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SUPPLEMENTAL STATEMENT OF FACTS

At Page 5 of Defendant’s Reply Brief, as part of their argument seeking to distinguish the decision of this Court in *Crocker v. Finley*, 99 Ill. 2d 444 (1984), defendants state:

“Presumably, following this Court’s decision in that case, all that simply needed to be done was for the trial court to turn over the segregated money. In this case, none of these procedures were pursued in the trial court. No orders were entered to segregate the money as it came into the circuit courts’ offices. **No fund was set up** or trustee named. **Instead, the fees continued to be collected and sent to the State treasurer** to be used in accordance with the statute. In order to seek the application of *Crocker*, plaintiff should’ve followed the measures in *Crocker. Id.* As such, it has no application here.” (emphasis added).

(Defendants-Appellants’ Reply Brief, p.5).

The Record (ROA) demonstrates that defendants’ assertion that no segregated funds were set up related to the collected add-on filing fees and that all funds related to the add-on filing fees were turned over to the state treasurer are not true. First, Will County has admitted in open court to setting up a segregated fund by placing the subject \$50 add-on filing fees in a separate account early on in this twelve-year litigation. R. 15. Second, per the legislation at issue in this case the circuit court clerks kept 2% of the collected fees. 735 ILCS 5/15-1504.1. Third, in discovery responses in this case, the Cook County Circuit Court Clerk admitted that \$61,918 in collected court filing fees were not sent to the state but were maintained under court orders. C. 2357. Collectively, these three funds total nearly \$3 million.¹

¹ Discovery responses by defendants reflect that Cook County was withholding \$61,918 in add-on filing fees collected under the subject legislation pending further order of court. C. 2356-2357. Will County was holding in a segregated account the sum of “\$670,000 plus” in add-on filing fees representing the \$50 add-on fees collected by the Will County Circuit Court Clerk. (See, email exchange between counsel, Sur Reply Appendix (SRA),

At an August 17, 2021, trial court hearing the court was discussing the status of funds previously collected by various clerks of court under the subject unconstitutional add-on fee statutes and the issue of when the stay order enjoining the collection of said fees should be lifted. Counsel representing the Will County clerk as class representative of all 102 Illinois circuit court clerks stated that Will County had not “submitted the money to the treasurer for years” and “...we got the money...” R 15. Counsel for Defendant-Intervenor Cook County Circuit Court clerk stated that out of the “\$45 million” in fees collected by the Cook County Clerk as of August 2020, “98 percent of it was sent to the state treasurer within 60 days.” R. 8. This action by the Cook County Clerk in retaining 2% of the unconstitutional filing fees was a provision of the offending legislation. 735 ILCS 5/15-1504.1

On September 10, 2021, the circuit court entered an order which dissolved an earlier stay of injunctive relief regarding the unconstitutional legislation in question. That order provided: “the clerks shall be permanently enjoined from imposing, collecting, holding, and dispersing the fees at issue.” C 2108-2109. On September 17, 2021, the circuit court modified its earlier order and directed that to “the extent the fees already collected under the subject statutes are (or have been) held by the circuit clerks, the circuit clerks are ordered to continue holding such funds, in a segregated account, until further court order.” C. 2113-2114. These orders were never vacated or otherwise modified prior to the appeal of the dismissal of the cause of action by the circuit court.

and affidavit of Daniel K. Cray) Under the offending legislation, two percent of the collected fees were to be kept by the clerks resulting in over \$2 million dollars retained by the clerks of the \$102 million dollars in total fees they collected. 735 ILCS 5/15-1504.1 and R. 256-257.

ARGUMENT**THE ILLINOIS JUDICIAL SYSTEM IS THE ONLY FORUM WHICH CAN EFFECTUATE A COMPLETE REFUND OF THE FEES COLLECTED UNDER THIS FACIALLY UNCONSTITUTIONAL LEGISLATION AND, IN PARTICULAR, ALLOW FOR FUNDS MAINTAINED BY CIRCUIT COURT ORDER TO BE PROVIDED TO PLAINTIFFS.**

The reply brief submitted by the Will County Circuit Court Clerk on August 28, 2024, states that in contrast to the facts of the decision in *Crocker v. Finley*, 99 Ill. 2d 444 (1984), none of the filing fees were placed into a segregated fund in the instant case and asserts that the decision in that case should be disregarded as precedent on that basis. (Defendants-Appellants' Reply Brief, p.5). The reply brief further claims that the fees collected under this legislation were turned over to the state treasurer and were therefore state funds which can only be addressed in the Court of Claims. (Defendants-Appellants' Reply Brief, p.5). Both arguments are factually inaccurate.

As addressed at length in the brief submitted to this Court by plaintiffs and as not disputed by defendants in any of their earlier pleadings/briefs, the jurisdiction of the Court of Claims is limited to actions seeking the recovery of state funds. Under the legislation that is the subject of the instant case however, each of the 102 circuit court clerks were instructed to transmit only 98% of the fees collected while retaining 2% in a fund. For example, as this Court observed in *Walker v. McGuire*, 2015 IL 11738 the legislation instructed that:

“The clerk shall remit the fee to the State Treasurer as provided in this Section to be expended for the purposes set forth in Section 7.30 of the Illinois Housing Development Act. All fees paid by plaintiffs to the clerk of the court as provided in this Section shall be disbursed within 60 days after receipt by the clerk of the court as follows: (i) 98% to the State Treasurer for deposit into the Foreclosure Prevention Program Fund, and (ii) 2% to the clerk of the court for administrative expenses related to implementation of this Section.” 735 ILCS 5/15–1504.1.

Walker v. McGuire, 2015 IL 117138, ¶ 4.

Illinois statutory law requires that the clerks of court in each county deposit these fees into a separate account with the county treasurer rather than with the state or with the state treasurer:

“§ 2. All elected or appointed officials of units of local government, and clerks of the circuit courts, authorized by law to collect fees which collection is not prohibited by Section 9 of Article VII of the Constitution, shall deposit all such collected fees upon receipt with the county treasurer or treasurer of such other unit of local government, as the case may be, except as otherwise provided by law; and except that such officials may maintain overpayments, tax redemptions, trust funds and special funds as provided for by law or local ordinance.”

50 ILCS 315/2.

Fees deposited in these accounts are not state funds. (See, *Kaden v. Kagann*, 260 Ill. App. 3d 256 (2d Dist. 1994) and *Kaden v. Pucinski*, 287 Ill. App. 3d 546 (1st Dist. 1997)). Defendants now claim in their reply brief that since the fees collected in the legislation were transferred to the state treasurer they are therefore state funds subject to refund only in an action filed before the Court of Claims. That is not correct as the above-identified three separate funds did not go to the State.²

The Court of Claims’ jurisdiction, discussed in detail in plaintiffs’ opening brief, is explicitly limited by statute to actions brought against the State of Illinois seeking to recover against state funds. Accordingly, defendants’ insistence that the courts lack jurisdiction to effectuate the refund and that the refund may only be considered before the Court of Claims would not allow the refund of over \$2,000,000 that was retained by units

² If all the fees were sent to the State, then this case must surely stay in the court system as the defendants would be guilty of violating the subject filing fee statute and they would be guilty of violating court orders enter by the circuit court in September of 2021—both of which cannot be addressed by the Court of Claims under its enabling act.

of local government under this unconstitutional legislation as required by Illinois law and precedent. Nor can the Court of Claims require a refund of the over \$700,000 combinedly held by Will and Cook Counties pending further order of the circuit court, orders that were intended to preserve these funds for later refund.

CONCLUSION

Defendants try to bolster their argument of there being no jurisdiction of the courts to provide back the unlawfully taken filing fees by stating inaccurate facts concerning the status of these filing fee funds not held by the state. Further, the defendants would like this Court to believe that all collected unconstitutional fees were given to the state and not retained in the three funds noted in this brief all of which are clearly not state funds and were never in the possession of the state. Almost three-quarters of a million dollars of these segregated funds remain under the control of the circuit court whose orders in September 2021 called for those funds to be maintained in separate accounts by the circuit court clerks. These inconvenient truths, along with the arguments contained in Plaintiffs-Appellants' Response Brief, prove the judicial system, not the Court of Claims, is the only entity which has the power and obligation to return to the plaintiffs their own money taken from them by the defendants through facially unconstitutional legislation. The decision of the Third District Appellate Court holding that Illinois courts have jurisdiction to return to the plaintiffs their unlawfully taken funds should be affirmed by this Court.

Respectfully submitted,

CRAY HUBER HORSTMAN HEIL
& Van AUSDAL LLC

/s/ Daniel K. Cray

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AFFIDAVIT OF DANIEL K. CRAY

NOW COMES Your Affiant, Daniel K. Cray, an adult person over the age of 18 years, provides this Affidavit under oath and states:

1. I am Daniel K. Cray and am one of the counsel for the Plaintiffs/ Respondents in the above-captioned matter. My business address is 303 W. Madison Street, Suite 2200, Chicago, Illinois 60606.

2. Statements made in my Affidavit are made under personal knowledge obtained as lead counsel for plaintiffs.

3. On September 15, 2021, as lead attorney for the plaintiffs, I engaged in an email exchange with Attorney Scott Pyles, counsel for defendant class representative, the Will County Circuit Court Clerk.

4. In this email exchange which concerned possible settlement of the plaintiffs' claims against only the Will County Circuit Court Clerk, I was informed by counsel that the Will County clerk had segregated from any filing fees sent to the State, "\$670,000 plus" of the filing fees the Will County clerk collected under the unconstitutional legislation at issue in this case. (See, three-page email exchange made part of the Sur Reply and marked as Exhibit 1)

5. As certain portions of the email exchange in Exhibit 1 may be subject to protection under ISCR 408, the email exchange has been redacted to disclose only the facts pertinent to the Plaintiffs' Sur Reply.

FURTHER AFFIANT SAYETH NOT.

/s/ Daniel K. Cray

Daniel K. Cray

VERIFICATION BY CERTIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in the above affidavit and Sur Reply are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

/s/ Daniel K. Cray

Daniel K. Cray

September 5, 2024

Date

CERTIFICATE OF COMPLIANCE

I certify that this Sur Reply conforms to the requirements of Supreme Court Rule 341. The length of this Sur Reply, excluding the pages containing the Rule 341(d) cover, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to this Sur Reply are 5 pages.

/s/ Daniel K. Cray

Daniel K. Cray
One of the Attorneys for Plaintiffs

130288

130288

SUR-REPLY
APPENDIX
(SRA)

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September 15, 2021 email from Scott Pyles to Daniel Cray SRA 1-3

CERTIFICATE OF FILING AND SERVICE

I certify that on September 5, 2024, I electronically filed the foregoing Plaintiffs'-Appellees' Sur Reply to Defendants'-Appellants' (Andrea Lynn Chasteen's) Reply Brief, by using the Odyssey eFileIL system.

I further certify that the other participants in this appeal, named below, are registered service contacts on the us will be served via the Odyssey eFileIL system.

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Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct to the best of my knowledge, information, and belief.

/s/ *Daniel K. Cray*

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Chicago, Illinois 60606
(312) 332-8450

130288
EXHIBIT 1

From: Scott Pyles <spyles@willcountyillinois.com>
Sent: Wednesday, September 15, 2021 7:38 PM
To: Daniel Cray
Subject: Re: petition

Dan-

As you know I inherited this case from Phil Mock. [REDACTED]
[REDACTED] We are holding \$670,000 plus from the segregated fees. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

I have given you an accounting of the money collected in Will County. [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Scott

On Sep 15, 2021, at 7:06 PM, Daniel Cray <dkc@crayhuber.com> wrote:

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Scott

Good evening, I acknowledge receipt of your draft Petition.

[REDACTED]



Dan

<image001.jpg>

Daniel K. Cray

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303 W. Madison | Ste. 2200 | Chicago, IL 60606

Cray Huber Horstman Heil & VanAusdal LLC

Any and all legal service or case-related email with Daniel K. Cray must include my legal assistant, Lori W. DeKeyser (lori@crayhuber.com) as a “To” or “cc” recipient. Thank you.

This transmission is intended only for the use of the addressee and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If you are not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify the sender immediately by reply email or by telephone at 312-332-8450. Thank you.

From: Scott Pyles <spyles@willcountyillinois.com>

Sent: Wednesday, September 15, 2021 3:33 PM

To: Daniel Cray <dkc@crayhuber.com>

Subject: petition

Draft of petition – basic

Scott Pyles

Assistant State's Attorney
Office of Will County State's Attorney

James W. Glasgow

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