs v. Indiana*, No. 17-1091, \_\_\_ U.S. \_\_\_ (argued Nov. 28, 2018); *Nelson v. Colorado*, 137 S. Ct. 1249 (2017); *Horne v. Dep’t of Agric.*, 135 S. Ct. 2419 (2015); *Kaley v. United States*, 134 S. Ct. 1090 (2014); *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595 (2013); *Kelo v. City of New London*, 545 U.S. 469 (2005); *Bennis v. Michigan*, 516 U.S. 442 (1996).

## ARGUMENT

This brief intends to inform the Court on two points:

First, it shows that the use of fines, fees, and forfeitures to generate revenue is a growing and troubling trend. Reliance on such revenues creates an incentive

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<sup>1</sup> Pursuant to FRAP 29(a)(2), counsel for *amicus* states that counsel for all parties have consented to the filing of this brief. No party or party’s counsel authored this brief in whole or in part, and no party or party’s counsel contributed money that was intended to fund preparing or submitting this brief. No person—other than the *amicus curiae* or its counsel—contributed money that was intended to fund preparing or submitting this brief.

for governments to use their municipal court and law enforcement systems, not to protect the public and do justice, but to generate revenue. This is a practice that continues to grow, as fines, fees, and forfeitures have exploded in recent decades.

Second, it presents the Court with recent court challenges to the practice of relying on fines, fees, and forfeitures to boost municipal revenues. These cases are directly analogous to the appellees' claims in this case. And some of these courts have even expressly held that municipal officials cannot, consistent with due process, have a financial incentive to ticket, convict, fine, or forfeit the property of individuals.<sup>2</sup>

**I. Using Fines, Fees, and Forfeitures to Fund Municipal Government Incentivizes Municipalities to Prioritize Revenue Over Justice and Is an Increasingly Common Practice.**

The court below found that “[a]pproximately \$1,000,000 from various fines and fees goes into the [Orleans Parish Criminal District Court (OPCDC)] budget each year.” *Cain v. City of New Orleans*, 281 F. Supp. 3d 624, 655 (E.D. La. 2017). The trial court held that this revenue stream creates an unconstitutional conflict of interest because the court’s judges “therefore have an institutional incentive to find that criminal defendants are able to pay fines and fees.” *Id.*

The OPCDC’s budgetary reliance on fines, fees, and forfeitures is part of a troubling nationwide trend. Across the country, local governments have come to

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<sup>2</sup> *Amicus* Institute for Justice has filed a substantially identical brief in this Court in *Caliste v. Cantrell*, No. 18-30954, a case raising the same legal issue on appeal.

rely on fines, fees, and forfeitures to generate revenue. This reliance incentivizes municipalities to prioritize revenue generation over the neutral administration of justice. And it has snowballed into staggering increases in fines, fees, and forfeitures collected.

**A. Governments Have Come to Rely on Fines, Fees, and Forfeitures.**

Local governments have come to rely upon fines, fees, and forfeitures to generate a substantial portion of municipal revenues. In New Orleans specifically, “[c]riminal justice agencies collected [in 2015] . . . \$1.7 million in bail and bond fees and \$2.8 million in conviction fines and fees.” Mathilde Laisne et al., *Past Due: Examining the Costs and Consequences of Charging for Justice in New Orleans* 22, Vera Institute of Justice (2017), <https://goo.gl/DjVFL6>. This “[r]evenue from fees helps to fund the municipal and district courts, the district attorney, public defender, and sheriff’s office, and other agencies.” *Id.* at 12.

The most notorious example of a municipal government using its court and law enforcement to collect revenue is Ferguson, Missouri. The Department of Justice’s report on Ferguson demonstrated that the ultimate goal of the town’s police and municipal court was to generate revenue. Every aspect of life in Ferguson was regulated by the Ferguson Municipal Code, the violation of which would result in a plethora of fines, fees, and surcharges. *See* U.S. Dep’t of Justice Civil Rights Division, *Investigation of the Ferguson Police Department* 7 (March

4, 2015), <https://goo.gl/JhzEiu>; *see also* Julia Lurie & Katie Rose Quandt, *How Many Ways Can the City of Ferguson Slap You with Court Fees? We Counted*, Mother Jones (Sept. 12, 2014), <https://goo.gl/CFu9hL> (documenting how rolling through a stop sign in Ferguson could easily result in incarceration and impoverishment). Maximizing these financial penalties meant the criminalization of mundane conditions, heavy-handed enforcement, biased policing, and a municipal court operated to quickly convict and obtain fines from defendants, who were often financially incapable of satisfying the city's revenue demands.

Ferguson, it turns out, is not an outlier. In St. Louis County, municipalities routinely used their municipal courts and law enforcement as revenue generators. The cities of Calverton Park, Bella Villa, Vinita Terrace, and Pine Lawn all derived around half or more than half of their general revenue from fines and fees. Better Together, *Public Safety—Municipal Courts* 8 (Oct. 2014), <https://goo.gl/jBkXcD>. And when the state of Missouri capped the amount of money municipalities could retain from traffic fees, municipalities resorted to ticketing people for things like having a barbeque in the front yard or basketball hoops in the street. Jennifer S. Mann, *Municipalities ticket for trees and toys, as traffic revenue declines*, St. Louis Post-Dispatch (May 24, 2015), <https://goo.gl/QNciJk>.

Nor is this practice limited to Missouri. In Colorado, five towns receive more than 30 percent of their revenue from traffic tickets and fines, with one town receiving 93 percent of its revenue from traffic tickets. Editorial, *Limit cities' reliance on revenue from traffic fines*, Denver Post (April 24, 2016), <https://goo.gl/u5F5Df>. In Georgia, the small city of Doraville, with a population of just around 10,000, was reported as writing over 40 tickets per day. Andria Simmons, *Atlanta's ticket traps: slow down or pay up*, Atlanta Journal-Constitution (Oct. 18, 2014), <https://goo.gl/LnqhLz>. Doraville also ticketed people for having cracked driveways or improperly stacked wood, before boasting to residents that “[a]veraging 15,000 cases and bringing in over \$3 million annually, the court system contributes heavily to the city’s bottom line.” Christian Britschgi, *Atlanta Suburb Brags About Fines for Chipped Paint and Incorrectly Stacked Wood*, Reason (May 24, 2018), <https://goo.gl/Zjbq2L>; Patrick Sisson, *How the municipal court money machine burdens city residents*, Curbed (May 24, 2018), <https://goo.gl/mKJjw9>. In Oklahoma, a County District Judge said that “we fund probably 90 percent or more of the operation of the courts actually out of the money that the court collects.” Kate Carlton Greer, *Over the Years, Court Fines, Fees Have Replaced General Revenue Funds*, KGOU (Feb. 9, 2015), <https://goo.gl/97UCbg>. And “the Nevada Supreme Court recently went broke because revenue from traffic tickets plummeted.” Karen D. Martin et al., *Monetary*

*Sanctions: Legal Financial Obligations in US Systems of Justice*, 1 Ann. Rev. Criminology 471, 477 (2018).

For many municipalities, municipal courts have become simply another way to generate revenue. And when those cities cannot easily obtain revenue through other means, they come to depend on this revenue to make ends meet. That reliance creates a perverse financial incentive, which turns local government decision-making away from public safety and toward revenue generation.

**B. Reliance on Fines, Fees, and Forfeitures Creates Perverse Profit Incentives for Municipal Courts, Prosecutors, and Law Enforcement.**

Reliance on the criminal justice system to produce revenue creates perverse incentives for local government. Local governments will use their municipal courts and law enforcement, not to do justice, but to collect revenue. This is precisely what the Department of Justice uncovered in its Ferguson investigation. After noting that “[t]he City budgets for sizeable increases in municipal fines and fees each year[ and] exhorts police and court staff to deliver those revenue increases,” the DOJ found that Ferguson’s “municipal court does not act as a neutral arbiter of the law . . . . Instead, the court primarily uses its judicial authority as the means to compel the payment of fines and fees that advance the City’s financial interests.” U.S. Dep’t of Justice, *Investigation of the Ferguson Police Department* at 2, 3.

The pressure to generate “royal revenue” is a well-recognized byproduct of any system of fines. See *Browning-Ferris Indus. of Vermont, Inc. v. Kelco Disposal, Inc.*, 492 U.S. 257, 271 (1989). Unlike other forms of punishment—which cost the government money—“fines are a source of revenue.” *Harmelin v. Michigan*, 501 U.S. 957, 978 n.9 (1991) (op. of Scalia, J.). So “[t]here is good reason to be concerned that fines, uniquely of all punishments, will be imposed in a measure out of accord with the penal goals of retribution and deterrence.” *Id.* Because “the State stands to benefit” from levying fines, *id.*, there is a singular risk that governments will exercise their punitive powers with an eye toward revenue, rather than justice.

Civil forfeitures in particular have infamously perverted government incentives. Civil forfeiture is a mechanism by which law enforcement agencies can seize and keep property “merely on a showing of probable cause to believe that the property was implicated in certain offenses.” *United States v. Melrose E. Subdivision*, 357 F.3d 493, 501 (5th Cir. 2004) (holding recent amendment to Civil Asset Forfeiture Reform Act did not raise standard of proof). “[B]ecause the law enforcement entity responsible for seizing the property often keeps it, these entities have strong incentives to pursue forfeiture.” *Leonard v. Texas*, 137 S. Ct. 847, 848 (2017) (Thomas, J., statement respecting denial of certiorari) (citation omitted). As Justice Thomas has recently noted, “[t]his system . . . has led to egregious and

well-chronicled abuses” and “frequently target[s] the poor and other groups least able to defend their interests in forfeiture proceedings.” *Id.*

This is not a merely theoretical incentive. Empirical research shows that relying on municipal fines and fees leads to fewer violent and property crimes being solved. See Rebecca Goldstein et al., *Exploitative Revenues, Law Enforcement, and the Quality of Government Service*, *Urban Affairs Rev.*, 2018, at 1, 17. That is because police departments, in response to political pressure, devote resources away from solving crime and toward generating revenue. See *id.* Specifically, a one-percent increase in a municipality’s fines, fees, and forfeitures revenue “is associated with a statistically and substantively significant 6.1 percentage point decrease in the violent crime clearance rate and 8.3 percentage point decrease in the property crime clearance rate.” *Id.* at 4. Law enforcement groups themselves have lamented that “[a]n inappropriate and misguided mission has been thrust upon the police in many communities: the need to generate large sums of revenue for their city governments.” Police Executive Research Forum, *Overcoming the Challenges and Creating a Regional Approach to Policing in St. Louis City and County* 7 (April 30, 2015), <http://www.policeforum.org/assets/stlouis.pdf>.

Reliance on forfeiture revenues can likewise impact law enforcement behavior and change enforcement priorities. Most state civil forfeiture laws “give

law enforcement agencies a financial stake in forfeitures by awarding them some, if not all, of the proceeds.” Dick M. Carpenter II et al., *Policing for Profit: The Abuse of Civil Asset Forfeiture* 11, Institute for Justice (2d ed., 2015), <https://goo.gl/QdfjQY>. The ill effects of this financial stake are well-studied. In a study in the Review of Behavioral Economics, the authors found that “the temptation for law enforcement personnel to benefit themselves at the expense of the public is indeed strong and clearly evident in our data.” Michael Preciado & Bart J. Wilson, *The Welfare Effects of Civil Forfeiture*, 4 Rev. Behavioral Econ. 153, 175 (2017), <https://goo.gl/qgBNVV>. Likewise, studies have shown that “[a]llowing law enforcement agencies to reap financial benefits from forfeitures encourages the pursuit of property over the impartial administration of justice.” Carpenter et al., *Policing for Profit*, at 11 (citing J. M. Miller & L. H. Selva, *Drug enforcement’s double-edged sword: An assessment of asset forfeiture programs*, 11 Justice Quarterly 313 (1994)). “[W]hen local governments allow police agencies to keep a substantial fraction of the assets that they seize in drug arrests, police respond . . . by increasing the drug offense arrest rate.” Goldstein et al., *Exploitative Revenues*, at 6 (citing, *inter alia*, Katherine Baicker & Mireille Jacobson, *Finders Keepers: Forfeiture Laws, Policing Incentives, and Local Budget*, 91 J. Pub. Econ. 2113, 2113–36 (2007)).

These incentives are not limited to unscrupulous individuals who misuse positions of power. Instead, these incentives lead to systemic distortions of priorities: revenue over public safety, fees over justice. The problem “is not one of ‘bad apples’ but bad rules that encourage bad behavior—it is not the players, but the game.” Bart J. Wilson & Michael Preciado, *Bad Apples or Bad Laws: Testing the Incentives of Civil Forfeiture*, Institute for Justice (Sept. 2014), <https://goo.gl/ALZZcS>. Not surprisingly given their incentives, municipalities have gotten quite good at the game.

**C. The Emphasis on Generating Revenue Has Led to an Explosion in Fines, Fees, and Forfeitures.**

Fines, fees, and forfeitures continue to grow. As of 2017, 10 million people owed more than \$50 billion in criminal fines, fees, and forfeitures alone. Karin D. Martin et al., *Shackled to Debt: Criminal Justice Financial Obligations and the Barriers to Re-entry They Create*, Harvard Kennedy Sch. & Nat’l Inst. of Justice 5 (Jan. 2017), <https://goo.gl/7U24No>. That is an average of over \$5,000 owed per person. *See id.*

Fines and fees have long been an aspect of punishment in both Europe and America. Alexes Harris et al., *Drawing Blood from Stones: Legal Debt and Social Inequality in the Contemporary United States*, 115 *Am. J. Sociology* 1753, 1758 (2010). Although the use of monetary sanctions in the U.S. had waned by World War II, *id.*, the postwar rise in crime, and the concurrent rise in the cost of

administering the criminal justice system, created a need to use penalties and fees to supplement state and local budgets, *see* Council of Economic Advisors, *Fines, Fees, and Bail: Payments in the Criminal Justice System that Disproportionately Impact the Poor* 1 (Dec. 2015), <https://goo.gl/RVm4xo>. In 1991, 25 percent of inmates reported receiving legal financial obligations. Alexes Harris, *A Pound of Flesh: Monetary Sanctions as Punishment for the Poor* 23 (2016). By 2004, the number of inmates reporting receiving such obligations had risen to 66 percent. *Id.* That number is undoubtedly higher today.

To shift the cost of criminal justice from taxpayers to defendants, state and local governments created new, and often novel, financial penalties for defendants. All 50 states mandate that fines be levied upon conviction. *Id.* at 26. This is just the beginning of the payments a defendant must make, however. In addition to actual fines, state and local governments have added so-called “user fees,” such as court costs, the cost of public defense, filing fees, jury costs, charges for witnesses, warrants, criminal laboratory costs, charges related to the collection, recording, and storage of DNA, court security fees, special court costs, and even, in North Carolina, a “cost of justice fee.” *Id.* at 27, 42.

These fees are levied across the country. For example, in Massachusetts, a defendant is subject to an almost never-ending list of charges:

He'll incur a fee for court-appointed counsel (even if he's indigent), a fine (if he's guilty of the underlying crime), a victim/witness assessment (even if the crime is victimless), a monthly supervision fee (if he's put on probation), a daily monitoring fee (if he has to wear a GPS device), court costs (because courts are expensive to run), a default fee (if he defaults on a court date), and so on.

Mass. Senate Comm. on Post Audit and Oversight, *Fine Time Massachusetts: Judges, Poor People, and Debtors' Prison in the 21<sup>st</sup> Century*, Mass. S. Docket No. 2734, at 10 (Nov. 7, 2016). In California, a \$100 fine for a traffic infraction requires the defendant to pay \$490 to the state, after an additional \$390 in charges for such things as a "criminal surcharge," a court construction fund, and a fee for EMS operations. Lawyers' Comm. for Civil Rights of the San Francisco Bay Area et al., *Not Just a Ferguson Problem: How Traffic Courts Drive Inequality in California* 10 (2015), <https://goo.gl/bz95yZ>. If the defendant fails to pay this amount or is late in paying, the state will suspend the defendant's driver's license, thus depriving the defendant of the ability to get to work to earn money to pay the citation, leading to more charges. *Id.* at 11. In fact, fines and fees fund large amounts of California governmental activities, everything from the State Optometry Fund to the Underground Storage Tank Cleanup Fund. Mac Taylor, *Improving California's Criminal Fine and Fee System*, Cal. Legislative Analyst's Office Rep. No. 3322, at 9 (Jan. 5, 2016).

And these legal financial obligations continue to grow. Since 2010, 48 states have increased civil and criminal fees. Joseph Shapiro, *Supreme Court Ruling Not*

*Enough to Prevent Debtors Prisons*, NPR (May 21, 2014) (describing results of yearlong investigation), <https://goo.gl/Tft4XK>. Arizona, Louisiana, Ohio, and Texas instituted new fees and raised existing fees to address 2010 budget shortfalls. See Martin et al., *Shackled to Debt*, at 6 (internal citation omitted). In 2012, the Tennessee legislature established a \$450 criminal record expungement fee for the principal purpose of raising revenue for the state general fund. Maura Ewing, *Want to Clear Your Record? It will Cost You \$450*, The Marshall Project (May 31, 2016), <https://goo.gl/wWsgfm>. The use of fines, fees, and forfeitures continues to grow because it is more politically feasible to levy fees on those stuck in the criminal justice system than to raise taxes: “[M]any lawmakers use economic sanctions in order to avoid increasing taxes while maintaining governmental services, with some lawmakers even including increases in ticketing in projected budgets.” Beth A. Colgan, *The Excessive Fines Clause: Challenging the Modern Debtors’ Prison*, 65 UCLA L. Rev. 2, 22 (2018) (footnotes omitted).

Civil forfeitures have also continued to grow as a means of revenue generation. In 2012, agencies in 26 States and the District of Columbia took in more than \$254 million through forfeiture under state laws alone. Dick M. Carpenter II et al., *Policing for Profit*, at 11 (noting that deriving totals for all 50 states is “impossible because most states require little to no public reporting of forfeiture activity”). This amount is growing: The total amount seized in forfeitures

“across 14 states *more than doubled* from 2002 to 2013.” *Id.* at 5 (emphasis added).

## **II. The Use of Fines, Fees, and Forfeitures to Generate Revenue Has Been Challenged in Courts Across the Country, and Some Have Expressly Found It to Be Unconstitutional.**

Because the use of fines, fees, and forfeitures to generate revenue continues to grow, courts are increasingly seeing constitutional challenges to the practice. Cases are sparse, however, because widespread budgetary reliance on fines and fees is a relatively recent phenomenon. Nevertheless, recent litigation on profit incentives in municipal government continues to percolate in federal courts. And courts have indeed found that financial incentives to convict or prosecute defendants violate due process.

In *DePiero v. City of Macedonia*, the Sixth Circuit held that “the plaintiff was deprived [of] due process when [the defendant city’s mayor] tried his contested traffic and criminal contempt charges.” 180 F.3d 770, 782 (6th Cir. 1999). The plaintiff alleged that the city’s “Mayor’s Court” violated due process because the mayor was not “neutral and detached” when acting as a municipal judge. *Id.* at 774. The Court of Appeals agreed, reasoning that the mayor’s “executive powers and his sweeping administrative responsibilities necessarily puts him in ‘two practically and seriously inconsistent positions, one partisan and the other judicial.’” *Id.* at 782 (quoting *Ward v. Vill. of Monroeville*, 409 U.S. 57,

60 (1972)). The court noted that the Mayor “retained ultimate responsibility for law enforcement and preparation of the city’s budget, and appointed the officer who issued plaintiff’s parking ticket,” and therefore faced a “possible temptation” to bias even if he “possessed no ‘actual’ temptation or bias.” *Id.*

A similar case was filed in 2015 by residents of Pagedale, Missouri. The residents filed a class action challenging “the City’s institutional reliance on revenue from fines and fees, claiming this reliance incentivizes the City’s unconstitutional conduct of ticketing, convicting, and fining defendants in order to generate revenue.” *Whitner v. City of Pagedale*, No. 4:15-CV-1655-RWS, 2016 WL 915303, at \*1 (E.D. Mo. Mar. 10, 2016) (internal quotation marks omitted); *see also* Monica Davey, *Lawsuit Accuses Missouri City of Fining Homeowners to Raise Revenue*, N.Y. Times, Nov. 4, 2015, at A15, <https://goo.gl/hbBUuo>. The residents alleged that the City’s revenue goals motivated its police to write tickets—and its municipal court to convict—for absurd violations, including “failing to install screens on every door and window opening to the outside, hang drapes or blinds that match and ‘are neatly hung, in a presentable appearance,’ repair driveway cracks or chipped or aging paint on a home’s exterior, or paint foundations and wood fences.” *Whitner*, 2016 WL 915303, at \*1. After the court denied the city’s motion to dismiss, the parties agreed to a consent decree in which Pagedale agreed to significantly reform its code and ticketing practices and to

submit regular reports regarding its finances. *See generally* Consent Decree, *Whitner v. City of Pagedale*, No. 4:15-CV-1655-RWS, Doc. 116 (E.D. Mo. May 21, 2018), <https://goo.gl/LVRfHr>.

Cases concerning civil forfeiture have also challenged municipal governments' financial incentives. In *Harjo v. City of Albuquerque*, the district court found “a due process violation” where “the forfeiture program prosecutors’ judgment will be distorted, because . . . the more revenues the prosecutor raises, the more money the forfeiture program can spend.” 326 F. Supp. 3d 1145, 1195 (D.N.M. 2018) (citing *Ward v. Vill. of Monroeville*, 409 U.S. 57, 60 (1972)). Arlene Harjo’s vehicle was seized under civil forfeiture after her son had taken it, without her consent, to visit a girlfriend. *Id.* at 1162–63. While driving the vehicle he was stopped for driving while intoxicated and the vehicle was seized. *Id.* After a city hearing officer found that Harjo had not proven her own innocence, Harjo filed suit against the City of Albuquerque alleging that the City had an unconstitutional financial incentive to use civil forfeiture. *Id.* at 1164–65. The district court found in Harjo’s favor, reasoning that “the forfeiture program has the control to spend all it takes in, and it has done so.” *Id.* at 1197. The Court thus “conclude[d] that the City of Albuquerque’s forfeiture officials have an unconstitutional institutional incentive to prosecute forfeiture cases, because

forfeiture revenues are set in a special fund, and the forfeiture program can spend, without meaningful oversight, all of the excess funds it raises.” *Id.* at 1193.

Likewise, homeowners in Philadelphia filed a class action against the City’s civil forfeiture program, which they alleged “use[d] form legal documents and endless proceedings to generate millions of dollars in revenue.” *Sourovelis v. City of Philadelphia*, 103 F. Supp. 3d 694, 698 (E.D. Pa. 2015) (internal quotation marks omitted). The court held that the plaintiffs had adequately pleaded a due process violation because they alleged that “the [Philadelphia] D.A.’s Office allocates forfeiture proceeds for both institutional and personal benefit and further alleg[ed] a profit-sharing agreement with the Philadelphia Police Department.” *Id.* at 709. The parties have since agreed to a proposed consent decree on that claim. Proposed Consent Decree on Plaintiffs’ Fifth and Sixth Claims for Relief, *Sourovelis v. City of Philadelphia*, No. 2:14-cv-04687, Doc. 253-1 (E.D. Pa. September 18, 2018), <https://goo.gl/k9vsZ5>.

## CONCLUSION

The challenge to revenue-driven municipal courts presented in this case is the tip of a nationwide iceberg. The relative dearth of caselaw on the issue should not therefore dissuade this Court from affirming. The district court’s findings of fact are in line with well-studied, nationwide (and troubling) trends. And the district court’s legal analysis is accurate: Municipal courts must be “neutral and

detached,” not financially interested, in the cases that come before them. *Ward*, 409 U.S. at 62 (1972).

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Respectfully submitted,

/s/ Jeffrey Rowes

Jeffrey Rowes (TX Bar #24104956)\*

Institute for Justice

816 Congress Avenue, Suite 960

Austin, TX 78701

Telephone: (512) 480-5936

Facsimile: (512) 480-5937

jrowes@ij.org

Joshua A. House

Institute for Justice

901 N. Glebe Road, Suite 900

Arlington, VA 22203

Telephone: (703) 682-9320

Facsimile: (703) 682-9321

jhouse@ij.org

*Counsel for Amicus Curiae*

*\* Lead Counsel*

### CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) and 32(a)(7)(B) because this brief contains 4,038 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f) and the Rules of this Court.
2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14-point Times New Roman font with 12-point Times New Roman footnotes.

Dated: January 4, 2019

/s/ Jeffrey Rowes  
*Counsel for Amicus Curiae*

### **CERTIFICATE OF SERVICE**

I hereby certify that on January 4, 2019, I caused the foregoing Brief of *Amicus Curiae* Institute for Justice in Support of Plaintiffs-Appellees to be filed electronically with the Clerk of the Court using the Court's CM/ECF system, which will send notice of such filing to all registered CM/ECF users.

Upon acceptance by the Clerk of the Court of the electronically filed document, the required number of bound copies of the Brief of *Amicus Curiae* Institute for Justice in Support of Plaintiffs-Appellees will be filed with the Clerk of the Court.

/s/ Jeffrey Rowes  
*Counsel for Amicus Curiae*  
*Institute for Justice*