STATE OF MICHIGAN

IN THE MICHIGAN SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee

SC: 155849
COA: 330879
Washtenaw CC: 13-1315 FH

-vs-

SHAWN LOVETO CAMERON, JR.,

Defendant-Appellant
_____/

WASHTENAW COUNTY PROSECUTOR
Attorney for Plaintiff-Appellee
_____

MARILENA DAVID-MARTIN (P73175)
Attorney for Defendant-Appellant
_____

DEFENDANT-APPELLANT'S SUPPLEMENTAL BRIEF

STATE APPELLATE DEFENDER OFFICE

BY: MARILENA DAVID-MARTIN (P73175)
Training Director

JACQUELINE OUVRY (P71214)
Assistant Defender
645 Griswold
3300 Penobscot Building
Detroit, Michigan 48226
(313) 256-9833

Table of Contents

Appendices

Index of Authorities

Cases

Constitution

Statutes

Rules and Other Authorities

Questions Presented

I. Court costs authorized under MCL 769.1k raise revenue, are not regulatory or voluntary, and are not proportionate to services rendered. Are court costs a tax imposed on the convicted?

Defendant-Appellant answers, "Yes."

Plaintiff-Appellee answers, "Yes."

The Court of Appeals answers, "Yes."

II. The Legislature has created a tax that was improperly delegated without intelligible principles and that requires fact finding that has no independent significance outside of the statute. Are court costs authorized under MCL 769.1k unconstitutional under the separation of powers clause and the non-delegation clause?

Defendant-Appellant answers, "Yes."

Plaintiff-Appellee answers, "No."

The Court of Appeals answers, "No."

III. The Legislature has created a tax that is obscure and deceitful and not distinctly stated. Are court costs authorized under MCL 769.1k unconstitutional under the distinct-statement clause?

Defendant-Appellant answers, "Yes."

Plaintiff-Appellee answers, "No."

The Court of Appeals answers, "No."

IV. MCL 769.1k authorizes individual judges to impose court costs without sufficient standards, which permits arbitrary enforcement against the convicted. Does the court cost statute violate the notice provision of the due process clause and is it void for vagueness?

Defendant-Appellant answers, "Yes."

Plaintiff-Appellee answers, "No."

The Court of Appeals was not presented with this question.

V. MCL 769.1k(1)(b)(iii) authorizes a tax to fund necessary services of local government and was not passed by voter approval. Is the statute unconstitutional in violation of the Headlee Amendment?

Defendant-Appellant answers, "Yes."

Plaintiff-Appellee answers, "No."

The Court of Appeals answers, "No."

Standard of Review

This Court applies de novo review to questions of statutory interpretation and issues of constructional law. *People v Cunningham*, 496 Mich 145, 149; 852 NW2d 118 (2014). Likewise, the Court applies de novo review to constitutional challenges to a statute. *People v Garza*, 469 Mich 431, 433; 670 NW2d 662 (2003).

Statement of Facts

Shawn Cameron was sentenced in January 2014 following a conviction in Washtenaw County. As part of his sentence, the trial court assessed $1,611 in court costs, (1a), pursuant to MCL 769.1k(1)(b), which authorized the court to impose "[a]ny cost in addition to the minimum state cost."

During the course of Mr. Cameron's direct appeal, this Court held in *People v Cunningham*, 496 Mich 145; 852 NW2d 118 (2014), that the "any cost" language of MCL 769.1k did not authorize the imposition of costs that were not separately authorized by statute.

Following *Cunningham*, the Legislature amended MCL 769.1k(1)(b) to authorize the imposition of "any cost reasonably related to the actual costs incurred by the trial court without separately calculating those costs involved in the particular case, including, but not limited to, the following:

> (A) Salaries and benefits for relevant court personnel.
>
> (B) Goods and services necessary for the operation of the court.
>
> (C) Necessary expenses for the operation and maintenance of court buildings and facilities."

As enacted, this amendment applied retroactively to all costs imposed under the statute prior to the June 18, 2014 *Cunningham* decision.

On July 28, 2015, the Court of Appeals affirmed Mr. Cameron's conviction but remanded his case to the trial court for consideration of the reasonableness of the amount of court costs pursuant to *Cunningham* and *People v Konopka*, 309 Mich App 345, 359-360; 869 NW2d 651 (2015), which held that costs are "reasonably related to the actual costs incurred by the trial court" if those costs are supported by a "factual basis." (2a).

On remand, the trial court concluded that $1,611 was reasonably related to the actual costs incurred by the trial court and reinstated the $1,611 court cost assessment. (4a, 6a):

> The Washtenaw County Trial Court previously established a factual basis for the court costs it has imposed on each felony case at the time of sentencing. The costs were computed based on the ten year average annual total court budget of $16,949,292 multiplied by the average annual percentage of all filings which are felonies, i.e., 22%, which revealed the average annual budget for the Washtenaw Trial Court's handling of all of its criminal felony cases. This amount was then divided by the average annual number of felony filings over [the] last 6 years ([$]2,217) which resulted in the average court costs of handling each felony case at $1,681. [4a].

On appeal, Mr. Cameron challenged that finding, arguing that the imposition of the court cost constituted an unconstitutional tax and must be vacated. In an April 4, 2017 published decision, the Court of Appeals found that the imposition of the court cost was indeed a tax, but declined to find it unconstitutional. *People v Cameron*, 319 Mich App 215; 900 NW 2d 658 (2017); (7a).

On March 9, 2018, this Court granted oral argument on Mr. Cameron's application for leave to appeal and directed the parties to address:

> (1) whether court costs under MCL 769.lk(1)(b)(iii) should be classified as a tax, a fee, or some other category of charge; and (2) if court costs are a tax, whether the statute violates the Separation of Powers Clause, Const. 1963, art 3, § 2, or the Distinct-Statement Clause, Const. 1963, art 4, § 32. [22a)].

Mr. Cameron answers that court costs under the statute are a tax because they raise revenue, are not regulatory or voluntary, and are not proportionate to services rendered. Court costs under the statute are unconstitutional because the statute violates the non-delegation clause of the separation of powers doctrine, the tax is not distinctly stated, and because the tax violates the Headlee amendment.

Argument

I. Court costs authorized under MCL 769.1k raise revenue, are not regulatory or voluntary, and are not proportionate to services rendered. Court costs are a tax imposed on the convicted.

The Court of Appeals correctly held that MCL 769.1k(1)(b)(iii) is a tax after finding that it was revenue raising, was not proportionate to the service rendered, and was involuntarily imposed. *Cameron, supra*; (7a).The prosecution has also conceded that court costs are a tax. (See Plaintiff-Appellee's Brief in Response filed June 9, 2017, p. 2).

Following a conviction, MCL 769.1k(1)(b)(iii) authorizes the imposition of "any cost reasonably related to the actual costs incurred by the trial court without separately calculating those costs involved in the particular case, including, but not limited to, the following:

(A) Salaries and benefits for relevant court personnel.

(B) Goods and services necessary for the operation of the court.

(C) Necessary expenses for the operation and maintenance of court buildings and facilities."

Black's Law Dictionary (9th ed) defines "tax" as: "A charge, usu. monetary, imposed by the government on persons, entities, transactions, or property to yield public revenue," and defines "user fee" as "[a] charge assessed for the use of a particular item or facility." The appellate courts have outlined multiple factors that distinguish a fee from a tax. *Jackson Cnty v City of Jackson*, 302 Mich App 90, 99, 101; 836 NW2d 903 (2013). The three primary distinctions between a fee and a tax are: (1) that user fees must serve a regulatory purpose rather than revenue-raising purpose, while a tax "is designed to raise revenue," (2) the "user fees must be proportionate to the necessary costs of the service," and (3) a user fee may not be involuntary or "compulsory by law" like a tax. *Bolt v City of Lansing*, 459 Mich 152, 161-162, 167; 587 NW2d 264 (1998).

This Court should affirm the ruling of the Court of Appeals and find that MCL 769.1k(1)(b)(iii) imposes a tax and not a user fee.

A. *Court costs authorized by MCL 769.1k(1)(b)(iii) are intended to raise revenue and serve no regulatory function.*

The revenue generating purpose of the statute is plain on its face. Court costs are authorized to raise revenue to support the operation of the courts by funding: "[s]alaries and benefits for relevant court personnel," "[g]oods and services necessary for the operation of the court," and "[n]ecessary expenses for the operation and maintenance of court buildings and facilities." MCL 769.1k(b)(iii)(A-C).

The statute's Legislative Analysis provides further support of its revenue raising purpose. MCL 769.1k was amended following *Cunningham* and was intended to prevent budget shortfalls and address the concern that "the burden to replace lost revenue may fall on local residents rather than on those using the criminal justice system." (25a). As acknowledged in the Legislative Analysis, the courts already assess different amounts at sentencing for other purposes: a fine for punishment, expenses of legal assistance and costs of prosecution, and state and crime victim reimbursements. (23a-24a). MCL 769.1k has been interpreted to mean that a court could authorize costs to "pay a part of the court's overhead costs" and has been estimated by some local governments to amount to "10 percent or more of their budget for any given year." (24a-25a).

The court cost statute is living up to its intended purpose and is raising revenue for the operation of Michigan's trial court system. Court costs alone are supplying nearly $40 million dollars in revenue for the operation of courts across the state. (27a-34a). MCL 769.1k(9) directs the State Court Administrative Office (SCAO) to compile a statewide yearly report detailing the total number of cases in which court costs were imposed, the total amount of court costs

imposed, and the total amount of court costs collected. The latest report dated June 30, 2017 shows that Michigan's circuit courts raised over $6 million dollars and Michigan's district and municipal courts raised almost $32 million dollars from assessed court costs in 2016. (34a).

Here, the Court of Appeals correctly held that MCL 769.1k(1)(b)(iii) is a revenue raising measure based on its plain language and intended and actual purpose. (10a).

B. *Court costs authorized by MCL 769.1k(1)(b)(iii) are not user fees proportionate to services rendered.*

"[A] fee is exchanged for a service rendered or a benefit conferred, and some reasonable relationship exists between the amount of the fee and the value of the service or benefit." *Bolt,* 459 Mich at 161 (internal citations and quotations omitted). MCL 769.1k is not a user fee because Mr. Cameron is not a "user" of any service and because the court cost is not being exchanged for any benefit.

A "user," seeks a government service and may pay a fee for the value of the service or benefit for however much of the service they wish to use. *Bolt,* 459 Mich at 165, 167. Mr. Cameron did not seek to use the court system; he was compelled to do so and, as the Court of Appeals and prosecution pointed out, Mr. Cameron had "no power to 'pass' on his . . . prosecution and avoid the underlying costs." (13a). Mr. Cameron, along with every other defendant who is charged with a crime, was arrested, held in custody, and forced to appear in court.

A reasonable relationship must exist "between the amount of the fee and the value of the service or benefit." *Id.* at 161 (internal citations and quotations omitted). The "user fee" here is not proportionate to the "service," because the courts confer benefit to the public (justice, fairness, order) not the particular person on whom the costs are imposed. *Id.* at 165. A true "fee"

is designed to benefit the particular person on whom it is imposed; a fee should not benefit the general public. *Id.*

MCL 769.1k(1)(b)(iii) expressly authorizes costs to be calculated "without separately calculating those costs involved in the particular case." As a result, the same court cost may be imposed for all cases without regard to the complexity of the case or the amount of time spent to resolve the case. Data collected by the State Appellate Defender Office (SADO) from approximately 700 case assignments received between January 2017 and December 2017, shows that is exactly the case. (35a-54a).[1] It is not uncommon for an individual who pleads guilty to be assessed the same court costs as someone who went to trial. Based on common sense and experience, most guilty pleas require considerably fewer court appearances, fewer resources, and less time than the average jury or bench trial. Yet, individuals convicted by plea are often assessed the same costs as those convicted by trial. (35a-54a). It cannot be said that the court costs imposed are proportionate to services rendered.

The Court of Appeals found that court costs under MCL 769.1k were proportionate to the individual, but were disproportionate to the service. In finding the court costs were proportionate for the individual, the court relied on the fact that the costs are presumed reasonable given that the trial court calculated the costs using a formula recommended by the Supreme Court Administrative Office. (11a-12a; see also 55a-58a). The court costs were not found to be proportionate to the service rendered "because any service rendered from the trial court's role in the prosecution of defendant benefits primarily the public, not defendant." (12a).

A further sign that amended MCL 769.1k is not a user fee is its inapplicability to civil litigants. There is no comparable authority for imposing court operating expenses or the salaries

[1] SADO is court-appointed to approximately 1 in every 4 indigent criminal felony appeals. This data is collected at the time of assignment by SADO's Administrative Office and reflects cases assigned to SADO from January 2017 to December 2017. (35a-54a).

and benefits of court personnel on the civil litigant. Prosecutors are similarly never assessed court costs, even in cases of wrongful convictions. If court operating expenses were truly a user fee, they would apply to all litigants who use the courts and not only to defendants following a conviction. Instead, the Legislature has authorized the imposition of a hidden tax on a special and vulnerable class of citizens.

C. *Court costs authorized by MCL 769.1k(1)(b)(iii) are not voluntary against the person being ordered to pay the costs.*

There is no question that court costs assessed pursuant to MCL 769.1k are involuntary. Both the prosecution and the Court of Appeals agree. (13a). Defendants are compelled to court by warrant or summons. MCR 6.102 & 6.103. At the discretion of the trial court, costs are assessed following a determination of guilt, at the time of sentencing and apply even if an individual is placed on probation, or if probation is revoked or discharged. MCL 769.1k(3). Further, if an individual who is assessed court costs has resources to pay but has not made a good-faith effort to do so, then he may be imprisoned, jailed, or incarcerated for non-payment. MCL 769.1k(10). Thus, the court costs are "compulsory by law," consistent with a tax. *Bolt,* 459 Mich at 167-168.

D. *Court costs authorized by MCL 769.1k(1)(b)(iii) are a tax.*

A fee and tax can be distinguished by the tendency of a tax to support a general government function providing a general benefit. "Exactions which are imposed primarily for public rather than private purposes are taxes. Revenue from taxes, therefore, must inure to the benefit of all, as opposed to exactions from a few for benefits that will insure to the persons or group assessed." *Bolt,* 459 Mich at 161 (citations omitted). Put another way, "any payment exacted by the state or its municipal subdivisions as a contribution toward the cost of

maintaining governmental functions, where the special benefits derived from their performance is merged in the general benefit, is a tax." *Bolt,* 459 Mich at 165-166.

Considering the storm water services charge before it in *Bolt,* this Court held that the charge was a tax because it served a capital investment purpose rather than a regulatory purpose. In fact, there was no evidence of regulation or service provided regarding the water run-off (no determination of the level of pollutants, or treatment) and nothing the property owners could choose to use or decline. The service charge was a compulsory tax and the Court found it unconstitutional. *Id.* at 169.

Applying that analysis here, the court cost provision of MCL 769.1k(1)(b)(iii) is also a tax. It does not "serve a regulatory purpose rather than revenue-raising purpose," it is not "proportionate" to the cost of the services rendered, and it is not voluntary. *Id.* at 161-162. Instead, MCL 769.1k acts as a revenue-generating measure, the permissible costs are *not* proportional to the actual costs of services rendered, and the criminal defendant is involuntarily required to pay for a service he is forced to use.

For these reasons, the Court of Appeals correctly held that the court costs authorized under MCL 769.1k(1)(b)(iii) and assessed in this case are a tax. As a tax, the court cost statute is unconstitutional on numerous grounds.

II. The Legislature has created a tax that was improperly delegated without intelligible principles and that requires fact finding that has no independent significance outside of the statute. Court costs authorized under MCL 769.1k are unconstitutional under the separation of powers clause and the non-delegation clause.

Assuming the Legislature even realized it was delegating its taxing authority to the judiciary, that delegation violates the separation of powers and nondelegation doctrines because it does not provide sufficient guidance to the individual sentencing judges now authorized to impose the tax. *Taylor v Smithkline Beecham Corp*, 468 Mich 1; 658 NW2d 127, 131 (2003); *People v Turmon*, 417 Mich 638, 644–45; 340 NW2d 620, 623 (1983).

The Court of Appeals held that MCL 769.1k(b)(iii) provides adequate guidance to the circuit courts by allowing them to impose "any costs reasonably related to the actual costs incurred by the trial court without separately calculating those costs involved in the particular case." (17a). In reaching this holding, the Court of Appeals engaged in no analysis and did nothing but reiterate the language of the statute. But it is the statutory language that is the problem. The Legislature may have intended to confer some kind of limit in adding language such as "reasonably related" or "relevant" and "necessary" to the statute, but in practice, this language is limitless. The authorized amount of the court cost assessment is not grounded in independent standards or facts, it relies on determinations by individual judges as to what is reasonable, relevant, or necessary, and it breeds inconsistent application with no principled measures as evidenced by data. (27a-34a, 35a-54a).

A. *The Legislature is prohibited from delegating power to another branch or agency in the absence of "intelligible principles" or "sufficient standards."*

The Michigan Constitution provides that the "legislative power of the State of Michigan is vested in a senate and a house of representatives." Const. 1963, art 4, § 1. In addition to its

exclusive authority to make laws, the Legislature has exclusive power to impose taxes: "The legislature shall impose taxes sufficient with other resources to pay the expenses of the state government." Const. 1963, art 9, § 1. "The power of taxation shall never be surrendered, suspended or contracted away." Const. 1963, art 9, § 2.

"The judicial power of the state is vested exclusively in one court of justice," Const. 1963, art 6, § 1, whose "defining aspect of judicial power is the interpretation of law." *People v Konopka*, 309 Mich App 345, 361; 869 NW 2d 651 (2015) (citations omitted).

The separation of powers provision of the Michigan Constitution states that "[n]o person exercising powers of one branch shall exercise powers properly belonging to another branch except as expressly provided in this constitution." Const. 1963, art 3, §2.

The express constitutional provisions providing for separation of duties amongst various branches of government has "led to the constitutional discipline that is described as the nondelegation doctrine." *Taylor*, 468 Mich at 8. The nondelegation doctrine prohibits the legislative branch from delegating its power to the executive or judicial branches. *Id.* quoting *Field v Clark*, 143 US 649, 692; 12 S Ct 495; 36 L Ed 294 (1892). It applies with "peculiar force to the case of taxation." Cooley, Law of Taxation (second ed), Chapter 3, p. 62.

The purpose behind the separation of powers doctrine is to preserve the independence of the three branches of government. *Taylor*, 468 Mich at 1. The purpose behind the nondelegation doctrine is to "protect the public from misuses of the delegated power." *Blue Cross and Blue Shield of Michigan v Milliken*, 422 Mich 1 at 51; 367 NW2d 1 (1985). These doctrines do not prohibit some "overlap of responsibilities and powers," *Judicial Attorneys Ass'n v Michigan*, 459 Mich 291, 296; 586 NW2d 894 (1998), and do not prevent the Legislature "from obtaining the

assistance of the coordinate Branches." *Taylor*, 468 Mich at 131-132 quoting *Mistretta v United States*, 488 US 361, 371; 109 S Ct 647; 102 L Ed 2d 714 (1989).

When there is overlap of responsibilities between branches, the overlap must be "limited and specific," *Judicial Attorneys*, 459 Mich at 296, and "explicitly" granted to the other branch. *Civil Service Com'n of Michigan v Auditor General*, 302 Mich 673, 683; 5 NW2d 536 (1942). Here, in enacting the court cost provision of MCL 769.1k(1)(b)(iii), the Legislature has implicitly delegated its exclusive power of taxation to the judiciary branch without limits or specifications.

When the legislature delegates its power to another state agency, that delegation is appropriate only if it is based on "intelligible principles" and "sufficient standards." *Taylor*, 468 Mich at 9-10. "The criteria this Court has utilized in evaluating legislative standards are set forth in *Dep't of Natural Resources v Seaman*, 396 Mich 299, 309; 240 NW2d 206 (1976)" and are as follows:

> The "act in question must be read as a whole; the provision in question should not be isolated but must be construed with reference to the entire act."
>
> * * *
>
> The "standard should be as reasonably precise as the subject matter requires or permits." The "preciseness of the standard will vary with the complexity and/or the degree to which subject regulated will require constantly changing regulation."
>
> * * *
>
> The "statute must be construed in such a way as to render it valid, not invalid, as conferring administrative, not legislative power and as vesting 'discretionary, not arbitrary, authority." [*People v Turmon*, 417 Mich 638, 644–45; 340 NW2d 620, 623 (1983) (internal citations and quotations omitted); See also *Blue Cross & Blue Shield of Michigan v Milliken*, 422 Mich 1, 51–52; 367 NW2d 1, 27 (1985)].

Here, the Legislature has delegated its taxing power to the courts without sufficient standards or intelligible principles.

B. *The Legislature has not provided the courts with "intelligible principles" or "sufficient standards" for the assessment of court courts.*

MCL 769.1k(1)(b)(iii) authorizes the imposition of "any cost reasonably related to the actual costs incurred by the trial court without separately calculating those costs involved in the particular case." Those costs include, but are not limited to: salaries and benefits for relevant court personnel, goods and services necessary for the operation of the court, and necessary expenses for the operation and maintenance of court buildings and facilities. MCL 769.1k(1)(b)(iii).

This statute lacks "intelligible principles" or "sufficient standards," not only for setting the amount of the court cost, but also on how to properly calculate a reasonably related cost, when the cost should be imposed (leaving open the possibility for discriminatory application), or whether the cost should be collected, and if so, when and in what manner. The Legislature has provided the trial courts with no guidance on the assessment of this hidden tax.

Instead, the Legislature has given the courts the unlimited ability to tax all criminal defendants coming through its doors. Or not. Since court costs are not mandatory, a trial court is free to impose or not impose the tax whenever it so chooses. There are no standards articulated for when the cost should be imposed aside from the general requirement that the costs are only authorized after a conviction. The statute provides a vague limitation that the costs must be related to the "actual costs incurred by the trial court," and goes on to list certain items that may factor into the amount of actual costs incurred (such as salaries, goods and service, and building maintenance). MCL 769.1k(1)(b)(iii)(A-C). But the statute also makes clear that the courts are

"not limited to" those items, cancelling out any perceived limitations those specific references may have set. MCL 769.1k(1)(b)(iii).

In practice, the court cost statute allows courts to tax criminal defendants, the majority of them indigent, at high enough rates to fund the entire operation of the trial court system. The Legislature has authorized the courts to get all of their revenue from criminal defendants through this statute. Or none at all. And it has not provided the courts with any guidance or caps on how much of the court operating expenses are to be raised through court costs. A court can tax nothing, or 10 percent, 50 percent, or 100 percent of its costs, and may even be authorized to profit off of court cost assessments. The possibility of such varied and unprincipled outcomes is a result of a lack of standards or guidance given by the Legislature at the time of delegation.

This lack of standards and principles creates uncertainty and inconsistent tax practices that open the statute up to challenges on due process and void for vagueness grounds (See Issue IV, infra). This is best illustrated when looking at data collected by SCAO and SADO. SADO's court cost data (35a-54a) indicates that counties and individual judges impose court costs with a wide range of inconsistency, even in the same type of cases (i.e., guilty pleas, no context pleas, and jury trials):

- In Wayne County, court costs can range from $0 to $1,300 for guilty plea cases. Those same costs often apply to jury trial cases. In some instances, a $1,300 court cost is imposed by the same judge following both guilty plea and jury trial cases. (38a, 39a, 45a, 46a, 51a).

- In Berrien County, some judges impose a $1,000 court cost for a guilty plea while the others impose $0. (40a, 52a).

- In Kent County, the same judge might impose a $400 cost for a guilty plea case one day and $0 for the same type of case on a different day. (41a).

- The lowest court cost assessed (other than $0) was $5 for a guilty plea case in Oakland County while the highest court cost assessed was $3,550 for a probation violation plea case out of Livingston County. (48a, 49a).

The imposition of court costs and collection of court costs also varies amongst counties as demonstrated by the June 2017 SCAO report, which collected 2016 data:

- Saginaw County Circuit Court imposed court costs in only 43 cases while its neighbor Genesee County Circuit Court imposed court costs in 1,206 cases. (29a).

- Saginaw County Circuit Court raised $20,900 in revenue through court costs while Genesee County raised $468,375. (29a).

- The Detroit District Court imposed court costs in 23,797 cases while the Oakland County District Court imposed costs in 10,542 cases. (32a).

Some courts assess court costs in thousands of cases per year while others rarely assess costs at all. (28a). Some courts assess a hundred dollars in a given case while others assess over a thousand dollars. (37a-54a). Court cost assessment practices even vary from judge to judge within individual courts, creating even more unprincipled outcomes. (37a-54a).

Additional evidence that the Legislature did not provide any guidance or standards when enacting MCL 769.1k can be found by looking to the November 6, 2014 memo prepared by SCAO following the amended statute's enactment. (55a). SCAO sent this memo to every circuit, family, district, and municipal court in the state and informed the courts that:

> SCAO has developed a tool to assist courts with determining the average cost of a criminal case for a particular court. This tool utilizes a court's average operating costs, percent of workload for criminal cases, and criminal cases disposed to calculate the average cost of a criminal case. All courts are encouraged to utilize this tool, as it will allow the court to make an informed decision regarding the average cost of a criminal case in their court. If you would like assistance with determining the cost of a criminal case in your court, please complete the attached and return it to me at BarberB@courts.mi.gov. [56a].

The Legislature delegated its taxing authority to individual sentencing judges, but there was such little guidance that SCAO, an agency of the judiciary, found it necessary to publish its own assistive tools containing comprehensive data collection instructions for applying the statute.

This type of delegation, in the absence of any guidance at all, does not meet the standards of setting "intelligible principles" and "sufficient standards." *Turmon, supra.*

"There is a difference between making the law and giving effect to the law; the one is legislation and the other administration." Cooley, Law of Taxation (second ed), Chapter 3, p. 62. "But to leave to a court of claims or any state officer or board the power to determine whether a tax should be laid for the current year, or at what rate, or upon what property, or how it should be collected, and whether lands should be sold or forfeited for its satisfaction,--all this prescribes no rule, and originates no authority; it merely attempts to empower some other tribunal to prescribe a rule and set in motion the tax machinery. And this is clearly incompetent." *Id.* at 62-63.

Through MLC 769.1k, the Legislature has given courts the unlimited ability to tax, or not, and has given the courts no meaningful rules or standards about how to use that arbitrary power. If further evidence is needed that the court cost statute contains a complete lack of intelligible principles, this Court need look no further than to the constant stream of opinions and orders that continue to be issued in our appellate courts remanding cases to the trial court for articulation of a factual basis to support the imposition of court costs under MCL 769.1k(1)(b)(iii).[2]

[2] For just a sampling of such cases, see *People v Matthews*, unpublished opinion per curiam of the Court of Appeals, issued March 1, 2018 (Docket No. 336121); *People v Allen*, unpublished opinion per curiam of the Court of Appeals, issued March 13, 2018 (Docket No. 335885); *People v Kirby*, unpublished opinion per curiam of the Court of Appeals, issued April 12, 2018 (Docket No. 336840); *People v Starks*, unpublished opinion per curiam of the Court of Appeals, issued May 8, 2018 (Docket No. 338208); *People v Wilson*, unpublished order of the Court of Appeals, entered September 8, 2017 (Docket no. 339515); *People v Pelletier*, unpublished opinion per curiam of the Court of Appeals, issued February 28, 2017 (Docket No. 330751); *People v Finn*, unpublished order of the Court of Appeals, entered January 10, 2017 (Docket No. 335948), attached at (59a-94a).

The court cost statute violates the separation of powers doctrine because the Legislature has fully surrendered its power to impose a tax to the judiciary without explicitly identifying the delegation as one of taxation and without providing proper guidance. Here, the Court of Appeals held that the Legislature may delegate its powers of taxation on other branches of government if the Legislature provides guidance and parameters to the other branch. It is not even clear that the Legislature knew it was delegating its taxation power to the judiciary in enacting MCL 769.1k(1)(b)(iii) since the question of whether the court costs are a tax is currently before this Court. The Legislature could not have properly delegated authority to the judiciary with sufficient limitations and specifications if it may not have even known it was delegating its taxing power and may have believed it was merely authorizing a user fee.

C. *MCL 769.1k is an unconstitutional "referral statute" that depends on a factual finding that has no significance outside of the statute.*

A referral statute is one in which the effect or consequence under the statute will depend "on a factual development that is outside the control of the legislative body." *Taylor*, 468 Mich at 10. MCL 769.1k(1)(b)(iii) authorizes the trial court to impose "any cost reasonably related" to the cost of running the trial court. The statute requires the court to make the factual finding as to what dollar amount is appropriate. Without the making of that factual finding, the statute would have no effect.

In order to determine if a referral statute violates the nondelegation and separation of powers doctrines, it must pass an "independent significance" test. There "is no improper delegation where the agency or outside body making the finding . . . is doing it for purposes independent of the particular statute to which it makes reference." *Id.* at 12. In other words, "if the fact or finding to which the Legislature refers has significance independent of a legislative

enactment, because the agency or outside body making the finding is doing it for purposes independent from the particular statute that refers to it, then there is no delegation" and the statute is valid. *Id.* at 18.

A common example of constitutionally valid referral statutes are statutes that are triggered by undisputed fact finding on uncontroversial matters such as age, time, and day of birth. *Taylor*, 468 Mich at 11. Requiring a factual finding on these types of facts in order to trigger a statute is proper because the finding is made by a third party for some other purpose independent of the statute. For example, MCL 168.720 directs that election polls shall be opened at 7 o'clock a.m. Under the statute, an outside agency is required to make a factual finding that it is 7 o'clock a.m. before opening the polls. This is a proper delegation because the fact found (i.e., the time) is kept "for purposes independent of the particular statute to which it makes a reference." *Id.* at 11-12. When a third party collects a fact for independent reasons unconnected to any given statute, there is no delegation impropriety. *Id.* at 12. A statute only violates the nondelegation clause when the making of the factual finding serves no other independent purpose outside of the statute.

Under MCL 769.1k, there is no independent purpose for the finding of reasonable court costs outside of the statute. There is no evidence that courts are determining a reasonable cost per case for any independent reason or that the reasonable cost per case dollar figure is being used for any purpose other than this statute. In fact, there seems to be evidence to the contrary—that the only reason courts are engaged in this factual finding is because they are required to do so under the statute.

This is evident from the SCAO memo published to trial courts following the enactment of the amended court costs statute. (55a). It was not until the enactment of the statute that courts

began making a cost per case finding. And the only reason courts made the finding was so that individuals could be assessed a dollar amount pursuant to MCL 769.1k(1)(b)(iii). Here, the Washtenaw County Circuit Court used SCAO's formula to calculate the amount of court costs against Mr. Cameron. (5a, 58a). There is reason to believe other counties are doing the same.

"Care must be exercised in distinguishing between statutes which delegate the authority to make the standards to private parties and those which refer to outside standards as the measuring device." *Taylor*, 468 Mich at 13 (internal citations and quotations omitted). The latter is perfectly valid while the former is not authorized. *Id.* The court cost statute falls into the former category in violation of separation of powers and nondelegation principles.

III. The Legislature has created a tax that is obscure and deceitful and not distinctly stated. Court costs authorized under MCL 769.1k are unconstitutional under the distinct-statement clause.

The Legislature may create a tax, but, according to the distinct-statement clause, that tax must be stated distinctly to pass constitutional muster: "Every law which imposes, continues or revives a tax shall distinctly state the tax." Const. 1963, art 4, § 32.

"The Distinct-Statement Clause is violated if a statute imposes an obscure or deceitful tax, such as when a tax is disguised as a regulatory fee." *Gillette Commercial Operations v Department of Treasury*, 312 Mich App 394; 878 NW2d 891, 924 (2015). The Court of Appeals here found that the court costs were a tax, and the statute "does not set or specifically limit the amount of costs a court may impose." (14a). Yet, because the court cost assessment must be supported by a factual basis and because the statute requires an annual reporting of the court costs assessed and collected, the court found that there was "transparency and accountability," which weighed against a finding that the tax was obscure or deceitful. (14a-15a).

The Court of Appeals placed an inapplicable and unjustly heavy burden on Mr. Cameron stating that he did not prove a distinct-statement clause violation because he "presented no evidence indicating that the Legislature did not intend MCL 769.1k(1)(b)(iii) to raise revenue for the courts or that the court costs collected are directed to a use unintended by the Legislature." (15a). The distinct-statement clause does not require Mr. Cameron to prove that the Legislature did not intend the court cost statute to raise revenue. According to the Legislative Analysis, that was exactly the intent of the statute. (24a). The distinct-statement clause also does not require Mr. Cameron to prove that the collected costs have been misdirected or misused.

Instead, the distinct-statement clause is violated whenever a tax is not distinctly stated in a statute, Const. 1963, art 4, § 32, and where the tax is deceitful or obscure, *Gillette*, 312 Mich

App 394; 878 NW2d at 924. On its face, the court cost statute appears to authorize the court to impose fair costs against convicted defendants using the court system. But that is deceptive. In practice, the court cost statute:

- authorizes hundreds of trial court judges,
- to individually determine the appropriate dollar amount of a cost,
- without receiving intelligible principles for determining the appropriate dollar amount,
- and allows judges to impose a cost that is actually a tax,
- if they choose to do so,
- against convicted people who are forced to use a constitutionally required court system,
- and who can then be imprisoned for failing to pay the tax.

A statute that authorizes these practices by its plain language is obscure and deceitful and does not satisfy the distinct-statement clause.

When construing the constitution, this Court must interpret constitutional provisions consistent with "that which reasonable minds, the great mass of the people themselves, would give it." *Traverse School Dist. v Attorney General*, 384 Mich 390, 405; 185 NW2d 9 (1971) (internal citations omitted). To fulfill this obligation, this Court must give effect to constitutional provisions in "the sense most obvious to the common understanding." *Id.*

An obvious and common understanding of the distinct-statement clause is that it requires exactly what it says: that every law imposing a tax "shall distinctly state the tax." Const. 1963, art 4, § 32. A "distinct" statement is one that is "clear" and "unmistakable."[3] In order for the court cost statute to satisfy the distinct-statement clause, the tax authorized by the statute must be

[3] Distinct. (n.d.). Retrieved May 31, 2018, from <https://www.merriam-webster.com/dictionary/distinct>

clear. The authorization of a court cost with no specification of the authorized amount, no cap or upper limits of the amount, and no limitations for calculating the amount, cannot be said to be distinct and clear.

In *Dawson v Secy of State*, 274 Mich App 723, 747; 739 NW2d 339 (2007), the Court of Appeals held that the driver responsibility fee statute met the requirements of the distinct-statement clause. The court first found that the fees assessed under the statute were taxes rather than fees. *Id.* The court went on to hold that "[w]hile the statute does not identify the fees as taxes, the amounts of the assessments to be paid by drivers who are convicted of specific misdemeanor or felony offenses are clearly stated" and thus, "not obscure or deceitful." *Id.* The driver responsibility fee statute, unlike the court cost statute here, expressly and clearly stated the amount of the assessment at $500 and $1,000 respectively.

In contrast, here there is no clarity. The cost can be "any cost reasonably related" to the entire operation of the trial court system. MCL 769.1k(1)(b)(iii) sets no specific amount or rate of calculation. Instead, trial courts are permitted to set costs in an undefined amount based on the individual operating and maintenance costs of each court. The statute does not make clear what proportion of the operating and maintenance costs will be borne by criminal defendants. There is no statutory limitation. The court cost statute is obscure and provides no reasonable guidance as to the appropriate assessment and is not distinctly stated in violation of the constitution.

IV. MCL 769.1k authorizes individual judges to impose court costs without sufficient standards, which permits arbitrary enforcement against the convicted. The court cost statute violates the notice provision of the due process clause and is void for vagueness.

The due process clause provides that no person shall be deprived "of life, liberty or property, without due process of law." Const. 1963, art 1, § 17; US Const. Am. XIV, § 1. The purpose of the due process clause is to "secure the individual from the arbitrary exercise of governmental power." *Cummins v Robinson Twp,* 283 Mich App 677, 701; 770 NW2d 421 (2009) (internal quotations and citations omitted). The Government violates this guarantee under a law so vague that it does not provide fair notice of the conduct it regulates, or a law "so standardless that it invites arbitrary enforcement." *Id*; quoting *Kolender* v *Lawson*, 461 US 352, 357-358; 103 S Ct 1855, 75 L Ed 2d 903 (1983).

As discussed above, the test for determining whether a statute violates the nondelegation doctrine is the "sufficient standards" test, one consideration of which is whether the statute sets forth standards that are "as reasonably precise as the subject matter requires or permits." *Turmon*, 417 Mich at 644–45. A "standard cannot be considered 'as reasonably precise as the subject matter requires or permits' if it does not satisfy due process requirements." *Id.*

Satisfaction of the "sufficient standards" test does not automatically satisfy constitutional principles of due process. The "sufficient standards" test allows standards to be flexible within reason, which may conflict with principles of due process. "[T]he more 'flexible' the legislative 'standards' permitted in given legislation (for valid reasons), the less the people are protected from potential discretionary abuse at the hands of administrative officials." *Westervelt v Nat. Res Comm*, 402 Mich 412, 442–43; 263 NW2d 564, 577 (1978) (internal citation omitted). When analyzing a due process claim under a delegation statute with sufficient standards, the test is

whether there are actual safeguards afforded to the people, regardless of the specified standards. *Id.* at 442, fn. 20.

In cases like the present where the statute lacks sufficient standards to begin with, there is little argument that the statute satisfies due process because there is no notice as to the impending property deprivation. A fundamental requirement of due process is "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Sidun v Wayne Co Treasurer*, 481 Mich 503, 509; 751 NW2d 453, 458 (2008) (internal quotation and citation omitted).

A convicted person subject to MCL 769.1k is provided with absolutely no notice as to the amount of court costs he will be required to pay because there are no standards, outside measures, caps, or guidelines provided in the statute.

This type of statute allows for an "arbitrary exercise of governmental power," *Cummins*, 283 Mich App at 701, and it actually effectuates and encourages such practices. This can be no more clear than when looking at court cost data, which shows that individual judges impose court costs at amounts that vary by hundreds and hundreds of dollars in cases of the same type and around the same time period.[4] (35a-54a). MCL 769.1k(1)(b)(iii) allows the assessment of court costs in this state to be arbitrarily imposed, at the will of hundreds of individual sentencing judges, providing individuals with no notice of what is coming and no ability to object to the assessment given the complete lack of specified standards.

The tax authorized by MCL 769.1k(1)(b)(iii) is also void for vagueness because there are no standards for its enforcement. The void for vagueness protection applies to tax statutes and economic matters because these statutes deprive a person of their property. See *STC Inc.*, v *Dept*

[4] Mr. Cameron concedes that it is possible there could be other factors present in the 700+ cases that might account for the variation in costs, but those factors are not data points collected by SADO's administrative office and are not easily accessible.

of the Treasury, 257 Mich App 528; 669 NW2d 594 (2003)*; The Cadle Co. v City of Kentwood,* 285 Mich App 240, 776 NW2d 145 (2009). MCL 769.1k(1)(b)(iii) is unconstitutionally vague in two ways: its objective is not legitimate and it is arbitrary, without standards of enforcement.

In assessing a statute's constitutional validity, this Court "must identify the objective that the challenged statute seeks to achieve." *The Cadle Co, supra* at 256. The court in *Cadle* evaluated the prohibition against the assignment of judgments under rational-basis review. The Court held that the purpose of the statute in question was to "effect expeditious justice," which is a legitimate purpose. *Id.*

But, in this case, the court costs statute's purpose is not legitimate because it enacts a deception. The statute purports to be a user fee, but is actually a local tax enacted circumventing the taxpayer's right to approve or deny the tax (See Issue V, infra). Deception is not a legitimate purpose of government.

And, this deception passes the cost of a necessary government function onto one class: the convicted criminal defendant. Yet, convicted criminal defendants are not a special class of citizens who alone benefit from the courts and must therefore alone bear the cost of administering them. This point was made by Court of Appeals Judge Douglas Shapiro in his dissenting opinion in *Cunningham*:

> Convicted felons have committed crimes and we punish them for doing so. They may be fined, incarcerated, or placed under other forms of supervision and restrictions upon their conduct. However, they remain citizens of our state. Whatever their conduct, they do not constitute a special class upon whom the courts may assess higher taxes or fees to pay for the expense necessary to maintain the constitutionally required operations of government. [*People v Cunningham (After Remand)*, 301 Mich App 218, 225; 836 NW2d 232 (2013) (Shapiro, J. dissenting); *rev'd on other grds* 469 Mich 145; 852 NW2d 118 (2014).]

Taxing convicted criminal defendants in order to fund a necessary government service places a harsh financial burden on a group of citizens who are disproportionately poor and of color.[5] Court costs function as an "extremely regressive" tax. Hogg, *District Court Tax Farming*, 90 Mich Bar J 2 (2011), p. 30.

The United States Department of Justice's investigation in Ferguson, Missouri[6] uncovered the perverse incentives created when municipal or county operations are funded through a tax on convicted criminal defendants:

> Ferguson has allowed its focus on revenue generation to fundamentally compromise the role of Ferguson's municipal court. The municipal court does not act as a neutral arbiter of the law or a check on unlawful police conduct. Instead, the court primarily uses its judicial authority as the means to compel the payment of fines and fees that advance the City's financial interests. This has led to court practices that violate the Fourteenth Amendment's due process and equal protection requirements. The court's practices also impose unnecessary harm, overwhelmingly on African-American individuals, and run counter to public safety. [Ginkowski, Beyond Ferguson: Community-Based or Cash-Register Justice?, Criminal Justice, Spring 2018, 15; quoting US Dept of Justice, Investigation of the Ferguson Police Department 2 (2015).]

Ferguson, Missouri is in no way unique. The regressive and targeted hidden tax authorized by MCL 769.1k(1)(b) fosters the same distortions and racially discriminatory practices uncovered in Ferguson.

---

[5] The Sentencing Project, *Report of The Sentencing Project to the United Nations Special Rapporteur on the Contemporary Forms of Racism, Racial Discrimination, Xenophobia, and Related Intolerance Regarding Racial Disparities in the United States Criminal Justice System* < https://www.sentencingproject.org/publications/un-report-on-racial-disparities/> (published April 19, 2018) (accessed June 1, 2018).

[6] In 2014, the Department of Justice launched an investigation into the death of Michael Brown (an unarmed black man killed by a police officer), the police department, and the municipal court.

The court costs statute also lacks any appropriate standards for enforcement. Due process requires that a State provide meaningful standards to guide the application of its law." *Pacific Mut. Life Ins. Co. v Haslip,* 499 US 1, 44; 111 S Ct 1032; 113 L Ed 2d 1 (1991); *Johnson v Dept of Nat Res*, 310 Mich App 635, 657; 873 NW2d 842, 854 (2015). "[I]f arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges and juries for resolution on an ad hoc and subjective basis, with attendant dangers of arbitrary and discriminatory application." *Grayned v City of Rockford*, 408 US 104, 108; 92 S Ct 2294, 33 L Ed 2d 222 (1972).

MCL 769.1k(1)(b)(iii) permits arbitrary enforcement due to the lack of any standards through which courts are required to properly assess costs. This statute impermissibly delegates to the circuit court judges "on an ad hoc and subjective basis" the ability to determine whether and to what amount to set the tax. The only guidance in the statute is the requirement that assessments be "reasonably related" to actual costs incurred by the trial court, and that guidance is insufficient.

This discretion without guidance leads to arbitrary results. Courts assess as little as zero dollars in court costs up to several thousand dollars. Within the same circuit, and even before the same judge, different defendants are assessed different amounts. The arbitrary results also extend to the proportion of the budget circuit courts may collect from MCL 769.1k(1)(b)(iii) funds – from zero to as much as 100% may be collected.

Finally, the appellate courts' interpretations of this statute and its prior iterations demonstrate its vagueness. In *Johnson*, the United States Supreme Court found the residual clause of the Armed Career Criminal Act of 1984 unconstitutionally vague after upholding the

statute in four prior decisions, but articulating differing tests in the decisions. *Johnson*, *supra* at 2558. "Persistent efforts…to establish a standard" can provide evidence of vagueness. *United State v L. Cohen Grocery Co,* 255 US 81, 91; 41 S Ct 298; 65 L Ed 516 (1921).

Despite numerous and laudable attempts, the appellate courts in this state have not yet settled whether this statute enacts a fee or a tax, and have not settled the determination of what constitutes a "reasonably related" cost. The Legislature failed to provide standards to guide enforcement of court costs that act as a hidden tax. As a result, enforcement is arbitrary and the statute is unconstitutionally vague and in violation of due process and should be found to be unconstitutional.

V. MCL 769.1k(1)(b)(iii) authorizes a tax to fund necessary services of local government and was not passed by voter approval. The statute is unconstitutional in violation of the Headlee Amendment.

The Legislature imposed a tax when it enacted MCL 769.1k. The tax is unconstitutional, in violation of the Michigan Constitution's Headlee Amendments because it is a local tax enacted without voter approval. Const. 1963, art 9, § 31.

The Headlee Amendments[7] involve provisions for local taxes and budgeting and "'grew out of the spirit of tax revolt' and was designed to place specific limitations on state and local revenues. The ultimate purpose was to place public spending under direct control." *Bolt*, 459 Mich at 161, quoting *Waterford School District v State Bd of Ed*, 98 Mich App 658, 663; 296 NW2d 328 (1980).

Section 31 of the Headlee Amendment prohibits the imposition of new local taxes without voter approval, and states in relevant part:

> Units of Local Government are hereby prohibited from levying any tax not authorized by law or charter when this section is ratified or from increasing the rate of an existing tax above that rate authorized by law or charter when this section is ratified, without the approval of a majority of the qualified electors of that unit of Local Government voting thereon. [Const. 1963, art 9, § 31].

---

[7] The Headlee Amendments involves eight sections of the Michigan Constitution, Const. 1963 art 9 §§ 25-33. The sections:

1. prevent taxes from being increased above limitations without voter approval, and prevent the state from increasing the tax burden on local government (§ 25);
2. establish the revenue limits above which the state may not tax, except in emergency (§ 26),
3. define "emergency" (§ 27);
4. require balanced budgeting (§ 28);
5. require the state to fund "necessary costs of any existing activity or service required of units of Local Government by state Law" (§ 29);
6. require spending proportionate to 1978-9 levels (§ 30);
7. prohibit new local taxes without voter approval (§ 31); and
8. provide standing to sue to any taxpayer in Michigan (§ 32).

The Legislature violated § 31 of the Headlee Amendment when it enacted MCL 769.1k(1)(b)(iii), thereby enacting a local tax without voter approval. A tax is a new local tax if: 1) it did not exist before 1978; and 2) the tax funds local government. If a tax meets these two conditions, it must receive voter approval.

The tax at issue here, MCL 769.1k(1)(b)(iii), did not exist before 1978. The first version of the court costs statute was enacted in 2005 and became effective in 2006. MCL 769.1k; 2005 PA 316. As originally enacted, the statute did not independently authorize court cost assessments unless the same assessments were defined elsewhere. *Cunningham*, 496 Mich 145. Only after *Cunningham* did the present version of the court costs statute permit the trial court independent authority to obtain operational costs of the court from criminal defendants. Because this taxing authority did not exist pre-1978 and because the tax imposed is designed to fund necessary operations of local government, MCL 769.1k runs afoul of § 31 of the Headlee Amendment and is unconstitutional.

The fact that this statute was enacted by the Legislature rather than the local government does not change its nature as a local tax. "[B]ecause it is at least theoretically possible that the state could levy a tax that was local in nature, the entity imposing the tax may not resolve the Headlee question." *Airlines Parking In, v Wayne County*, 452 Mich 527, 534; 550 NW2d 490 (1996). In dissent, Justice Cavanaugh framed it this way: "[t]he issue is whether the Legislature may impose a tax on a specific activity in a specific location in order to generate revenue to assist financially the specific county and the specific municipality in which that activity occurs." *Id.* at 545.

In *Airlines,* the determination of whether the "airport parking tax" violated the Headlee Amendment turned on whether the tax was a local tax or a state tax. The Court defined local

taxes as taxes "collected by local government, administered directly by that local entity, and spent by the local government according to local fiscal policy." *Id*. at 536-537. As noted above, the Court found that the entity imposing the tax would not conclusively decide the issue. "The Headlee Amendment makes the crucial inquiry, for purposes of analyzing tax limitations, the entity responsible for levying the tax." *Id.* at 544. The Court relied on the state collection and distribution, rather than the recipient of the proceeds, to hold that the airport tax "clearly serves a state purpose" and is under state control. *Id.*

Thus, even though the Legislature enacted MCL 769.1k(1)(b)(iii), it is a local tax. The circuit court sets the amount of the tax assessment to be collected in the form of per case court costs and has the authority of wage assignment, if needed for collection. MCL 769.1k(1)(b)(iii). The circuit court determines what proportion of the court's budget, if any, shall be procured from these taxes. And, the circuit court is the designated collector and distributor of these funds. See MCL 775.22; MCL 780.766a. This is the definition of a local tax.

The Legislature intended to fund the courts when it enacted MCL 769.1k(1)(b)(iii). By doing so, it attempted to circumvent the Headlee Amendment, which requires court funding to be provided by the state. This tax is disguised as a valid user fee, but "the imposition of mandatory 'user fees' by local units of government has been characterized as one of the most frequent abridgments 'of the spirit, if not the letter,' of the [Headlee] amendment." *Bolt,* 459 Mich at 169.

> The danger to the taxpayer of this burgeoning phenomenom [the imposition of user fees] is as clear as are its attractions to local units of government. The "mandatory user fee" has all the compulsory attributes of a tax, in that it must be paid by law without regard to the usage of a service, and becomes a tax lien of the property. However, it escapes the constitutional protections afforded voters for taxes. It can be increased any time without limit. This is precisely the sort of abuse from which the Headlee Amendment was intended to protect taxpayers. [Headlee Blue Ribbon Commission Report, supra sec 5,pp 26-27.] [*Bolt*, 459 Mich at 169].

Similarly, the Legislature escaped the approval of the voters and the local funding unit when it enacted MCL 768.1k(1)(b)(iii). The statute is a tax disguised as a user fee. This disguise enacts a deception on the taxpayers who could neither approve nor deny the tax. The statute violates the intent of the Headlee Amendments to allow voters to control local taxing and to require states to fund necessary local government services.

Ultimately, the taxpayers are the "users" of the justice delivered by a circuit court. "When virtually every person in a community is a "user" of a public improvement, a municipal government's tactic of augmenting its budget by purporting to charge a "fee" for the "service" rendered should be seen for what it is: a subterfuge to evade constitutional limitations on its power to raise taxes. *Bolt, supra* at 166. And, when citizens are taxed when they are brought to court, they will lose confidence in the judicial system: "Respect for judicial authority will erode as people learn that their court appearance has simply become a taxable event, an opportunity for the government to take their money without regard to their acts or omissions." Hogg, *District Court Tax Farming*, 90 Mich Bar J 2 (2011), p. 32.

The taxpayers are entitled to a system accountable to them and have demanded the same through the Headlee Amendments. MCL 769.1k violates Headlee and is unconstitutional.

Summary and Relief Requested

Mr. Cameron asks this Honorable Court to issue an opinion finding the court cost provision of MCL 769.1k(1)(b)(iii) to be an unconstitutional tax, or in the alternative, to grant leave to appeal.

Respectfully submitted,

STATE APPELLATE DEFENDER OFFICE

BY: /s/ Marilena David-Martin
_____
MARILENA DAVID-MARTIN (P73175)
Training Director

JACQUELINE OUVRY (P71214)
Assistant Defender
645 Griswold
3300 Penobscot Building
Detroit, Michigan 48226
(313) 256-9833

Date: June 1, 2018