No. 130288

In the
Supreme Court of Illinois

REUBEN 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 Judicial District, No. 3-22-0387 There Heard on Appeal from the Circuit Court for the Twelfth Judicial Circuit, Will County, Illinois No. 12 CH 5275 The Honorable John C. Anderson, Judge Presiding

PLAINTIFFS-APPELLEES' RESPONSE BRIEF

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ISSUE PRESENTED FOR REVIEW

Do Illinois Courts have the power to order the constitutional remedy of a return of money taken from citizens under a facially unconstitutional state court filing fee statute?

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ARGUMENT

INTRODUCTION

This cause of action was initially filed in 2012 challenging certain add-on court filing fees as a burden on and therefore barred by the free access clause of the Illinois Constitution. In 2013, after this Court had earlier recognized the burden on a citizen's access to the courts created by add-on court filing fees enacted by the Illinois legislature, this Court with cooperation of various entities formed the first Statutory Court Fee Task Force. The Task Force was charged with reviewing and making recommendations to resolve the burdens caused by add-on fees on constitutional protections.

After an initial appeal to this Court and remand for additional consideration by the circuit court, the circuit court held that the challenged legislation here was a facially unconstitutional burden on the free access clause and on other constitutional protections. (C2013-31). In 2021 this Court affirmed the decision of the circuit court that the legislation was a facially unconstitutional burden on the free access clause and remanded this cause of action to the circuit court "for further proceedings consistent with [its] opinion". *Walker v. Chasteen*, 2021 IL 126086, ¶ 51.

Following remand from this Court's 2021 opinion and discovery to determine the amount of the plaintiffs' money which defendants took under the facially unconstitutional statutes, the circuit court dismissed this cause of action. The circuit court advised plaintiffs that if they wished to recover the fees they had been forced to pay under this unconstitutional legislation they would be required to file a new action before the Court of Claims. (C3016-18 V2).

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The circuit court's dismissal was based on accepting as correct a theory of law defendants had never previously raised in this case, including in the two appeals they defended before this Court. Relying exclusively on a misinterpretation of language from an earlier decision of this Court that did not reach the constitutionality of the cause before it, *Parmar v. Madigan*, 2018 IL 122265, defendants persuaded the circuit court that the decision in *Parmar* held that the courts of Illinois had no jurisdiction to order the refund of fees taken under what defendants now concede was unconstitutional legislation. They suggested further that the refund would have to be pursued in the Court of Claims.

Plaintiffs appealed to the Appellate Court of Illinois, Third District. That court vacated the dismissal order, found that Illinois courts had jurisdiction to order a refund of the fees, and noted that the Court of Claims lacked jurisdiction to hear this matter. (A1-10). Defendants then appealed to this Court, now presenting the argument they raised for the first time in 2022, that the courts of Illinois have no jurisdiction to order a refund or grant any further relief when the government has taken property (here money) through a facially unconstitutional court filing fee statute. Defendants are equivocal before this Court as to whether the Court of Claims has jurisdiction to order the constitutionally mandated refund of fees. (Opening Brief and Appendix of Defendants-Appellants 18 Clerks, p. 31).

Defendants' misinterpretation of the *Parmar* decision, if accepted by this Court, presents a unique and uniquely troubling challenge to the ability of the court system to carry out its critical and exclusive role of protecting the access of Illinois citizens to the court system. This is especially so in the instant case given that the legislation at issue here was recognized by this Court in its opinion as an unconstitutional impairment to the

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to the right of citizens to have free access to their courts. This opinion was further recognized and cited at length in the Report and Recommendations of the Illinois Supreme Court Statutory Court Fee Task Force this Court formed to examine and recommend solutions to address the burden on the free access clause created by add-on fees such as that created by the legislation this Court believed it had resolved in its 2021 *Walker* opinion and remand order. (SA1-75).

All of that was effectively nullified by the success of the tactics adopted by defendants raised for the first time after remand (and a decade after this case was filed) and now repeated in their arguments to this Court. As noted by The Third District Appellate Court, the dismissal and argument that further proceedings, if any, lie solely within the jurisdiction of the Court of Claims was patently erroneous for several reasons as will be addressed in this brief.

As the appellants before this Court, it is defendants' burden to prove that despite the declaration by this Court in 2021 that the subject legislation was facially unconstitutional and that the fees collected pursuant to it were taken unlawfully as a result, the Illinois court system was limited to that declaration and it lacked jurisdiction to order those fees to be refunded to the plaintiffs. Defendants must further carry their burden of establishing that even though this Court remanded this case to the circuit court "for further proceedings consistent with this opinion," the circuit court acted properly when it dismissed this case, leaving defendants in possession of the fees unlawfully collected.

Defendants have not cited authority in their briefs that supports their claim that the courts lack jurisdiction to order a refund of the benefits wrongfully taken under a

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facially unconstitutional court filing fee statute. They have failed to do so in the face of the decisions of this Court that have explicitly recognized the authority of the courts to order the return of property taken by state agents through unconstitutional means.

Given that the defendants' arguments in this case are an inherent threat to the continued ability of this Court to effectively protect the free access clause, that issue will be addressed at the outset of this Response Brief.

I.
DEFENDANTS' POSITION THAT ILLINOIS COURTS LACK JURISDICTION TO AWARD A CONSTITUTIONALLY MANDATED REFUND IS ERRONEOUS AND EFFECTIVELY NULLIFIES THE DECLARATION OF THIS COURT THAT THE ADD-ON FEES ARE FACIALLY UNCONSTITUTIONAL

The legislation challenged below addressed the constitutionality of an "add-on court filing fee" imposed on litigants for purposes outside the use and benefit of the court system. The 2021 *Walker* decision of this Court declared such fees to be facially unconstitutional. Defendants do not directly challenge that determination in the current appeal but assert instead that the jurisdiction of Illinois courts was limited solely to the declaration that the statute was unconstitutional. They insist that the refund of fees which were deemed to be unlawfully collected from plaintiffs by virtue of the declaration of the facial unconstitutionality of the subject statute lies beyond the jurisdiction of Illinois courts.

Accepting their argument that the Illinois courts lack jurisdiction to provide relief from unconstitutional legislation nullifies both the declaration that this legislation was facially unconstitutional as well as establishing a precedent that would cripple the power of the judiciary to protect access to the courts. What litigant would seek to challenge an unconstitutional court filing fee statute if it was known that this extremely difficult task

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would be made that much harder by a required second litigation and an additional fee before the Court of Claims, an arm of the legislature which authored the facially unconstitutional fee statute?

The legislation and the dangers it created to the free access clause were addressed by this Court and resolved in *Walker v. Chasteen*, 2021 IL 126086. Plaintiffs believe that the importance of that decision and the process by which this Court addressed that issue are far too important to be swept away as casually as suggested by defendants in this appeal. And, although ignored by defendants in their briefs to this Court, accepting their argument would have a substantial and deleterious impact on several other long-standing and critical principles of Illinois law.

The burden of add-on court filing fees and the question of how to deal with their impact on the free access clause was recognized as a matter of critical importance by this Court and led, *inter alia*, to the formation of the first Statutory Court Fee Task Force in 2013. The importance of this issue and the need to develop a solution was further recognized and initially supported by the legislature itself. 705 ILCS 95/25 (2013).

After the first Task Force completed its report and initial recommendations as to the problem of the ever–increasing number of add-on fees remained unresolved, this Court appointed another court fee Task Force. After this Court announced its 2021 *Walker* decision, the Illinois Supreme Court Statutory Court Fee Task Force published its Report and Recommendations. This Court's 2021 *Walker* decision featured prominently as support and a vehicle by which courts could address add-on fees in the Task Force's report and recommendation:

> "In *Walker v. Chasteen*, 2021 IL 126086, the Supreme Court held that the add-on filing fee on mortgage foreclosure complaints contained in Section

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> 15-1504.1 of the Code of Civil Procedure (735 ILCS 5/15-1504.1) violated the free access clause of the Illinois constitution, Ill. Const. 1970 art. I, § 12***
>
> In striking down the mortgage foreclosure fee, the Supreme Court reaffirmed its holding in *Crocker v. Finley*, 99 Ill. 2d 444, 451 (1984), ***[that t]he fee was a revenue-raising measure designed to fund a statewide social program, which had no direct relation to the administration of the court system."

S40.

Defendants' response to the above is both simple and simply unacceptable: defendants insist that the only solution this Court may lawfully provide to eliminate the burden on the free access clause created by these add-on fees is to require the citizens who paid the fees they successfully contested before the court system to file additional litigation and pay an additional fee to recover the unconstitutional fee they never should have been forced to pay initially.[1] Rather than protect citizens from unnecessary fees that burden their free access to the courts, defendants claim that this Court is obliged to require the payment of additional fees and burden the citizens with additional protracted and wholly unnecessary litigation.

In short, rather than a solution to the burden created by add-on court filing fees, the defendants simply double down on their ability to further inhibit free access to Illinois courts through additional litigation and additional fees while reserving the right to later claim that the State may keep those fees despite the determination of this Court that they were never lawfully taken.

[1] The individual plaintiffs, such as class representative Reuben Walker, would be required to pay an additional $15 filing fee in the Court of Claims in an attempt to recoup the $50 add-on fee taken from him by defendants through a facially unconstitutional add-on court fee statute. 705 ILCS 505/21.

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Accordingly, defendants' argument and the theory it rests upon is patently erroneous, contrary to a correct view of the jurisdiction of the court system, and also contrary to the actual jurisdiction and the proper roles of the judicial system and the Court of Claims as pointed out by the Third District Appellate Court. Plaintiffs respectfully submit that, for the reasons discussed here and in more detail below, the opinion of the Third District Appellate Court should be affirmed by this Court.

II.
THE COURTS HAVE EXCLUSIVE JURISDICTION TO RESOLVE ALL ASPECTS OF LITIGATION WHICH ADDRESS THE CONSTITUTIONALITY OF LEGISLATION INCLUDING ORDERING A COMPLETE AND EFFECTIVE REMEDY

A. The Courts have Jurisdiction to Order a Refund of Fees Taken Under an Unconstitutional Legislation

Defendants' insistence that the judicial system lacks jurisdiction to order a return of fees taken under a facially unconstitutional statute rests on defendants' refusal to recognize the jurisdiction of the Illinois courts to provide complete and effective relief under the Constitution. Defendants further ignore their obligation to demonstrate that their claimed restriction on the limitations of the jurisdiction of the court system actually exists. They have not even addressed nor satisfied their burden to distinguish what this Court has recognized, that the "Illinois courts are courts of general jurisdiction and enjoy a presumption of subject matter jurisdiction." *Illinois State Treas*. v. *Illinois Worker's Compensation commission*, 2015 IL 117418, ¶ 14.

Defendants have failed to rebut this presumption. They have also failed to demonstrate that the jurisdiction of this Court to afford citizens complete relief from unconstitutional conduct or legislation is, as they assert, limited by sovereign immunity. This is especially so as their misinterpretation of sovereign immunity is based on a

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misinterpretation of the earlier *Parmar* decision of this Court that never reached the constitutional issue.

Reduced to its essence, defendants' argument is that regardless of the fact that fees were taken from citizens as a result of unconstitutional conduct or legislation, a refund is "money damages" no matter how it was obtained and regardless of a determination by the courts that it was obtained unlawfully. Based on that premise alone, defendants insist that any cause of action that seeks a refund or return of fees held by the State is, as a matter of course, an action against the State of Illinois and therefore barred by sovereign immunity. Fortunately, that argument and defendants' erroneous reliance on their interpretation of the doctrine of sovereign immunity have already been considered and rejected by this Court.

In the *City of Springfield v. Allphin*, 74 Ill. 2d 117 (1978) and *City of Springfield v. Allphin*, 82 Ill. 2d 571 (1980) decisions, this Court examined the interplay between the court system's inherent power to grant a refund based on an unlawful act of a state official and the constraints of sovereign immunity. In the first *Allphin* decision this Court reversed the dismissal of a cause of action seeking relief from the collection by a state official of certain municipal taxes under an unconstitutional misapplication of a statute and remanded the case to the circuit court to provide appropriate relief. *City of Springfield v. Allphin*, 74 Ill. 2d 117, 131 (1978). The precise nature of that relief (a return of the funds taken improperly through the unconstitutional conduct) as well as the limitation on the extent of such relief was clarified in the second *Allpin* opinion. The funds taken unlawfully were to be refunded in the amount necessary to return funds to the plaintiff which were never lawfully retained by the State:

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> "[The circuit court] was authorized to compensate the plaintiff for the amount 'over withheld' and nothing more." *City of Springfield v. Allphin*, 82 Ill. 2d at 573 – 574.
>
> The Court continued further and stated:
>
> "In our original review of *City of Springfield v. Allphin*, we considered at length the question of sovereign immunity. We noted therein the statutory duties of the Director of Revenue and found that the relief requested against the Director for the wrongful withholding of funds did not make the case a suit against the State*"*.

Id. at 579.

The opinion continued, recognizing that the doctrine of sovereign immunity did provide protection to the State of Illinois but did not protect it from its obligation to refund monies taken through illegal action.

> "It is quite another question, however, for a court of equity to also withhold from future collections, not that which had been wrongfully paid into the State Treasury, but an amount over and above that sum to be paid to plaintiffs as interest. The claimed interest is a separate and distinct claim against the State of Illinois, and the order of the trial court ordering interest is, in effect, a judgment against the State of Illinois. The circuit court had no authority to enter a judgment or to fashion an equitable remedy for the collection of interest in this case. (See *Campbell v. Department of Public Aid* (1975), 61 Ill. 2d 1, 5, 329 N.E.2d 225.) By compelling the defendant to do acts in his official capacity which are not provided for by statute and to go beyond mere reparation for past 'illegal' conduct, this court would be taking action against the State in contravention of sovereign immunity. *Hudgens v. Dean*, 75 Ill. 2d 353 (1979)."

Id. at 580-581.

Thus, in *Allphin,* this Court correctly distinguished between its authority (as well as its obligation) to order a refund of the litigant's own funds wrongfully collected as "reparation for past 'illegal' conduct", and a request by a plaintiff for interest and other compensatory damages in addition to the plaintiff's own funds. Since plaintiffs explicitly limited the relief requested to a refund of the unlawfully collected fees and sought neither

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interest nor any type of "damages" the jurisdiction of the courts to order the refund of the fees in the case now before this Court should never have been questioned by defendants (nor accepted as such by the circuit court). And accordingly, defendants' insistence that the source of the funds constituting the refund has no relevance since funds in the hands of the state treasurer regardless of how they got there are just "State funds" or "money" and certainly beyond the court's jurisdiction to order their return, is patently wrong.

Defendants' position here is that even if the funds in question were never lawfully held by the State the simple fact of their possession by the State morphs those monies into State funds shielded from the jurisdiction of the courts under the doctrine of sovereign immunity. This magical transformation does not and did not occur in the *Allphin* cases nor in the present case. Accepting it would further and improperly restrict the jurisdiction and power of the courts to protect the rights of citizens from unconstitutional acts or legislation by leaving the fruits of such in the hands of the very source of that unlawful conduct or unconstitutional legislation.

Rejecting defendants' misplaced interpretation of the doctrine of sovereign immunity will not negatively affect the proper application of that doctrine. For the reasons pointed out by the *Allphin* Court, an action relating to funds taken under illegal or unconstitutional conduct does not implicate 'State funds' and is not therefore a case brought against the State of Illinois. *City of Springfield v. Allphin*, 82 Ill. 2d 571, 580–81 (1980). There is no conflict with the doctrine of sovereign immunity since no funds lawfully within the control of the State of Illinois are at issue. There is then no action brought against the State of Illinois that requires an interpretation of the doctrine of sovereign immunity. And most importantly, a cause of action to retrieve a litigant's own

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funds paid under an unconstitutional statute and which were never lawfully in the possession of the State, remains within the exclusive jurisdiction of the judicial branch and may not be addressed in any fashion by the legislative branch.

The 18 Clerks cite *Allphin* as authority for asserting that "sovereign immunity applies if a judgment in the plaintiff's favor would result in 'the net effect of entering a money judgment against the State.'" (Opening Brief and Appendix of Defendants-Appellees-18 Clerks, p. 15). However, after citing this decision for consideration by this Court, defendants do not acknowledge and do not suggest that the remainder of this decision and its principal holding should be disregarded by this Court. Therefore, not only do defendants fail to provide any authority that has interpreted the application of sovereign immunity as they argue, they do not dispute authority which they have commended to this Court which establishes that the courts do have the power and jurisdiction to order a refund of the citizen's own funds as such an order would not be a "money judgment against the State."

B. Sovereign immunity does not restrict the exercise of the power and jurisdiction of the judicial branch to protect the constitutional rights of citizens

The bottom line of defendants' is argument that sovereign immunity 'trumps' the power of the court system to carry out its exclusive and vital duty of judicial review to ensure that the conduct of the executive and legislative branches do not violate the rights of Illinois citizens guaranteed under the Constitution. If accepted, this argument would result in a radical restructuring, if not complete elimination, of this Court's ability to afford its citizens the protections guaranteed by the Constitution.

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Defendants focus on the phrase "prospective relief" used in the authorities discussing the scope of sovereign immunity. According to defendants, their application of this phrase is sufficient to override and eliminate the ability of the courts to order the return of monies necessary to provide a constitutionally prescribed remedy to those who had their property/funds taken by unconstitutional conduct or legislation. Defendants insist that doing so is awarding damages for a "past wrong" and therefore barred by sovereign immunity.

None of the cases cited by the defendants before the Third District or before this Court have recognized such limitation. None of these cases have limited the jurisdiction of the courts to grant a refund in a case involving an unconstitutional taking despite defendants' claim that such a refund addresses a "past wrong" and cannot be ordered without violating that prohibition on doing so under the doctrine of sovereign immunity.

On the other hand, courts that have ordered a refund where legislation was declared to be unconstitutional, including *Crocker v. Finley*, 99 Ill. 2d 444 (1984), have not hesitated to provide a method which assured the return of monies as necessary to complete the specific protections and remedies guaranteed citizens under the Constitution.

The constitutional protections guaranteed citizens in addition to the free access clause which preclude the State from retaining funds are addressed later in this brief, but at this point plaintiffs respectfully suggest that the difficulty defendants have demonstrated with their incorrect understanding of statutory sovereign immunity as related to constitutionally-based protections can be resolved by simply examining the

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authorities cited above which have ordered methods for assuring refunds despite the supposed bar of sovereign immunity.

The power and obligation of the court to protect citizens through judicial review which includes disgorgement of property/funds is, as stated, a unique and uniquely protected power of the judiciary. A review of both the cases which have ordered a return of property as a result of unconstitutional conduct/legislation and those cases which have declined to grant relief to a plaintiff does not conflict in any manner with the doctrine of sovereign immunity. Accordingly, cases which have ordered a refund as a result of unconstitutional conduct/legislation and cases which have declined to grant relief to a plaintiff are distinct from one another and matters where constitutional protections are involved are matters solely for the jurisdiction of the courts.

Moreover, surrendering the jurisdiction of the courts to provide complete and prompt relief for a violation of the free access clause in favor of a tribunal within the legislative branch would also be in derogation of the long-standing principle that the judicial branch has the exclusive power to interpret the constitution and apply it to the laws of the State of Illinois and may not be forced to share that power with another branch. It is axiomatic that the courts have the exclusive jurisdiction to interpret and apply the Constitution to the laws of the State of Illinois:

> "Under our constitution, the three branches of government legislative, executive, and judicial-are separate and one branch shall not "exercise powers properly belonging to another." Ill. Const.1970, art. II, § 1. …Each branch of government has its own unique sphere of authority that cannot be exercised by another branch"

Best v Taylor Machine Works, 179 Ill. 2d 367, 410 (1997).

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Illinois Courts, not the Court of Claims, are charged with interpreting the applicability of constitutional provisions and determining the effect to be given to the constitutional protections. See *Bennett v. State of Illinois*, 72 Ill. Ct. Cl. 141, 142 (2019) (Federal and state constitutional issues are outside the jurisdiction of the Court of Claims).

Defendants' demand that the court system relinquish to the Court of Claims its jurisdiction to enforce the free access clause should be rejected.

III.
THE COURT OF CLAIMS LACKS JURISDICTION TO ADDRESS THE CONSTITUTIONAL REMEDIES REQUIRED IN THIS CASE

Defendants argue that a challenge to the constitutionality of a statute, including the constitutional remedy which provides the very protection afforded under the constitutional provision, the courts must defer their jurisdiction in whole or in part to the Court of Claims. This argument is both erroneous and presented equivocally and inconsistently in the two briefs of the defendants.

The Court of Claims is not a part of the judicial branch. It was created by, and is controlled by, the legislative branch. (705 ILCS 505/1 *et. seq*.). The limited jurisdiction of the Court of Claims is set forth in section 8 of the Court of Claims Act and later restated by the legislature in the statutes and rules of the Court of Claims. The jurisdiction of the Court of Claims is limited to the following:

> **Sec. 8. Court of Claims Jurisdiction; deliberation periods.**
> The court shall have exclusive jurisdiction to hear and determine the following matters:
> (a) All claims against the State founded upon any law of the State of Illinois or upon any regulation adopted there under by an executive or administrative officer or agency; provided, however, the court shall not have jurisdiction (i) to hear or determine claims arising under the Workers' Compensation Act or the Workers' Occupational Diseases Act, or claims

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> for expenses in civil litigation, or (ii) to review administrative decisions for which a statute provides that review shall be in the circuit or appellate court.
> (b) All claims against the State founded upon any contract entered into with the State of Illinois…
> (c) All claims against the State for time unjustly served in prisons of this State…
> (d) All claims against the State for damages in cases sounding in tort,…
> (e) All claims for recoupment made by the State of Illinois against any claimant.
> (f) All claims pursuant to the Line of Duty Compensation Act. …
> (g) All claims filed pursuant to the Crime Victims Compensation Act.
> (h) All claims pursuant to the Illinois National Guardsman's Compensation Act.

705 ILCS 505/8 (from Ch. 37, par. 439.8) (Extraneous language removed not bearing upon identification of the type of case allowed in Court of Claims.)

The Court of Claims jurisdiction is thus limited by its enabling legislation solely to cases brought against the State of Illinois. Indeed, in the Act, each of the above categories setting out the jurisdiction of the Court of Claims begins with the statement that such jurisdiction is limited to "all claims against the State . . ." It is axiomatic that the State cannot be guilty of unconstitutional action. *Leetaru v. Board of Trustees of University of Illinois*, 2015 IL 117485. A lawsuit which seeks to uphold the constitutional protections which were violated by action taken in reference to an unconstitutional act is not a "claim against the State". *Id.* Therefore, in cases where a statute is found to be unconstitutional, the Court of Claims has no jurisdiction to "hear and determine" these matters because they do not involve a "claim against the State."

If defendants wish to argue that the plain and unambiguous language of the enactment limiting the jurisdiction of the Court of Claims should somehow be enlarged by this Court based on a misinterpretation of the doctrine of sovereign immunity, that

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would violate the separation of powers doctrine by asking this Court to intrude into the province of the legislative branch.

This Court has stated on numerous occasions that it does not have the power to amend, restrict, or enlarge upon enactments adopted by the legislature. As this Court held in *Heinrich v. Libertyville High School*:

> "It is the province of the legislature to enact laws; it is the province of the courts to construe them. Courts have no legislative powers; courts may not enact or amend statutes. A court cannot restrict or enlarge the meaning of an unambiguous statute. ***A court must interpret and apply statutes in the manner in which they are written. A court must not rewrite statutes to make them consistent with the court's idea of orderliness and public policy."

Heinrich v. Libertyville High School, 186 Ill. 2d 381, 394–95 (1998), as modified on denial of reh'g (June 1, 1999).

Reading the plain and unambiguous language chosen by the legislature to define and limit the jurisdiction of the Court of Claims, that body lacks jurisdiction to "hear and determine" the constitutional analysis of this legislation, including the second part of the analysis related to unconstitutional fee statutes, that being the return of the unconstitutionally taken fees. Defendants ignore the restrictions placed on the jurisdiction of the Court of Claims and assume, without providing any authority in support, that the courts can compel the Court of Claims to accept jurisdiction. Defendants' belief that either the circuit court or this Court must abdicate its exclusive jurisdiction and decline to order the return of wrongfully held monies is in derogation of the separation of powers doctrine and, quite frankly, would leave litigants damaged by unconstitutional conduct/legislation wholly without a remedy. Illinois courts not only have the authority to

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declare an act unconstitutional but the obligation to make sure the litigant is afforded the remedy which fulfills the constitutional protection.

The jurisdiction of the Court of Claims which does not include deciding constitutional issues does not allow plaintiffs to recover the constitutionally prescribed refund as that remedy is an integral part of this Court's power to hear and determine constitutional challenges to conduct or legislation. As also shown above, this Court cannot compel the Court of Claims to order a refund. The result of adopting defendants' arguments would strip the courts of their power of judicial review and should not be accepted by this Court. Those arguments should further be rejected as directly contrary to the constitutional protection accorded citizens under the Takings Clause.

Defendants, as stated before, have been equivocal in their actual position relating to the ability of the Court of Claims to grant a refund or any other form of relief to plaintiffs. Although the circuit court was led to believe there be no opposition to the refund if presented to the Court of Claims (R. 263-264) that is not the position of defendants' counsel who would represent the State of Illinois before the Court of Claims.

In the Third District Appellate Court, the Attorney General on behalf of certain defendants noted in an April 19, 2023, brief that the causes of actions plaintiffs may file in the Court of Claims to seek recovery of the unconstitutionally taken filing fees were already time-barred:

> "Also, many of the class members' claims may be time-barred…See 705 ILCS 505/22h (2020) (generally, "claim must be filed within [two] years after it first accrues); Klopfer v. Ct. of Claims, 286 Ill. App. 3d 499, 505 (1st. Dist. 1997) (compliance with the limitations period in Court of Claims Act was 'jurisdictional prerequisite to the plaintiff's right to bring his action before the Court of Claims")."

(A101-102).

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As shown above, there is more than a substantial question as to whether the return of fees required by this Court's declaratory judgment in the 2021 *Walker* decision declaration cannot be addressed by the Court of Claims. The 18 Clerks through the Attorney General recognizes this and argues the court's supposed lack of jurisdiction and the Court of Claims' concurrent lack of jurisdiction:

> "And if it [Court of Claims] did not have such authority, this Court has rejected the argument that, just because a claim cannot be pursued in the Court of Claims, it must be allowed to proceed in the circuit court. See *Parmar, 2018 IL 122265,* ¶¶ 50-52 (limiting available remedies to injunctive relief is constitutionally permissible)."

Opening Brief and Appendix of Defendants-Appellants 18 Clerks, p. 31.

The natural (or maybe more accurately the unnatural) result of this argument concerning the concurrent lack of jurisdiction in the Illinois courts and in the Court of Claims to return the unlawfully taken fees to the plaintiffs would leave the funds unlawfully collected in the hands of the State.

It should be noted that the underlying premise of this argument is not supported by the authority it supposedly rests upon. The *Parmar* decision does not state that a plaintiff should be denied the ability to recover his or her own property where neither the courts nor the Court of Claims have jurisdiction. *Parmar* does not stand for the proposition that limiting constitutional remedies to injunctive relief is permissible. As will be discussed in far more detail later in this brief, the *Parmar* Court pointed out that the plaintiff there was given two separate statutory remedies within the court system to recover his money but chose to disregard those available remedies. This Court in *Parmar* never reached the question of constitutionality nor the limits on the power of the court to grant relief as a result.

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However, the source of the above argument is quite significant. Although it is presented to this Court by the Attorney General of the State of Illinois in his capacity as counsel for the 18 Clerks, under the Constitution and the Court of Claims Act the Attorney General of the State of Illinois is the attorney who would represent the State of Illinois before the Court of Claims if this Court finds no jurisdiction in the court system for this unconstitutional taking.

The Attorney General has candidly acknowledged that not only is the jurisdiction of the Court of Claims subject to substantial dispute, but if this Court dismisses this case for lack of jurisdiction to order a refund, and in the event that the Court of Claims decides it has no jurisdiction over the refund or to order it, plaintiffs will have no ability to recover their funds currently in the hands of the State despite the fact that they were obtained under unconstitutional legislation. In that event the State would retain funds unlawfully taken from a citizen.

If that argument was to be successful and results in the retention by the State of Illinois of funds never lawfully in its possession, the dismissal and the absence of jurisdiction to obtain a refund in the Court of Claims would be in violation of the Takings Clause of the Constitution of the State of Illinois and the Constitution of the United States. The violation of the Takings Clause which will occur if the funds unlawfully collected are retained by the State is addressed in the following section of this brief.

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IV.
DEFENDANTS' ASSERTION THAT THE COURT OF CLAIMS' LACK OF JURISDICTION WOULD ALLOW THE STATE TO KEEP ALL WRONGFULLY TAKEN MONIES IS CONTRARY TO THE TAKINGS CLAUSE OF THE CONSTITUTIONS OF ILLINOIS AND THE UNITED STATES

Defendants concede that the 1970 Constitution of the State of Illinois abolished Sovereign Immunity which previously had barred "suits of any kind" against the State. They state that the "legislature then exercised that grant of constitutional authority by enacting the Immunity Act, which restored sovereign immunity..." (Opening Brief and Appendix of Defendants-Appellants 18 Clerks, p. 13). Defendants thereafter erroneously argue that the doctrine of sovereign immunity enacted by the legislature is deemed to be superior to and controlling over the protections afforded the citizens of Illinois under the Constitution of Illinois as well as the Constitution of the United States of America. That argument is presented based on a misunderstanding and misinterpretation of the doctrine of sovereign immunity and an incorrect understanding of the free access clause. Defendants' argument also ignores yet another aspect of the protections accorded citizens under the constitutions of the State of Illinois and the United States of America zealously protected by the courts of Illinois and by the Supreme Court of the United States of America, the Takings Clause.

The Constitution of 1970 permitted the legislature to adopt sovereign immunity "as may [be] provide[d] by law." Since the statutory reenactment of sovereign immunity is just that, a provision adopted as a statute rather than a provision of the Illinois Constitution as it was prior to 1970, defendants' efforts to limit the protections guaranteed to citizens in the Constitution of the State of Illinois and, where appropriate, the Constitution of the United States, by retaining funds collected under a facially

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unconstitutional enactment is in conflict with a fundamental principle of law well-established in Illinois:

> Although we recognize that fiscal soundness is important, the General Assembly may not utilize an unconstitutional method to achieve that end. *Maddux v. Blagojevich,* 233 Ill. 2d 508, 528, (2009) ("If a statute is unconstitutional, courts are obligated to declare it invalid" and "[t]his duty cannot be evaded or neglected, no matter how desirable or beneficial the legislation may appear to be.").

Jones v. Mun. Employees' Annuity & Ben. Fund of Chicago, 2016 IL 119618, ¶ 47.

Accordingly, to the extent that defendants insist that their interpretation of the doctrine of sovereign immunity should be deemed to restrict or overrule the power of this Court to effectively exercise its power of judicial review and protect citizens under the free access clause, any conflict would have to be resolved in favor of the latter. However, there is no need to do so in the present case as there are numerous provisions of the Constitution of the State of Illinois and at least one provision of the Constitution of the United States that preclude the State from retaining these funds under any circumstances.

Retaining property (and money is defined as property in Illinois)[2] without just compensation is prohibited as contrary to the most fundamental protection adopted at the very beginning of the Illinois Constitution of 1970, the protection against confiscatory acts of the State, described by this Court and others, in the "Takings Clause":

> "Private property shall not be taken or damaged for public use without just compensation as provided by law. Such compensation shall be determined by a jury as provided by law."

Ill. Const. 1970, Art. I §15.

[2] *Palmer v. Forbes 23* Ill. 301 (1860), and more recently, *Mercury Sightseeing Boats v. County of Coo*k, 2019 IL Ap (1st)180439, (May 22, 2019).

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This Court examined the constitutional protections of the Takings Clause in *Hampton v. Metropolitan Water Reclamation District of Greater Chicago*, 2016 IL 119861, and declined to permit a statute to control over the Illinois Takings Clause. The decision in *Hampton* provides a carefully reasoned analysis of the Takings Clause of the Constitution of the State of Illinois. It also reviews and confirms the continuing "limited lockstep" doctrine that Illinois courts apply when viewing state conduct as potentially being in derogation of the Takings Clause.

The limited lockstep doctrine provides that this Court will follow the lead of the United States Supreme Court when it publishes decisions citing the Constitution of the United States and the Takings Clause in particular "if it is determined that the relevant provision is to be interpreted as synonymous with its Illinois counterpart." *Hampton v. Metropolitan Water Reclamation District of Greater Chicago*, 2016 IL 119861 ¶ 10. The *Hampton* Court explained that the "United States Supreme Court decisions regarding what constitutes a taking are relevant for purposes of determining whether a plaintiff has sufficiently alleged a taking clause under the Illinois Constitution." *Id*. at ¶ 16.

Defendants' argument that statutory Sovereign Immunity in Illinois may control or overrule the Illinois Constitution or the Constitution of the United States of America in a manner permitting the retention of funds collected in derogation of the Takings Clause was also considered and rejected in a recent decision of the Supreme Court of the United States.

In *Tyler v. Hennepin County*, *infra,* the Supreme Court cited the Takings Clause of the Constitution of the United States as barring the application of a Minnesota statute that was used to bar a taxpayer from recovering funds belonging to the taxpayer but

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retained by the unit of local government. The Supreme Court refused to allow a state statute to cancel the protections guaranteed by the Takings Clause of the United States Constitution, stating in brief but cogent fashion:

> "The Takings Clause 'was designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.' *Armstrong*, 364 U. S., at 49. A taxpayer who loses her $40,000 house to the State to fulfill a $15,000 tax debt has made a far greater contribution to the public fisc than she owed. The taxpayer must render unto Caesar what is Caesar's, but no more."

Tyler v. Hennepin County, 598 U.S. 631, 647 (2023).

In a recent decision, this Court also recognized and agreed with the above analysis and stated that the principal purpose of the Takings Clause is: "to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice should be borne by the public as a whole." *Arlington Heights Police Penson Fund v. Pritzker*, 2024 IL 129471 ¶ 35 (quoting *Illinois Home Builders Ass'n, Inc. v. County of DuPage*, 165 Ill. 2d 25, 31-32 (1995)).

Here, some of the defendants suggest that if the Court of Claims does not have jurisdiction to award the relief required by the decision of this Court in *Walker* their interpretation of the doctrine of Sovereign Immunity will allow them to retain the funds collected under an unlawful enactment. This Court should not permit defendants to elevate their interpretation a statute over the protections granted citizens by the Takings Clause of both the Constitution of the State of Illinois and the Constitution of the United States. As eloquently stated in *Tyler*, "a taxpayer must render unto Caesar what is Caesar's, but no more." *Tyler v. Hennepin Cnty., Minnesota*, 598 U.S. 631, 647 (2023).

Accepting defendants' elevation of statutory sovereign immunity over the protection guaranteed citizens under the Takings Clause would be in conflict with the

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decisions of this Court and, under the *Tyle*r decision of the Supreme Court of the United States, prohibited by the Constitution of the United States as well. This patently improper argument should be rejected by this Court.

V.
THE STATE MAY NOT RETAIN THE BENEFITS OF MONEY COLLECTED UNDER A FACIALLY UNCONSTITUTIONAL STATUTE

As the *Walker* Court observed, "[s]uccessfully making a facial challenge to a statute's constitutionality is extremely difficult, requiring a showing that the statute would be invalid under any imaginable set of circumstances." *Walker*, 2021 IL 126086, ¶ 31. Accordingly, a successful challenge to a statute's constitutionality voids the statute for all parties in all contexts." *Id*. When a court determines that a statute is unconstitutional, the statute is void *ab initio*. *People v. Gersch*, 135 Ill. 2d 384, 390 (1990). The legal effect of declaring a statute unconstitutional is to relegate the parties to such rights as obtained prior to the enactment of the unconstitutional statute. *In re Marriage of Sullivan*, 342 Ill. App. 3d 560, 564-65 (2d Dist. 2003), citing *Geneva Const. Co. v. Martin Transfer & Storage Co*., 4 Ill. 2d 273, 277 (1954).

Limiting the power of the courts to a declaration that the statute is unconstitutional and enjoining the statutes' prospective enforcement as defendants demand in the instant case provides no relief to the plaintiffs whose property was taken through payment of the unconstitutional fees. Accepting that restriction on the powers of the courts is contrary to the decisions cited above that recognize a declaration that a statute is unconstitutional renders it void *ab initio* and requires returning the parties to the status they enjoyed prior to the enactment of the unconstitutional legislation.

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The only way to return the plaintiffs to the *status quo ante* before they were forced to pay these add-on fees is to return to the plaintiffs the money that they should not have been forced to pay in the first place. This Court has already opined that there was no rational basis for imposing the filing fee on the mortgage foreclosure litigants and requiring them to bear the cost of maintaining a social welfare program, while excluding other taxpayers from this burden. *Walker v. Chasteen*, 2021 IL 126086, ¶ 48. Anything less than the return of those fees would embolden the legislative branch to continue funding social programs on the backs of Illinois citizens who use their courts. Permitting defendants to even arguably retain these funds after a decision by this court that they were collected under unconstitutional legislation would be in derogation of the long–standing principles of law regarding remedy for a constitutional taking and should be rejected by this Court.

Defendants further ignore the additional benefits that the filing of a new action before the Court of Claims would provide the State of Illinois. The court system, under the separation of powers doctrine, has no authority to instruct the Court of Claims as to how it must proceed in the additional litigation proposed by defendants. See *Klopfer v. Court of Claims*, 286 Ill. App. 3d 499, 502 (1977) (Generally, decisions of the Court of Claims are not subject to judicial review). If such a filing is required, the Court of Claims may accept the filing as a class action (its current status) requiring the payment of only a single fee; however, that would be inconsistent with the earlier decisions of the Court of Claims itself and a decision this Court would not interfere with under the separation of powers doctrine.

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In the event the Court of Claims follows its existing rules and procedures, plaintiffs such as Reuben Walker would be forced to file individual cases and pay individual court filing fees. 705 ILCS 505/21. Such a result is hardly consistent with the concerns expressed by this Court regarding add-on fees and would be yet another effort by defendants to frustrate the constitutionally mandated remedy to the taking of the plaintiffs' property through defendants' use of an unconstitutional statute.

Based on the discovery conducted following the 2021 remand to the circuit court, all parties understand that over $102 million dollars of fees were taken from the plaintiffs through the subject unconstitutional add-on court fee statutes. (R. 257) (Defendants-Appellants' Additional Brief (Chasteen), pg. 10.) The add-on fee was $50 initially, but the defendants increased the add-on filing fee burden on certain filers in later years to $250 and $500 per filing. (C1468-70). Payment of the additional fees necessary to file these new cases in the Court of Claims would generate an additional filing fee burden on the plaintiffs and would provide additional funds to the State as a consequence of adopting unconstitutional legislation.[3] The defendants in their briefs to the Third District Appellate Court argued that some of the individual filings might be consolidated in the Court of Claims, but clearly that would not happen to individual filers such as Reuben Walker.

[3] Simple mathematics on the amount of unconstitutional fees taken from the plaintiffs reveals the number of individual add-on fee filings would be on the low end over 200,000 filings ($500 fee per filing times 200,000 filings = $100 million and on the high end 2,000,000 filings ($50 fee per filing times 2,000,000 filings = $100 million). With the number of individual matters which resulted in unconstitutional takings by the government as noted above coupled with the $15 or $35 filing fees (705 ILCS 505/21), the filing fees for this action in the Court of Claims could range into the hundreds of thousands, if not millions of dollars.

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Defendants have provided no authority that recognizes the right of the State to retain any benefit derived from unconstitutional conduct or legislation. They cannot do so since it is beyond question that requiring an additional filing before the Court of Claims will only increase the burden upon the very parties whose rights have already been unconstitutionally trampled upon.

VI.
THE TRIAL COURT ERRONEOUSLY IGNORED THE UNAMBIGUOUS LANGUAGE OF THE MANDATE OF THIS COURT WHEN DISMISSING THIS CAUSE OF ACTION

The mandate of this Court remanding this case to the circuit court was clear and unambiguous: "For the foregoing reasons we affirm the judgment of the circuit court of Will County and remand this cause for further proceedings consistent with this opinion." *Walker*, 2021 IL 126086. ¶ 51. The circuit court, however, at defendants' urging, decided to stop further proceedings and dismissed the cause of action. (C3016-18 V2).

The lack of merit underlying this dismissal is addressed earlier in this brief and will not be discussed again. The fact that defendants admittedly convinced the circuit court to dismiss this case based on a theory of law they never raised as a defense to the claims on either of the two prior appeals to this Court in 2015 or 2021, this Court can consider whether it wants to deny the defendants the right to at this time to raise this belated argument issue before this Court.

The circuit court was obliged to follow the unambiguous language of this Court's mandate:

> "It is impossible to negate every possible issue in an opinion and therefore the rule is that "(w)here * * * the directions of a reviewing court are specific, a positive duty devolves upon the court to which the cause is remanded to enter an order or decree in accordance with the directions

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> contained in the mandate. Precise and unambiguous directions in a mandate must be obeyed." (internal citation omitted).

Stuart v. Cont'l Illinois Nat. Bank & Tr. Co. of Chicago, 75 Ill. 2d 22, 27–28 (1979).

It was the duty of the circuit court to follow the straightforward direction of this Court in the mandate, and to begin further proceedings consistent with the opinion. Regardless of whether the circuit court was persuaded that defendants' newly-raised arguments were valid – and they were not – the only possible means to proceed would be to enter an order providing for the return of monies, and complete any other matters necessary to conclude this cause of action. If defendants believe there was merit to their arguments regarding jurisdiction, they had every right to appeal. They had no right to "appeal" as they did to the circuit court.

The tactics adopted by the defendants before the circuit court were particularly questionable since they relied upon the *Parmar* decision as their supposed newly discovered basis to contest jurisdiction. *Parmar* was decided in 2018. The State of Illinois in that case was represented by the Attorney General. Three years later the Attorney General appeared as counsel in the 2021 appeal. Is it reasonable to conclude that the Attorney General had simply 'forgotten' the *Parmar* decision when presenting argument before this Court in 2021?

Giving defendants the benefit of the doubt and assuming the failure to raise the *Parmar* decision before this Court in 2021 was inadvertent, they still had the opportunity to present the arguments they made before the circuit court in a timely-filed petition for rehearing. They chose not to do so. They had the right and the opportunity to raise this new theory and cite *Parmar* in support of it on appeal from an order of the circuit court that granted a refund. They chose not to do so. Raising this argument as a basis to

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convince the circuit court to refuse to follow the mandate of this Court creates a precedent that is again not supported by a single decision that has reviewed and approved such conduct.

Defendants will no doubt claim that an issue relating to jurisdiction can be raised at any time and was not waived by being presented for the first time as the basis to disregard the mandate of this Court. At the same time however, this Court has the power to address matters without being bound by the doctrine of waiver (*Unzicker v. Kraft Food Ingredients Corp.*, 203 Ill. 2d 64 (2002)) and has every right to address and condemn the conduct of defendants in this case to prevent further efforts to evade a decision of a higher court by this type of collateral and unauthorized method.

VII.
SOVEREIGN IMMUNITY DOES NOT APPLY WHERE A STATE ACTOR VIOLATES THE CONSTITUTION.

Under the Illinois Constitution of 1870, the State of Illinois enjoyed immunity for lawsuits of any kind. *Parmar v. Madigan*, 2018 IL 122265, ¶ 19. The doctrine of sovereign immunity was abolished in Illinois by the 1970 Constitution "[e]xcept as the General Assembly may provide by law." Ill. Const. 1970, art. XIII, § 4. The General Assembly subsequently reinstated the doctrine through the enactment of the State Lawsuit Immunity Act. See Pub. Act 77-1776 (eff. Jan. 1, 1972). Thus, sovereign immunity is no longer constitutional in nature, but is provided only by statute.[4] This statute provides that except as provided in the Court of Claims Act and several other

[4] To the extent statutory sovereign immunity could possibly be raised to question the refund of fees taken under an unconstitutional statute, as a "law" it cannot be a basis to allow the State to retain those fees due to the controlling power of the Free Access Clause and the Takings Clause. (See discussions in §§ I and IV of this brief).

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specified statutes, "the State of Illinois shall not be made a defendant or party in any court." *Id.*

The formal identification of the parties as they appear in the complaint is not dispositive of whether the State is a party to the lawsuit. *Leetaru v. Board of Trustees of University of Illinois*, 2015 IL 117485 ¶ 44. However, the fact that the named defendant is an agent of the State does not mean that the bar of sovereign immunity applies. *Id*. In appropriate circumstances, plaintiffs may obtain relief in the circuit court, even where the defendants are servants or agents of the State. *City of Springfield v. Allphin*, 74 Ill. 2d 117, 124 (1980); *Healey v. Vaupel*, 133 Ill. 2d 295, 308 (1990). Whether an action is against the State depends on the issues involved and the relief sought. *Healey*, 133 Ill. 2d at 308. Importantly, the doctrine of sovereign immunity affords no protection when it is alleged that the State's agent acted in violation of the Illinois Constitution. *Leetaru*, 2015 IL 117485, ¶ 44; *Healey*, 133 Ill. 2d at 308.

When it is alleged that the state agent acted unconstitutionally, the State agent's conduct is not considered to be that of the State for purposes of sovereign immunity. *Leetauru*, 2015, IL 117485, ¶ 46. This Court in *Leetaru* stated: "[t]he doctrine of sovereign immunity "affords no protection, however, when it is alleged that the State's agent acted in violation of statutory or constitutional law or in excess of his authority, and in those instances an action may be brought in circuit court." *Id.* As the *Leetaru* Court reasoned:

> "This exception [to sovereign immunity] is premised on the principle that while legal official acts of state officers are regarded as acts of the State itself, illegal acts performed by the officers are not. In effect, actions of a state officer undertaken without legal authority strip the officer of his official status. Accordingly, when a state officer performs illegally *or purports to act under an unconstitutional act* or under authority which he

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> does not have, the officer's conduct is not regarded as the conduct of the State. *PHL, Inc. v. Pullman Bank & Trust Co.,* 216 Ill. 2d 250, 261, 296 Ill.Dec. 828, 836 N.E.2d 351 (2005). A suit may therefore be maintained against the officer without running afoul of sovereign immunity principles. *Sass v. Kramer,* 72 Ill. 2d at 492, 21 Ill.Dec. 528, 381 N.E.2d 975; *Senn Park Nursing Center,* 104 Ill. 2d at 188, 83 Ill.Dec. 609, 470 N.E.2d 1029."

Id., ¶ 46. (emphasis added)

The *Leetaru* Court reasoned that the purpose of the doctrine of sovereign immunity is "to protect the State from interference in its performance of the functions of government and to preserve its control over State coffers." *Id*. (citation omitted). However, when the state actor performs duties under an unconstitutional statute, the State cannot claim interference with State functions. *Id.* Here, the Illinois constitution controls the actions of defendant clerks when they try to use an unconstitutional filing fee statute to take the property of the plaintiffs without just cause. Here, constitutional protections prescribe the remedy of a return of the money taken from the plaintiffs. And here, the money being returned under these constitutional protections was never "State funds" as the offending court filing fee statutes were void *ab initio* and must be returned as part of the constitutional remedy.

As this Court reasoned in *City of Springfield v. Allphin,* there is a presumption that the State does not violate the constitution or laws of the State, but that such a violation, if it occurs, is by a state actor and may thus be restrained by a proper action instituted by a citizen. *City of Springfield v. Allphin*, 74 Ill. 2d 117, 124 (1978). Where a state actor acts in violation of the constitution or the laws of Illinois, the rights of the plaintiffs to be free from the consequences of those actions outweigh the interest of the State that is served by the sovereign immunity doctrine. *Senn Park Nursing Center v.*

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Miller, 104 Ill. 2d 169, 188 (1984); see *Illinois Collaboration on Youth v. Dimas*, 2017 IL App (1st) 162471, ¶ 35 (Where the plaintiff seeks to enjoin the state actor from taking actions in violation of the plaintiff's protectable legal interests, the suit does not contravene the immunity prohibition.). The exception to sovereign immunity is aimed at situations where "the official is not doing the business which the sovereign has empowered him to do or is doing it in a way in which the law forbids." *Dimas*, 2017 IL App (1st) 162471, ¶ 36, citing *Leetaru*, 2015 IL 117485, ¶ 47.

Here, the 102 circuit court clerks are state officers within the judicial branch of state government and are not county officers. *Drury v. McLean County*, 89 Ill. 2d 417, 424 (1982). These defendants were not performing their duties negligently, but this Court in its 2021 *Walker* decision affirmed that the add-on filing fee statutes were facially unconstitutional (*Walker,* 2021 IL 126086 ⁋ 48) and as such, any action taken because of those statutes cannot be shielded by a sovereign immunity defense.

A. Mandating Restitution Would Neither Control the Actions of the State Nor Expose the State to Direct Liability.

The rationale for sovereign immunity is not present under the facts of this case because ordering the return of the add-on fees to the plaintiffs who were forced by defendants to pay those fees in order to file their respective cases is part of the protections of the Illinois Constitution. Once a statute is found to be facially unconstitutional, in order to provide the citizen with his constitutional protections he is to receive back the money taken from him under the constitution statute. (See discussions and cases in Section V. above). Further, this action would neither operate to control the actions of the State nor subject the State to direct liability. *Bianchi v. McQueen*, 2016 IL App (2d) 150646, ¶ 42. This is so because the unconstitutional acts of a state agent "cannot be

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properly characterized as action on behalf of the State." *Loman v. Freeman*, 229 Ill. 2d 104, 123 (2008); see *Jinkins v. Lee*, 209 Ill. 2d 320, 337 (2004) (A judgment against health professionals employed at state mental healthcare facility would not operate to control the actions of the State as consequent state policy decisions would remain dependent on the goal of meeting the standard of care already directed by existing state law.). A judgment in favor of a plaintiff finding that a state actor has been found to have acted illegally could not serve to restrain the state actor's performance of his or her lawful duties. *Bianchi*, 2016 IL App (2d) 150646, ¶ 42. To the contrary, a circuit court judgment that would tend to *curb* such unconstitutional actions does not violate sovereign immunity. *Loman*, 229 Ill. 2d at 123.

Additionally, any duty the State may have to indemnify its state actors is not the same as "liability," which is a legal obligation enforced against the state itself. *Loman,* 229 Ill. 2d at 121. "The State's obligation to indemnify its employees for liability incurred by them does not constitute the State's assumption of direct liability." *Id.* The State's decision to indemnify its employees should not be equated with the State's direct liability for its employee's conduct, and a State's decision to indemnify its employees does not deprive the circuit court of subject matter jurisdiction. *Id*.

As the *Loman* Court observed, the State Employee Indemnification Act provides that unless the court *or a jury* finds the conduct or inaction which gave rise to the cause of action was intentional, willful, or wanton and was not intended to serve the interests of the State, the State shall indemnify the State employee for any damages as long as certain conditions are met. *Id*. at 122. Jury trials are not available in the Court of Claims. *Id*. According to the *Loman* Court, "[i]f the availability of indemnification was sufficient to

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confer exclusive jurisdiction in the Court of Claims, there would be no role for a jury. *Id.* The State Employee Indemnification Act anticipates actions against state agents in the circuit courts and the circuit courts' authority to render monetary judgments.

B. Defendants' arguments that sovereign immunity applies because their duties for the State mandated collection of the unconstitutional fee and that they risked a Class 3 Felony conviction if they did not are misplaced.

Defendant Will County Clerk Chasteen as class representative speaking on behalf of all 102 Illinois Circuit Court Clerks claims the defendants have sovereign immunity because they were just doing their job in requiring the plaintiffs to pay fees which violated the Illinois Constitution. (Defendants-Appellants' Additional Brief (Chasteen) p. 8.) Further, defendants express concern that they were at risk of committing a Class 3 felony if they did not collect the fee before it was declared unconstitutional. No one is criminally prosecuting the defendants for acting under an unconstitutional fee statute that took money unlawfully from the plaintiffs. The concern of the Clerks for being guilty of a Class 3 felony is misplaced. The Circuit Court Clerks collected these fees until the effective date of the injunction directed them to stop. The concern expressed as to the consequences to the clerks of collecting those fees prior to a ruling that the statute was unconstitutional and the entry of injunctive relief is resolved by the fact that the hypothetical conduct never took place.

More importantly, the 2021 *Walker* decision addressed the unconstitutionality of the legislation rather than any misconduct, negligence, or any other like action that would cause the stated concern. Stated another way, the defendants appear to be claiming they are protected by sovereign immunity under the "source of the duty" test. See *Loman v. Freeman*, 229 Ill. 2d. 24 (2008). Under that duty-based test for sovereign immunity

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protection, one looks to determine if the state actor's discretionary actions arose solely under his/her state duties or was there a source of duty which mandated his/her actions apart from their state duties. *Id*. This test is primarily used in tort cases where breach of duty is involved. See for example, *Currie v. Lao*, 148 Ill. 2d.151 (1992) (State Trooper had an independent duty apart from his state trooper duties not to drive negligently) and *Loman,* 229 Ill. 2d 24 (Professor/Veterinarian at the University of Illinois could be sued in circuit court for unsuccessful surgery on a horse he performed as a professor). In the *Walker* case, sovereign immunity does not apply to the clerks not because of some particular action, negligent or otherwise on their part, but because their actions were taken in relation to an unconstitutional statute. A state actor performing her work using an unconstitutional statute loses the protection of sovereign immunity. *Leetaru* at ¶ 47. Defendants' arguments concerning possible Class 3 felonies and source of duty test for sovereign immunity are unavailing.

VIII.
RESTITUTION (A REFUND OF ONE'S OWN MONEY) IS NOT A MONEY DAMAGE AND DOES NOT DEPRIVE THE CIRCUIT COURT OF SUBJECT MATTER JURISDICTION

Defendants argued in the Third District and again before this Court that restitution is just another name for money damages. (A111) (Opening Brief and Appendix of Defendants-Appellants 18 Clerks, p. 13). They attempt to parse words and seek form over substance when describing restitution as money damages. Reuben Walker sought in his 2012 Complaint a return of fees collected by defendants paid under the facially unconstitutional statutes (C360). Restitution is defined as "…a legal action serving to cause restoration of a previous state". *Merriam-Webster*. (n.d.). Restitution. In Merriam-Webster.com dictionary. Retrieved May 16, 2023, from https://www.merriam-

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webster.com/dictionary/restitution. Although defendants repeatedly argue that restitution is just another form of money damages for past loss restitution and money damages are two separate and distinct forms of relief under the law.

Money damages are a substituted relief for a past loss or wrong. *Veluchamy v. F.D.I.C.*, 706 F.3d 810, 816 (7th Cir. 2013) (*infra*.). A good example would be a suit brought for a broken leg. Because the plaintiff seeking recovery cannot receive the specific relief he wants, which would be for his leg to have never been injured, the plaintiff must accept money damages paid as a substitute for this past loss-the broken leg. Restitution on the other hand is a specific equitable relief which does not look to substituted damages for a past loss but simply returns to the parties to their previous state of being. (See *Raintree Homes v. Village of Long Grove*, 209 Ill. 2d 248 (2004)). Restitution provides Reuben Walker with the specific thing he lacks-which is simply a return of his own money to place him back to where he was before his property was taken by the government under constitutionally infirm action.

The legal distinction under Illinois law between the terms "restitution" and "money damages" was set out in detail by this Court in the *Raintree Homes,* 209 Ill. 2d 248 (2004). This Court was clear in *Raintree Homes* that under a scenario where restitution is given for a refund of fees taken as a result of an unconstitutional statute that refund is NOT considered money damages, or even damages, under Illinois law.

> "Stated another way, plaintiffs' requested relief of a refund may be properly designated as seeking an award of restitution. While restitution may be available in both cases at law and in equity [citations omitted], the concepts of restitution and damages are quite distinct, but sometimes courts use the term damages when they mean restitution. *** The damages award is not the only money award courts make. Court may also award restitution in money; they may also order money payments in the exercise of equity powers. Damages differs from restitution in that damages is

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> measured by the plaintiff's loss; restitution is measured by the defendant's unjust gain."

Id. at 257.

Further, the federal courts when dealing with federal sovereign immunity reach a similar conclusion under a slightly different analysis to determine whether the money paid to another can be considered "money damages" that cannot be awarded under the Act. The question is whether the money damages are substitute relief or whether the money damages are paid for specific relief. In *Veluchamy v. F.D.I.C*., 706 F.3d 810 (7th Cir. 2013) the court notes that a refund of fees would be considered specific relief and therefore are not considered damages which are forbidden under the Act:

> "A party seeks 'money damages' if he or she is seeking 'substitute' relief, rather than 'specific' relief. In other words, money damages are given to the plaintiff to substitute for a suffered loss, whereas specific remedies are not substitute remedies at all, but attempt to give the plaintiff the very thing to which he was entitled."

Veluchamy v. F.D.I.C., 706 F.3d 810, 815 (7th Cir. 2013) (citations omitted).

In the present case, as in *Raintree Homes*, plaintiffs sought restitution, a return of fees paid, under an invalid fee statute. In both cases, defendants argued that immunity acts barred the circuit court from providing plaintiffs with a return of the fees paid. In *Raintree Homes*, this Court noted that restitution is not money damages and allowed the circuit court to provide the refund of the fees which the plaintiff had paid under the facially unconstitutional statute. *Raintree Homes, Inc. v. Village of Long Grove*, 209 Ill. 2d 248, 261 (2004). The relief of restitution occurs in the case of a facially unconstitutional fee statute when the defendants return the invalid fees paid by the plaintiffs in order to remove the unjust gains from the defendants. The return of the fees paid (money paid) is restitution. See *Raintree Homes*. The refund of plaintiffs' own

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money, not State funds, provides specific, equitable relief for an unjust gain and not damages for a past wrong. *Id*. at 257. Plaintiffs here do not seek interest or any other form of damages for the wrongful taking – just a return of their money.

Illinois is not unique in finding a distinct legal difference between restitution and money damages in the context of refunding or providing back under equity principles the money the plaintiff paid to access the court where a facially unconstitutional court fee was imposed by the defendants. The State of Ohio is another state which recognizes the distinction between restitution and money damages in the context of its sovereign immunity statute. In *Barrow v. Village of New Miami*, 104 N.E.3d 814, 217 (Ohio App. 12 Dist. 2018), a motorist sued in a class action for a declaration that a village ordinance which did not allow court review of penalties issued for speed violations via the Automated Speed Enforcement Program was an unconstitutional restriction of due process. The plaintiffs also made a claim for restitution of penalties paid under the ordinance if it was found to be unconstitutional. The court noted that if the return of money paid in penalties by the plaintiffs were considered "money damages" then the sovereign immunity statue barred the restitution. The Ohio Appellate Court found the claim for "the restoration, refund or return" of the penalties the plaintiffs were forced to pay pursuant to the unconstitutional ordinance were not money damages but equitable relief. *Barrow v. Village of New Miami*, 104 N.E.3d 814, 817 (Ohio App. 12 Dist. 2018).

The difference in seeking the specific equitable relief of restitution and not the payment of money damages as a substitute for a past wrong separates the instant case from the sovereign immunity cases cited by the Defendants in their briefs. (See, for example, *Brucato v. Edgar*, 128 Ill.App.3d 260 (1st Dist. 1984) (Class action suit for

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wage differentials seeking lost wages, interest accrued and punitive damages); *Joseph Construction Company v. Board of Trustees*, 2012 IL App 3d 110379 (construction contract suit involves money judgment plus pre-judgment interest); *Parmar v. Madigan*, 2018 IL 122265 (taxpayer estate claim for refund, interest and loss of use damages)). Not one of the cases cited by the defendants concerns the issue we face here, which is the return of fees as specific constitutional relief of restitution after a fee statute was declared facially unconstitutional.

IX.
DEFENDANTS HAVE MISINTERPRETED AND MISAPPLIED THE DECISION OF *PARMAR V. MADIGAN,* AND THIS DECISION SHOULD NOT BE READ TO LIMIT EQUITABLE CLAIMS FOR RESTITUTION.

Defendants premise their appeal on the claim that the 2023 decision of the Third District Appellate Court reversing the circuit court's decision below was "inconsistent" with the 2018 decision of this Court in *Parmar v. Madigan*, 2018 IL 122265. Defendants argue that because this Court in *Parmar* declined to exercise jurisdiction in that case which they assert has identical facts and legal issues to the present case, the Third District erred in finding that sovereign immunity concerns did not cause the circuit court to lose jurisdiction, and that the circuit court was empowered to determine the plaintiffs' remedy of restitution.

A. *Parmar,* a Tax Refund Case, Presented the Court with Different Facts and Issues which Necessitated a Different Result than the Present Case

Contrary to the arguments of the defendants, this Court's decision in *Parmar* did not address a cause of action that was identical to or even similar to the present case. In *Parmar,* this Court had no occasion to consider an appropriate remedy when statutes were found to be facially unconstitutional and violative of the free access clause.

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Additionally, *Parmar* does not hold that the circuit courts lacked jurisdiction where the only monetary relief requested was a refund of the plaintiffs' money taken through unconstitutional statutes (and therefore never state funds), as distinguished from the "damages" sought in *Parmar* where plaintiff requested recovery for *interest and loss of use damages* in addition to reimbursement of the taxes paid.

Parmar was a tax refund case. Unlike the filing of a constitutional challenge to add-on filing fee statutes, the required procedures for filing tax refund lawsuits are identified and codified by statute. The cause of action submitted to this Court in *Parmar* involved both different facts, different procedural application, and different requested relief. The plaintiff in *Parmar* challenged the authority of state officials to enforce the Estate Tax Act, which, according to Parmar, caused him to overpay taxes purportedly owed on his mother's estate. *Id*. at ¶ 4-7. Parmar alleged that retroactive application of an amendment to the Estate Tax Act violated his due process rights, and that the amendment was also adopted in violation of the three readings clause of the Illinois Constitution. *Id*.at ¶ 8. A critically important distinguishing fact in *Parmar* was that the plaintiff sought *interest damages and loss of use damages* in addition to his request for a refund of taxes. *Id*.

This Court determined that Parmar could have litigated his claims in the circuit court had he followed the procedures for paying taxes under protest pursuant to the Protest Moneys Act, 30 ILCS 230/1 *et seq*. (2014). *Id*. at ¶ 47-48. As this Court observed:

> "This statutory procedure has been utilized to challenge the retroactive application and constitutionality of an amendment to the Estate Tax Act (*McGinley v. Madigan*, 366 Ill. App. 3d 974, 303 Ill. Dec. 522, 851 N.E.2d 709 (2006)) and to challenge the construction of an amendment to

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> the Estate Tax Act (*Brooker v. Madigan*, 388 Ill. App. 3d 410, 327 Ill. Dec. 860, 902 N.E.2d 1246 (2009)). Plaintiff could have availed himself of this statutory procedure and pursued his constitutional claims in the circuit court, but he failed to do so."

Id. at ¶ 49.

The *Parmar* Court also found that Parmar failed to avail himself of the procedures for obtaining a tax refund under the Estate Tax Refund Fund, a special fund created under section 13(c) of the Estate Tax Act that requires the Illinois Treasurer to deposit 6% of taxes collected into the Estate Tax Refund Fund, for purpose of paying refunds from overpayment of tax liability under the Estate Tax Act. 35 ILCS 405/13(c). *Id*. at ¶¶ 37-42.

Parmar neither predicated his complaint on an overpayment of taxes under the Estate Tax Act, nor filed an application for a refund with the State Treasurer. *Id*. at ¶ 43. Instead, he filed a complaint arguing that the Estate Tax Act should not have applied at all and sought a return of all the money paid plus interest and loss of use. *Id*. Critically, *Parmar* conceded at oral argument that he was not seeking to limit his requested relief to the amount available under the Estate Tax Refund Fund (which would be a refund [restitution] of the improper taxes), and Parmar stated that his complaint expressly requested interest and loss of use on the money he paid to the treasurer. *Id*. at ¶ 44. In other words, it was a complaint not limited to a request for restitution as in the present case, but was one which sought damages.

The *Parmar* Court also discussed the exception to sovereign immunity, where, as here in Walker, a plaintiff alleges that the State officer's conduct violates constitutional law or is in excess of his authority. *Id*. at ¶ 22. However, the *Parmar* Court never addressed whether any provisions of the Estate Tax Code were unconstitutional. Instead, this Court held that the officer suit exception to sovereign immunity did *not* apply

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because *Parmar*'s lawsuit did not seek to enjoin future conduct by the defendants but instead sought damages which included a full tax refund "*together with interest and loss of use" as a remedy* for a past wrong. *Id*. at ¶¶ 23, 26 (emphasis added) The Court reasoned that compensatory damages, which are intended to indemnify the injured plaintiff for a past loss, do not fall within the officer suit exception to sovereign immunity. *Id*. at ¶ 26. Again, in clear contrast to the cause of action and complaint in the present case which did/do not seek damages.

Parmar is further distinguishable on its facts from the present case as this Court in *Parmar* emphasized as a significant basis for its refusal to consider any constitutional claims that Parmar had multiple procedural vehicles available to him under existing Illinois statutory law for seeking a tax refund. The Court explained that the Protest Moneys Act has been utilized in past matters to challenge both the retroactive application and constitutionality of amendments to the Estate Tax Act. *Id*. at ¶¶ 48, 49. In contrast to *Parmar*, who had multiple procedural options to seek a tax refund in the circuit court, plaintiffs here had no forum within which they could bring their constitutional challenge other than in the circuit court.[5] The courts are the only refuge for constitutional claims.

B. In the Factually Similar Case of *Crocker v. Finley* Neither the Illinois Supreme Court Nor the Defendants Claimed a Return of Fees Under an Unconstitutional Statute Caused the Circuit Court to Lose Jurisdiction.

In their additional briefs, none of the defendants recognized the factually similar case of *Crocker v. Finley,* (another case in which the legislature forced Illinois citizens to pay facially unconstitutional court fees for general social programs unrelated to the court

[5] The Court of Claims cannot consider a constitutional challenge to legislation. See, *Bennett v. State of Illinois*, 72 Ill. Ct. Cl. 141, 142 (2019) (Federal and state constitutional issues are outside the jurisdiction of the Court of Claims).

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system), where the lower court made a determination of unconstitutionality and ordered the trustee who was administering the fund containing the challenged fees to prepare a plan of refund of the fees to all plaintiffs. *Crocker v. Finley*, 99 Ill. 2d 444, 449 (1984). The trial court stayed the order setting the refund program until a direct appeal was taken to this Court of the orders entered by the circuit court. *Id*. at 449. The Illinois Attorney General for the People of Illinois and the State's Attorneys of Cook County for Morgan Finley, then the Circuit Court Clerk of Cook County, appealed the decision. At the time *Crocker* went to this Court, it was clear from the orders of the circuit court that the trustee in charge of the refund program was already in place, and a mandate had been given to the trustee to provide a program allowing the refund of fees to the plaintiffs. *Id*. The Illinois Supreme Court decision in *Crocker* contains no claim like that being made by defendants in the instant case that the circuit court lacked jurisdiction to enter orders setting a program for restitution of fees, and that refund of fees can only occur in the Court of Claims. As noted earlier in this brief, there was good reason for the defendants to not make such a claim of lack of subject matter jurisdiction of the circuit court, and that reason is that the circuit court had subject matter jurisdiction to provide a return of the fees taken by the defendants under a facially unconstitutional statute.

This Court in *Crocker*, after making the declaration that the challenged add-on fee statute was facially unconstitutional, returned the case for further proceedings in the circuit court. Common sense dictates that the *Crocker* Court knew what was to occur in the circuit court after the declaration of facial unconstitutionality which was that the parties are to be returned to their relative positions held prior to the enactment of the statute. This means return of the fees to the plaintiffs and refund of the invalid fees taken

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by the defendants. (See, *In re Marriage of Sullivan, supra) (*when a statute is *void ab initio* the parties must be placed back in the same position they were in prior to the enactment).

Illinois courts are duty bound to determine issues of jurisdiction, even *sua sponte*, if necessary. *Bradley v. City of Marion*, 2015 IL. App (5th) 140267 ("Illinois courts have an independent duty to consider subject matter jurisdiction"). See also, *Baldwin v. Illinois Workers' Compensation Comm'n,* 409 Ill App 3d 472, 501-502 (2011) (Illinois appellate courts have an independent duty to consider the jurisdiction of the circuit court). When the *Crocker* Court remanded the case back to the circuit court "for further proceedings," this Court and parties had to understand the only remaining significant issue in the lower court was to complete the program of distribution of the refunded fees to the plaintiff class. It is expected this Court fulfilled its duty of determining subject matter jurisdiction when it sends a case back to the circuit court. And the *Crocker* Court would not have remanded to the circuit court unless it believed the circuit court had jurisdiction to complete the program to refund fees to the plaintiffs which was begun by order of the circuit court and stayed to allow defendants to appeal.

This return of the add-on filing fees in the circuit court is exactly what should have happened to Reuben Walker and the other plaintiffs here but did not due to the circuit court's misunderstanding of the jurisdiction of the Court of Claims and that sovereign immunity did not eliminate the jurisdiction of Illinois Courts to order the constitutionally mandated recovery of the plaintiffs own property (here money) which the State took under a facially unconstitutional statute.

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To accept the defendants' position in this case, one must believe that the *Parmar* decision was completely at odds with the 2021 *Walker* decision (it is not for reasons noted above), and all the justices of the 2021 *Walker* Court completely forgot that its *Parmar* decision stood for the proposition that there is no jurisdiction to award a refund of the plaintiffs own money in a facially unconstitutional case at the time when this Court remanded *Walker* to the circuit court. Further, you also have to believe that the author of the 2018 *Parmar* opinion, who dissented from the majority decision in the 2021 *Walker* opinion, explaining her reasons for the dissent in detail, somehow forgot the *Parmar* case and the supposed jurisdictional defect in the present case when drafting her dissent. That is frankly insulting to this Court in general and to the Chief Justice in particular.

CONCLUSION

In 2021, after a decade of efforts by this Court and its appointed task forces regarding examination of the burdens of add-on court filing fees, this Court published its decision in *Walker v. Chasteen*, striking down the subject add-on court fees as an unconstitutional burden on the free access clause. Defendants' arguments before this Court would, if accepted, nullify both that decision as well as effectively remove the exclusive power of the Illinois courts to protect its citizens from unconstitutional conduct by the legislative branch.

Plaintiffs respectfully, but also most emphatically, urge this Court to not do so and to affirm the decision of the Third District Appellate Court that correctly recognized and upheld the exclusive jurisdiction of the courts to continue that protection and order the constitutionally mandated return of plaintiffs' money necessarily consistent with the exercise of that power.

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this Response Brief conforms to the requirements of Supreme Court Rule 341(a). The length of this Response Brief, excluding the pages containing the Rule 341(d) cover, the Table of Contents and Points and Authorities, the Rule 341 (c) certificate of compliance, the certificate of service, and those matters to be appended to this Response Brief is 46 pages.

/s/ *Daniel K. Cray*

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One of the Attorneys for Plaintiffs

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APPENDIX

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ILLINOIS SUPREME COURT STATUTORY COURT FEE TASK FORCE

Report on Implementation of 2016 Task Force Recommendations and Additional Proposed Measures for Addressing Barriers to Access to Justice and Excessive Financial Burdens Associated with Fees and Costs in Illinois Court Proceedings

JANUARY 1, 2023

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ORIGINS AND PURPOSE OF THIS REPORT

This report builds on the June 1, 2016, findings and recommendations of the Illinois Statutory Court Fee Task Force (the "2016 Report")[1], as well as legislation enacted by the Illinois General Assembly and court rules promulgated by the Illinois Supreme Court in response to the 2016 Report. Contained in Public Act 100-987, the legislation included the Criminal and Traffic Assessment Act ("CTAA," 705 ILCS 135/) addressing court fees and costs ("assessments") in criminal and traffic proceedings, and Section 27.1b of the Clerk of Courts Act ("Section 27.1b," 705 ILCS 105/27.1b) governing assessments in civil litigation. The legislation streamlined and simplified the imposition of assessments, made the imposition of assessments more uniform across the state, and together with Supreme Court Rule amendments expanded the availability of assessment waivers for low-income parties.

The General Assembly anticipated that, as with any massive statutory overhaul, P.A. 100-987 (the "Legislation") would produce some implementation issues, inconsistent interpretations, and unintended consequences. Consequently, the Legislation included a sunset date—currently January 1, 2024—to ensure that any such issues would be identified and addressed. The Illinois Supreme Court responded to the impending sunset by issuing an order on January 11, 2021, creating a new Task Force to propose measures to remedy any problems that had surfaced regarding the Legislation, and to develop proposals to further improve the manner in which assessments are imposed in Illinois courts.[2]

Like the original Task Force, the members of the new Task Force include judges, legislators from both parties, court clerks, representatives appointed by the Governor, and lawyers appointed by the Supreme Court. Most of the Task Force's initial work was performed by three committees: (1) an Implementation Committee charged with identifying, and proposing measures to remedy, problems that have arisen with the operation of the Legislation; (2) a New Initiatives Committee responsible for developing proposals aimed at problems that the original Task Force had not targeted; and (3) a Data

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[1] https://www.illinoiscourts.gov/Resources/4b970035-98ba-4110-86fc-60e02b6a126b/2016_Statutory_Court_Fee_Task_Force_Report.pdf

[2] https://ilcourtsaudio.blob.core.windows.net/antilles-resources/resources/24c031c6-dacc-411d-9002-095eb3d45646/030521-1.pdf

Collection and Analysis Committee tasked with providing data required to inform the work of the other committees, as well as developing recommendations for improving the collection of information needed to evaluate the effectiveness of previous proposals and to provide an informed basis for additional proposals.

The structure of this report parallels the work of the Task Force's three committees. Following an Executive Summary, Section I of the Recommendations discusses the measures developed by the Implementation Committee for addressing issues that have arisen under the Legislation. Section II discusses proposals developed by the New Initiatives Committee for further improving the manner in which assessments are imposed in Illinois courts. Finally, Section III discusses measures that will improve the data collected regarding assessments and thereby improve our ability to measure the effectiveness of the current system and identify additional needed reforms.

The Task Force developed these recommendations with the assistance of input from two public hearings. The first hearing was conducted by Zoom videoconference on July 13, 2021. Testimony from that hearing helped focus and guide the Task Force's work. The second public hearing was held by Zoom videoconference on August 30, 2022, for the purpose of obtaining public comments on the recommendations contained in a draft of this report. Feedback from both hearings, as well as written comments on the draft report, has been considered by the Task Force and reflected in this final report where appropriate.

EXECUTIVE SUMMARY

The Task Force's Implementation, New Initiatives, and Data Collection and Reporting Committees developed recommendations for the subjects within their respective areas of responsibility. The committees' recommendations were then reviewed by the Task Force as a whole, which also considered input from two public hearings before approving the following final Task Force recommendations:

Implementation Recommendations

1. *The General Assembly should eliminate the sunset provisions in the CTAA and Section 27.1b.* This is needed because the CTAA has largely succeeded in its purpose of simplifying the imposition of assessments, slowing the increase in assessments, reducing variations in the amount imposed, and reducing the impact on low- and moderate-income residents. Appendix A to this Report contains proposed legislation that would implement this recommendation.

2. *The General Assembly should revise and clarify certain definitions in the CTAA (705 ILCS 135/1-5).* The recommended revisions will clarify that "case" includes all proceedings arising out of a single occurrence, that an assessment paid directly to the court is waivable, and that an assessment paid to a third-party is waivable if the third-party provided services pursuant to a contract with the court. This is needed to eliminate confusion about what is waivable under the current definition of "case," and to increase the consistency in the application of waiver rules. Appendices B and C contain proposed legislation that would implement this recommendation.

3. *The General Assembly should revise 725 ILCS 5/124A-20 to prohibit plea agreements which are conditioned upon the defendant giving up the right to seek an assessment waiver.* This is needed because of the practice that has developed in some jurisdictions of requiring defendants to bargain away their right to an assessment waiver, which (a) saddles defendants with debt they cannot afford to pay, (b) increases the variation, from county to county, in terms of the availability of assessment waivers, and (c) defeats the purpose of allowing such waivers. Appendix D contains proposed legislation implementing this recommendation.

4. *Supreme Court Rules 298 and 404 should be amended to establish a uniform procedure governing assessment waivers that limits when a hearing can be conducted in civil cases and prevents the decision on an application for assessment waiver in a criminal case from being deferred until the defendant completes his or her sentence.* These changes are needed to (a) reduce inconsistency in the decisions on assessment waiver applications for similarly situated applicants, and (b) reduce the potential for implicit bias, which is increased with a hearing, to impact the decision whether to grant a waiver. Appendix E contains proposed revisions to Supreme Court Rules 298 and 404 to implement this recommendation.

5. *The General Assembly should fully incorporate all assessments into either the CTAA or Section 27.1b.* The Task Force identified assessment statutes that were overlooked in the original Legislation. Moving those provisions into either the CTAA (criminal assessments) or Clerk of Courts Act (civil assessments)—or possibly eliminating some of those assessments—is needed to avoid confusion regarding the continuing existence of these outlier assessments and to further the original purpose of the CTAA to make imposition of assessments simpler and more transparent. Appendix F includes a complete list of all outlier civil and criminal add-on assessments. The Task Force takes no position on whether particular assessments should be eliminated, but Appendix F contains suggestions regarding where, if they are not eliminated, the outlier assessments should be included in either the CTAA or Clerk of Courts Act.

6. *The General Assembly, the judiciary, counties, circuit court clerks, and the bar should continue to work cooperatively to ensure that the judicial system receives sufficient funding to enable it to remain capable of effectively serving the public.* While the need for adequate funding of the judicial system is self-evident, this recommendation recognizes the important role that each of the identified stakeholders plays in ensuring that this objective continues to be achieved.

7. *The flexibility which the CTAA provides counties regarding how much funding to provide organizations authorized to receive assessment revenue should be preserved.* This is needed because (a) the CTAA was intended to give counties discretion to decide, in light of local conditions, the extent (if at all) to which certain nonprofit organizations should receive funding from assessments, and (b) that flexibility promotes accountability and efficiency in disbursing funds.

8. *Vigilance by interested stakeholders is required to prevent future legislation from weakening the reforms contained in the CTAA and Section 27.1b.* The General Assembly, the Supreme Court, the AOIC, circuit clerks, and bar associations each bear responsibility for ensuring that future legislation does not erode the gains achieved by the CTAA and Section 27.1b. In particular: (a) future legislation amending the CTAA and Section 27.1b should include findings that explain the history and purpose of those statutes in order to discourage the creation of new assessments outside of the current system; (b) future legislation that increases or creates a new assessment should include a finding explaining how the assessment either defrays the net cost of the litigation or directly relates to the administration of the court system; and (c) the Supreme Court, circuit clerks, and bar associations should vigilantly monitor proposed legislation that would add an assessment and strive to ensure that, if enacted, any new assessments are placed in the CTAA or Section 27.1b and adhere to the overall caps on the amount of assessments contained in that legislation.

Recommended New Initiatives

1. *The General Assembly should abolish assessments and fines in juvenile delinquency cases.* Assessments and fines in juvenile delinquency cases undermine the goal of achieving rehabilitation and successful reentry into the community by leaving youths with significant debt, prolonging their involvement in the justice system, and increasing the likelihood of recidivism.

2. *The General Assembly should eliminate the annual fee in guardianship cases for minors and disabled adults from the Clerk of Courts Act.* This is needed because most guardians are family members and are self-represented and the revenue impact would be small. Appendix G contains proposed legislation implementing this recommendation.

3. *The General Assembly should eliminate redundant legislation authorizing debt collection charges regarding unpaid assessments.* There are currently four different statutes authorizing the imposition of a fee in connection with efforts by circuit clerks to collect unpaid assessments. Elimination of two of those statutes is needed because they are redundant to the other collection fees, unnecessarily add to the debtor's burden, and are not currently assessed by all circuit clerks. Appendix H contains proposed legislation implementing this recommendation.

4. *The General Assembly should allow defendants sentenced to the Department of Corrections to earn a reduction in the amount of assessments (i.e., court costs and fees) and fines, but not restitution, unless the States Attorney requests and obtains an order excluding the reduction from the sentence based on the defendant's ability to pay.* The recommended legislation would reduce the amount of assessments and fines 20% for each year of a sentence, with defendants sentenced to a term of five or more years earning a 100% reduction. This is needed to (a) reduce barriers to defendants' successful reentry into society, and (b) relieve court officials of the administrative burden and expense of tracking debt that is usually uncollectable. Appendix I contains proposed legislation implementing this recommendation.

5. *Legislation applying to civil cases the more generous financial criteria for full or partial assessment waivers that currently apply to criminal cases should be enacted once the financial impact of that change is ascertained and adequate replacement funding for lost revenues is identified*. This is needed because assessments continue to present a significant barrier to access to justice in civil cases and it is difficult, from a policy rather than a budgetary perspective, to justify having different guidelines for civil and criminal proceedings.

6. *The General Assembly should convene a legislative working group to review a list of potentially problematic assessments in civil cases to ensure compliance with Illinois Supreme Court decisions which prohibit, as unlawful litigation taxes, fees that do not defray the expenses of litigation and therefore violate the free access and due process clauses of the Illinois Constitution*. This is needed because some of the fees listed in Appendix F that were inadvertently omitted from the CTAA and Section 27.1b may not be sufficiently tied to expenses of litigation to withstand constitutional scrutiny.

7. *Interested stakeholders should develop a long-term plan for achieving a unified Illinois court system that further reduces (or eliminates entirely) the use of assessments as a source of revenue*. This is needed because all Illinois citizens benefit from the justice system and a fully taxpayer-funded court system would allocate the costs of the state court system across all taxpayers rather than only those utilizing the system to resolve a dispute.

Data Collection and Reporting Recommendations

1. *The General Assembly should revise Section 1-10 of the CTAA to require the continuation and expansion of reports by circuit court clerks regarding assessments in criminal and traffic proceedings*. The CTAA did not require the filing of assessment reports after 2019, although reports were filed for 2020 and 2021 pursuant to Supreme Court order. Requiring biannual assessment reports, and adding the number of assessment waiver applications to the data that had been required by the CTAA, is needed to analyze the functioning of the current system for the imposition, collection, and waiver of assessments and fines in criminal and traffic cases, and to identify areas for future reforms. Appendix J contains proposed legislation implementing this recommendation.

2. *The General Assembly should revise Section 27.1d of the Clerk of Courts Act to expand reports by circuit court clerks regarding assessments in civil cases*. Requiring biannual assessment reports, and adding the number of cases in which assessment waiver applications are filed to the data that is currently required, is needed to evaluate the imposition, collection and waiver of assessments in civil cases, and to identify areas for future reforms. Appendix K contains proposed legislation implementing this recommendation.

3. *The Supreme Court should direct the AOIC's Judicial Management Information Services division to continue to work with the circuit clerks on improving the data reported to the AOIC regarding the collection of assessments and fines*. This is needed to improve our ability to identify the impact of the CTAA and Section 27.1b, as well as the projected impact of future proposed legislation relating to assessments.

ANALYSIS AND RECOMMENDATIONS

I. Issues Regarding Implementation of the Criminal and Traffic Assessment Act and Section 27.1b of the Clerk of Courts Act

The Implementation Committee obtained feedback on the operation of the Legislation from judges, lawyers, circuit clerks, and other justice partners. The Committee evaluated the effectiveness of the Legislation by reference to the extent to which it has addressed the following key findings contained in the 2016 Report[3]:

(1) The nature and purpose of assessments have changed over time, leading to a byzantine system that attempts to pass an increased share of the cost of court administration onto the parties to court proceedings;

(2) Court fines and fees are constantly increasing and are outpacing inflation;

(3) There is excessive variation across the state in the amount of assessments for the same type of proceedings; and

(4) The cumulative impact of the assessments imposed on parties to civil lawsuits and defendants in criminal and traffic proceedings imposes severe and disproportionate impacts on low- and moderate-income Illinois residents.

The Implementation Committee concluded that the Legislation had been successful in simplifying the manner in which assessments are imposed in civil, criminal, and traffic proceedings, slowing the increase in assessment amounts, reducing intra-state variation in the amount of assessments imposed for the same type of proceedings, and reducing the impacts of assessments on low- and moderate-income residents. However, the Committee identified areas where additional legislation is needed to cure ambiguous language in the original Legislation or correct statutory interpretations that were inconsistent with the legislative intent. The Task Force as a whole subsequently reviewed and refined the Implementation Committee's recommendations. The following

[3] 2016 Report at 1-2.

discussion addresses nine implementation issues, explains why they are important, and where needed presents a proposed remedy in the form of legislation or Supreme Court Rule.

Implementation Issue 1: The CTAA and Section 27.1b Are Scheduled to Sunset on January 1, 2024

Why is this an issue?

Sunset provisions would repeal the CTAA and Section 27.1b on January 1, 2024. Due to the way the sunset provisions were drafted, the statutory framework for collection of assessments would not revert to the prior system if the Legislation is allowed to sunset. The prior statutory framework has been repealed in its entirety. Therefore, if the Legislation sunsets, no statutory authorization for the collection of assessments in civil, criminal, or traffic proceedings would exist in Illinois at all.

The sweeping reforms contained in the Legislation were intended to address systemic problems identified in the 2016 Report. Litigants bore the brunt of most of those problems, including a proliferation of court assessments that interfered with access to justice in civil cases, created excessive variation across the state in assessments levied in the same kind of cases, and imposed undue financial burdens on defendants in criminal and traffic cases. The sunset provisions in the Legislation have added urgency to the need to evaluate the extent to which the Legislation has achieved its ambitious objectives, especially those pertaining to the impact of assessments on litigants, and to identify the need for amendments to better achieve those objectives.

The Task Force received feedback from clerks, judges, attorneys, and AOIC staff who have been intimately involved with the implementation of the Legislation. The consensus is that while the initial implementation process was at times difficult, once implemented the Legislation made the system of court fees and costs vastly better. Court clerks find it much simpler and easier to administer court fees and costs than before the enactment, and litigants have benefitted from the Legislation in the following respects:

- The nature and amount of assessments are much clearer and easier to understand. When the average citizen asks the Circuit Clerk, “where do all these fees come from?”

there is an easy answer and the fees can all be found in one place rather than scattered in many different statutes.

- There is greater consistency across the state, so whether a citizen receives a traffic ticket in, say, Montgomery County or McHenry County, they will pay the same assessment amount for the same violation. Similarly, while assessments in civil cases are not completely uniform statewide, the amount of variation between counties has been significantly reduced.

- In some counties, and on some case types, the average citizen is paying less than before. Particularly significant in this regard is the reduction of the large Criminal/ Traffic Conviction Surcharge that had been imposed in some counties.

- There is also more accuracy in what is being assessed. The relative simplicity of the CTAA and Section 27.1b has made it easier for circuit court clerks to determine the correct sums to be assessed.

- The expansion of assessment waivers under Section 27.1b and the authorization of assessment waivers under the CTAA have reduced the financial burden on low-income individuals in civil and criminal cases.

- The proliferation of add-on fees has been slowed since passage of the Legislation, and with it the trend toward imposing on litigants the responsibility for funding an increasing share of the cost of court proceedings.

Recommendations

The Legislation's success in addressing (while not completely solving) the problems identified in the 2016 Report warrants elimination of the sunset provisions. Attached as Appendix A to this report is proposed legislation deleting the sunset provisions from the CTAA and Section 27.1b.

Implementation Issue 2: Definitions in the CTAA

Why is this an issue?

Section 1-5 of the CTAA contains its definitions. 705 ILCS 135/1-5. Included is a definition of "case" as meaning "all charges and counts filed against a single defendant which are being prosecuted as a single proceeding before the court." *Id.* This definition created some confusion, much of which has been cured by revisions to the Manual on Recordkeeping that were approved by the Supreme Court. However, an issue remains regarding a situation where there may be one traffic stop, but two agencies (*e.g.*, the Sheriff and Village Police) issue tickets that are prosecuted by separate agencies (*e.g.*, the State's Attorney and Village Attorney). It is unclear if this is one "case" or separate cases under the current definition.

Additionally, the CTAA defines "assessments" as "costs imposed on a defendant under schedules 1 through 13 of this Act." *Id.* The CTAA permits courts to waive "assessments." See Section 5-10(e) ("Unless a court ordered payment schedule is implemented *or the assessment requirements of this Act are waived under a court order[*.]") (emphasis added). This gives rise to a question: if "assessments" can be waived, can all "costs" be waived as well? Some "costs" are not true court assessments. For example, an ambulance service which transports an injured defendant who causes a car crash while drunk may charge the defendant for the "cost" of their service, but that service is not an "assessment" under the CTAA. That type of cost is distinguishable from, for example, a charge imposed by a court requiring a defendant to submit to a court-managed or supervised service. The CTAA does not create a clear line between the two.

Recommendation

Attached as Appendix B to this report are various proposed changes to the CTAA's definition section. In particular, the revisions clarify that the definition of "case" includes all proceedings arising out of a single occurrence.

The revised definitions also clarify that an assessment that is paid directly to the court is waivable. An assessment paid to a third-party is only waivable if the third-party provided services pursuant to a contract with the court. This distinction is also reflected, with

respect to assessment waivers in criminal and civil cases, in proposed revisions to Section 124A-20 of the Code of Criminal Procedure and Section 1-105 of the Code of Civil Procedure that are contained in Appendix C.

Implementation Issue 3: A Prosecutor's Ability to Require a Criminal Defendant, as Part of a Negotiated Plea Agreement, to Relinquish the Right to Seek an Assessment Waiver

Why is this an issue?

The Task Force is aware, anecdotally, that some jurisdictions are requiring criminal defendants to relinquish their right to seek an assessment waiver as part of a negotiated plea. The Task Force believes this practice undermines the fundamental goals of the CTAA, and it recommends that it be statutorily prohibited.

Relevant Background. The 2016 Report recommended that the legislature treat separately those things which are "fines" (*i.e.*, punishment for the offense charged) and those which are "assessments" (*i.e.*, fees, costs and other charges designed to offset the State's cost of prosecuting the defendant). Although court fees were originally intended "simply to offset a portion of the cost of the services being provided," they had grown complex and extensive.

Because the justification for assessments is to help defray the cost of prosecution, rather than to punish the defendant, the Task Force recommended that the financial burden of assessments should not be imposed on those least capable of shouldering it. This recommendation did not affect judges' ability to order restitution, assess fines, or impose prison sentences:

> While criminal defendants should face meaningful punishment for committing a crime, *it is unjust and unwise to burden indigent criminal defendants with court assessments that are beyond their ability to pay and that create a disproportionate and counterproductive barrier to their reentry into society.* Rather than levy such assessments, which also impose administrative burdens on court clerks that are unwarranted by the potential amounts to be collected, it is preferable to allow judges to grant waivers. Such waivers would facilitate judges' ability to impose

> fines (that, unlike fees, are designed to punish) at amounts that are commensurate with the crime. Moreover, unlike assessments, in appropriate cases judges can authorize fines to be worked off through community service or similar programs.[4]

The legislature acted on this recommendation when it passed the CTAA, establishing a more uniform and limited scheme for imposing assessments in criminal cases. In addition, the legislature created a system under which criminal defendants could apply to the Court to have their fees waived. Eligibility for a full or partial assessment waiver was defined by reference to the defendant's income or receipt of a means-tested public benefit. 725 ILCS 5/124A-20. The statute requires the circuit clerk to provide applications forms to "any defendant who indicates an inability to pay the assessments." 725 ILCS 5/124A-20(d). Upon receipt of an application showing the defendant qualifies as an "indigent person" as defined by the CTAA, the court "shall grant" the application for the appropriate level (i.e., full or partial).

The use of the word "shall" generally indicates that the legislature intended to impose a mandatory obligation. *Schultz v. Performance Lighting, Inc.*, 2013 IL 115738, ¶ 16. The CTAA demonstrates the intention that its provisions are mandatory, *i.e.,* that any defendant has the right to request an assessment waiver and any defendant who qualifies must be given such a waiver.

Impact of Plea Bargaining. As noted above, the Task Force is aware that, in some jurisdictions, the prosecuting office has adopted the practice of conditioning plea offers on the defendant's agreement to give up the right to seek a waiver—a "waiver of the waiver." The Task Force is concerned that this practice undercuts the policies which underlie the CTAA.

The legislature's purpose in providing for waivers of the assessments imposed on indigent defendants is that the responsibility to financially support the judicial system should not be placed on those least able to bear it. Additionally, a plea agreement generally involves the defendant bargaining to preserve his or her personal liberty to the greatest extent possible; this puts the defendant in a significantly reduced bargaining position when compared to the prosecution. Recalling that some 95-99% of all criminal dispositions are effectuated by pleas, it would very nearly constitute a *de facto* repeal of the statutory

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4 2016 Report at 34 (emphasis added)

assessment waiver provisions in those jurisdictions which condition plea agreements on the defendant giving up the statutory right to an assessment waiver.

It is true that a negotiated plea is a voluntary agreement between the prosecution and the defendant, and such agreements are generally considered to be governed by the law applicable to private contracts. *People v. Nutall*, 312 Ill. App. 3d 620, 637 (1st Dist. 2000). However, the analogy between pleas and private contracts "may not hold in all respects." *Puckett v. United States*, 556 U.S. 129, 137 (2009). A criminal defendant's underlying contract right is constitutionally based and reflects fundamentally different concerns than those involved with private contracts; therefore, "application of contract law principles to plea agreements may require tempering in some instances." *People v. Evans*, 174 Ill. 2d 320, 326–27 (1996).

Furthermore, even with private contracts, parties are not permitted to include terms which are "against public policy" or "contravene some positive rule of law." *County of Jackson v. Mediacom Illinois, LLC,* 2012 IL App (5th) 110350, ¶11. The legislature carefully crafted a scheme for the consolidation of all court costs and fees under the concept of "assessments," along with a provision to allow indigent defendants to receive full or partial waivers of their obligation to pay those assessments. This reflects a clear statement of Illinois public policy concerning the rights of those indigent defendants. It is likely already contrary to public policy for prosecutors to require criminal defendants to bargain away that right as a condition of a plea agreement. To the extent there is any doubt, the legislature should clarify that intent.

Finally, there is another fundamental purpose of the CTAA frustrated by this practice: uniformity. One of the animating goals of the CTAA was reducing the variability of financial consequences for the same crime from jurisdiction to jurisdiction. If some jurisdictions are preventing criminal defendants from seeking assessment waivers, it means that a defendant's ability to exercise that right will depend on the jurisdiction in which the case against them is being prosecuted.

Recommendation

For the reasons stated above, the Task Force recommends that the legislature prohibit plea agreements which are conditioned upon the defendant giving up the right to seek

an assessment waiver. We propose that this be accomplished by amending 725 ILCS 5/124A-20 to add the following provision:

> (h) No defendant shall be required to forego or waive his or her right to seek a waiver of assessments as a condition of any plea agreement.

This proposed statutory amendment is included in Appendix D.

Implementation Issue 4: Lack of a Uniform Procedure Governing Assessment Waiver Applications

Why is this an issue?

Wide variations have developed in the procedures employed by courts in deciding applications for assessment waivers. For example, some courts only require a hearing if there is a factual issue on the face of the application, while other courts require a hearing on every application. Some courts require the applicant to provide proof of public benefits and others do not. The list goes on. These practices can even vary between courthouses in the same circuit.

These inconsistent practices are problematic for several reasons. First and foremost, they can lead to unequal treatment of similarly situated court users, some of whom would obtain waivers while others would not. In addition, requiring litigants seeking a waiver to appear for a hearing, whether in person or via video conference, creates procedural hurdles for some litigants but not others. Inconsistent practices also make it nearly impossible for those attempting to help pro se litigants to be able to provide detailed guidance to help them navigate this process.

Research suggests that requiring an appearance in connection with an assessment waiver application creates an unnecessary risk that factors like physical appearance, race, and gender may inappropriately influence the decision. Litigants appearing at a hearing may appear to have greater or fewer financial resources than they really do. The visual information a judge can gain from requiring an appearance is not necessary for the consideration of the fee waiver application, and it may actually prevent the judge from making an accurate and unbiased decision.

Recommendation

The Task Force recommends that the Supreme Court Rules be amended to establish a uniform procedure governing assessment waivers that limits the circumstances in which a hearing can be conducted in civil cases and prevents the decision on an application for assessment waiver in a criminal case from being deferred until the defendant completes his or her sentence. Appendix E contains proposed revisions to Rules 298 and 404 that would implement this recommendation.

Implementation Issue 5: Existence of Assessments in Statutes Outside of the CTAA and Section 27.1b

Why is this an issue?

A core principle adopted by the original Statutory Court Fee Task Force in its 2016 Report was that court assessments should be simple, easy to understand, and uniform to the extent possible. At the time, the civil and criminal assessment landscape in Illinois consisted of a multitude of add-on fees that were scattered among many different statutes, making it very difficult for civil and criminal litigants to accurately determine which fees would be imposed and what the true and final cost would be.

Out of that core principle, the CTAA was adopted to codify and centralize all criminal assessments into a single statute, and civil assessments were consolidated into a single section, Section 27.1b of the Clerk of Courts Act. These enactments have gone a long way toward simplifying and bringing transparency to the assessment process.

In the process of consolidating the existing assessments into the CTAA and Section 27.1b, a significant number of statutory add-on fees were inadvertently missed and are still contained in various other statutes. This has created confusion and lingering questions about whether, and to what extent, such outlier assessments may be assessed and whether they are subject to waiver.

Recommendation

The Task Force recommends the General Assembly fully incorporate all assessments into either the CTAA or Section 27.1b. Appendix F includes a complete list of all outlier civil and criminal add-on assessments identified by the Task Force and recommended for inclusion in either the CTAA (criminal assessments) or Clerk of Courts Act (civil assessments).

Some of these assessments could be eliminated entirely. The Task Force takes no position on whether an assessment should be eliminated. However, if the assessment is not eliminated, Appendix F offers a suggestion for where it should be moved.

Implementation Issue 6: Impact of the CTAA and Section 27.1b on County Budgets

Why is this an issue?

The judicial branch in Illinois operates, generally, from the following funding sources:

1. The State pays for all judicial salaries and the operations and staff salaries of the Supreme Court, Appellate Courts, and Administrative Office of the Illinois Courts. It also reimburses the counties for probation costs.

2. Trial court operations are funded through a combination of County general revenues, court assessments, and fines. These funding sources support courthouse operations, salaries and operations of the circuit court clerk, courtroom security, and various other costs needed to operate the trial court.

County appropriations to court operations have become severely stressed, especially in smaller rural counties. While the CTAA and Section 27.1b have undoubtedly had some effect on these budget pressures, the Task Force has been unable to determine how much. This is due to several reasons.

First, the Legislation dramatically changed both the system for imposing assessments in civil, criminal, and traffic cases as well as reporting requirements. For example,

Section 27.1b expanded the availability of assessment waivers in civil cases, but the amount of waivers had not previously been tracked. It is therefore impossible to determine the extent to which the expanded assessment waiver provisions in Section 27.1b have affected court budgets.

Second, there has been a decade-plus decline in case filings across all case types. Fewer cases mean fewer court assessments. This has had a detrimental effect on the amount of fees collected over time, and would have continued without passage of the Legislation.

Third, the COVID-19 pandemic began approximately six months after the CTAA and Section 27.1b went into effect. The pandemic undoubtedly reduced the number of court filings, making it more difficult to measure the fiscal effect of the Legislation.

While it has not been possible to measure the effect of the Legislation on county appropriations to trial court operations, the Task Force believes this is an issue of great importance that the General Assembly, the counties, and the judiciary should work cooperatively to address. Indeed, this issue is likely to become even more important with the abolition of cash bail under the SAFE-T Act as well as current depopulation trends.

Recommendation

The problem here does not lie with the CTAA or Section 27.1b. But the problem is of such importance the Task Force provides the following observations.

The General Assembly in recent years has increased its appropriation to the Supreme Court to the point where it now fully funds the Court's budget requests. This includes, importantly, full funding for reimbursing counties' probation costs. Previously, counties were required to make up the shortfall or cut probation services. By fully funding probation reimbursement costs, the General Assembly has taken an undue burden off counties and made a robust probation system possible.

Additionally, this year the General Assembly for the first time (upon the first request) provided the Supreme Court with nearly $26 million to support the new pretrial services division of the AOIC. The Office of Statewide Pretrial Services will provide support to trial courts for services relating to bail decisions and the monitoring of defendants released

pretrial. This, too, will help ease the budget pressure on counties. Further relief is expected from $10 million in technology improvements funded by the General Assembly to improve the efficiency of trial court operations.

The Supreme Court, through the Illinois Judicial Conference, has created a Court Funding Task Force that is looking into the costs of operating the judicial system globally with the goal of making recommendations for improvements in the way the system is funded.

Finally, counties have also invested in technology that has provided efficiencies that reduce staff needs, paper storage costs, and myriad other costs associated with operating a court system. And, of course, counties have provided funding to the courts from their general revenue budget beyond what the counties receive from fees and fines.

The judicial branch is not an executive agency providing government services, but a separate branch of government. There should never be a debate about how much service the judiciary should provide. Thankfully all the partners in court funding have understood this. But as the pressures on county budgets continue, the Task Force recommends the General Assembly, the judiciary, the counties, circuit court clerks, and the bar continue to work cooperatively to ensure that the judiciary remains capable of effectively serving the public.

Implementation Issue 7: Impact of the CTAA and Section 27.1b on Organizations That Receive Funding Through Assessments

Why is this an issue?

The previous system evolved through a series of well-intentioned measures that added a host of assessments that were individually small but significant—and significantly problematic—in the aggregate. Over the years the General Assembly added assessments to provide funding to various worthy initiatives or organizations, such as court automation, law libraries, and children's waiting rooms. The previous system provided fixed amounts from various assessments to be allocated directly to such organizations.

The Legislation changed that system. It provides counties with the flexibility to decide how much to provide such organizations, if anything at all. As a result, some

organizations may have received less funding from assessments than they did under the prior system, while at the local level some organizations may have experienced an increase.

Recommendation

The Task Force believes this is a feature, not a bug, of the new system. Organizations are free to lobby the General Assembly if they believe they should be authorized to receive funding, and to work within counties to advocate for funding for their services. But the Task Force does not believe organizations should receive set percentages or amounts from assessments to fund their programs. Giving counties the flexibility to make those decisions provides for a more efficient system with greater accountability and flexibility.

Implementation Issue 8: Preventing Legislative Authorization of New Add-On Assessments

Why is this an issue?

The 2016 Report described the old system as "byzantine." And it was. Court assessments were scattered throughout the Illinois Complied Statutes without much organization or thought. This system had developed over time by individual assessments authorized by the General Assembly, all certainly enacted with good intentions. But without considering these assessments within the context of the entire assessment structure, the aggregate amounts charged outpaced inflation and the system became increasingly complex, confusing, and difficult to manage. The Task Force believes we should strive to avoid slipping back into such a system.

There is no simple fix to this problem. The General Assembly cannot prevent future General Assemblies from adding assessments outside the CTAA or Section 27.1b. And future General Assemblies with new members and staff will not know the history that led to enactment of the CTAA and Section 27.1b, so it is inevitable that someone at some point will seek to add an assessment outside the current structure.

Recommendation

The Task Force recommends that any future legislation amending the CTAA and Section 27.1b include findings that explain the history and purpose of those statutes so that future lawmakers will understand the importance of curbing increases in assessments and avoiding the creation of new assessments that are not subject to the overall limits created by those statutes. Any future legislation that increases or creates new assessments should also include a finding which explains how the assessment either defrays the cost of the litigation or directly relates to the administration of the court system.

Additionally, the Supreme Court, circuit clerks, and bar associations should vigilantly watch for new legislation that would add an assessment outside the current structure. When such legislation is introduced, those parties should lobby the General Assembly to ensure that, if additional assessments are authorized, they should be placed in the CTAA or Section 27.1b and should be required to adhere to the overall caps on assessments contained in those provisions.

II. Issues Regarding Court Assessments That Were Not Identified by the First Statutory Court Fee Task Force

The New Initiatives Committee was tasked with considering potential additional measures intended to address problems identified by the original Task Force, as well as related problems. After considering 16 potential initiatives, the Committee focused on the following seven subjects:

1. The varying Federal Poverty Level thresholds for partial and total waivers of assessments in civil and criminal cases;

2. The accounting fee and reporting fee charged to guardians in guardianship cases for disabled adults and children;

3. Assessments imposed in delinquency proceedings in Juvenile Court;

4. Collection practices regarding unpaid assessments;

5. Assessments imposed on defendants sentenced to the Department of Corrections;

6. Assessments that are not tied to court-related services and, therefore, may violate the free access clause of the Illinois Constitution; and

7. A process for moving toward a unified and assessment-free court system.

Each of these subjects was assigned to smaller subgroups of the New Initiatives Committee for further investigation and development of proposed legislation. The resulting recommendations were ultimately reviewed and adopted by the Task Force, with some modifications and refinements. The seven new initiatives are discussed below.

New Initiative 1: Assessments and Fines in Juvenile Delinquency Cases

Issue

Should assessments and fines be eliminated, or should waivers be allowed, in juvenile delinquency cases?

Why is this an issue?

A wide range of assessments are currently authorized in juvenile delinquency cases. These include assessments for probation, supervision, DNA testing, detention, legal representation, and diversion. In practice, there is a great deal of variation from county to county regarding the extent to which assessments are imposed. Across the board, relatively small amounts of revenue are generated from juvenile assessments, and often little if any attempt is made to collect outstanding juvenile assessment balances.[5]

Research has found that assessments and fines in juvenile delinquency cases can undermine the goal of achieving rehabilitation and successful reentry into the community by leaving youths with significant debt and prolonging their involvement in the justice system.[6] [7] [8] Inability to pay assessments has also been associated with a significant increase in the likelihood of recidivism.

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[5] Data obtained by the Task Force's Data Collection and Analysis Committee indicates that less than a third of Illinois counties impose any assessments or fines in juvenile delinquency cases. Only a handful of counties collected a total of more than $1,000 in assessments and fines during any of the last five years, and no county collected a total of more than $10,000 over that five-year period.

[6] National Juvenile Defender Center, *The Cost of Juvenile Probation: A Critical Look into Juvenile Supervision Fees* https://njdc.info/wp-content/uploads/2017/08/NJDC_The-Cost-of-Juvenile-Probation.pdf.

[7] Policy Advocacy Clinic, Berkeley Law School, "Making Families Pay: The Harmful, Unlawful, And Costly Practice of Charging Juvenile Administrative Fees in California," (2017): University of California, Berkeley. https://www.law.berkeley.edu/wp-content/uploads/2019/12/State-Juvenile-Fees-Report_revised12-10-19-.pdf.

[8] Juvenile Law Center, *Debtors' Prison for Kids? The High Cost of Fines and Fees in the Juvenile Justice System* (2016) http://debtorsprison.jlc.org/documents/jlc-debtors-prison.pdf.

The additional stressor of the assessments and fines, especially when imposed without a determination of the youth's ability to pay, can adversely affect the youth's trust in the fairness of the justice system and even reduce the youth's compliance with orders and sentencing conditions.[9] Research has further found that states like Illinois that hold the parent and youth jointly liable can create divisiveness within the family during a time when family engagement is crucial to the rehabilitation of the youth and the youth's successful reintegration into the community.[10]

Juvenile assessments may also have disproportionate adverse effects on families living in poverty and families of color. Juvenile assessments can force low-income families to choose between paying the assessments and paying for necessities such as food, clothing, shelter, healthcare, and education.[11] In the juvenile court system, youths living in poverty may face harsher consequences than their more well-off peers since poor children are less likely to pay juvenile assessments, which may result in contempt of court, probation violations, recidivism ,and even additional fees.[12] Based on available arrest and detention data, youth of color in Illinois make up disproportionately higher number of arrests and detentions than white youth.[13] It is likely then that families of color in Illinois bear a disproportionate burden of juvenile assessments.

With respect to court assessments, as in all other contexts, the justice system is required to protect the special vulnerabilities of children.[14] In order to ensure children are

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[9] *See* fn. 6, above.

[10] *Id.*

[11] *Id.*

[12] See fn. 8, above.

[13] Illinois Juvenile Justice Center, *FY19 Illinois Disproportionate Minority Contact (DMC) Compliance Plan* (2019) https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/media/document/IL-Y18-DMC-PLAN_508.pdf

[14] United States Department of Justice, *Advisory for Recipients of Financial Assistance from the U.S. Department of Justice on Levying Fines and Fees on Juveniles Fees* (2017), https://www.ojp.gov/sites/g/files/xyckuh241/files/archives/documents/AdvisoryJuvFinesFees.pdf

protected in this context, the Office of Access to Justice of the U.S. Department of Justice issued the following recommendations:

1. Juvenile justice agencies should presume that young people are unable to pay fines and fees and only impose them after an affirmative showing of ability to pay.

2. Before juvenile justice agencies punish youth for failing to pay fines and fees, they must first determine ability to pay, considering factors particularly applicable to youth.

3. Juvenile justice agencies should not condition entry into a diversion program or another alternative to adjudication on the payment of a fee if the youth or the youth's family is unable to pay the fee.

4. Juvenile justice agencies should collect data on race, national origin, sex, and disability to determine whether the imposition of fines and fees has an unlawful disparate impact on juveniles or their families.

5. Juvenile justice agencies should consider whether the imposition or enforcement of fines and fees in any particular case comports with the rehabilitative goals of the juvenile justice system.14

Since 2015, 21 states have reduced or eliminated assessments imposed on youths and families in juvenile cases. One additional state, New York, has never charged assessments in juvenile cases.

Recommendation

The Task Force recommends that legislation be enacted abolishing assessments and fines in juvenile delinquency cases, but preserving juveniles' liability for restitution and for assessments in traffic cases. Senate Bill 3621, which was filed in the spring 2022 legislative session of the 102nd General Assembly, was designed to accomplish that objective. The Task Force recommends that the General Assembly pass legislation substantially in the form of SB 3621.

The "substantially in the form" qualification to this recommendation primarily reflects the reality that SB 3621 was a lengthy piece of legislation (90 pages) that is likely to be re-filed during the 103rd General Assembly. The Task Force believes the heart of the legislation was well-conceived and well-drafted. The Task Force strongly urges that it be enacted.

New Initiative 2: Fee for Guardian Reports

Issue

Reports by guardians of disabled adults and children may be ordered by the court pursuant to the Probate Act. 755 ILCS 5/11a-17. There is a $25 fee for filing this report. 705 ILCS 105/27/1b(v)(1).

Why is this an issue?

Assuming guardianship of a disabled adult or child is a significant responsibility—emotionally, physically, and financially. Even though guardians may seek reasonable compensation for guardianship duties, in practice many do not or there may be insufficient assets in the estate from which to be paid. Most guardians are family members of the disabled adult or child, and most are self-represented after being appointed.

A report must be filed every year, along with payment of the $25 fee, until the disabled adult or child emerges from guardianship or dies.

Recommendation

The Task Force considered whether the availability of fee waivers offered a solution to this issue. Fee waivers are available in guardianship cases. However, fee waivers are only in effect for a year, which would require obtaining an annual renewal in addition to filing the annual report. See 735 ILCS 5/5-105(f).

The amount of money collected from this fee is small. The largest case management system vendor in Illinois cannot provide an estimate for this revenue because it is not

tracked separately from other miscellaneous circuit clerk fees. However, in 2021, DuPage County collected approximately $20,000, McHenry County collected approximately $11,000, and Winnebago County collected approximately $3,000 in fees in guardianship cases.

The Task Force recommends the annual fee in guardianship cases be removed from the Clerk of Courts Act by revising 705 ILCS 105/27.1b(v) as follows:

> (v) Probate filings.
>
> (1) For each account (other than one final account) filed in the estate of a decedent, ~~or ward,~~ the fee shall not exceed $25. No fee shall be charged for accounts filed for guardianships established for minors pursuant to Article XI of the Probate Act or for disabled adults pursuant to Article XIa of the Probate Act.

This proposed statutory amendment is included in Appendix G.

New Initiative 3: Debt Collection Fees

Issue

There are a host of authorized assessments relating to efforts by circuit court clerks to collect outstanding obligations. The issue is whether all of those assessments are warranted.

Why is this an issue?

Any additional assessments imposed on civil litigants impede their access to the courts. Any additional assessments imposed on criminal defendants, while ostensibly not intended to punish, are indistinguishable from the defendant's standpoint from fines that are intended to punish, and in some instances may be more punitive because assessments cannot be worked off through community service.

There are two ways circuit clerks collect outstanding obligations. The first is by using the Illinois Office of the Comptroller's Local Debt Recovery Program (IDROP). 15 ILCS 405/10.05-10.05D. To use the IDROP program, circuit court clerks submit a data file listing outstanding debt. IDROP intercepts state payouts to the obligor, including wages,

tax refunds, and lottery winnings. For each successful intercept, the Comptroller assesses a fee of $15 or $20 to the obligor.

Circuit clerks also use the State's Attorney's Office to collect outstanding obligations. 730 ILCS 5/5-9-3(e). The State's Attorney may charge an additional 30% of the outstanding balance as a fee. Many State's Attorney's offices have outsourced this function to private companies in exchange for the 30% collection fee.

The only cost to the circuit clerk for collections work is the minor expense of creating the debt file and uploading it to the Comptroller or private debt collector. However, collections can bring in significant amounts of money. For example, in 2020, DuPage County collected over $1 million from both types of collection activities, and both Winnebago and McHenry counties collect hundreds of thousands of dollars per year. This money is used to pay obligations owed to municipal governments and third-party vendor services, as well as county and court clerk services.

There are two additional statutory provisions that add more financial penalties to obligors who do not make payments on their court debts. 705 ILCS 105/27.1b(j-5) allows the circuit clerk to collect an additional flat fee of $35-$65 depending on the amount of the debt. Despite the statutory authorization, not all circuit clerks assess this additional amount. 705 ILCS 105/27.1b(y-5) and 725 ILCS 5/124A-10, allow the circuit clerk to charge an additional 5% to 15% of the outstanding balance of fees to defray administrative costs. Not all circuit clerks assess these additional charges, either.

Recommendation

The Task Force believes that it is excessive for there to be two potential charges on delinquent accounts in addition to the collection fees charged by IDROP or the State's Attorney. The Task Force recommends that 705 ILCS 105/27.1b(y-5) and the provisions of 725 ILCS 5/124A-10 relating to additional fees be repealed. The repeals will operate prospectively only. This recommendation is not intended to require clerks to recalculate delinquency fees and unpaid balances that are already in debt collection, nor to refund any debt collection fees that have already been collected.

(705 ILCS 105/27.1b)

* * *

~~(y-5) Unpaid fees. Unless a court ordered payment schedule is implemented or the fee requirements of this Section are waived under a court order, the clerk of the circuit court may add to any unpaid fees and costs under this Section a delinquency amount equal to 5% of the unpaid fees that remain unpaid after 30 days, 10% of the unpaid fees that remain unpaid after 60 days, and 15% of the unpaid fees that remain unpaid after 90 days. Notice to those parties may be made by signage posting or publication. The additional delinquency amounts collected under this Section shall be deposited into the Circuit Court Clerk Operations and Administration Fund and used to defray additional administrative costs incurred by the clerk of the circuit court in collecting unpaid fees and costs.~~

(725 ILCS 5/124A-10)

Sec. 124A-10. Lien. The property, real and personal, of a person who is convicted of an offense shall be bound, and a lien is created on the property, both real and personal, of every offender, not exempt from the enforcement of a judgment or attachment, from the time of finding the indictment at least so far as will be sufficient to pay the fine and costs of prosecution. The clerk of the court in which the conviction is had shall upon the expiration of 30 days after judgment is entered issue a certified copy of the judgment for any fine that remains unpaid, and all costs of conviction remaining unpaid. ~~Unless a court ordered payment schedule is implemented, the clerk of the court may add to any judgment a delinquency amount equal to 5% of the unpaid fines, costs, fees, and penalties that remain unpaid after 30 days, 10% of the unpaid fines, costs, fees, and penalties that remain unpaid after 60 days, and 15% of the unpaid fines, costs, fees, and penalties that remain unpaid after 90 days.~~ Notice to those parties affected may be made by signage posting or publication. The clerk of the court may also after a period of 90 days release to credit reporting agencies, information regarding unpaid amounts. ~~The additional delinquency amounts collected under this Section shall be used to defray additional administrative costs incurred by the clerk of the court in collecting unpaid fines, costs, fees, and penalties.~~ The certified copy of the

> judgment shall state the day on which the arrest was made or indictment found, as the case may be. Enforcement of the judgment may be directed to the proper officer of any county in this State. The officer to whom the certified copy of the judgment is delivered shall levy the judgment upon all the estate, real and personal, of the defendant (not exempt from enforcement) possessed by him or her on the day of the arrest or finding the indictment, as stated in the certified copy of the judgment and any such property subsequently acquired; and the property so levied upon shall be advertised and sold in the same manner as in civil cases, with the like rights to all parties that may be interested in the property. It is not an objection to the selling of any property under the judgment that the defendant is in custody for the fine or costs, or both.

These proposed statutory amendments are contained in Appendix H.

New Initiative 4: Assessments and Fines Imposed on Defendants Sentenced to the Department of Corrections

Issue

Should assessments and fines be reduced or eliminated for defendants sentenced to the Department of Corrections (DOC)?

Why is this an issue?

Defendants convicted of felonies can accumulate large amounts of court assessments. Defendants who are released after completing a sentence in the DOC face the daunting prospect of trying to reintegrate into society, including finding employment and housing. Indebtedness poses a significant obstacle to this process. This issue is well-documented. For example, a Brennan Center report from 2010 found that criminal justice debt significantly hobbles a person's chances to reenter society successfully after a conviction.[15]

[15] A. Bannon, M. Nagrecha, and R. Diller, *Criminal Justice Debt: A Barrier to Reentry*¸ Brennan Center for Justice (2010).

The Task Force attempted to weigh the adverse impact of assessments on recidivism and defendants' ability to reintegrate into society, against the potential financial impact on counties of eliminating these assessments with respect to defendants sentenced to the DOC. The Task Force sought data regarding the relationship between the length of defendants' sentences and the amount of financial obligations incurred and paid. While statewide data was unavailable, data from DuPage, McHenry, and Winnebago counties indicates that defendants sentenced to a prison term between one and eight years have a payment rate ranging between 15% and 25%. For sentences over eight years, the payment rate drops to approximately 5%.

The Task Force attempted to determine what portion of the payments were made using cash bond. It was determined that a substantial portion (as high as 90%) of the payments are made from available cash bond.

Recommendation

The Task Force recommends that defendants sentenced to the Department of Corrections earn a reduction in the amount of assessments (*i.e.*, court costs and fees) and fines tied to the length of their prison sentence. There would be a reduction in the amount of assessments and fines of 20% for each year of a sentence, with defendants sentenced to a prison term of five or more years earning a 100% reduction. This recommendation is designed to simultaneously avoid burdening defendants sentenced to prison with significant prison debt, reduce barriers to their successful reentry into society following their release from custody, and relieve court officials of the administrative burden of tracking indebtedness that is rarely collected, all without imposing any significant financial impact on counties because of the poor prospects for collecting those assessments and fines.

For the unusual situations in which a defendant sentenced to a prison term does have the wherewithal to pay the full amount of assessments and fines, the recommended legislation contains a provision allowing the State's Attorney to file a motion seeking to exclude the reduction or elimination of liability for assessments and fines from the defendant's sentence. The court would then be tasked with determining whether the defendant is reasonably able to pay the full amount of the assessments and fines, with due regard for their current income, anticipated income while incarcerated (if any),

current assets and liabilities, and the anticipated cost, while they are incarcerated, of supporting persons who will remain dependent on them for support.

The Task Force believes that a defendant's financial responsibility for restitution is warranted to reimburse a victim for an actual realized loss from the actions of the defendant. Consequently, a defendant's liability for providing restitution is excluded from the recommended reduction or elimination of their liability for assessments and fines. Reducing or eliminating liability for assessments and fines is also expected to promote defendants' ability to pay restitution.

A copy of the proposed legislation effecting this recommendation is contained in Appendix I.

New Initiative 5: Eligibility Guidelines for Assessment Waivers in Civil Litigation

Issue

Should the eligibility guidelines for full or partial assessment waivers in civil cases be modified to mirror the more generous eligibility guidelines for full or partial assessment waivers in criminal cases?

Why is this an issue?

Section 5-105 of the Code of Civil Procedure authorizes full waivers of assessments in civil actions for persons whose income is 125% or less of the federal poverty level ("FPL"), or who are receiving assistance under specified means-based government public benefits programs, or whose payment of assessments would result in substantial hardship to the person or his or her family. Persons with income between 125% and 150% of the FPL are eligible for a 75% waiver; persons with income between 150% and 175% of the FPL are eligible for a 50% waiver; and persons with income between 175% and 200% of the FPL are eligible for a 25% waiver. 735 ILCS 5/5-105(b).

The eligibility criteria for assessment waivers in criminal cases are more generous. Section 124A-20 of the Code of Criminal Procedure authorizes full assessment waivers for persons whose income is 200% or less of the FPL, or who are receiving assistance under

specified means-based government public benefits programs, or whose payment of assessments would result in substantial hardship to the person or his or her family. Persons with income between 200% and 250% of the FPL are eligible for a 75% waiver; persons with income between 250% and 300% of the FPL are eligible for a 50% waiver; and persons with income between 300% and 400% of the FPL are eligible for a 25% waiver. 725 ILCS 5/124A-20(b).

Cost is a significant barrier to access to the civil justice system. Aside from the potential budgetary impact, it is difficult to justify having two separate guidelines.

Recommendation

While most members of the Task Force believe the waiver thresholds should be the same for civil and criminal cases, the Task Force does not recommend implementing this change without first determining the budgetary impact on counties. As previously noted, counties rely on assessments from civil cases to help fund court operations, including the circuit clerk's office. Rather than assume that counties can absorb the loss of income that might be created by changing the waiver thresholds, the Task Force recommends that (1) professionals be engaged to determine the financial impact of changing the waiver thresholds in civil cases to correspond with those applicable to criminal cases[16]; (2) a plan be devised to compensate counties for the anticipated loss of income; and (3) legislation be drafted that (a) brings the eligibility guidelines for assessment waivers in civil cases in line with those for criminal cases, while (b) compensating counties for the projected loss of income.

New Initiative 6: Review of Assessments That May Violate the Free Access Clause of the Illinois Constitution

Issue

[16] The Task Force gratefully acknowledges Stout, a global investment bank and advisory firm, for helping analyze this issue. Led by Neil Steinkamp, Stout examined the potential incremental annual financial impact that could arise by aligning the civil fee waiver schedule with the criminal fee waiver schedule. A copy of Stout's analysis is available from the Access to Justice Division of the Administrative Office of the Illinois Courts, https://www.illinoiscourts.gov/aoic/access-to-justice/.

Should the General Assembly identify and repeal assessments that may violate the free access clause of the Illinois Constitution?

Why is this an issue?

In *Walker v. Chasteen*, 2021 IL 126086, the Supreme Court held that the add-on filing fee on mortgage foreclosure complaints contained in Section 15-1504.1 of the Code of Civil Procedure (735 ILCS 5/15-1504.1) violated the free access clause of the Illinois Constitution, Ill. Const. 1970 art. I, § 12. Enacted as part of the "Save Our Neighborhoods Act" in response to the mortgage foreclosure crisis, the legislation authorizing the fee directed that those funds be used to support the Foreclosure Program Prevention Fund and the Abandoned Residential Property Fund, including by subsidizing grants to housing counseling agencies, foreclosure prevention services, and municipalities for such things as cutting grass, removing garbage and graffiti, and erecting fencing at abandoned properties.

In striking down the mortgage foreclosure fee, the Supreme Court reaffirmed its holding in *Crocker v. Finley,* 99 Ill. 2d 444, 451 (1984), that a charge imposed on a litigant is a permissible fee if assessed to defray the expenses of the litigation. On the other hand, a charge having no relation to the court services rendered is a litigation tax that violates the free access and due process clauses of the Illinois Constitution unless it is imposed for purposes related to the operation and maintenance of the courts.

Like the domestic violence filing fee in *Crocker*, the Supreme Court concluded that the mortgage foreclosure filing fee in *Walker* was actually a litigation tax, as it bore no direct relation to the expenses of the litigation or to the services rendered. Because that tax was a revenue-raising measure designed to fund a statewide social program, which had no direct relation to the administration of the court system, the Court held that the fee unreasonably interfered with foreclosure litigants' access to the courts in violation of the free access clause of the Illinois Constitution.

Recommendation

The Task Force recommends that the General Assembly convene a legislative working group to review the list of civil statutory add-on fees located in Appendix F to ensure

consistency with the standard set out in *Crocker* and affirmed in *Walker*. Any fees which do not defray the expenses of litigation should be considered litigation taxes which run afoul of the free access clause of the Illinois Constitution unless they have a direct relationship to the administration of the court system. Litigation taxes which are merely designed to raise revenue to fund non-court-related social welfare programs should be repealed, and if the resulting revenue loss is problematic alternate funding sources for the affected programs should be identified. Any fees contained in Appendix F that are not repealed, due to the concerns identified in *Crocker* and *Walker* or for any other reason, should be moved into the CTAA or Section 27.1b, as provided in Implementation Recommendation No. 5.

New Initiative 7: Working Toward a Unified, Assessment-Free Court System

Issue

Should our state work to adopt a mechanism to "fully fund" the court system (a "unified" court system) and reduce or eliminate the use of assessments as a source of revenue?

Why is this an issue?

Access to justice is a fundamental right that should be provided and protected by the State. The justice system benefits all of the state's residents, not just those who come in contact with it. It should, therefore, be funded by all of the residents. The current system of funding disproportionately falls on those who use the system even though the system benefits everyone.

The Illinois Judicial Conference Court Funding Task Force ("Court Funding Task Force") was charged with determining the complete cost of the court system and identifying and explaining the multiple sources of funding, including answering key questions about court system funding, what the court system costs now, and where funding comes from. In its January 2021 Progress Report to the Judicial Conference, the Court Funding Task Force determined that from a funding perspective, the state court system can be broken down into four broad categories: Personnel, Physical Space, Technology, and Other Needs and Services.

While financing the state court system is a shared responsibility between the State of Illinois and its 102 counties, the Court Funding Task Force found that most of the funding responsibility is borne by the counties. For Fiscal Year 2019, the total amount of revenue for the Illinois court system from all sources was approximately $2.1 billion, as against expenditures of roughly $2.3 billion. More than half of that revenue came from counties. Approximately $151.6 million, or roughly seven percent (7%) of total revenues, was generated from court assessments.[17]

Recommendation

The CTAA and Section 27.1b reduced the number of assessments, grouped assessments for criminal cases into categories with specified assessment amounts, grouped assessments for civil cases into categories with specified maximum assessment amounts, and expanded the use of waivers. While this has led to more transparent and understandable assessments, judges, court staff, and clerk's offices must still devote resources to the processes of fee determination, waiver, and collection. Even with the remaining assessments, under the current model of funding the expenditures of the court system will likely exceed its total revenue, resulting in underfunding of a co-equal and important branch of the State's government. A fully taxpayer-funded court system would allocate the costs of the state court system across all taxpayers rather than imposing a disproportionate burden on parties to court proceedings. All taxpayers benefit from a well-functioning judicial system. As was stated in a 2013 Illinois State Bar Association report on the funding crisis in the Illinois courts, "[p]ut simply, an effective civil and criminal court system is critical to the safety and well being of the people of this State."[18]

The Task Force recommends that all stakeholders develop a long-term funding plan for a unified Illinois court system that further reduces (or eliminates entirely) the use of assessments as a source of revenue.[19]

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[17] Court Funding Task Force, *January 2021 Progress Report to the Judicial Conference,* Exhibit 3.

[18] *See Report on the Funding Crisis in the Illinois Courts*, https://www.americanbar.org/content/dam/aba/administrative/tips/Court%20Funding/Report%20on%20the%20Funding%20Crisis%20in%20the%20Illinois%20Courts.pdf.

[19] One member of the Task Force believes that consideration of the desirability of a unified court system exceeds the scope of this Task Force's charge.

Other states' funding models may provide a starting point. In 1997, the State of California eliminated separate county and state budgeting for the court system and gave the state primary responsibility for funding trial court operations. Following this consolidation, the Judicial Council in California worked toward a transparent model to distribute the branch's budget funds to the state's 58 trial courts. The judicial branch's "Workload Formula" determines the money a trial court receives based upon its workload; funding is based on the number of cases received as well as the types of cases handled annually.[20] Court filings are averaged over time to avoid funding swings that might come with a surge or decline in filings. The Judicial Council's committees review the formula and its application and recommend amendments.

Notably, the changes in the funding system in California did not eliminate criminal fines and fees or civil assessments. The judicial branch of California has, however, advocated for a funding structure that ends its reliance on fines and fees from court users.[21] The Task Force recommends that the State of Illinois adopt a similar long-term goal regarding assessments.

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[20] *See* Judicial Council of California, Budget and Finance, https://www.courts.ca.gov/finance.htm.

[21] *See, e.g.*, Judicial Branch of California, *California's Judicial Branch Budget Process*, https://newsroom.courts.ca.gov/branch-facts/californias-judicial-branch-budget-process ("The judicial branch has advocated for a three-branch (Executive–Legislative–Judicial) solution to this funding structure and its reliance on fines and fees from court users."); *see also* Commission on the Future of California's Court System, Report to the Chief Justice (2017), 183, https://www.courts.ca.gov/documents/futures-commission-final-report.pdf (recommending "[p]roviding alternative funding to adequately support the judicial system and thereby reduce or preferably eliminate reliance on fines and fees as a source of court funding").

III. Data Collection and Reporting Needed to Provide Empirical Basis for Additional Improvements

Accurate data is essential to evaluating the extent to which the CTAA and Section 27.1b are achieving their objectives, and to identifying opportunities for additional improvements. Many of the recommendations contained in this report are based on data developed by the Task Force's Data Collection & Analysis Committee to support the work of the Implementation Committee and the New Initiatives Committee. To that end, the Data Collection & Analysis Committee obtained data regarding certain topics from all 102 Illinois circuit clerks. When that data was unavailable, the Committee obtained data from a representative subset of counties. For other types of data, the Committee obtained information from the Conference of Chief Judges. The Committee also worked with the Judicial Management Information Services division of the Administrative Office of Illinois Courts (AOIC) to identify areas where better financial data should be gathered from the circuit clerks, including data required by each circuit clerk's annual financial "Report J."

Data Reporting Recommendation 1: Continuation and Expansion of Annual Reports by Circuit Court Clerks Regarding Assessments in Criminal and Traffic Proceedings

Issue

Should circuit court clerks be required to file annual reports with the AOIC containing detailed information relating to assessments in criminal and traffic proceedings?

Why is this an issue?

Section 1-10 of the CTAA required circuit clerks to file annual reports with the AOIC containing detailed information regarding, among other things, the number of various types of criminal and traffic cases that were filed, the number and amount of assessments imposed and collected, the number and amount of fines imposed and collected, the number of assessment waiver applications that were granted at each waiver level between 25 and 100 percent, and the amount of assessments that were waived. 705 ILCS 135/1-10. The CTAA only required assessment reports to be filed for

calendar year 2019, but reports were also filed for 2020 and 2021 pursuant to Supreme Court order.

Recommendation

The Task Force recommends revising Section 1-10 of the CTAA to require assessment reports for a calendar year to be filed no later than March 1 of the following year. The Task Force also recommends expanding the content of the reports to include the number of assessment waiver applications that are filed. Recommended statutory language is contained in Appendix J to this report.

Data Reporting Recommendation 2: Continuation and Expansion of Annual Reports by Circuit Court Clerks Regarding Assessments in Civil Cases

Issue

Should circuit court clerks be required to file annual reports with the AOIC containing detailed information relating to assessments in civil cases?

Why is this an issue?

Section 27.1c of the Clerk of Courts Act contains a reporting requirement for civil cases that is analogous to the reporting requirement for criminal and traffic cases contained in Section 1-10 of the CTAA. The primary difference from the CTAA provision is that Section 27.1c is not limited to 2019. However, both provisions did not originally contain a requirement that the number of assessment waiver applications be reported.

Recommendation

The Task Force recommends revising Section 27.1c to require reporting of the total number of civil cases in which assessment waivers were filed. Recommended statutory language is contained in Appendix K.

Data Reporting Recommendation 3: Continuation of Efforts by Circuit Clerks and the Judicial Management Information Services Division to Make Better Use of Assessment-Related Data Reported by the Clerks

Issue

Should the Supreme Court direct the AOIC's Judicial Management Information Services division (JMIS) to continue to work with circuit court clerks to make better use of assessment-related data reported by the clerks?

Why is this an issue?

The annual "Report J" filed by circuit court clerks includes detailed financial data on every assessment and fine collected by circuit clerks across the state. The JMIS division has undertaken a project to consolidate several data sets provided by circuit clerks, which will improve our long-term ability to identify the impact of the CTAA and Section 27.1b, as well as the projected impact of proposed legislation relating to assessments.

Recommendation

The Task Force recommends that the Supreme Court direct the JMIS Division of the AOIC to continue to work with the circuit clerks to make better use of the assessment data the clerks are reporting to the AOIC.

CONCLUSION

The legislation and court rules resulting from the efforts of the first Statutory Court Fee Task Force have enabled our State to make significant strides in terms of reducing barriers to access to justice associated with court assessments, addressing excessive variation in the amount of assessments charged in different counties, simplifying the system of assessments, and deterring the proliferation of additional assessments. Given the length and complexity of the CTAA and Section 27.1b, it was anticipated that issues would arise in implementing that legislation that would require subsequent legislative corrections. The nine Implementation Recommendations in this report effectively address those issues.

It was also recognized that additional areas remained in which future improvements to the system of assessments would be needed. Enactment of legislation implementing the seven New Initiative Recommendations will build on the progress that has already been achieved toward realizing the goals articulated by the first Task Force, while effectuation of the Data Collection and Reporting Recommendations will provide stakeholders with empirical information needed to evaluate the effectiveness of the current system and identify opportunities for future improvements.

The members of the Task Force recognize that, as was the case with the issuance of the first Task Force Report, issuance of this report does not mean that the Task Force's responsibilities have been discharged. The Task Force is committed to working with the General Assembly and the Supreme Court to help make implementation of the recommendations contained in these pages a reality through enactment of legislation and promulgation of court rules.

Dated: January 1, 2023 Respectfully submitted,

The Statutory Court Fee Task Force

Chirag G. Badlani	Hon. Eugene G. Doherty
Hon. Thomas M. Donnelly	Hon. Michael A. Fiello
Hon. David Friess	Hon. Katherine Keefe
Hon. Thomas A. Klein	Hon. Leroy K. Martin
Steven F. Pflaum, Chair	Jonathan Pilsner
Hon. Elizabeth A. Robb (Ret.)	Hon. Justin Slaughter
Hon. Brian W. Stewart	Adam Vaught

APPENDIX

ELIMINATION OF THE SUNSET PROVISIONS FROM THE CTAA AND SECTION 27.1B OF THE CLERK OF COURTS ACT

(705 ILCS 105/27.1b)

Sec. 27.1b. Circuit court clerk fees. ...

...

~~(aa) This Section is repealed on January 1, 2024.~~

(705 ILCS 135/20-5)

~~Sec. 20-5. Repeal. This Act is repealed on January 1, 2024.~~

CLARIFICATION OF DEFINITIONS IN THE CTAA

(705 ILCS 135/1-5)

Sec. 1-5. Definitions. In this Act:

* * *

"Case" means all charges and counts arising from the same act or incident filed against a single defendant which are being prosecuted by a single agency ~~as a single proceeding~~ before the court.

* * *

"Conditional assessments" means any costs imposed on a defendant under Section 15-70 of this Act.

"Court-supervised service provider" means any entity, facility, or other person that is directly or contractually supervised by the court and which provides services to the court, parties, or other persons in connection with a case.

"Court-supervised service provider costs" means any charges imposed in a case by a service provider in accordance with a court order.

* * *

"Non-court supervised ~~S~~service provider costs" means costs incurred as a result of services provided by a~~n~~ non-court supervised entity, facility, or other person, including, but not limited to, ~~traffic safety programs, laboratories,~~ ambulance companies~~,~~ and fire departments. ~~"Service provider costs" includes conditional amounts under this Act that are reimbursements for services provided.~~

(705 ILCS 135/5-15)

Sec. 5-15. Non-court supervised service provider costs. Unless otherwise provided in Article 15 of this Act, the defendant shall pay non-court supervised service provider costs to the entity that provided the service. Such costs are not eligible for credit for time served, substitution of community service, or waiver. The circuit court may, through administrative order or local rule, appoint the clerk of the court as the receiver and remitter of certain non-court supervised service provider costs ~~which may include, but are not limited to, probation fees, traffic school fees, or drug or alcohol testing fees~~.

(705 ILCS 135/15-70)

Sec. 15-70. Conditional assessments. In addition to payments under one of the Schedule of Assessments 1 through 13 of this Act, the court shall also order payment of any of the following conditional assessment amounts for each sentenced violation in the case to which a conditional assessment is applicable, which shall be collected and remitted by the Clerk of the Circuit Court as provided in this Section:

* * *

(20) Court-supervised service provider costs imposed in a case.

CLARIFICATION OF SCOPE OF ASSESSMENT WAIVERS

(725 ILCS 5/124A-20)

Sec. 124A-20. Assessment waiver.

(a) As used in this Section:

"Assessments" means any costs imposed on a criminal defendant under Article 15 of the Criminal and Traffic Assessment Act, but does not include violation of the Illinois Vehicle Code assessments except as provided in subsection (a-5); all fees set forth in Section 27.1b of the Clerks of Courts Act; fees for supplementary proceedings; charges for translation services; fees associated with preparation of a record on appeal, including court reporter fees; fees for record or case searches; fees for the reproduction of any document contained in the clerk's files; and all other processes and procedures deemed by the court to be necessary to defend a criminal action. "Assessments" does not include, and assessment waivers under this Section do not cover, non-court supervised service provider costs, as defined in Section 1-5 of the Criminal and Traffic Assessment Act.

* * *

(b) For assessment schedules and conditional assessments imposed on criminal offenses reflected in Schedules 1, 3, 4, 5, 7, and 8 of Article 15 of the Criminal and Traffic Assessment Act, upon the application of any defendant, after the commencement of an action, but no later than 30 days after sentencing:

(735 ILCS 5/5-105) (from Ch. 110, par. 5-105)

Sec. 5-105. Waiver of court fees, costs, and charges.

(a) As used in this Section:

(1) "Fees, costs, and charges" means payments imposed on a party in connection with the prosecution or defense of a civil action, ~~including, but not limited to~~ defined as: all fees set forth in Section 27.1b of the Clerks of Courts Act; fees for service of process and other papers served either within or outside this State, including service by publication pursuant to Section 2-206 of this Code and publication of necessary legal notices; motion fees; charges for participation in, or

attendance at, any mandatory process or procedure including, but not limited to, conciliation, mediation, arbitration, counseling, evaluation, "Children First", "Focus on Children" or similar programs; fees for supplementary proceedings; charges for translation services; guardian ad litem fees; fees associated with preparation of a record on appeal, including court reporter fees; fees for record or case searches; fees for the reproduction of any document contained in the clerk's files; and all other processes and procedures deemed by the court to be necessary to commence, prosecute, defend, or enforce relief in a civil action. "Fees, costs, and charges" does not include, and fee waivers under this Section do not cover, expenses incurred as a result of services provided by a non-court supervised entity, facility, or other person, including, but not limited to, real estate services, healthcare or mental health services, child care, or job placement assistance.

CLARIFICATION THAT ASSESSMENT WAIVERS CANNOT BE A CONDITION OF PLEA BARGAINS

(725 ILCS 5/124A-20)

Sec. 124A-20. Assessment waiver.

* * *

(h) No defendant shall be required to forego or waive his or her right to seek a waiver of assessments as a condition of any plea agreement.

CLARIFICATION OF PROCEDURE FOR SEEKING ASSESSMENT WAIVERS

Rule 298. Application for Waiver of Court Fees, Costs, and Charges

(a) Contents and Filing. An ~~Application for Waiver of Court Fees~~ application for waiver of court fees, costs, and charges in a civil action pursuant to 735 ILCS 5/5-105 shall be in writing and signed by the applicant or, if the applicant is a minor or an incompetent adult, by another person having knowledge of the facts.

(1) An applicant shall use the "Application for Waiver of Court Fees" form approved by the Illinois Supreme Court and the Supreme Court Commission on Access to Justice.

(~~1~~2) The ~~contents of the~~ Application (and supporting documents, if required,) must be sufficient to allow a court to determine whether an applicant qualifies for full or partial waiver of assessments pursuant to 735 ILCS 5/5-105~~, and shall include information regarding the applicant's household composition, receipt of need-based public benefits, income, expenses, and nonexempt assets~~.

~~(2) Applicants shall use the "Application for Waiver of Court Fees" adopted by the Illinois Supreme Court Access to Justice Commission, which can be found in the Article II Forms Appendix.~~

(3) No fee may be charged for filing an Application. Applications by persons who are exempt from electronic filing under Supreme Court Rule 9(c) may be filed in-person at the clerk of court, or by United States mail, third-party commercial carrier, deposit in a drop box receptacle maintained by the clerk, or any other means permitted by the local court. All other Applications shall be electronically filed.

(b) ~~Ruling~~. ~~The court shall either enter a ruling on the Application or set the Application for a hearing requiring the applicant to appear in person. The court may order the applicant to produce copies of specified documents in support of the Application at the hearing. The court's ruling on an Application for Waiver of Court Fees shall be made according to standards set forth in 735 ILCS 5/5-105. If the Application is denied, the court shall enter an order to that effect specifying the reasons for the denial. If the court determines that the conditions for a full assessment waiver under 735 ILCS 5/5-105(b)(1) are satisfied, it shall enter an order permitting the applicant to sue or defend without payment of assessments, costs or charges. If the court determines that the conditions for~~

~~a partial assessment waiver under 735 ILCS 5/5-105(b)(2) are satisfied, it shall enter an order permitting the applicant to sue or defend after payment of a specified percentage of assessments, costs, or charges. If an Application for a partial assessment waiver is granted, and if necessary to avoid undue hardship on the applicant, the court may allow the applicant to defer payment of assessments, costs, and charges, make installment payments or make payment upon reasonable terms and conditions stated in the order~~ **Supporting Documentation.** No supporting documentation of eligibility in addition to the Application is needed unless the county or circuit has adopted a local rule requiring it. Any such local rule may not require any more than the following:

(1) Government Benefit Recipients. An applicant who is currently receiving assistance under one or more of the means-based governmental public benefits may be required to provide a current benefits statement or other documentary proof of their receipt of benefits, but shall not be required to provide any additional information or documentation about their income, assets, debts, or expenses.

(2) **Other Applicants.** An applicant who is not receiving one or more of the means-based governmental public benefit may be required to provide financial information and supporting documentation including their most recent pay stubs from all employers, 1099s, and W-2s.

(c) ~~**Filing**. No fee may be charged for filing an Application for Waiver of Court Fees. The clerk must allow an applicant to file an Application for Waiver of Court Fees in the court where his case will be heard.~~ **Decision of Application.** Applications shall be decided as soon as reasonably possible in accordance with the following procedure:

(1) An Application shall be decided without a hearing if all relevant sections are complete (and, if applicable, it is supported by documents required by that jurisdiction pursuant to (b)(1)). If all the relevant sections or the Application are not complete or it is not accompanied by any required supporting documentation, outright denial is not permitted; the applicant must be notified of the deficiencies and given the opportunity to amend the application by providing the supporting documentation and/or be given a hearing.

(2) If the court schedules a hearing, it shall enter an order scheduling a remote hearing in accordance with Rule 45, within 30 days, unless the applicant requests an in-person hearing or will already be present at the courthouse on the date of the hearing. The order must state: (a) the specific eligibility questions that necessitate the hearing; (b) what documents, if any, must be submitted in support

of the Application at or before the hearing, and how to submit them; and (c) the remote hearing meeting ID and password or the courtroom location if in-person.

(3) An order deciding an Application, with or without a hearing, or scheduling a hearing, shall use the "Order for Waiver of Court Fees" form approved by the Illinois Supreme Court and the Supreme Court Commission on Access to Justice. The court's ruling on an Application for Waiver of Court Fees shall be made according to standards set forth in 735 ILCS 5/5-105. If the Application is denied, the court shall enter an order to that effect specifying the reasons for the denial. As provided in the form Order, if the court determines that the conditions for a full assessment waiver under 735 ILCS 5/5-105(b)(1) are satisfied, it shall enter an order permitting the applicant to sue or defend without payment of assessments, costs, or charges. If the court determines that the conditions for a partial assessment waiver under 735 ILCS 5/5-105(b)(2) are satisfied, it shall enter an order permitting the applicant to sue or defend after payment of a specified percentage of assessments, costs, or charges. If an Application for a partial assessment waiver is granted, and if necessary to avoid undue hardship on the applicant, the court may allow the applicant to defer payment of assessments, costs, and charges, make installment payments, or make payment upon reasonable terms and conditions stated in the order.

(4) The clerk shall provide one or more options for the applicant to obtain the court's ruling on the Application, including but not limited to mailing a copy of the court's ruling to the address on the Application, providing notification via email or text as requested by the applicant.

(d) Filing and Retention of Supporting Documentation. Any documents submitted in support of an Application shall be filed under seal. The clerk shall not be required to retain paper copies of any such documents.

(~~d~~e) **Cases involving representation by civil legal services provider or lawyer in court-sponsored pro bono program**. In any case where a party is represented by a civil legal services provider or attorney in a court-sponsored pro bono program as defined in 735 ILCS 5/5-105.5, the attorney representing that party shall file a certification with the court, and that party shall be allowed to sue or defend without payment of fees~~assessments~~, costs, or charges as defined in 735 ILCS 5/5-105(a)(1) without necessity of an Application under this rule. Instead, the attorney representing the party shall file a certification prepared by utilizing, or substantially adopting the appearance and content of, the form provided in the Article II Forms Appendix.

Committee Comment

Paragraph (b)(1)

Applicants receiving assistance under one or more of the means-based governmental public benefits programs are not required to provide any additional financial information because they have been screened, reviewed, and approved by the relevant government agency and regular recertification is required to maintain that benefit.

Rule 404. Application for Waiver of Court Assessments

(a) Contents and Filing. An Application for Waiver of Court Assessments in a criminal action pursuant to 725 ILCS 5/124A-20 shall be in writing and signed by the applicant or, if the applicant is a minor or an incompetent adult, by another person having knowledge of the facts. The Application should be submitted no later than 30 days after sentencing.

(1) An applicant shall use the "Application for Waiver of Criminal Court Assessments" form approved by the Illinois Supreme Court and the Supreme Court Commission on Access to Justice.

(~~1~~2) The ~~contents of the~~ Application (and supporting documents, if required,) must be sufficient to allow a court to determine whether an applicant qualifies for full or partial waiver of assessments pursuant to 725 ILCS 5/124A20~~, and shall include information regarding the applicant's household composition, receipt of need-based public benefits, income, expenses, and nonexempt assets~~.

~~(2) Applicants shall use the "Application for Waiver of Court Assessments" adopted by the Illinois Supreme Court Access to Justice Commission, which can be found in the Article IV Forms Appendix.~~

(3) No fee may be charged for filing an Application. Applications by persons who are exempt from electronic filing under Supreme Court Rule 9(c) may be filed in-person at the clerk of court, or by United States mail, third-party commercial carrier, deposit in a drop box receptacle maintained by the clerk, or any other means permitted by the local court. All other Applications shall be electronically filed.

(b) Ruling The court shall either enter a ruling on the Application or shall set the Application for a hearing requiring the applicant to appear in person. The court may order the applicant to produce copies of certain documents in support of the Application at the hearing. The court's ruling on an Application for Waiver of Assessments shall be made according to standards set forth in 725 ILCS 5/124A-20. If the Application is denied, the court shall enter an order to that effect specifying the reasons for the denial. If the court determines that the conditions for a full assessment waiver are satisfied under 725 ILCS 5/124A-20(b)(1), it shall enter an order waiving the payment of the assessments. If the court determines that the conditions for a partial assessment waiver under 725 ILCS 5/124A-20(b)(2) are satisfied, it shall enter an order for payment of a specified percentage of the assessments. If an Application is denied or an Application for a partial assessment waiver is granted, the court may allow the applicant to defer payment of the assessments, make installment payments, or make payment upon reasonable terms and conditions stated in the order. **Supporting Documentation**. No supporting documentation of eligibility in addition to the application is needed unless the county or circuit has adopted a local rule requiring it. Any such local rule may not require any more than the following:

(1) **Government Benefit Recipients.** An applicant who is currently receiving assistance under one or more of the means-based governmental public benefits may be required to provide a current benefits statement or other documentary proof of their receipt of benefits, but shall not be required to provide any additional information or documentation about their income, assets, debts, or expenses.

(2) **Other Applicants.** An applicant who is not receiving a means-based governmental public benefit shall provide financial information and supporting documentation including their most recent pay stubs from all employers, 1099s, and W-2s.

(c) Filing. No fee may be charged for filing an Application for Waiver of Court Assessments. The clerk must allow an applicant to file an Application for Waiver of Court Assessments in the court where his case will be heard. **Decision of Application.** Applications shall be decided as soon as reasonably possible in accordance with the following procedure:

(1) An Application shall be decided without a hearing if all relevant sections are complete (and, if applicable, it is supported by documents required by that jurisdiction pursuant to (b)(1)). If all of the relevant sections of the Application are not complete or it is not accompanied by any required supporting documentation, outright denial is not permitted; the applicant must be notified of the deficiencies

and given the opportunity to amend the Application by providing the supporting documentation and/or be given a hearing.

(2) If the court schedules a hearing, it shall enter an order scheduling a remote hearing in accordance with Rule 45, within 30 days, unless the applicant requests an in-person hearing or will already be present at the courthouse on the date of the hearing. The order must state: (a) the specific eligibility questions that necessitate the hearing; (b) what documents, if any, must be submitted in support of the Application at or before the hearing, and how to submit them; and (c) the remote hearing meeting ID and password or the courtroom location if in-person.

(3) An order deciding an Application, with or without a hearing, or scheduling a hearing, shall use the "Order for Waiver of Criminal Court Assessments" form approved by the Illinois Supreme Court and the Supreme Court Commission on Access to Justice. The court's ruling on an Application for Waiver of Assessments shall be made according to standards set forth in 725 ILCS 5/124A-20. As provided in the form Order, if the Application is denied, the court shall enter an order to that effect specifying the reasons for the denial. If the court determines that the conditions for a full assessment waiver are satisfied under 725 ILCS 5/124A-20(b)(1), it shall enter an order waiving the payment of assessments. If the court determines that the conditions for a partial assessment waiver under 725 ILCS 5/124A-20(b)(2) are satisfied, it shall enter an order for payment of a specified percentage of the assessments. If an Application is denied or an Application for a partial assessment waiver is granted, the court may allow the applicant to defer payment of the assessments, make installment payments, or make payment upon reasonable terms and conditions stated in the order.

(d) Filing and Retention of Supporting Documentation. Any documents submitted in support of an Application shall be filed under seal. The clerk shall not be required to retain paper copies of any such documents.

(~~d~~e) Cases involving representation by public defenders, criminal legal services providers, or attorneys in court-sponsored pro bono program. In any case where a ~~party~~ defendant is represented by a public defender, criminal legal services provider, or an attorney in a court-sponsored pro bono program, the attorney representing that ~~party~~ defendant shall file a certification with the court, and that ~~party~~ defendant shall be entitled to a waiver of assessments as defined ~~allowed to proceed without payment of assessments~~ in 725 ILCS 5/124A-20(a) without necessity of an Application under this rule. "Criminal legal services provider" means a not-for-profit corporation that (i) employs one or more attorneys who are licensed to practice law in the State of Illinois and who directly

provide free criminal legal services or (ii) is established for the purpose of providing free criminal legal services by an organized panel of pro bono attorneys. "Court-sponsored pro bono program" means a pro bono program established by or in partnership with a court in this State for the purpose of providing free criminal legal services by an organized panel of pro bono attorneys.

Committee Comments

Paragraph (b)(1)

Applicants receiving assistance under one or more of the means-based governmental public benefits programs are not required to provide any additional financial information because they have been screened, reviewed, and approved by the relevant government agency and regular recertification is required to maintain that benefit.

Paragraph (c)

The procedure prescribed by paragraph (c) is intended to prohibit the practice of deferring ruling on an Application for Waiver of Court Assessments until after completion of the sentence. Criminal Assessments must be imposed by the court at the time of sentencing. Where possible, a ruling on whether the defendant qualifies for a full or partial waiver should also be determined at the time of sentencing, or within a reasonable time thereafter if the defendant submits an Application under paragraph (a) or a certification under paragraph (d) after sentencing.

ASSESSMENTS NOT CURRENTLY INCLUDED IN CTAA OR SECTION 27.1B

Statute	Civil Schedules	Criminal Schedules	Notes
55 ILCS 5/5-1101.3	AR, CH, DC, DN, ED, EV, FA, FC, GC, GR, LA, LM, MH, MR, PR, SC, TX	CF, CM, CV, DT, DV, MT, OV, QC, TR	Judicial Facilities Fee CC, CL,OP
55 ILCS 5/5-39001	AR, CH, DC, DN, ED, EV, FA, FC, GC, GR, LA, LM, MH, MR, PR, SC, TX		Law Library Fee OP
55 ILCS 82/15	AR, CH, DC, DN, ED, EV, FA, FC, GC, GR, LA, LM, MH, MR, PR, SC, TX		Custody Exchange Fee OP
65 ILCS 5/7-1-2	GC		Annexation Clerk's Fee (Filing Fee)
65 ILCS 5/11-31-1(b)	MR		Demolition Filing Fee
215 ILCS 5/203	AR, CH, DC, DN, ED, EV, FA, FC, GC, GR, LA, LM, MH, MR, PR, SC, TX (insurance code only)		Insurance Director Fees
430 ILCS 66/70(e)		CF/CM	FOID Card
705 ILCS 105/27.3f	GR/PR (decedent)		Guardianship and Advocacy Operations Fee
705 ILCS 105/27.9(a)	MX	CF	Frivolous Lawsuit Fee

Statute	Civil Schedules	Criminal Schedules	Notes
705 ILCS 130/15	AR, CH, DC, DN, ED, EV, FA, FC, GC, GR, LA, LM, MH, MR, PR, SC, TX		Domestic Relations Fee OP
710 ILCS 20/3	AR, CH, DC, DN, ED, EV, FA, FC, GC, GR, LA, LM, MH, MR, PR, SC, TX		Dispute Resolution Fee OP
720 ILCS 5/11-1.10(e)		CF (sex crimes)	HIV Test Cost
720 ILCS 5/12-5.2(g)	CH (limited)	CF, CM (limited)	Property Improvement Fee
725 ILCS 5/110-7(i)		CF, CM, CV, DT, DV, MT, OV, QC, TR	FTA Warrant Fee (repealed)
725 ILCS 5/110-10(b)(14.1)		CF, CM, DT	Pretrial Home Monitoring
725 ILCS 5/110-10(b)(14.2)		CF, CM, DT	Pretrial Home Monitoring
730 ILCS 5/5-5-3(g) & (h)		CF, CM	STD Cost
730 ILCS 5/5-5-10		CF, CM, DV, DT, DV, MT., OV, QC, TR	Community Service Fee JD
730 ILCS 5/5-6-3(b)(10)(iv) & (v)		CF, CM, DT, DV, MT	Post Conviction Home Monitoring
730 ILCS 5/5-6-3(g)		CF, CM, CV, DT, DV, MT, QC, TR	Drug/Alcohol Testing Monitoring

Statute	Civil Schedules	Criminal Schedules	Notes
730 ILCS 5/5-6-3(h) & (i)		CF, CM, CV, DT, DV, MT, QC, TR	Probation Fee
730 ILCS 5/5-6-3.1(g)		CM, CV, DT, DV, MT, QC, TR	Drug/Alcohol Testing Monitoring
730 ILCS 5/5-6-3.1(i) & (u)		CF, CM, CV, DT, DV, MT, QC, TR	Probation Fee JD
730 ILCS 5/5-7-1(g) & (h)		CF, CM CV, DT, DV, MT	Drug/Alcohol Testing Monitoring
730 ILCS 5/5-9-1.13		CF, CM, DT, DV, MT	Out of state transfer fee
730 ILCS 5/5-9-1.16(c)		CF, CM	DV Equipment Fee
730 ILCS 5/5-9-1.22		CF, DT (DUI)	Roadside Memorial Fee
735 ILCS 5/4-124	AR, CH, DC, DN, ED, EV, FA, FC, GC, GR, LA, LM, MH, MR, PR, SC		Livestock Cost
735 ILCS 5/12-655	AR, CH, DC, DN, Ed, EV, FA, FC, GC, GR, LA, LM, MH, MR, PR, SC, TX		Foreign Judgment Clerk's Fee OP
735 ILCS 5/15-1504.1	FC		Foreclosure Fee Unconstitutional
735 ILCS 5/15-1504.1(a-5)	FC		Foreclosure Tier Fee Unconstitutional
750 ILCS 5/705(6) 750 ILCS 5/711	DC, FA, GR		Public Aid Child Support Fee

Statute	Civil Schedules	Criminal Schedules	Notes
750 ILCS 50/12a	FA		Notice to Putative Father Clerk's Fee
765 ILCS 102/31	MR		County Clerk's Fee (Lost goods)

ELIMINATION OF ANNUAL FEE IN GUARDIANSHIP PROCEEDINGS INVOLVING FOR MINORS AND DISABLED ADULTS

(705 ILCS 105/27.1b)

Sec. 27.1b. Circuit court clerk fees....

* * *

(v) Probate filings.

(1) For each account (other than one final account) filed in the estate of a decedent, ~~or ward,~~ the fee shall not exceed $25. No fee shall be charged for accounts filed for guardianships established for minors pursuant to Article XI of the Probate Act or for disabled adults pursuant to Article XIa of the Probate Act.

* * *

ELIMINATION OF DUPLICATIVE COLLECTION FEES REGARDING UNPAID ASSESSMENTS

(705 ILCS 105/27.1b)

Sec. 27.1b. Circuit court clerk fees....

* * *

~~(y-5) Unpaid fees. Unless a court ordered payment schedule is implemented or the fee requirements of this Section are waived under a court order, the clerk of the circuit court may add to any unpaid fees and costs under this Section a delinquency amount equal to 5% of the unpaid fees that remain unpaid after 30 days, 10% of the unpaid fees that remain unpaid after 60 days, and 15% of the unpaid fees that remain unpaid after 90 days. Notice to those parties may be made by signage posting or publication. The additional delinquency amounts collected under this Section shall be deposited into the Circuit Court Clerk Operations and Administration Fund and used to defray additional administrative costs incurred by the clerk of the circuit court in collecting unpaid fees and costs.~~

(725 ILCS 5/124A-10)

Sec. 124A-10. Lien. The property, real and personal, of a person who is convicted of an offense shall be bound, and a lien is created on the property, both real and personal, of every offender, not exempt from the enforcement of a judgment or attachment, from the time of finding the indictment at least so far as will be sufficient to pay the fine and costs of prosecution. The clerk of the court in which the conviction is had shall upon the expiration of 30 days after judgment is entered issue a certified copy of the judgment for any fine that remains unpaid, and all costs of conviction remaining unpaid. ~~Unless a court ordered payment schedule is implemented, the clerk of the court may add to any judgment a delinquency amount equal to 5% of the unpaid fines, costs, fees, and penalties that remain unpaid after 30 days, 10% of the unpaid fines, costs, fees, and penalties that remain unpaid after 60 days, and 15% of the unpaid fines, costs, fees, and penalties that remain unpaid after 90 days.~~ Notice to those parties affected may be made by

signage posting or publication. The clerk of the court may also after a period of 90 days release to credit reporting agencies, information regarding unpaid amounts. ~~The additional delinquency amounts collected under this Section shall be used to defray additional administrative costs incurred by the clerk of the court in collecting unpaid fines, costs, fees, and penalties.~~ The certified copy of the judgment shall state the day on which the arrest was made or indictment found, as the case may be. Enforcement of the judgment may be directed to the proper officer of any county in this State. The officer to whom the certified copy of the judgment is delivered shall levy the judgment upon all the estate, real and personal, of the defendant (not exempt from enforcement) possessed by him or her on the day of the arrest or finding the indictment, as stated in the certified copy of the judgment and any such property subsequently acquired; and the property so levied upon shall be advertised and sold in the same manner as in civil cases, with the like rights to all parties that may be interested in the property. It is not an objection to the selling of any property under the judgment that the defendant is in custody for the fine or costs, or both.

EARN-DOWN REDUCTION OF ASSESSMENTS AND FINES FOR DEFENDANTS SENTENCED TO THE DEPARTMENT OF CORRECTIONS

Section 124A-25 is added to the Code of Criminal Procedure, 725 ILCS 5/124A-25, to read as follows:

(725 ILCS 5/124A-25)

Sec. 124A-25. Earn-down reduction of assessments imposed on defendants sentenced to the Department of Corrections.

(a) As used in this Section:

(1) "Assessments" means any costs imposed on a criminal defendant under Article 15 of the Criminal and Traffic Assessment Act, including but not limited to assessments relating to violations of the Illinois Vehicle Code, after the application of any income-based waiver under Section 124A-20.

(2) "Prison term" means the longest term of imprisonment to which a defendant is sentenced in a case, either for a single offense or in the aggregate for multiple offenses that run consecutively, and without regard to any credit for time served in custody, home detention, or for any other reason.

(b) The court shall, without application, reduce the total amount of assessments imposed on a defendant who is sentenced to a term of imprisonment in that case, as follows:

(1) 20% for a prison term of at least one year but less than two years;

(2) 40% for a prison term of at least two years but less than three years;

(3) 60% for a prison term of at least three years but less than four years;

(4) 80% for a prison term of at least four years but less than five years; and

(5) 100% for a prison term of five or more years.

(c) The State's Attorney may file a motion to eliminate any reduction in assessments, pursuant to subsection (b), in the sentence of a defendant whom the State's Attorney believes is reasonably capable of paying the full amount of the assessments. The decision whether to deny the motion or to require the defendant to provide information bearing on their ability to pay the assessments is committed to the sound discretion of the court. If the court requires the defendant to provide such information:

(1) Unless the defendant has already done so, the court shall order the defendant to complete the "Application for Waiver of Criminal Court Assessments" approved by the Illinois Supreme Court;

(2) The motion shall be denied if the defendant provides a current benefits statement or other documentary proof of their receipt of assistance under one or more of the means-based governmental public benefits programs listed in 725 ILCS 5/124A-20(c)(1). Such a defendant shall not be required to provide any additional information about their income, assets, debts, or expenses.

(3) A defendant who is not receiving a means-based governmental public benefit shall provide financial information and supporting documentation relating to the factors listed in 725 ILCS 5/124A-20(c)(1)(2-6), including their most recent pay stubs from all employers, 1099s, and W-2s.

(4) The court may decline to reduce, pursuant to subsection (b), the amount of assessments imposed on the defendant if the court enters a written finding that there is clear and convincing evidence that the defendant can afford to pay the full amount of the

assessments, after considering the defendant's current income, anticipated income while incarcerated (if any), current assets and liabilities, and the anticipated cost, while the defendant is incarcerated, of supporting persons who will remain dependent on the defendant for support.

Section 5-9-1 of the Unified Code of Corrections, 730 ILCS 5/5-9-1, is revised to read as follows:

(730 ILCS 5/5-9-1)

Sec. 5-9-1. Authorized Fines.

(a) An offender may be sentenced to pay a fine as provided in Article 4.5 of Chapter V, subject to subsection (f) of this section.

* * *

(f) The court shall, without application, reduce the total amount of fines imposed on an offender who is sentenced to a term of imprisonment as follows:

(1) 20% for a prison term of at least one year but less than two years;

(2) 40% for a prison term of at least two years but less than three years;

(3) 60% for a prison term of at least three years but less than four years;

(4) 80% for a prison term of at least four years but less than five years; and

(5) 100% for a prison term of five or more years.

(g) For purposes of paragraph (f), "prison term" means the longest term of imprisonment to which an offender is sentenced in a case, either for a single offense or in the aggregate for multiple offenses that run consecutively, and without regard to any credit for time served in custody, home detention, or for any other reason.

(h) The State's Attorney may file a motion to eliminate any reduction in fines, pursuant to subsection (f), in the sentence of an offender whom the State's Attorney believes is reasonably capable of paying the full amount of the fines. The decision whether to deny the motion or to require the offender to provide information bearing on their ability to pay the fines is committed to the sound discretion of the court. If the court requires the offender to provide such information:

(1) Unless the offender has already done so, the court shall order the offender to complete the "Application for Waiver of Criminal Court Assessments" approved by the Illinois Supreme Court;

(2) The motion shall be denied if the offender provides a current benefits statement or other documentary proof of their receipt of assistance under one or more of the means-based governmental public benefits programs listed in 725 ILCS 5/124A-20(c)(1). Such an offender shall not be required to provide any additional information about their income, assets, debts, or expenses.

(3) An offender who is not receiving a means-based governmental public benefit shall provide financial information and supporting documentation relating to the factors listed in 725 ILCS 5/124A-20(c)(1)(2-6), including their most recent pay stubs from all employers, 1099s, and W-2s.

(4) The court may decline to reduce, pursuant to subsection (f), the total amount of fines imposed on the offender if the court enters a written finding determining that there is clear and convincing evidence that the offender can afford to pay the full amount of the fines, after considering the offender's current income, anticipated income while incarcerated (if any), current assets and liabilities, and the anticipated cost, while the offender is incarcerated, of supporting persons who will remain dependent on the offender for support.

CIRCUIT COURT CLERK ASSESSMENT REPORTS FOR CRIMINAL CASES

(705 ILCS 135/1-10)

~~(Section scheduled to be repealed on January 1, 2024)~~

Sec. 1-10. Assessment reports.

(a) Not later than ~~February 29, 2020,~~March 1 of each year, the clerk of the circuit court shall file with the Administrative Office of the Illinois Courts, in the form and manner directed by the Supreme Court, a report for the previous calendar year containing, in accordance with the Supreme Court's General Administrative Order on Recordkeeping in the Circuit Courts:

(1) ~~a report for the period July 1, 2019 through December 31, 2019 containing~~ the total number of cases filed in the following categories: total felony cases; felony driving under the influence of alcohol, drugs, or a combination thereof; cases that contain at least one count of driving under the influence of alcohol, drugs, or a combination thereof; felony cases that contain at least one count of a drug offense; felony cases that contain at least one count of a sex offense; total misdemeanor cases; misdemeanor driving under the influence of alcohol, drugs, or a combination thereof cases; misdemeanor cases that contain at least one count of a drug offense; misdemeanor cases that contain at least one count of a sex offense; total traffic offense counts; traffic offense counts of a misdemeanor offense under the Illinois Vehicle Code; traffic offense counts of an overweight offense under the Illinois Vehicle Code; traffic offense counts that are satisfied under Supreme Court Rule 529; conservation cases; and ordinance cases that do not contain an offense under the Illinois Vehicle Code;

(2) ~~a report for the period July 1, 2019 through December 31, 2019 containing~~ the following for each schedule referenced in Sections 15-5 through 15-70 of this Act: the number of offenses for which assessments were imposed; the amount of any fines imposed in addition to assessments; the number and amount of conditional assessments ordered pursuant to Section 15-70; the total number of assessment waiver applications filed under Section 124A-20 of the Code of Criminal Procedure; and the number of applications for 25%, 50%, 75%, and 100% waivers, respectively, that were approved, the number of offenses for which waivers were granted, and the associated amount of assessments that were waived; and

(3) ~~a report for the period July 1, 2019 through December 31, 2019 containing,~~ with respect to each schedule referenced in Sections 15-5 through 15-70 of this Act~~,~~: the number of offenses for which assessments were collected; the number of offenses for which fines were collected and the amount collected; and how much was disbursed to each fund under the disbursement requirements for each schedule defined in Section 15-5.

(b) The Administrative Office of the Illinois Courts shall publish the reports submitted under this Section on its website.

(c) A list of offenses that qualify as drug offenses for Schedules 3 and 7 and a list of offenses that qualify as sex offenses for Schedules 4 and 8 shall be distributed to clerks of the circuit court by the Administrative Office of the Illinois Courts.

CIRCUIT COURT CLERK ASSESSMENT REPORTS FOR CIVIL CASES

(705 ILCS 105/27.1c)

Sec. 27.1c. Assessment reports.

(a) Not later than ~~March 1, 2022, and~~ March 1 of ~~every~~ each year ~~thereafter~~, the clerk of the circuit court shall submit to the Administrative Office of the Illinois Courts an annual report, in the form and manner directed by the Supreme Court, for the period January 1 through December 31 of the previous year. The report shall contain, with respect to each of the 4 categories of civil cases established by the Supreme Court pursuant to Section 27.1b of this Act, and in accordance with the Supreme Court's General Administrative Order on Recordkeeping in the Circuit Courts:

(1) the total number of cases that were filed;

(2) the amount of filing fees that were collected pursuant to subsection (a) of Section 27.1b;

(3) the amount of appearance fees that were collected pursuant to subsection (b) of Section 27.1b;

(4) the amount of fees collected pursuant to subsection (b-5) of Section 27.1b;

(5) the amount of filing fees collected for counterclaims or third party complaints pursuant to subsection (c) of Section 27.1b;

(6) the nature and amount of any fees collected pursuant to subsection (y) of Section 27.1b; ~~and~~

(7) the total number of applications, pursuant to Section 5-105 of the Code of Civil Procedure, for waiver of court fees, costs, and charges; and

(~~7~~8) the number of ~~cases for which~~ applications, pursuant to Section 5-105 of the Code of Civil Procedure, ~~there were waivers~~ for waiver of fees, costs, and charges of 25%, 50%, 75%, or 100%, respectively, that were approved, and the associated amount of fees, costs, and charges that were waived.

(b) The Administrative Office of the Illinois Courts shall publish the reports submitted under this Section on its website.

~~(c) (Blank).~~

Supreme Court of Illinois

February 21, 2023

STATUTORY COURT FEE TASK FORCE RELEASES NEW REPORT TO BUILD ON 2016 IMPROVEMENTS

The Illinois Supreme Court's Statutory Court Fee Task Force (Task Force) announced today the release of its final report, a follow-up to the work of the first Task Force in 2016. The new report builds on the original Task Force recommendations that were aimed at reducing barriers to access to justice, expanding the availability of fee waivers to low-income litigants, and simplifying the system of court fees imposed in civil, criminal and traffic cases.

The title of the new report is "Report on Implementation of 2016 Task Force Recommendations and Additional Proposed Measures for Addressing Barriers to Access to Justice and Excessive Financial Burdens Associated with Fees and Costs in Illinois Court Proceedings". The full report can be found here.

The recommendations of the first Task Force led to legislation (the Criminal and Traffic Assessment Act, P.A. 100-987) and court rules that effected a sweeping overhaul of the fees and costs imposed by Illinois courts. The Supreme Court created the current Task Force in 2021 to evaluate the effectiveness of those reforms and consider potential follow-up measures.

The Task Force is made up of legislators, judges, lawyers, and circuit clerks from across the state, many of whom served on the original Task Force. Steven F. Pflaum, of the Chicago law firm of Neal, Gerber and Eisenberg LLP, serves as chairperson of the Task Force, and also chaired the original Task Force.

The Task Force held two public hearings in connection with its effort to obtain broad input and perspectives regarding the impact of the previous reforms and additional areas where improvement is needed. The resulting report is divided into sections addressing (1) issues concerning implementation of the original Task Force recommendations, (2) additional proposed reforms, including eliminating fees and fines in juvenile delinquency proceedings, and (3) the collection of court fee data by circuit court clerks needed to evaluate the operation of the current system and identify areas for future improvements.

The report includes a 27-page Appendix containing legislation and court rules recommended by the Task Force.

(FOR MORE INFORMATION, CONTACT: James Brunner, Public Information Officer for the Illinois Supreme Court at 217.208.3354 or jbrunner@illinoiscourts.gov)

No. 3-22-0387

In the
Appellate Court of Illinois
Third Judicial District

REUBEN 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-Appellants, 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-Appellees, 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-Defendants-Appellees.	Appeal from the Twelfth Judicial Circuit, Will County, Illinois Case No. 12 CH 05275 The Honorable John D. Anderson Judge Presiding

MOTION FOR LEAVE TO CITE ADDITIONAL AUTHORITY

NOW come Class Plaintiffs/Appellants, through counsel, and respectfully request leave to submit the following recent decision of the United States Supreme Court, *Tyler*

v. Hennepin County, 598 U.S. ___ (May 25, 2023) as additional authority in support of their argument before this Court.[1] (This decision is attached and submitted as Exhibit A to the instant motion.) Plaintiffs seek leave to provide this decision as what they respectfully submit is authority in support of reversal of the decision of the Circuit Court of Will County now before this Court. In support of this request Class Plaintiffs/Appellants state:

The Illinois Supreme Court in 2021 affirmed the ruling of the Circuit Court of Will County declaring the legislation in question to be facially unconstitutional and "therefore affirm[ed] the judgment of the Circuit Court and remand the cause to the Circuit Court of Will County for ***further proceedings.***" *Walker v. Chasteen*, 2021 IL 126086, ¶ 55, (emphasis added). On the motion of Defendants, the Circuit Court held that, based on sovereign immunity, it lacked jurisdiction to order the only possible remaining proceedings – a return of the fees taken from the Class Plaintiffs under legislation which Defendants now concede was facially unconstitutional and properly enjoined by the Court. The Circuit Court stated that in order for Class Plaintiffs to obtain restitution they were lawfully entitled to recover under existing Illinois Supreme Court precedent, they would need to seek that relief by filing additional actions in the Court of Claims.

The decision of the United States Supreme Court in *Tyler* rejects Defendants' claim that despite the finding that the legislation under which these fees were collected was facially unconstitutional and therefore never properly collected from Plaintiffs, the court system lacks jurisdiction to order the State to return funds. In a scholarly opinion

[1] Defendants/Intervenors/Appellees 18 Clerks have notified Class Plaintiffs' counsel that they are filing an objection to this motion for leave to file.

reviewing the history of the power and obligation of the court system to order the executive or legislative branches of government to return property (in our case the Plaintiffs' own money) improperly collected from citizens, the majority opinion[2] reached back to the year 1215 and the Magna Carta and then set out the long – standing American law upholding the exclusive power of the judiciary to order the other branches of government to return to its citizens monies collected in excess of the government's constitutional authority to collect those monies.

Therefore, and in addition to the arguments already presented in Plaintiffs' briefs before this Court, Class Plaintiffs/Appellants respectfully request allowance to submit the decision in *Tyler* as instructive to the question of whether the court system in this case lacked the jurisdiction/power/authority to order Defendants to return the fees collected under this unconstitutional legislation and disposes of the claim that further relief was available exclusively by the filing of a new cause of action before the Court of Claims, a tribunal created by the Illinois legislature.

Respectfully submitted,

CRAY HUBER HORSTMAN HEIL &
VanAUSDAL LLC

By: /s/ Daniel K. Cray
Daniel K. Cray

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[2] All nine members of the Supreme Court agreed that the judicial system had the power to order the government to return to its citizens monies collected in excess of its lawful authority under the "Taking Clause" and the 14th amendment while two members concurred with the result but stated that the Court should have also addressed the excessive fees/penalties prohibition under the 8th amendment.

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EXHIBIT A

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

TYLER *v.* HENNEPIN COUNTY, MINNESOTA, ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 22–166. Argued April 26, 2023—Decided May 25, 2023

Geraldine Tyler owned a condominium in Hennepin County, Minnesota, that accumulated about $15,000 in unpaid real estate taxes along with interest and penalties. The County seized the condo and sold it for $40,000, keeping the $25,000 excess over Tyler's tax debt for itself. Minn. Stat. §§281.18, 282.07, 282.08. Tyler filed suit, alleging that the County had unconstitutionally retained the excess value of her home above her tax debt in violation of the Takings Clause of the Fifth Amendment and the Excessive Fines Clause of the Eighth Amendment. The District Court dismissed the suit for failure to state a claim, and the Eighth Circuit affirmed.

Held: Tyler plausibly alleges that Hennepin County's retention of the excess value of her home above her tax debt violated the Takings Clause. Pp. 3–14.

(a) Tyler's claim that the County illegally appropriated the $25,000 surplus constitutes a classic pocketbook injury sufficient to give her standing. *TransUnion LLC* v. *Ramirez*, 594 U. S. ___, ___. Even if there are debts on her home, as the County claims, Tyler still plausibly alleges a financial harm, for the County has kept $25,000 that she could have used to reduce her personal liability for those debts. Pp. 3–4.

(b) Tyler has stated a claim under the Takings Clause, which provides that "private property [shall not] be taken for public use, without just compensation." Whether remaining value from a tax sale is property protected under the Takings Clause depends on state law, "traditional property law principles," historical practice, and the Court's precedents. *Phillips* v. *Washington Legal Foundation*, 524 U. S. 156, 165–168. Though state law is an important source of property rights, it cannot be the only one because otherwise a State could "sidestep the

Syllabus

Takings Clause by disavowing traditional property interests" in assets it wishes to appropriate. *Id.*, at 167. History and precedent dictate that, while the County had the power to sell Tyler's home to recover the unpaid property taxes, it could not use the tax debt to confiscate more property than was due. Doing so effected a "classic taking in which the government directly appropriates private property for its own use." *Tahoe-Sierra Preservation Council, Inc.* v. *Tahoe Regional Planning Agency*, 535 U. S. 302, 324 (internal quotation marks omitted).

The principle that a government may not take from a taxpayer more than she owes is rooted in English law and can trace its origins at least as far back as the Magna Carta. From the founding, the new Government of the United States could seize and sell only "so much of [a] tract of land . . . as may be necessary to satisfy the taxes due thereon." Act of July 14, 1798, §13, 1 Stat. 601. Ten States adopted similar statutes around the same time, and the consensus that a government could not take more property than it was owed held true through the ratification of the Fourteenth Amendment. Today, most States and the Federal Government require excess value to be returned to the taxpayer whose property is sold to satisfy outstanding tax debt.

The Court's precedents have long recognized the principle that a taxpayer is entitled to the surplus in excess of the debt owed. See *United States* v. *Taylor*, 104 U. S. 216; *United States* v. *Lawton,* 110 U. S. 146. *Nelson* v. *City of New York*, 352 U. S. 103, did not change that. The ordinance challenged there did not "absolutely preclud[e] an owner from obtaining the surplus proceeds of a judicial sale," but instead simply defined the process through which the owner could claim the surplus. *Id.,* at 110. Minnesota's scheme, in comparison, provides no opportunity for the taxpayer to recover the excess value from the State.

Significantly, Minnesota law itself recognizes in many other contexts that a property owner is entitled to the surplus in excess of her debt. If a bank forecloses on a mortgaged property, state law entitles the homeowner to the surplus from the sale. And in collecting past due taxes on income or personal property, Minnesota protects the taxpayer's right to surplus. Minnesota may not extinguish a property interest that it recognizes everywhere else to avoid paying just compensation when the State does the taking. *Phillips*, 524 U. S., at 167. Pp. 4–12.

(c) The Court rejects the County's argument that Tyler has no property interest in the surplus because she constructively abandoned her home by failing to pay her taxes. Abandonment requires the "surrender or relinquishment or disclaimer of" all rights in the property, *Rowe* v. *Minneapolis*, 51 N. W. 907, 908. Minnesota's forfeiture law is not concerned about the taxpayer's use or abandonment of the property, only her failure to pay taxes. The County cannot frame that failure as

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abandonment to avoid the demands of the Takings Clause. Pp. 12–14. 26 F. 4th 789, reversed.

ROBERTS, C. J., delivered the opinion for a unanimous Court. GORSUCH, J., filed a concurring opinion, in which JACKSON, J., joined.

SUPREME COURT OF THE UNITED STATES

No. 22–166

GERALDINE TYLER, PETITIONER *v.* HENNEPIN COUNTY, MINNESOTA, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

[May 25, 2023]

CHIEF JUSTICE ROBERTS delivered the opinion of the Court.

Hennepin County, Minnesota, sold Geraldine Tyler's home for $40,000 to satisfy a $15,000 tax bill. Instead of returning the remaining $25,000, the County kept it for itself. The question presented is whether this constituted a taking of property without just compensation, in violation of the Fifth Amendment.

I

Hennepin County imposes an annual tax on real property. Minn. Stat. §273.01 (2022). The taxpayer has one year to pay before the taxes become delinquent. §279.02. If she does not timely pay, the tax accrues interest and penalties, and the County obtains a judgment against the property, transferring limited title to the State. See §§279.03, 279.18, 280.01. The delinquent taxpayer then has three years to redeem the property and regain title by paying all the taxes and late fees. §§281.17(a), 281.18. During this time, the taxpayer remains the beneficial owner of the property and can continue to live in her home. See §281.70. But

if at the end of three years the bill has not been paid, absolute title vests in the State, and the tax debt is extinguished. §§281.18, 282.07. The State may keep the property for public use or sell it to a private party. §282.01 subds. 1a, 3. If the property is sold, any proceeds in excess of the tax debt and the costs of the sale remain with the County, to be split between it, the town, and the school district. §282.08. The former owner has no opportunity to recover this surplus.

Geraldine Tyler is 94 years old. In 1999, she bought a one-bedroom condominium in Minneapolis and lived alone there for more than a decade. But as Tyler aged, she and her family decided that she would be safer in a senior community, so they moved her to one in 2010. Nobody paid the property taxes on the condo in Tyler's absence and, by 2015, it had accumulated about $2300 in unpaid taxes and $13,000 in interest and penalties. Acting under Minnesota's forfeiture procedures, Hennepin County seized the condo and sold it for $40,000, extinguishing the $15,000 debt. App. 5. The County kept the remaining $25,000 for its own use.

Tyler filed a putative class action against Hennepin County and its officials, asserting that the County had unconstitutionally retained the excess value of her home above her tax debt. As relevant, she brought claims under the Takings Clause of the Fifth Amendment and the Excessive Fines Clause of the Eighth Amendment.

The District Court dismissed the suit for failure to state a claim. 505 F. Supp. 3d 879, 883 (Minn. 2020). The Eighth Circuit affirmed. 26 F. 4th 789, 790 (2022). It held that "[w]here state law recognizes no property interest in surplus proceeds from a tax-foreclosure sale conducted after adequate notice to the owner, there is no unconstitutional taking." *Id.*, at 793. The court also rejected Tyler's claim under the Excessive Fines Clause, adopting the District Court's reasoning that the forfeiture was not a fine because

it was intended to remedy the State's tax losses, not to punish delinquent property owners. *Id.*, at 794 (citing 505 F. Supp. 3d, at 895–899).

We granted certiorari. 598 U. S. ___ (2023).

II

The County asserts that Tyler does not have standing to bring her takings claim. To bring suit, a plaintiff must plead an injury in fact attributable to the defendant's conduct and redressable by the court. *Lujan* v. *Defenders of Wildlife*, 504 U. S. 555, 560–561 (1992). This case comes to us on a motion to dismiss for failure to state a claim. At this initial stage, we take the facts in the complaint as true. *Warth* v. *Seldin*, 422 U. S. 490, 501 (1975). Tyler claims that the County has illegally appropriated the $25,000 surplus beyond her $15,000 tax debt. App. 5. This is a classic pocketbook injury sufficient to give her standing. *TransUnion LLC* v. *Ramirez*, 594 U. S. ___, ___ (2021) (slip op., at 9).

The County objects that Tyler does not have standing because she did not affirmatively "disclaim the existence of other debts or encumbrances" on her home worth more than the $25,000 surplus. Brief for Respondents 12–13, and n. 5. According to the County, public records suggest that the condo may be subject to a $49,000 mortgage and a $12,000 lien for unpaid homeowners' association fees. See *ibid.* The County argues that these potential encumbrances exceed the value of any interest Tyler has in the home above her $15,000 tax debt, and that she therefore ultimately suffered no financial harm from the sale of her home. Without such harm she would have no standing.

But the County never entered these records below, nor has it submitted them to this Court. Even if there were encumbrances on the home worth more than the surplus, Tyler still plausibly alleges a financial harm: The County has kept $25,000 that belongs to her. In Minnesota, a tax sale extinguishes all other liens on a property. See Minn.

Stat. §281.18; *County of Blue Earth* v. *Turtle*, 593 N. W. 2d 258, 261 (Minn. App. 1999). That sale does not extinguish the taxpayer's debts. Instead, the borrower remains personally liable. See *St. Paul* v. *St. Anthony Flats Ltd. Partnership*, 517 N. W. 2d 58, 62 (Minn. App. 1994). Had Tyler received the surplus from the tax sale, she could have at the very least used it to reduce any such liability.

At this initial stage of the case, Tyler need not definitively prove her injury or disprove the County's defenses. She has plausibly pleaded on the face of her complaint that she suffered financial harm from the County's action, and that is enough for now. See *Lujan*, 504 U. S., at 561.

III

A

The Takings Clause, applicable to the States through the Fourteenth Amendment, provides that "private property [shall not] be taken for public use, without just compensation." U. S. Const., Amdt. 5. States have long imposed taxes on property. Such taxes are not themselves a taking, but are a mandated "contribution from individuals . . . for the support of the government . . . for which they receive compensation in the protection which government affords." *County of Mobile* v. *Kimball*, 102 U. S. 691, 703 (1881). In collecting these taxes, the State may impose interest and late fees. It may also seize and sell property, including land, to recover the amount owed. See *Jones* v. *Flowers*, 547 U. S. 220, 234 (2006). Here there was money remaining after Tyler's home was seized and sold by the County to satisfy her past due taxes, along with the costs of collecting them. The question is whether that remaining value is property under the Takings Clause, protected from uncompensated appropriation by the State.

The Takings Clause does not itself define property. *Phillips* v. *Washington Legal Foundation*, 524 U. S. 156, 164

(1998). For that, the Court draws on "existing rules or understandings" about property rights. *Ibid.* (internal quotation marks omitted). State law is one important source. *Ibid.*; see also *Stop the Beach Renourishment, Inc.* v. *Florida Dept. of Environmental Protection*, 560 U. S. 702, 707 (2010). But state law cannot be the only source. Otherwise, a State could "sidestep the Takings Clause by disavowing traditional property interests" in assets it wishes to appropriate. *Phillips*, 524 U. S., at 167; see also *Webb's Fabulous Pharmacies, Inc.* v. *Beckwith*, 449 U. S. 155, 164 (1980); *Hall* v. *Meisner*, 51 F. 4th 185, 190 (CA6 2022) (Kethledge, J., for the Court) ("[T]he Takings Clause would be a dead letter if a state could simply exclude from its definition of property any interest that the state wished to take."). So we also look to "traditional property law principles," plus historical practice and this Court's precedents. *Phillips*, 524 U. S., at 165–168; see, *e.g.*, *United States* v. *Causby*, 328 U. S. 256, 260–267 (1946); *Ruckelshaus* v. *Monsanto Co.*, 467 U. S. 986, 1001–1004 (1984).

Minnesota recognizes a homeowner's right to real property, like a house, and to financial interests in that property, like home equity. Cf. *Armstrong* v. *United States*, 364 U. S. 40, 44 (1960) (lien on boats); *Louisville Joint Stock Land Bank* v. *Radford*, 295 U. S. 555, 590 (1935) (mortgage on farm). Historically, Minnesota also recognized that a homeowner whose property has been sold to satisfy delinquent property taxes had an interest in the excess value of her home above the debt owed. See *Farnham* v. *Jones*, 32 Minn. 7, 11, 19 N. W. 83, 85 (1884). But in 1935, the State purported to extinguish that property interest by enacting a law providing that an owner forfeits her interest in her home when she falls behind on her property taxes. See 1935 Minn. Laws pp. 713–714, §8. This means, the County reasons, that Tyler has no property interest protected by the Takings Clause.

History and precedent say otherwise. The County had

the power to sell Tyler's home to recover the unpaid property taxes. But it could not use the toehold of the tax debt to confiscate more property than was due. By doing so, it effected a "classic taking in which the government directly appropriates private property for its own use." *Tahoe-Sierra Preservation Council, Inc.* v. *Tahoe Regional Planning Agency*, 535 U. S. 302, 324 (2002) (internal quotation marks and alteration omitted). Tyler has stated a claim under the Takings Clause and is entitled to just compensation.

B

The principle that a government may not take more from a taxpayer than she owes can trace its origins at least as far back as Runnymeade in 1215, where King John swore in the Magna Carta that when his sheriff or bailiff came to collect any debts owed him from a dead man, they could remove property "until the debt which is evident shall be fully paid to us; and the residue shall be left to the executors to fulfil the will of the deceased." W. McKechnie, Magna Carta, A Commentary on the Great of King John, ch. 26, p. 322 (rev. 2d ed. 1914) (footnote omitted).

That doctrine became rooted in English law. Parliament gave the Crown the power to seize and sell a taxpayer's property to recover a tax debt, but dictated that any "Overplus" from the sale "be immediately restored to the Owner." 4 W. & M., ch. 1, §12, in 3 Eng. Stat. at Large 488–489 (1692). As Blackstone explained, the common law demanded the same: If a tax collector seized a taxpayer's property, he was "bound by an implied contract in law to restore [the property] on payment of the debt, duty, and expenses, before the time of sale; or, when sold, to render back the overplus." 2 Commentaries on the Laws of England 453 (1771).

This principle made its way across the Atlantic. In collecting taxes, the new Government of the United States could seize and sell only "so much of [a] tract of land . . . as

may be necessary to satisfy the taxes due thereon." Act of July 14, 1798, §13, 1 Stat. 601. Ten States adopted similar statutes shortly after the founding.[1] For example, Maryland required that only so much land be sold "as may be sufficient to discharge the taxes thereon due," and provided that if the sale produced more than needed for the taxes, "such overplus of money" shall be paid to the owner. 1797 Md. Laws ch. 90, §§4–5. This Court enforced one such state statute against a Georgia tax collector, reasoning that "if a whole tract of land was sold when a small part of it would have been sufficient for the taxes, which at present appears to be the case, the collector unquestionably exceeded his authority." *Stead's Executors* v. *Course*, 4 Cranch 403, 414 (1808) (Marshall, C. J., for the Court).

Like its sister States, Virginia originally provided that the Commonwealth could seize and sell "so much" of the delinquent tracts "as shall be sufficient to discharge the said taxes." 1781 Va. Acts p. 153, §4. But about a decade later, Virginia enacted a new scheme, which provided for the forfeiture of any delinquent land to the Commonwealth. Virginia passed this harsh forfeiture regime in response to the "loose, cheap and unguarded system of disposing of her public lands" that the Commonwealth had adopted immediately following statehood. *McClure* v. *Maitland*, 24 W. Va. 561, 564 (1884). To encourage settlement, Virginia permitted "any person [to] acquire title to so much . . . unappropriated lands as he or she shall desire to purchase" at the price of 40 pounds per 100 acres. 1779 Va. Acts p. 95, §2. Within two decades, nearly all of Virginia's land had been claimed,

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[1] 1796 Conn. Acts p. 356–357, §§32, 36; 1797 Del. Laws p. 1260, §26; 1791 Ga. Laws p. 14; 1801 Ky. Acts pp. 78–79, §4; 1797 Md. Laws ch. 90, §§4–5; 1786 Mass. Acts pp. 360–361; 1792 N. H. Laws p. 194; 1792 N. C. Sess. Laws p. 23, §5; 1801 N. Y. Laws pp. 498–499, §17; 1787 Vt. Acts & Resolves p. 126. Kentucky made an exception for unregistered land, or land that the owner had "fail[ed] to list . . . for taxation," with such land forfeiting to the State. 1801 Ky. Acts p. 80, §5.

much of it by nonresidents who did not live on or farm the land but instead hoped to sell it for a profit. *McClure*, 24 W. Va., at 564. Many of these nonresidents "wholly neglected to pay the taxes" on the land, *id.*, at 565, so Virginia provided that title to any taxpayer's land was completely "lost, forfeited and vested in the Commonwealth" if the taxpayer failed to pay taxes within a set period, 1790 Va. Acts p. 5, §5. This solution was short lived, however; the Commonwealth repealed the forfeiture scheme in 1814 and once again sold "so much only of each tract of land . . . as will be sufficient to discharge the" debt. 1813 Va. Acts p. 21, §27. Virginia's "exceptional" and temporary forfeiture scheme carries little weight against the overwhelming consensus of its sister States. See *Martin* v. *Snowden*, 59 Va. 100, 138 (1868).

The consensus that a government could not take more property than it was owed held true through the passage of the Fourteenth Amendment. States, including Minnesota, continued to require that no more than the minimum amount of land be sold to satisfy the outstanding tax debt.[2] The County identifies just three States that deemed delinquent property entirely forfeited for failure to pay taxes. See 1836 Me. Laws p. 325, §4; 1869 La. Acts p. 159, §63; 1850 Miss. Laws p. 52, §4.[3] Two of these laws did not last.

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[2] Many of these new States required that the land be sold to whichever buyer would "pay [the tax debt] for the least number of acres" and provided that the land forfeited to the State only if it failed to sell "for want of bidders" because the land was worth less than the taxes owed. 1821 Ohio pp. 27–28, §§7, 10; see also 1837 Ark. Acts pp. 14–17, §§83, 100; 1844 Ill. Laws pp. 13, 18, §§51, 77; 1859 Minn. Laws pp. 58, 61, §§23, 38; 1859 Wis. Laws Ch. 22, pp. 22–23, §§7, 9; cf. Iowa Code pp. 120–121, §§766, 773 (1860) (requiring that property be offered for sale "until all the taxes shall have been paid"); see also *O'Brien* v. *Coulter*, 2 Blackf. 421, 425 (Ind. 1831) (*per curiam*) ("[S]o much only of the defendant's property shall be sold at one time, as a sound judgment would dictate to be sufficient to pay the debt.").

[3] North Carolina amended its laws in 1842 to permit the forfeiture of

Maine amended its law a decade later to permit the former owner to recover the surplus. 1848 Me. Laws p. 56, §4. And Mississippi's highest court promptly struck down its law for violating the Due Process and Takings Clauses of the Mississippi Constitution. See *Griffin* v. *Mixon*, 38 Miss. 424, 439, 451–452 (Ct. Err. & App. 1860). Louisiana's statute remained on the books, but the County cites no case showing that the statute was actually enforced against a taxpayer to take his entire property.

The minority rule then remains the minority rule today: Thirty-six States and the Federal Government require that the excess value be returned to the taxpayer.

C

Our precedents have also recognized the principle that a taxpayer is entitled to the surplus in excess of the debt owed. In *United States* v. *Taylor*, 104 U. S. 216 (1881), an Arkansas taxpayer whose property had been sold to satisfy a tax debt sought to recover the surplus from the sale. A nationwide tax had been imposed by Congress in 1861 to raise funds for the Civil War. Under that statute, if a taxpayer did not pay, his property would be sold and "the surplus of the proceeds of the sale [would] be paid to the owner." Act of Aug. 5, 1861, §36, 12 Stat. 304. The next year, Congress added a 50 percent penalty in the rebelling States, but made no mention of the owner's right to surplus after a tax sale. See Act of June 7, 1862, §1, 12 Stat. 422. Taylor's property had been sold for failure to pay taxes under the 1862 Act, but he sought to recover the surplus under the 1861 Act. Though the 1862 Act "ma[de] no mention of the right of the owner of the lands to receive the surplus proceeds of their sale," we held that the taxpayer was entitled to the surplus because nothing in the 1862 Act took

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unregistered "swamp lands," 1842 N. C. Sess. Laws p. 64, §1, but otherwise continued to follow the majority rule, see 1792 N. C. Sess. Laws p. 23, §5.

"from the owner the right accorded him by the act of 1861, of applying for and receiving from the treasury the surplus proceeds of the sale of his lands." *Taylor*, 104 U. S., at 218–219.

We extended a taxpayer's right to surplus even further in *United States* v. *Lawton,* 110 U. S. 146 (1884). The property owner had an unpaid tax bill under the 1862 Act for $170.50. *Id.*, at 148. The Federal Government seized the taxpayer's property and, instead of selling it to a private buyer, kept the property for itself at a value of $1100. *Ibid.* The property owner sought to recover the excess value from the Government, but the Government refused. *Ibid.* The 1861 Act explicitly provided that any surplus from tax sales to private parties had to be returned to the owner, but it did not mention paying the property owner the excess value where the Government *kept* the property for its own use instead of selling it. See 12 Stat. 304. We held that the taxpayer was still entitled to the surplus under the statute, just as if the Government had sold the property. *Lawton*, 110 U. S., at 149–150. Though the 1861 statute did not explicitly provide the right to the surplus under such circumstances, "[t]o withhold the surplus from the owner would be to violate the Fifth Amendment to the Constitution and to deprive him of his property without due process of law, or to take his property for public use without just compensation." *Id.*, at 150.

The County argues that *Taylor* and *Lawton* were superseded by *Nelson* v. *City of New York*, 352 U. S. 103 (1956), but that case is readily distinguished. There New York City foreclosed on properties for unpaid water bills. Under the governing ordinance, a property owner had almost two months after the city filed for foreclosure to pay off the tax debt, and an additional 20 days to ask for the surplus from any tax sale. *Id.*, at 104–105, n. 1. No property owner requested his surplus within the required time. The owners later sued the city, claiming that it had denied them due

process and equal protection of the laws. *Id.*, at 109. In their reply brief before this Court, the owners also argued for the first time that they had been denied just compensation under the Takings Clause. *Ibid.*

We rejected this belated argument. *Lawton* had suggested that withholding the surplus from a property owner always violated the Fifth Amendment, but there was no specific procedure there for recovering the surplus. *Nelson*, 352 U. S., at 110. New York City's ordinance, in comparison, permitted the owner to recover the surplus but required that the owner have "filed a timely answer in [the] foreclosure proceeding, asserting his property had a value substantially exceeding the tax due." *Ibid.* (citing *New York* v. *Chapman Docks Co.*, 1 App. Div. 2d 895, 149 N. Y. S. 2d 679 (1956)). Had the owners challenging the ordinance done so, "a separate sale" could have taken place "so that [they] might receive the surplus." 352 U. S., at 110. The owners did not take advantage of this procedure, so they forfeited their right to the surplus. Because the New York City ordinance did not "absolutely preclud[e] an owner from obtaining the surplus proceeds of a judicial sale," but instead simply defined the process through which the owner could claim the surplus, we found no Takings Clause violation. *Ibid.*

Unlike in *Nelson*, Minnesota's scheme provides no opportunity for the taxpayer to recover the excess value; once absolute title has transferred to the State, any excess value always remains with the State. The County argues that the delinquent taxpayer could sell her house to pay her tax debt before the County itself seizes and sells the house. But requiring a taxpayer to sell her house to avoid a taking is not the same as providing her an opportunity to recover the excess value of her house once the State has sold it.

D

Finally, Minnesota law itself recognizes that in other contexts a property owner is entitled to the surplus in excess of her debt. Under state law, a private creditor may enforce a judgment against a debtor by selling her real property, but "[n]o more shall be sold than is sufficient to satisfy" the debt, and the creditor may receive only "so much [of the proceeds] as will satisfy" the debt. Minn. Stat. §§550.20, 550.08 (2022). Likewise, if a bank forecloses on a home because the homeowner fails to pay the mortgage, the homeowner is entitled to the surplus from the sale. §580.10.

In collecting all other taxes, Minnesota protects the taxpayer's right to surplus. If a taxpayer falls behind on her income tax and the State seizes and sells her property, "[a]ny surplus proceeds . . . shall . . . be credited or refunded" to the owner. §§270C.7101, 270C.7108, subd. 2. So too if a taxpayer does not pay taxes on her personal property, like a car. §277.21, subd. 13. Until 1935, Minnesota followed the same rule for the sale of real property. The State could sell only the "least quantity" of land sufficient to satisfy the debt, 1859 Minn. Laws p. 58, §23, and "any surplus realized from the sale must revert to the owner," *Farnham*, 32 Minn., at 11, 19 N. W., at 85.

The State now makes an exception only for itself, and only for taxes on real property. But "property rights cannot be so easily manipulated." *Cedar Point Nursery* v. *Hassid*, 594 U. S. ___, ___ (2021) (slip op., at 13) (internal quotation marks omitted). Minnesota may not extinguish a property interest that it recognizes everywhere else to avoid paying just compensation when it is the one doing the taking. *Phillips*, 524 U. S., at 167.

IV

The County argues that Tyler has no interest in the surplus because she constructively abandoned her home by

failing to pay her taxes. States and localities have long imposed "reasonable conditions" on property ownership. *Texaco, Inc.* v. *Short*, 454 U. S. 516, 526 (1982). In Minnesota, one of those conditions is paying property taxes. By neglecting this reasonable condition, the County argues, the owner can be considered to have abandoned her property and is therefore not entitled to any compensation for its taking. See Minn. Stat. §282.08.

The County portrays this as just another example in the long tradition of States taking title to abandoned property. We upheld one such statutory scheme in *Texaco*. There, Indiana law dictated that a mineral interest automatically reverted to the owner of the land if not used for 20 years. 454 U. S., at 518. Use included excavating minerals, renting out the right to excavate, paying taxes, or simply filing a "statement of claim with the local recorder of deeds." *Id.*, at 519. Owners who lost their mineral interests challenged the statute as unconstitutional. We held that the statute did not violate the Takings Clause because the State "has the power to condition the permanent retention of [a] property right on the performance of reasonable conditions that indicate a *present intention to retain the interest*." *Id.*, at 526 (emphasis added). Indiana reasonably "treat[ed] a mineral interest that ha[d] not been used for 20 years and for which no statement of claim ha[d] been filed as abandoned." *Id.*, at 530. There was thus no taking, for "after abandonment, the former owner retain[ed] no interest for which he may claim compensation." *Ibid.*

The County suggests that here, too, Tyler constructively abandoned her property by failing to comply with a reasonable condition imposed by the State. But the County cites no case suggesting that failing to pay property taxes is itself sufficient for abandonment. Cf. *Krueger* v. *Market*, 124 Minn. 393, 397, 145 N. W. 30, 32 (1914) (owner did not abandon property despite failing to pay taxes for 30 years). Abandonment requires the "surrender or relinquishment or

disclaimer of" all rights in the property. *Rowe* v. *Minneapolis*, 49 Minn. 148, 157, 51 N. W. 907, 908 (1892). "It is the owner's failure to make *any* use of the property"—and for a lengthy period of time—"that causes the lapse of the property right." *Texaco*, 454 U. S., at 530 (emphasis added). In *Texaco*, the owners lost their property because they made *no* use of their interest for 20 years and then failed to take the simple step of filing paperwork indicating that they still claimed ownership over the interest. In comparison, Minnesota's forfeiture scheme is not about abandonment at all. It gives no weight to the taxpayer's use of the property. Indeed, the delinquent taxpayer can continue to live in her house for years after falling behind in taxes, up until the government sells it. See §281.70. Minnesota cares only about the taxpayer's failure to contribute her share to the public fisc. The County cannot frame that failure as abandonment to avoid the demands of the Takings Clause.

* * *

The Takings Clause "was designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." *Armstrong*, 364 U. S., at 49. A taxpayer who loses her $40,000 house to the State to fulfill a $15,000 tax debt has made a far greater contribution to the public fisc than she owed. The taxpayer must render unto Caesar what is Caesar's, but no more.

Because we find that Tyler has plausibly alleged a taking under the Fifth Amendment, and she agrees that relief under "the Takings Clause would fully remedy [her] harm," we need not decide whether she has also alleged an excessive fine under the Eighth Amendment. Tr. of Oral Arg. 27. The judgment of the Court of Appeals for the Eighth Circuit is reversed.

It is so ordered.

SUPREME COURT OF THE UNITED STATES

No. 22–166

GERALDINE TYLER, PETITIONER *v.* HENNEPIN COUNTY, MINNESOTA, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

[May 25, 2023]

JUSTICE GORSUCH, with whom JUSTICE JACKSON joins, concurring.

The Court reverses the Eighth Circuit's dismissal of Geraldine Tyler's suit and holds that she has plausibly alleged a violation of the Fifth Amendment's Takings Clause. I agree. Given its Takings Clause holding, the Court understandably declines to pass on the question whether the Eighth Circuit committed a further error when it dismissed Ms. Tyler's claim under the Eighth Amendment's Excessive Fines Clause. *Ante*, at 14. But even a cursory review of the District Court's excessive-fines analysis—which the Eighth Circuit adopted as "well-reasoned," 26 F. 4th 789, 794 (2022)—reveals that it too contains mistakes future lower courts should not be quick to emulate.

First, the District Court concluded that the Minnesota tax-forfeiture scheme is not punitive because "its primary purpose" is "remedial"—aimed, in other words, at "compensat[ing] the government for lost revenues due to the nonpayment of taxes." 505 F. Supp. 3d 879, 896 (Minn. 2020). That primary-purpose test finds no support in our law. Because "sanctions frequently serve more than one purpose," this Court has said that the Excessive Fines Clause applies to *any* statutory scheme that "serv[es] *in part* to punish." *Austin* v. *United States*, 509 U. S. 602, 610 (1993) (emphasis added). It matters not whether the scheme has a remedial

purpose, even a predominantly remedial purpose. So long as the law "cannot fairly be said *solely* to serve a remedial purpose," the Excessive Fines Clause applies. *Ibid.* (emphasis added; internal quotation marks omitted). Nor, this Court has held, is it appropriate to label sanctions as "remedial" when (as here) they bear "'no correlation to any damages sustained by society or to the cost of enforcing the law,'" and "any relationship between the Government's actual costs and the amount of the sanction is merely coincidental." *Id.*, at 621–622, and n. 14.

Second, the District Court asserted that the Minnesota tax-forfeiture scheme cannot "be punitive because it actually confers a windfall on the delinquent taxpayer when the value of the property that is forfeited is less than the amount of taxes owed." 505 F. Supp. 3d, at 896. That observation may be factually true, but it is legally irrelevant. Some prisoners better themselves behind bars; some addicts credit court-ordered rehabilitation with saving their lives. But punishment remains punishment all the same. See Tr. of Oral Arg. 61. Of course, no one thinks that an individual who profits from an economic penalty has a *winning* excessive-fines claim. But nor has this Court ever held that a scheme producing fines that punishes some individuals can escape constitutional scrutiny merely because it does not punish others.

Third, the District Court appears to have inferred that the Minnesota scheme is not "punitive" because it does not turn on the "culpability" of the individual property owner. 505 F. Supp. 3d, at 897. But while a focus on "culpability" can sometimes make a provision "look more like punishment," this Court has never endorsed the converse view. *Austin*, 509 U. S., at 619. Even without emphasizing culpability, this Court has said a statutory scheme may still be punitive where it serves another "goal of punishment," such as "[d]eterrence." *United States* v. *Bajakajian*, 524 U. S. 321, 329 (1998). And the District Court expressly approved

the Minnesota tax-forfeiture scheme in this case in large part because "'the ultimate possibility of loss of property serves as a *deterrent* to those taxpayers considering tax delinquency.'" 505 F. Supp. 3d, at 899 (emphasis added). Economic penalties imposed to deter willful noncompliance with the law are fines by any other name. And the Constitution has something to say about them: They cannot be excessive.

STATE OF ILLINOIS

THIRD DISTRICT APPELLATE COURT

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August 30, 2023

Daniel Keith Cray
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RE: Walker, Reuben D., et al. v. Chasteen, Andrea Lynn
General No.: 3-22-0387
County: Will County
Trial Court No: 12CH5275

The Court has this day, August 30, 2023, entered the following order in the above entitled case:

Appellant's Motion for Leave to Cite Additional Authority, response noted, is ALLOWED.

Zachary A. Hooper
Clerk of the Appellate Court

c: Carrie L. Haas
Carson Reid Griffis
Gary Scott Pyles
James William Glasgow
Jessica Megan Scheller
Jonathon Delmar Byrer
Kimberly Michelle Foxx
Kwame Y. Raoul
Laird Michael Ozmon
Marie Quinlivan Czech
Melissa Hermann Dakich
Michael Terence Reagan
Patrick Edward Dwyer, III
Paul Leo Fangman

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CERTIFICATE OF FILING AND SERVICE

I certify that on August 14, 2024, I electronically filed the foregoing Plaintiffs-Appellees' Response 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 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 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.

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