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IN THE
SUPREME COURT OF ILLINOIS

RUEBEN D. WALKER and M. STEVEN DIAMOND, Individually and on Behalf of Themselves and for the Benefit of the Taxpayers and on Behalf of All Other Individuals or Institutions who pay Foreclosure Fees in the State of Illinois,

Plaintiffs-Appellees,

v.

ANDREA LYNN CHASTEEN, in her official capacity as the Clerk of the Circuit Court of Will County, and as a representative of all Clerks of the Circuit Courts of all Counties within the State of Illinois,

Defendants-Appellants,

and

PEOPLE OF THE STATE OF ILLINOIS *Ex rel.* KWAME RAOUL, Attorney General of the State of Illinois, and DOROTHY BROWN, in her official capacity as the Clerk of the Circuit Court of Cook County,

Intervenors-Appellants.

On Appeal from the
Appellate Court of Illinois, Third District, No. 3-22-0387
There heard on Appeal from the Circuit Court of the
Twelfth Judicial Circuit, Will County, Illinois
Case No. 12 CH 5275
The Honorable John C. Anderson, Judge Presiding

DEFENDANTS-APPELLANTS' REPLY BRIEF

ORAL ARGUMENT REQUESTED

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SUPREME COURT CLERK

ARGUMENT

I. Defendant Circuit Clerks Should Not be Stripped of Their Sovereign Immunity for Simply Following the Command of the Legislature Until its Enactment Was Found Unconstitutional.

The Plaintiffs, in their response brief, make several arguments in support of their position. However, missing from those arguments is substantive support for the appellate court's reasoning finding that sovereign immunity does not apply for Defendants state officer circuit clerks collecting a statutorily mandated fee prior to this court's ruling in *Walker*. *Walker v Chasteen*, 2021 IL 126086 ("*Walker II*"). Also missing from the Plaintiff's response is an effective argument as to why *Parmar v. Madigan* should not be applied in this case. 2018 IL 122265. Instead, Plaintiffs make policy arguments on why sovereign immunity should not be applied. The two cases principally relied upon by Plaintiffs are inapplicable to this factual situation and thus do not apply. Further, the Plaintiffs do not cite to any cases in which a plaintiff was allowed to bring an action for past wrong money damages to be paid from the State treasury, while Defendants have cited *Parmar* which does apply in this instance. *Id.* Defendants have not suggested that Plaintiffs should not have a remedy to recover the fees paid in this matter, but that the forum for such remedy should be with the Illinois Court of Claims.

At the outset, among the arguments Plaintiffs make are references to this Court's report on court fees which was never presented to the trial court. While the report references *Walker II,* it has no bearing as to whether the trial court has jurisdiction to enter a 102-million-dollar judgment against the State of Illinois. *Walker v Chasteen*, 2021 IL 126086; *Walker v. Chasteen*, 2023 IL App (3d) 220387; see generally Illinois Supreme Court

Statutory Court Fee Task Report (Jan. 1, 2023). The report discusses the problems of court fees in both criminal and civil cases; however, the report does not discuss the state's liability in a circumstance such as this instant matter. See generally Illinois Supreme Court Statutory Court Fee Task Report (Jan. 1, 2023).

The Plaintiffs repeatedly point out the fact that Defendants did not raise sovereign immunity until after *Walker II;* however, that issue was not ripe until the constitutional issue was resolved. *Walker v. Chasteen*, 2021 IL 126086. This Court has repeatedly held that sovereign immunity, which implicates the court's subject matter jurisdiction, may be raised at any time. *Currie v. Lao*, 148 Ill. 2d 151, 157 (1992). Plaintiffs acknowledge this towards the end of their brief, when they argue that this Court should condemn the "behavior" of the Defendants in representing the circuit clerks who have been sued for merely following a statute. Again, prior to the finding of unconstitutionality, damages were not at issue.

The principal issue in this case is whether the Defendants circuit clerks, as state officers, should be afforded sovereign immunity under the facts of this case. The Plaintiffs' argument seeks to avoid the plain language of the State Lawsuit Immunity Act which states "**. . . the State of Illinois shall not be made a defendant or party in any court**" 745 ILCS 5/1. The fundamental rule of statutory construction is to ascertain and give effect to the intent of the legislature. *Jackson v. Bd. of Election Com'rs of City of Chicago*, 2012 IL 111928. The most reliable indicator of that intent is the language of the statute itself. *Id.* at 48. If the statutory language is clear and unambiguous, it must be applied as written, without resorting to further aids of statutory construction. *Id.* A court may not depart from

the plain language of the statute and read into it exceptions, limitations, or conditions that are not consistent with the express legislative intent. *Town & Country Utilities, Inc. v. Illinois Pollution Control Bd.,* 225 Ill. 2d 103, 117 (2007); *Carlasare v. Will Cnty. Officers Electoral Bd.*, 2012 IL App (3d) 120699, *Petition for leave to appeal denied* 992 N.E.2d 1228 (Ill. 2012). Policy arguments on this issue are for the legislature. Here, the legislature has provided a path for monetary claims made against the State which is the Illinois Court of Claims. 705 ILCS 505/1. As stated in Defendants-Appellants' Additional Brief, the Plaintiffs do have an avenue to recover their fees in the Illinois Court of Claims.

The Plaintiffs attempt to circumvent going to the Illinois Court of Claims. Instead, Plaintiffs seek to invoke another exception to sovereign immunity by arguing that the "prospective relief exception" applies to this case. As recognized in the similar facts of *Parmar,* a claim for past wrongs against state actors generally belong in the Illinois Court of Claims. *Parmar*, 2018 IL 122265. The court in *Parmar* discusses that exception to the doctrine of sovereign immunity is recognized where a plaintiff alleges that a "[s]tate officer's conduct violates statutory or constitutional law or is in excess of his or her authority." *Id. at* ¶ 22. This is often referred to as the "officer suit exception" on the theory that "when an action of a state officer is undertaken without legal authority, such action strips a State officer of his official status [and] his conduct is not then regarded as the conduct of the State, nor is the action against him considered an action against the State." *PHL, Inc. v. Pullman Bank & Trust Co.*, 216 Ill. 2d 250, 261 (2005). The exception is also referred to as the "prospective injunctive relief exception." *C.J. v. Department of Human Services*, 331 Ill. App. 3d 871, 876 (1st Dist. 2002). That was the reasoning adopted, in

part, by the appellate court in this case. *Walker v. Chasteen*, 2023 IL App (3d) 220387. The Plaintiffs attempt to distinguish *Parmar* as it applies to this case. Defendants are not going to restate its argument regarding the application of *Parmar* to the facts of this case. Defendants submit that *Parmar* is applicable to this case and that Plaintiffs' remedy for the return of the fees remitted to the State of Illinois treasurer should be in the Illinois Court of Claims. *Parmar*, 2018 IL 122265.

This Court has consistently held that the prospective injunctive relief exception applies to actions going forward and not for past relief seeking money from the State treasury. *Id.* Here Plaintiffs sought prospective relief that the subject fee collected violated the Illinois Constitution, and that relief was granted by this Court. Plaintiffs also sought money damages and thus seek to breach sovereign immunity to collect a 102-million-dollar judgment against the State. Plaintiffs argue that by not allowing them to collect from the State in circuit court instead of the Court of Claims, diminishes the power of this Court in providing relief to Plaintiffs. Defendants submit that the circuit court gave relief to the Plaintiffs in ruling the fee collected as unconstitutional and stopped the collection of any future fees.

Plaintiffs also continue to invoke *Crocker v. Finley* in support of their position. 99 Ill. 2d 444 (1984). *Crocker* did not address the claim of money in its opinion. However, the plaintiffs in *Crocker*, at the trial court, had a fund set up and a trustee named to segregate the questioned funds. From that opinion:

> Upon plaintiff's motion, the trial court ordered the clerk to segregate all $5 fees collected from dissolution-of-marriage petitioners. The order directed the clerk to deposit the fees into interest-bearing accounts to be entitled the "Domestic Violence Special Protest Fund." The court appointed a trustee to

> supervise the fund, and it temporarily restrained the clerk and his deputies from transferring the fees to the county treasurer. *Id.* at 448.

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 those procedures were pursued in the trial court. No orders were entered to segregate the money as it came into the circuit clerks' 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,* Plaintiffs should have followed the measures in *Crocker. Id.* As such, it has no application here.

Plaintiffs argue that *City of Springfield v. Allphin* should apply here. 82 Ill.2d 571 (1980). "In *Allphin*, the Department of Revenue collected taxes on behalf of various municipalities and paid the taxes over to the municipalities while keeping a portion of the funds as fees for administration." *Mgmt. Ass'n of Illinois, Inc. v. Bd. of Regents of N. Illinois Univ.*, 248 Ill. App. 3d 599, 610 (1st Dist. 1993) citing *City of Springfield v. Allphin*, 74 Ill.2d 117, 121-22 (1979). The Director of Revenue made an error in calculating the fees and retained too much money in fees for the State. *Id.* at 610-611. "The municipalities sought a declaratory judgment in the circuit court as to the amendment's effective date and reimbursement of amounts erroneously withheld." *Id.* at 611 citing *Allphin*, 74 Ill.2d at 122. The court noted "the presumption that the State does not violate the constitution and laws of the State, but if such violation occurs, it is by the State officer and therefore a suit to compel the officer to disburse appropriated funds according to law is not an action against the State." *Id.* at 611. However, the court went on to state that:

> ...the fiduciary relationship between taxing authorities, i.e., between

> municipalities which assess the taxes and the State government which acts as collection agent. The concern of the court was to provide an adequate forum to municipalities to recover taxes wrongfully withheld by a government official acting in excess of statutory authority. *Id.* citing *Allphin*, 74 Ill.2d at 127.

Allphin, is distinguishable from the present case. The present case does not involve taxes as *Allphin* did. No fiduciary relationship exists between Plaintiffs and the Defendants circuit clerks such as the fiduciary relationship between taxing bodies. Furthermore, the relief discussed was not payment of monies from the State treasury, but instead a tax credit on future payments.

Plaintiffs also argue that a strict statutory interpretation of the Court of Claims Act limits its jurisdiction for it to seek a remedy there as this matter involved an unconstitutional act. While Defendants are not going to restate their previous arguments it briefly reiterates that all constitutional issues were already resolved in the circuit court, there are no remaining constitutional issues for the Court of Claims to address, and the only remaining issue are the money damages Plaintiffs seek to recover against the State. Accordingly, the Court of Claims has exclusive jurisdiction against any claims brought against the State which *Parmar* thoroughly addresses. Illinois Court of Claims Act, 705 ILCS 505/1 *et seq.*; *Parmar v. Madigan*, 2018 IL 122265.

Additionally, Plaintiffs argue that to allow the dismissal to stand would violate the holding of *Tyler v. Hennepin Cnty., Minnesota*. 598 U.S. 631 (2023). The court in *Tyler* held that it would be a fifth amendment taking to hold the excess home value recovered in a tax sale and that the governmental entity had to return the excess value to the taxpayer. *Id.* In *Tyler*, the taxpayer had no remedy available to recover their lost equity. *Id. Tyler*

does not apply here. Again, the Plaintiffs have a remedy to be made whole under Illinois law in the Illinois Court of Claims. The court in *Tyler* referenced *Nelson v. City of New York*, which examined another tax sale statutory scheme, but which allowed a process in which the taxpayer could recover their equity. 352 U.S. 103 (1956). The Court in *Nelson* upheld that statutory scheme as the taxpayer had a remedy to recover their funds. *Id.* Just like the party in *Nelson* unlike *Tyler,* the Plaintiffs have a remedy to recover their fees in the Illinois Court of Claims. Furthermore, a distinction can be drawn between the loss of one's home and an unconstitutional add on filing fee. Plaintiffs' argument on this is unavailing. Additionally, the Plaintiffs have never raised the fifth amendment as a theory of recovery and any argument should be disregarded.

Even if Plaintiffs had no remedy available in the Court of Claims for whatever reason, codification of public policy is for the legislature, and the lack of a remedy cannot grant jurisdiction to a circuit court over subject matter which is specifically barred by statute. *Vill. of Riverwoods v. BG Ltd. P'ship,* 276 Ill. App. 3d 720 (1st Dist. 1995); *President Lincoln Hotel Venture v. Bank One, Springfield*, 271 Ill. App. 3d 1048 (1st Dist. 1994); see also *Gordon v. Dep't of Transp.*, 99 Ill. 2d 44 (1983).

Plaintiffs also refer to an argument advanced by Defendants-Appellants circuit clerks in this case that any claims of Plaintiffs may be time barred. It is not in the record whether Plaintiffs filed a companion case in the Illinois Court of Claims and had it stayed following the resolution of the constitutionality of the challenged statute. As that is not in the record, the Defendants circuit clerks make no response to this argument.

Lastly, Plaintiffs bemoan the $15 dollar filing fee for the Illinois Court of Claims

that would need to be paid for each case. This argument falls flat given, as stated in the Defendants-Appellants' Additional Brief, the universe of actual plaintiffs is quite small as the fee was paid by a certain number of banks foreclosing on properties and as such one filing fee could cover the numerous claims for fees in a single case. *e.g.* C2187, C2189-2216. See also *Kay v. Frerichs*, 2021 IL App (1st) 192271 (state court refers class action to Illinois Court of Claims).

A remedy to recover the collected unconstitutional filing fees exists in the Illinois Court of Claims. The Plaintiffs do not cite any precedent which allows a plaintiff to sue the State for past wrongs from State treasury funds. The Plaintiffs cannot get around sovereign immunity by seeking to invoke an exception that does not apply.

CONCLUSION

For these reasons, Defendants-Appellants, Andrea Chasteen, in her official capacity as the Clerk of the Circuit Court of Will County, and as a representative of all Clerks of the Circuit Courts of all Counties within the State of Illinois, respectfully requests that the decision of the appellate court be reversed, and circuit court be affirmed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this reply brief conforms to the requirements of Rules 341(a) and (b). The length of this reply brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the reply brief under Rule 342(a), is 9 pages.

Respectfully submitted,

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NOTICE OF FILING

TO: *See Certificate of Service*

PLEASE TAKE NOTICE that we have caused to be electronically filed with the Clerk of the Supreme Court of Illinois this 28th day of August, 2024, the following document(s), a copy of which is attached hereto:

DEFENDANTS-APPELLANTS' REPLY BRIEF

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Gary Scott Pyles, certify that on August 28, 2024, I electronically filed the foregoing with the Clerk of the Illinois Supreme Court by using Odyssey eFileIL system, an approved electronic filing service provider, pursuant to Illinois Supreme Court Rule 11(c).

I further certify that the other participants in this appeal, named below, are registered service contacts on the Odyssey eFileIL system, and thus 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 Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned as aforesaid that he verily believes the same to be true.

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