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OPINION, SUPREME COURT OF THE STATE OF ILLINOIS (JANUARY 24, 2025)

IN THE SUPREME COURT OF THE STATE OF ILLINOIS

REUBEN D. WALKER ET AL.,

Appellees,

v.

ANDREA LYNN CHASTEEN, The People of the State of Illinois ex rel. KWAME RAOUL, Attorney General of Illinois, ET AL.,

Appellants.

Docket No. 130288

Before: THEIS, Chief Justice, ROCHFORD, OVERSTREET, Holder WHITE, CUNNINGHAM, O'BRIEN and NEVILLE, Justices.

JUSTICE ROCHFORD delivered the judgment of the court, with opinion.

Chief Justice Theis and Justices Overstreet, Holder White, Cunningham, and O'Brien concurred in the judgment and opinion.

Justice Neville took no part in the decision.

OPINION

¶ 1 Plaintiffs are a class of individuals who filed mortgage foreclosure complaints in the circuit courts and paid "add-on" filing fees mandated by section 15-1504.1 of the Code of Civil Procedure (Code) (735 ILCS 5/15-1504.1 (West 2012)). Defendants are Illinois circuit court clerks who imposed the fees in accordance with the statute.

¶ 2 Plaintiffs filed a class-action complaint asserting, *inter alia*, that defendants must be permanently enjoined from enforcing section 15-1504.1 of the Code because it is unconstitutional on its face. This court agreed and declared that section 15-1504.1 and two other statutes that created programs funded by the filing fees (*see* 20 ILCS 3805/7.30, 7.31 (West 2012)) violated the free access clause of the Illinois Constitution (Ill. Const. 1970, art. I, § 12). *Walker v. Chasteen*, 2021 IL 126086, ¶ 47 (*Walker II*). We affirmed the injunction entered by the Will County circuit court against defendants and remanded the cause for further proceedings. *Id.* ¶ 51.

¶ 3 On remand, plaintiffs pursued their sole pending claim, which was for a return of the unconstitutional fees. The circuit court dismissed the refund claim, concluding that it was a claim against the State and thus barred by the doctrine of sovereign immunity. The appellate court reversed the dismissal, holding that the circuit court has jurisdiction to order the refunds under the officer-suit exception to sovereign immunity. We granted defendants leave to appeal.

¶ 4 We hold that the officer-suit exception initially gave the circuit court jurisdiction to enjoin the prospective enforcement of the fee statute as facially

unconstitutional. But once the courts declared the fee statute unconstitutional and enjoined its enforcement, plaintiffs' claim for a monetary award to redress a past wrong was the type of claim that is the province of the Court of Claims, not the circuit court. Because the officer-suit exception does not apply to the refund claim, we reverse the appellate court's judgment and affirm the circuit court's judgment of dismissal.

¶ 5 I. Background

¶ 6 This case has a long procedural history that began with two underlying residential mortgage foreclosure lawsuits. In April 2012, plaintiff Reuben D. Walker filed a mortgage foreclosure complaint in Will County. In August 2015, plaintiff M. Steven Diamond filed a mortgage foreclosure complaint in Cook County.

¶ 7 Section 15-1504.1 of the Code created a $50 "add-on" filing fee for residential mortgage foreclosure actions like those filed by Walker and Diamond. 735 ILCS 5/15-1504.1 (West 2012). Sections 7.30 and 7.31 of the Illinois Housing Development Act (Act) created social welfare programs funded by the fee created in section 15-1504.1. 20 ILCS 3805/7.30, 7.31 (West 2012). Walker and Diamond each paid the $50 add-on fee.[1]

¶ 8 In October 2012, Walker filed a putative class-action complaint against the clerk of the Will County circuit court, alleging, *inter alia*, that section 15-

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[1] Plaintiffs conceded at oral argument in this appeal that the State currently holds almost all the fees that defendants collected under section 15-1504.1, except for a very small percentage retained by defendants under the statute to cover the circuit courts' administrative costs.

1504.1 was facially unconstitutional. The circuit court certified the class, which included Walker and all individuals who had paid the $50 filing fee up to the time Walker filed his foreclosure action. The court also certified a class of defendants that consisted of all the circuit court clerks in Illinois in their official capacities. The State, through the attorney general, was allowed to intervene.

¶ 9 In November 2013, the circuit court granted plaintiffs partial summary judgment, finding section 15-1504.1 to be facially unconstitutional. The court determined that (1) the circuit court clerks fell within the "fee officer" prohibition in article VI, section 14, of the Illinois Constitution (Ill. Const. 1970, art. VI, § 14) and (2) the provision in section 15-1504.1 that authorized circuit court clerks to retain 2% of the $50 filing fees for administrative expenses created an unconstitutional fee office. This court reversed the judgment and remanded the class action for further proceedings without addressing plaintiffs' other constitutional claims. *Walker v. McGuire*, 2015 IL 117138, ¶¶ 30, 44 (*Walker I*).

¶ 10 Diamond was added as a named party, and in April 2018, plaintiffs filed a second-amended complaint for a permanent injunction prohibiting enforcement of the statutes and for the return of the unconstitutional filing fees. More specifically, count I alleged section 15-1504.1 of the Code and sections 7.30 and 7.31 of the Act violated separation-of-powers principles. Count II alleged the statutes violated equal protection, due process, and uniformity-of-burden principles. Count III alleged the statutes violated the free access clause by providing for the imposition of a filing fee for a purpose that was not court related. Count IV

requested the creation of a protest fund for all fees collected or to be collected pursuant to section 15-1504.1 until the conclusion of plaintiffs' action. Counts I, II, and III requested the same relief: (1) a declaratory judgment that the statutes were unconstitutional; (2) "[a] declaratory judgment that any expenditures of State funds collected pursuant to this statute must be returned to Plaintiffs"; (3) temporary, preliminary, and permanent injunctions "enjoining Defendants from disbursing fees collected pursuant to [section 15-1504.1]"; and (4) "[a]n order to return all fees collected pursuant to [section 15-1504.1] to Plaintiffs." Defendants responded that the statutes were constitutional.

¶ 11 The circuit court granted plaintiffs partial summary judgment and declared the three statutes unconstitutional. However, the court granted defendants summary judgment on count IV on the grounds that the creation of a protest fund is not an independent cause of action. The court entered a permanent injunction that prohibited the future collection of the fees and the funding of the social welfare programs, but the court stayed the injunction so this court could review the matter.

¶ 12 This court, in turn, held that plaintiffs paid the filing fees under duress such that the voluntary payment doctrine did not bar plaintiffs' cause of action. *Walker II*, 2021 IL 126086, ¶ 28. This court further held that section 15-1504.1 of the Code and sections 7.30 and 7.31 of the Act violated the free access clause of the Illinois Constitution (Ill. Const. 1970, art. I, § 12). *Walker II*, 2021 IL 126086, ¶¶ 47-48. We affirmed the judgment of the Will County circuit court and remanded the cause for "further

proceedings consistent with [the] opinion." *Id.* ¶ 51. The proceedings on remand are the subject of this appeal.

¶ 13 On remand, plaintiffs pursued their sole pending claim for a refund of the unconstitutional fees. Defendants responded that the State Lawsuit Immunity Act (Immunity Act) divested the circuit court of subject-matter jurisdiction to grant plaintiffs monetary relief from the State. *See* 745 ILCS 5/1 (West 2020). The circuit court agreed and granted defendants' motion to dismiss under section 2-619(a) of the Code. 735 ILCS 5/2-619(a) (West 2020). The court concluded that, because the refund claim was an attempt to recover money from the State, the claim must be brought in the Court of Claims. Plaintiffs appealed.

¶ 14 The appellate court reversed the dismissal and remanded the cause again, holding that (1) the Court of Claims would lack jurisdiction over the refund claim because it could not decide constitutional matters or grant equitable relief and (2) the refund claim fell within the officer-suit exception to sovereign immunity because the complaint had sought restitution, not damages, as well as an injunction. 2023 IL App (3d) 220387, ¶¶ 19, 25. We allowed defendants' petition for leave to appeal. Ill. S. Ct. R. 315(a) (eff. Dec. 7, 2023).

¶ 15 II. Analysis

¶ 16 Defendants contend the Will County circuit court correctly dismissed plaintiffs' refund claim pursuant to section 2-619(a) of the Code. "The purpose of a section 2-619 motion to dismiss is to dispose of issues of law and easily proved issues of fact at the

outset of litigation." *Van Meter v. Darien Park District*, 207 Ill. 2d 359, 367 (2003). When ruling on a motion filed under section 2-619, a court must construe all pleadings and supporting documents in the light most favorable to the nonmoving party. *Id.* at 367-68. When a defendant claims that sovereign immunity divests the circuit court of jurisdiction, section 2-619(a)(1) prescribes a motion to dismiss that alleges "the court does not have jurisdiction of the subject matter of the action, provided the defect cannot be removed by a transfer of the case to a court having jurisdiction." 735 ILCS 5/2-619(a)(1) (West 2020); *see Parmar v. Madigan*, 2018 IL 122265, 1 9; *Leetaru v. Board of Trustees of the University of Illinois*, 2015 IL 117485, ¶ 41. Because a motion to dismiss and questions related to the circuit court's subject-matter jurisdiction present issues of law, our review proceeds *de novo*. *Parmar*, 2018 IL 122265, ¶ 17.

¶ 17 A. Sovereign Immunity

¶ 18 Defendants' jurisdictional challenge is premised on principles of sovereign immunity. The Illinois Constitution of 1970 abolished sovereign immunity in this state "[e]xcept as the General Assembly may provide by law." Ill. Const. 1970, art. XIII, § 4. The General Assembly then enacted the Immunity Act, reinstituting the doctrine of sovereign immunity. The Immunity Act provides in relevant part, "Except as provided in * * * the Court of Claims Act * * * , the State of Illinois shall not be made a defendant or party in any court." 745 ILCS 5/1 (West 2022).

¶ 19 The Court of Claims Act (705 ILCS 505/1 *et seq.* (West 2022)), in turn, creates a forum for actions against the State. *Parmar*, 2018 IL 122265, ¶ 20. With

certain exceptions not relevant here, the Court of Claims "shall have exclusive jurisdiction to hear and determine * * * [a]ll claims against the State founded upon any law of the State of Illinois." 705 ILCS 505/8(a) (West 2022). The Court of Claims is not a court within the meaning of the judicial article of our state constitution. *See* Ill. Const. 1970, art. VI. Rather, the General Assembly established the Court of Claims to receive and resolve claims against the State. *People v. Philip Morris, Inc.*, 198 Ill. 2d 87, 97 (2001).

¶ 20 Plaintiffs' complaint does not purport to assert a claim against the State as such. Rather, they filed their complaint against Andrea Lynn Chasteen in her official capacity as the clerk of the Will County circuit court and as a representative of all clerks of the circuit courts of all counties within the state. As the complaint states that each defendant is sued in his or her "official capacity," the suit is against each official's office and is the same as a suit against the State. *Parmar*, 2018 IL 122265, 1 21; *see Drury v. County of McLean*, 89 Ill. 2d 417, 424 (1982) (clerks of circuit courts are not county officials but are nonjudicial members of the judicial branch of state government). Thus, sovereign immunity would appear to bar the entire class action from the circuit court.

¶ 21 However, in determining whether sovereign immunity applies to a particular action, substance takes precedence over form, and a plaintiff may obtain relief in the circuit court even when the named defendant is a state board, agency, or department. *Leetaru*, 2015 IL 117485, ¶ 44. This court has held consistently that deciding whether an action is one against the State depends on the issues involved and the relief sought and not simply the formal

identification of the parties. *Parmar*, 2018 IL 122265, ¶ 22; *Leetaru*, 2015 IL 117485, ¶¶ 44-45; *Healy v. Vaupel*, 133 Ill. 2d 295, 308 (1990). Where, for example, a plaintiff alleges that the State officer's conduct violates statutory or constitutional law or exceeds his or her authority, such conduct is not regarded as the conduct of the State. The underlying principle is that conduct taken by a State officer without legal authority strips the officer of his or her official status. *Parmar*, 2018 IL 122265, ¶ 22 (citing *Leetaru*, 2015 IL 117485, ¶¶ 45-46).

¶ 22 Of course, not every legal wrong committed by an officer of the State will trigger this exception. For example, where the challenged conduct amounts to simple breach of contract and nothing more, the exception does not apply. *Leetaru*, 2015 IL 117485, ¶ 47. The exception is aimed at situations where the official is not doing the business that the sovereign has empowered him or her to do or is doing it in a way that the law forbids. *Id.* The purpose of the doctrine of sovereign immunity, after all, is to protect the State from interference in its performance of government functions and preserve its control over State coffers. *Id.* The State cannot justifiably claim interference with its functions when the act complained of is unauthorized or illegal. *Id.*

¶ 23 Thus, a complaint seeking to prospectively enjoin unlawful conduct may be brought in the circuit court without offending sovereign immunity principles. *Id.* ¶ 48; *see PHL, Inc. v. Pullman Bank & Trust Co.*, 216 Ill. 2d 250, 261 (2005) (when a State officer's conduct violates the constitution, he may be "'restrained by proper action instituted by a citizen'" (quoting *Schwing v. Miles*, 367 Ill. 436, 442 (1937))).

¶ 24 This exception to sovereign immunity is often referred to as the "officer suit exception." *Parmar*, 2018 IL 122265, ¶ 22; *see PHL, Inc.*, 216 Ill. 2d at 261 (when a State officer undertakes an action without legal authority, the action strips the State officer of his official status, and his conduct is not that of the State, nor is the action against him considered an action against the State, so sovereign immunity does not bar an action in the circuit court). The exception has also been called the "prospective injunctive relief exception." *C.J. v. Department of Human Services*, 331 Ill. App. 3d 871, 876 (2002). This moniker captures the essential element of the exception: forward-looking relief. *See Green v. State*, 2023 IL App (1st) 220245, ¶ 22. The Appellate Court, First District, has described the exception this way: "Where the plaintiff is not attempting to enforce a present claim against the State but rather seeks to enjoin the defendant from taking actions in excess of his delegated authority, and in violation of the plaintiff's protectable legal interests, the suit does not contravene the immunity prohibition." *Grey v. Hasbrouck*, 2015 IL App (1st) 130267, ¶ 25.

¶ 25 In this action, the complaint contained claims for both (1) prospective injunctive relief to enjoin defendants from enforcing unconstitutional statutes *and* (2) a present claim for refunds of the unconstitutional fees. Plaintiffs argue the officer-suit exception applies to both claims, such that sovereign immunity does not bar the circuit court from ordering both the injunction and the refunds. Plaintiffs' central argument is that the refund claim is inextricably tied to the claim for injunctive relief so that the circuit court must decide both.

¶ 26 Defendants respond that the officer-suit exception applied only to the claim for injunctive relief and, once the *Walker II* court declared the statutes unconstitutional and affirmed the injunction against their enforcement, the officer-suit exception ceased to apply. Defendants contend plaintiffs' pending claim for refunds must be severed from the claim for injunctive relief because the refund claim is a present claim against the State for an award to redress a past wrong. This court's decisions in *Leetaru* and *Parmar* support defendants' position.

¶ 27 B. *Leetaru*

¶ 28 In *Leetaru*, the plaintiff sued the Board of Trustees of the University of Illinois and one of the university's associate vice chancellors. The plaintiff sought to enjoin the defendants from proceeding with an investigation into the plaintiff's research as a graduate student. The plaintiff conceded that the defendants were authorized to investigate research misconduct but alleged their conduct did not comply with the university's rules and regulations governing student discipline. This court held that principles of sovereign immunity did not divest the circuit court of jurisdiction over the complaint. *Leetaru*, 2015 IL 117485, ¶ 49. We explained, "[b]ecause sovereign immunity affords no protection when agents of the State have acted in violation of statutory or constitutional law or in excess of their authority, which is precisely what [the plaintiff] has alleged, Illinois precedent compels the conclusion that he was entitled to proceed in circuit court." *Id.* ¶ 50. We emphasized that the plaintiff did "not seek redress for some past wrong" but sought "only to prohibit future conduct (proceeding with the disciplinary process) undertaken

by agents of the State in violation of statutory or constitutional law or in excess of their authority." *Id.* ¶ 51. We held that, because the requested relief was to prohibit future conduct, the claim was not against the State at all and did not threaten the State's sovereign immunity. *Id.*

¶ 29 C. *Parmar*

¶ 30 In contrast to *Leetaru*, the plaintiff in *Parmar* filed a complaint seeking to enforce a present claim. The complaint against the attorney general and the treasurer challenged the retroactive application and constitutionality of an amendment to the Illinois Estate and Generation-Skipping Transfer Tax Act (Estate Tax Act) (35 ILCS 405/1 *et seq.* (West 2014)) and sought a refund of all money paid to the treasurer pursuant to the statute. *Parmar*, 2018 IL 122265, ¶ 1. The defendants did not act outside or beyond their statutory authority because the Estate Tax Act, on its face, applied to the decedent due to her date of death. And the attorney general was responsible for administering and enforcing the statute while the treasurer was responsible for receiving and refunding money collected pursuant to it. *Id.* ¶ 25.

¶ 31 The plaintiff alleged that the defendants' conduct was unlawful because the retroactive application of the amended statute violated the Statute on Statutes (5 ILCS 70/4 (West 2014)), the due process and takings clauses of the Illinois and United States Constitutions (U.S. Const., amends. V, XIV; Ill. Const. 1970, art. I, §§ 2, 15), and the *ex post facto* clause of the Illinois Constitution (Ill. Const. 1970, art. I, § 16). *Parmar*, 2018 IL 122265, ¶ 8. The plaintiff further alleged that the amendment was adopted in violation

of the three readings clause of the Illinois Constitution (Ill. Const. 1970, art. IV, § 8(d)) and that the vote on the amendment was invalid because the General Assembly was given inaccurate information about the estate tax scheme. *Parmar*, 2018 IL 122265, ¶ 8.

¶ 32 This court held the officer-suit exception to sovereign immunity did not apply because the plaintiff sought damages, including a refund of an alleged overpayment of taxes. *Id.* ¶ 26. We restated the rule that the officer-suit exception applies when a plaintiff seeks to "enjoin future conduct" that is alleged to be contrary to law, not to "a complaint seeking damages for a past wrong." *Id.*

¶ 33 Unlike the plaintiff in *Leetaru* who sought to enjoin future conduct, the plaintiff in *Parmar* sought damages in the form of a refund of his payments made under the Estate Tax Act, together with interest and loss of use, for a past wrong. We observed that "*Leetaru* makes plain that a complaint seeking damages for a past wrong does not fall within the officer[-]suit exception to sovereign immunity." *Id.* (citing *Leetaru*, 2015 IL 117485, ¶ 51). Although the complaint alleged the amended statute was unconstitutional (*id.* ¶ 8), the officer-suit exception did not apply because the requested relief was for damages, and sovereign immunity barred the circuit court from adjudicating the claim (*id.* ¶¶ 26-27).

¶ 34 D. The Refund Claim

¶ 35 Contrary to plaintiffs' assertion, the issues related to their refund claim and the relief they request make this case more like *Parmar* than *Leetaru*. Plaintiffs concede that section 15-1504.1 of the Code,

on its face, applied to their mortgage foreclosure complaints and that defendants were responsible for administering and enforcing the statute by imposing the add-on filing fees. *See id.* ¶ 25. Like the plaintiff in *Parmar*, plaintiffs did not allege that defendants engaged in any conduct that was outside of or contrary to their statutory authority. Instead, plaintiffs alleged that the imposition of the fees was unlawful because defendants were acting pursuant to an unconstitutional statute. *Id.* ¶ 26.

¶ 36 Plaintiffs asked the circuit court to enjoin defendants from imposing the add-on fees in new mortgage foreclosure actions, which is the type of prospective injunctive relief the circuit court may order under the officer-suit exception. Indeed, the circuit court granted plaintiffs injunctive relief, and this court affirmed the judgment in *Walker II*. Therefore, plaintiffs' claim for prospective relief was not pending when this court remanded the matter to the circuit court for further proceedings.

¶ 37 On remand, plaintiffs, like the plaintiff in *Parmar*, sought a refund of money paid pursuant to an unconstitutional statute. The return of the fees would necessarily draw from state funds because defendants were statutorily obligated to deposit 98% of the collected fees with the treasurer, while retaining 2% to cover the administrative costs of collecting the fees. *See* 735 ILCS 5/15-1504.1(a) (2012). Because plaintiffs' claim on remand was for monetary relief to redress a past wrong, sovereign immunity barred the circuit court from adjudicating the refund claim, and the appellate court erred in holding that the officer-suit exception to sovereign immunity applies. *See Parmar*,

2018 IL 122265, ¶ 26 (citing *Leetaru*, 2015 IL 117485, ¶ 51).

¶ 38 The appellate court concluded "the defendant circuit court clerks collected the filing fees from the plaintiffs in violation of the constitution and absent legal authority to do so; accordingly, their actions were not considered as actions by the State." 2023 IL App (3d) 220387, ¶ 24. This statement is accurate to the extent the officer-suit exception applies to a claim to prospectively enjoin unlawful conduct and explains why sovereign immunity did not bar the circuit court from enjoining the enforcement of the unconstitutional fee statute. *See Parmar*, 2018 IL 122265, ¶ 22. But the appellate court overlooked the distinction between claims for forward-looking relief and for a present claim to redress a past wrong. A complaint that pairs the two types of claims based on the same conduct does not trigger the officer-suit exception for all the claims.

¶ 39 In fact, sovereign immunity may even bar a claim for injunctive relief if the plaintiff is attempting to enforce a present claim against the State. In *Ellis v. Board of Governors of State Colleges & Universities*, 102 Ill. 2d 387, 394 (1984), the plaintiff asserted that, because her action was based on an alleged violation of a statute and because she was asking for injunctive relief (in addition to money damages), her action was not within the exclusive jurisdiction of the Court of Claims but could be brought in the circuit court. This court held that, despite the plaintiff's attempt to frame her requested relief as an injunction, both claims were intended to enforce a present claim of unlawful constructive discharge and the officer-suit exception did not apply to either claim. *Id.* at 395.

¶ 40 In a related argument, plaintiffs assert the circuit court has exclusive jurisdiction to resolve "all aspects of litigation which address the constitutionality of legislation, including ordering a complete and effective remedy." However, the sovereign immunity doctrine is intended to protect the State from interference in its performance of government functions and preserve its control over State coffers, and ordering the circuit court to adjudicate a present claim to redress a past wrong undermines that goal. *Leetaru*, 2015 IL 117485, ¶ 47. Moreover, the courts did address the constitutionality of the $50 filing fee, which ceased to be at issue after the *Walker II* court ordered the remand. The dispositive question is whether the circuit court had jurisdiction over the separate refund claim that was pending on remand, and the refund claim is the type of claim to be addressed by the Court of Claims.

¶ 41 Plaintiffs argue that, even if sovereign immunity bars a claim for damages, they are, in fact, seeking restitution because "'[d]amages differs from restitution in that damages is measured by the plaintiff's loss; restitution is measured by the defendant's unjust gain.'" *Raintree Homes, Inc. v. Village of Long Grove*, 209 Ill. 2d 248, 257 (2004) (quoting 1 Dan B. Dobbs, Remedies § 3.1, at 278 (2d ed. 1993)). Plaintiffs assert that restitution claims and damages claims are different for purposes of sovereign immunity. At this point we note the parties have used various terms like disgorgement, refund, and compensation to describe the requested relief. But the crucial lesson of our sovereign immunity jurisprudence is that the application of the officer-suit exception turns

on whether the requested relief is prospective, even if it involves money.

¶ 42 This point is illustrated by our decisions in *City of Springfield v. Allphin*, 74 Ill. 2d 117 (1978) (*Allphin I*), and *City of Springfield v. Allphin*, 82 Ill. 2d 571 (1980) (*Allphin II*), where the officer-suit exception authorized the circuit court to award monetary compensation in the form of injunctive relief rather than a refund. In *Allphin I*, the parties disputed the effective date of a statute that reduced the State's fee for the collection of certain municipal taxes. *Allphin II*, 82 Ill. 2d at 573. This court held that the State, by collecting the greater fee during a period when the lesser fee was due, had retained funds that should have been distributed to the plaintiff municipalities under the statute. *Id.* at 573-74. The *Allphin I* court remanded the cause to the circuit court with directions to fashion injunctive relief designed to halt the withholding of additional fees until the amount overwithheld had been compensated for. *Id.* at 574.

¶ 43 More specifically, the *Allphin I* court ordered the circuit court to grant the plaintiffs leave to amend their complaint to define more precisely the tax revenue from which the plaintiffs could obtain reimbursement. "The net effect of such relief should be to reduce the amount of such taxes withheld by the State until the earlier overwithholding is compensated for." *Allphin I*, 74 Ill. 2d at 131. "Having determined that the defendant withheld an inappropriate amount of tax, in violation of the law, the court fashioned a remedy to correct that violation by allowing the defendant to be restrained from with-

holding future taxes until the amount overwithheld had been compensated for." *Allphin II*, 82 Ill. 2d at 580.

¶ 44 In other words, the State officers were enjoined from collecting future taxes until they credited the plaintiffs for their overpayments. The circuit court had jurisdiction under the officer-suit exception to prospectively enjoin the unlawful conduct without offending sovereign immunity principles. Ultimately, the legislature appropriated funds for the payment of the amounts overwithheld, and those payments were not at issue in *Allphin II*. *Id.* at 574.

¶ 45 The *Allphin I* court endorsed injunctive relief to credit the plaintiffs for their overpayments and to facilitate reimbursement without ordering a refund. By contrast, plaintiffs have specifically requested a refund, not prospective injunctive relief, which is a crucial distinction for purposes of the officer-suit exception to sovereign immunity.

¶ 46 Plaintiffs also assert that, if their refund claim turns out to be time-barred in the Court of Claims, the State's retention of the unconstitutionally taken funds would violate the takings clause of the United States Constitution and the Illinois Constitution. But adopting plaintiffs' position that a procedural bar to recovery in the Court of Claims is tantamount to a takings clause violation would negate the procedural requirements that the General Assembly enacted to prescribe the court's authority. The refunds qualify as the type of relief the Court of Claims may award, but we need not decide and do not consider whether plaintiffs are procedurally barred from pursuing their refund claim in the Court of Claims.

¶ 47 Finally, plaintiffs argue the *Walker II* court, when remanding the cause, ordered the circuit court to award the refunds. Plaintiffs misinterpret the court's broad directive "for further proceedings consistent with this opinion." Dismissing the refund claim based on sovereign immunity is consistent with *Walker II*, as well as *Parmar* and *Leetaru*.

¶ 48 III. Conclusion

¶ 49 The Will County circuit court had jurisdiction under the officer-suit exception to sovereign immunity to enjoin the prospective enforcement of the fee statute as facially unconstitutional. But once the courts declared the unconstitutionality of the fee statute and ordered the permanent injunction, plaintiffs' claim for a monetary award to redress a past wrong was the type of retrospective claim that is the province of the Court of Claims, not the circuit court. We reverse the appellate court's judgment and affirm the circuit court's judgment of dismissal, accordingly.

¶ 50 Appellate court judgment reversed.

¶ 51 Circuit court judgment affirmed.

¶ 52 JUSTICE NEVILLE took no part in the consideration or decision of this case.

OPINION, APPELLATE COURT OF ILLINOIS THIRD DISTRICT (NOVEMBER 15, 2023)

IN THE APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2023

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; CANDICE ADAMS, Clerk of the Circuit Court of Du Page County; ERIN CARTWRIGHT WEINSTEIN, Clerk of the Circuit Court of Lake County; THOMAS A. KLEIN, Clerk of the Circuit Court of Winnebago County; MATTHEW PROCHASKA, Clerk of the Circuit Court of Kendall County; THERESA E. BARREIRO, Clerk of the Circuit Court of Kane County; LORI GESCHWANDNER, Clerk of the Circuit Court of Adams County; PATTY HIHER, Clerk of the Circuit Court of Carroll County; SUSAN W. McGRATH, Clerk of the Circuit Court of Champaign County,

AMI L. SHAW, Clerk of the Circuit Court of Clark County; ANGELA REINOEHL, Clerk of the Circuit Court of Crawford County; JOHN NIEMERG, Clerk of the Circuit Court of Effingham County; KAMALEN JOHNSON ANDERSON, Clerk of the Circuit Court of Ford County; LEANN DIXON, Clerk of the Circuit Court of Livingston County; KELLY ELIAS, Clerk of the Circuit Court of Logan County; LISA FALLON, Clerk of the Circuit Court of Monroe County; CHRISTA S. HELMUTH, Clerk of the Circuit Court of Livingston County; KIMBERLY A. STAHL, Clerk of the Circuit Court of Ogle County; and SETH E. FLOYD, Clerk of the Circuit Court of Piatt County,

Defendants-Appellees.

Appeal No. 3-22-0387

Circuit No. 12-CH-5275

Appeal from the Circuit Court of the
12th Judicial Circuit, Will County, Illinois.
The Honorable John C. Anderson, Judge, presiding.

Before: HOLDRIDGE, Presiding Justice,
McDADE and PETERSON Justices.

JUSTICE McDADE delivered the
judgment of the court, with opinion.

Presiding Justice Holdridge and Justice Peterson
concurred in the judgment and opinion.

OPINION

¶ 1 The plaintiffs in this case comprise a class of individuals who, in connection with the filing of their

mortgage foreclosure complaints in the circuit courts, paid filing fees mandated by section 15-1504.1 of the Code of Civil Procedure (Code) (735 ILCS 5/15-1504.1 (West 2012)). The defendants are a class of all the Illinois circuit court clerks. The class action alleged, among other things, that section 15-1504.1 of the Code was facially unconstitutional. The supreme court agreed, thereby striking down section 15-1504.1, as well as two additional statutes that created programs funded by the filing fees (20 ILCS 3805/7.30, 7.31 (West 2012)). *Walker v. Chasteen*, 2021 IL 126086, ¶ 47 (*Walker II*).

¶ 2 On remand from the supreme court, the circuit court dismissed the remainder of the plaintiffs' action, which sought refunds of the filing fees paid by the plaintiffs. The circuit court ruled that it lacked jurisdiction to grant the plaintiffs' requested relief, as the claim was against the State and therefore had to be brought in the Illinois Court of Claims. On appeal, the plaintiffs alleged that the circuit court erred when it dismissed the remainder of their action. We reverse and remand for further proceedings.

¶ 3 I. Background

¶ 4 The facts of this case have been set out in previous appeals; most recently, in *Walker II*, 2021 IL 126086. We include only those facts necessary for the disposition of this appeal.

¶ 5 The original plaintiff in this action, Reuben D. Walker, filed a mortgage foreclosure complaint in the Will County Circuit Court in April 2012. At the time he filed his complaint, Walker paid a $50 filing fee mandated by section 15-1504.1 of the Code. Pursuant to sections 7.30 and 7.31 of the Illinois

Housing Development Act (Act) (20 ILCS 3805/7.30, 7.31 (West 2012)), the fees collected in connection with the filing of mortgage foreclosure complaints were earmarked to fund a social welfare program.

¶ 6 In October 2012, Walker filed a putative class action complaint against the Will County Circuit Court, which, in part, alleged that section 15-1504.1 was unconstitutional. The circuit court certified the class, which included all individuals who paid the $50 filing fee up to and including Walker. The court also certified a class of defendants, which consisted of all the Illinois circuit court clerks in their official capacities. The State was later allowed to intervene.

¶ 7 In November 2013, the circuit court granted partial summary judgment in favor of the plaintiffs and denied the State's motion to dismiss. More specifically, the court ruled that (1) the circuit court clerks fell within the "fee officer" prohibition in article VI, section 14, of the Illinois Constitution (Ill. Const. 1970, art. VI, § 14), and (2) the provision in section 15-1504.1 authorizing circuit court clerks to retain 2% of the $50 filing fees for administrative expenses created an unconstitutional fee office. Accordingly, the court struck down section 15-1504.1 as facially unconstitutional.

¶ 8 An appeal was taken to our supreme court. In *Walker v. McGuire*, 2015 IL 117138, ¶ 30 (*Walker I*), our supreme court disagreed with both of the circuit court's rulings. The case was remanded for further proceedings. *Id.* ¶ 44.

¶ 9 In April 2018, the plaintiffs filed an amended complaint containing four counts. Count I alleged that section 15-1504.1 of the Code and sections 7.30 and 7.31

of the Act violated separation-of-powers principles. Count II alleged that the statutes violated equal protection, due process, and uniformity-of-burden principles. Count III alleged that the statutes unconstitutionally provided for the imposition of a filing fee for a noncourt related purpose. Count IV requested the creation of a protest fund to contain all fees collected or to be collected pursuant to section 15-1504.1 until the conclusion of the plaintiffs' case. Counts I, II, and III requested the same relief: (1) a declaratory judgment that the statutes were unconstitutional, (2) "[a] declaratory judgment that any expenditures of State funds collected pursuant to this statute must be returned to Plaintiffs," (3) temporary, preliminary, and permanent injunctions "enjoining Defendants from disbursing fees collected pursuant to [section 15-1504.1], and (4) "[a]n order to return all fees collected pursuant to [section 15-1504.1] to Plaintiffs."

¶ 10 The circuit court granted partial summary judgment in favor of the plaintiffs, striking down all three statutes as violative of the equal protection, due process, and uniformity clauses of the Illinois Constitution (Ill. Const. 1970, art. I, § 2; Ill. Const. 1970, art. IX, § 2). The court also found the statutes violated the free access clause of the Illinois Constitution (Ill. Const. 1970, art. I, § 12). The court stayed its permanent injunction, which prohibited the collection of the fees and the funding the social welfare program, so our supreme court could review the case.

¶ 11 In June 2021, our supreme court addressed the appeal in *Walker II*. First, the court held that the filing fees were paid by the plaintiffs under duress such that the voluntary payment doctrine did not invalidate the plaintiffs' cause of action. *Walker II*, 2021

IL 126086, ¶ 28. Second, the court held that section 15-1504.1 of the Code and sections 7.30 and 7.31 of the Act violated the free access clause of the Illinois Constitution. *Id.* ¶¶ 47-48. The court then remanded the case for further proceedings. *Id.* ¶ 49.

¶ 12 After remand, discovery proceeded on the issue of restitution. During that time, numerous motions were filed, including a motion and supplemental motion to dismiss pursuant to section 2-619 of the Code (735 ILCS 5/2-619 (West 2020)) filed by Will County Circuit Court Clerk Andrea Lynn Chasteen.

¶ 13 In August 2022, the circuit court issued a written order dismissing the case. The court ruled that it lacked jurisdiction over the plaintiffs' restitution claims, as those claims had to be brought in the court of claims because they were directed at recovering money from the State. The plaintiffs appealed.

¶ 14 **II. Analysis**

¶ 15 While the plaintiffs claim there are five issues on appeal, there is only one—whether the circuit court erred when it granted Chasteen's motion to dismiss.

¶ 16 "The purpose of a section 2-619 motion to dismiss is to dispose of issues of law and easily proved issues of fact at the outset of litigation." *Van Meter v. Darien Park District*, 207 Ill. 2d 359, 367 (2003). Section 2-619(a)(9) permits a motion to dismiss that alleges "the claim asserted against defendant is barred by other affirmative matter avoiding the legal effect of or defeating the claim." 735 ILCS 5/2-619(a)(9) (West 2020). When ruling on a section 2-619 motion, a court must construe all pleadings and

supporting documents in the light most favorable to the nonmoving party. *Van Meter*, 207 Ill. 2d at 367-68. We review the granting of a motion to dismiss *de novo*. *Parmar v. Madigan*, 2018 IL 122265, ¶ 17.

¶ 17 The primary question we must answer on appeal is whether jurisdiction over the remainder of the plaintiffs' case lies with the circuit court or the court of claims. Here, the plaintiffs filed a declaratory judgment action seeking a ruling that section 15-1504.1 of the Code and sections 7.30 and 7.31 of the Act were unconstitutional. "Actions under the declaratory judgments statute [citation] are neither legal nor equitable in nature. Rather, they are *sui generis* and the judgment, decree or order takes its character from the nature of the relief declared." *Continental Casualty Co. v. Commonwealth Edison Co.*, 286 Ill. App. 3d 572, 578 (1997).

¶ 18 The only issue remaining from the plaintiffs' action is their request for restitution—namely, refunds of the fees they paid. Our supreme court has noted that restitution "may be available in both cases at law and in equity." *Raintree Homes, Inc. v. Village of Long Grove*, 209 Ill. 2d 248, 257 (2004). Notably, "[t]he law of restitution is not easily characterized as legal or equitable, because it acquired its modern contours as the result of an explicit amalgamation of rights and remedies drawn from both systems." Restatement (Third) of Restitution and Unjust Enrichment § 4 cmt. b (2011); *see Great-West Life & Annuity Insurance Co. v. Knudson*, 534 U.S. 204, 212-15 (2002) (discussing the distinction between restitution as a legal remedy and restitution as an equitable remedy). The complex

analysis[1] needed to determine whether the plaintiffs' restitution request in this case is legal or equitable is not necessary, however. Either way, the court of claims would not have jurisdiction over the plaintiffs' restitution request.

¶ 19 While the State possesses immunity from being sued (745 ILCS 5/1 (West 2020)), the legislature has authorized certain claims to be brought against the State in the court of claims (705 ILCS 505/8 (West 2020)). In relevant part, the court of claims has jurisdiction over "[a]ll claims against the State founded upon any law of the State of Illinois." *Id.* § 8(a). Constitutional questions, which present legal questions (*Hooker v. Illinois State Board of Elections*, 2016 IL 121077, ¶ 21), cannot be heard by the court of claims. *See*, *e.g.*, *Bennett v. State*, 72 Ill. Ct. Cl. 141, 142 (2019). Additionally, the court of claims does not possess the authority to grant equitable remedies. *Lowery v. State*, 72 Ill. Ct. Cl. 102, 104 (2020). Thus, no matter whether the plaintiffs' restitution request is legal or equitable, the court of claims was—and is—not the proper venue for any part of the plaintiffs' action. Therefore, the circuit court erred when it so held.

¶ 20 We note that an issue was raised below regarding whether sovereign immunity prohibited the plaintiffs from maintaining this action in the circuit court. The issue was addressed by both parties but not decided by the circuit court. Because that issue will

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[1] The Restatement (Third) of Restitution and Unjust Enrichment § 4 (2011), contains an excellent, thorough discussion of why it is so difficult to determine whether a request for restitution is legal or equitable.

arise again on remand and is a question of law that both parties have briefed on appeal, we choose to address the issue now. *Village of Spring Grove v. Doss*, 202 Ill. App. 3d 858, 862 (1990); *see Bell v. Louisville & Nashville R.R. Co.*, 106 Ill. 2d 135, 142 (1985).

¶ 21 "Sovereign immunity is a common-law doctrine that bars lawsuits against the government unless the government consents to be sued." *Jackson v. Alverez*, 358 Ill. App. 3d 555, 559 (2005). Article XIII, section 4, of the Illinois Constitution (Ill. Const. 1970, art. XIII, § 4) abolished sovereign immunity but authorized the legislature to reinstate it by law. It did so, with limited exceptions that include the court of claims, in section 1 of the State Lawsuit Immunity Act (745 ILCS 5/1 (2020)).

¶ 22 "A suit against a State official in his or her official capacity is a suit against the official's office and is therefore no different than a suit against the State." *Parmar*, 2018 IL 122265, ¶ 21. In this case, the plaintiffs sued the defendant circuit court clerks in their official capacities and do not dispute that they are State officers. Presumably, then, sovereign immunity would apply in this case.

¶ 23 However, under the "officer suit exception," sovereign immunity will not apply if "the State officer's conduct violates statutory or constitutional law or is in excess of his or her authority, [because] such conduct is not regarded as the conduct of the State." *Id.* ¶ 22; *see PHL, Inc. v. Pullman Bank & Trust Co.*, 216 Ill. 2d 250, 261 (2005) (holding that "when an action of a state officer is undertaken without legal authority, such an action strips a State officer of his official status * * * [and] his conduct is not then regarded as the conduct of the State, nor is

the action against him considered an action against the State" (internal quotation marks omitted)).

¶ 24 "When a statute is found to be facially unconstitutional in Illinois, it is said to be void *ab initio*; that is, it is as if the law had never been passed * * * ." *In re N.G.*, 2018 IL 121939, ¶ 50. Here, our supreme court held that the relevant statutes were facially unconstitutional. *Walker II*, 2021 IL 126086, ¶¶ 47-48. Thus, the defendant circuit court clerks collected the filing fees from the plaintiffs in violation of the constitution and absent legal authority to do so; accordingly, their actions were not considered as actions by the State. *See Parmar*, 2018 IL 122265, ¶ 22; *PHL*, 216 Ill. 2d at 261.

¶ 25 Importantly, this exception to sovereign immunity does not apply when the complaint seeks only damages for a past wrong. *Parmar*, 2018 IL 122265, ¶ 26. However, the plaintiffs' complaint not only sought restitution rather than damages (*see Raintree*, 209 Ill. 2d at 257-58 (discussing the difference between damages and restitution)), but also sought injunctive relief to prohibit certain future conduct. Under these circumstances, we hold that the officer suit exception applies and sovereign immunity neither protects the defendants in this case nor robs the circuit court of jurisdiction to resolve the restitution issue.

¶ 26 III. Conclusion

¶ 27 The judgment of the circuit court of Will County is reversed, and the cause is remanded for further proceedings on the plaintiffs' complaint.

¶ 28 Reversed and remanded.

ORDER, CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT (AUGUST 30, 2022)

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT WILL COUNTY, 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,

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.

Case No. 12 CH 5275

Before: John C. ANDERSON, Circuit Judge.

ORDER

In March 2020, this Court declared section 15-1504.1 of the Code of Civil Procedure (735 ILCS 5/15-1504.1), and also sections 7.30 and 7.31 of the Illinois Housing Development Act (20 ILCS 3805/7.30 and 20

ILCS 3805/7.31), unconstitutional. The Illinois Supreme Court affirmed. *Walker v. Chasteen*, 2021 IL 126086.

This Court's prior orders did not resolve issues of damages sought in the complaint (specifically, restitution relating to the plaintiff class members' payment of unconstitutional court fees).

Pending before the Court are three motions: (1) Will County's supplemental motion to dismiss; (2) Cook County's motion for summary judgment on damages; (3) the Illinois Attorney General's motion (on behalf of various circuit clerks) for judgment on the pleadings. Even though the three motions are advanced under three different procedural vehicles, they all make the same basic argument. Specifically, the governmental entities all contend that the question of restitution must be litigated in the Court of Claims.

The Court of Claims Act (705 ILCS 505/1 *et seq.)* creates a forum for actions against the State. *Healy v. Vaupel*, 133 Ill. 2d 295, 307 (1990). That statute, with some exceptions not relevant here, provides that the Illinois Court of Claims "shall have exclusive jurisdiction to hear and determine * * * [a]ll claims against the State founded upon any law of the State of Illinois." 705 ILCS 505/8(a).

The circuit clerks are nonjudical members of the judicial branch of state government. *See Drury v. McLean Cty.*, 89 Ill. 2d 417 (1982). In other words, the defendant class members are state officers. However, the determination of whether an action is against the State "does not depend on the identity of the formal parties, but rather on the issues raised and the relief sought." *Senn Park Nursing Center v. Miller*, 104 Ill. 2d 169, 186 (1984). If a judgment for plaintiff could

operate to control the actions of the State or subject it to liability, the action is effectively against the State and is barred by sovereign immunity. *Currie v. Lao*, 148 Ill. 2d 151, 158 (1992). The justification advanced in support of the doctrine is that it "protects the State from interference in its performance of the functions of government and preserves its control over State coffers." *S.J. Groves & Sons Co. v. State of Illinois*, 93 Ill. 2d 397, 401 (1982), *overruled on other grounds, Rossetti Contracting Co. v. Ct. of Claims*, 109 Ill. 2d 72, 79 (1985). Here, the Amended Complaint seeks "[a]n order to return all fees collected pursuant to this statute to Plaintiffs." The Court must conclude that the remaining aspects of the case involve a request for money damages, thereby implicating sovereign immunity.

Plaintiffs suggest that the Court of Claims cannot hear the case because their restitution claim is equitable in nature. Plaintiff's might be right regarding their claim being based in equity. As the Illinois Supreme Court stated in *Raintree Homes, Inc. v. Vill. of Long Grove*, 209 Ill. 2d 248, 257 (2004):

> 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, "[t]he concepts of restitution and damages are quite distinct, but sometimes courts use the term damages when they mean restitution." As Professor Dobbs states in his 1993 revision of his Treatise on Remedies:
>
> > "The damages award is not the only money award courts make. Courts 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 measured by the plaintiff's loss; restitution is measured by the defendant's unjust gain."

(Internal citations omitted.)

However, even if the restitution sought here should be viewed as a purely equitable remedy, the Court of Claims' jurisdiction is not limited to monetary "damages at law" claims. It has authority to grant equitable relief. *See Management Ass'n of Illinois, Inc. v. Board of Regents of Northern Illinois University*, 248 Ill.App.3d 599, 610 (1993).

For the reasons stated in the governmental entities' briefs, the Court agrees that the Court of Claims Act, and the Illinois Supreme Court's ruling in *Parmar v. Madigan*, 2018 IL 122265, and that fact that the last remaining issue involves a monetary claim against the State, the Court must agree that it lacks jurisdiction to proceed.

Will County's supplemental motion to dismiss is granted to the extent it seeks dismissal for lack of jurisdiction over plaintiff's restitution claims. This order does not impact the permanent injunction previously entered by the Court; that order was entered with jurisdiction and remains enforceable. However, the Court lacks jurisdiction to provide any relief to plaintiffs relative to their claim for restitution. Accordingly, the prayers for restitution are stricken. Class plaintiffs may pursue their request for restitution in the Court of Claims. Cook County's motion for summary judgment, and the Illinois Attorney General's motion for judgment on the pleadings, are denied as moot. This order

resolves all matters pending before this Court. Clerk to notify.

ENTERED:

/s/ John C. Anderson
Circuit Judge

Dated: August 30, 2022

OPINION, SUPREME COURT OF THE STATE OF ILLINOIS (JUNE 17, 2021)

IN THE SUPREME COURT OF THE STATE OF ILLINOIS

REUBEN D. WALKER, ET AL.,

Appellees,

v.

ANDREA LYNN CHASTEEN, The People of the State of Illinois ex rel. KWAME RAOUL, Attorney General of Illinois, ET AL.,

Appellants.

Docket Nos. 126086, 126087, 126088

Before: Anne M. BURKE, Chief Justice, CARTER, OVERSTREET, GARMAN, Michael J. BURKE, OVERSTREET, THEIS and NEVILLE, Justices.

OPINION

¶ 1 In this direct appeal, we address the constitutionality of section 15-1504.1 of the Code of Civil Procedure (Code) (735 ILCS 5/15-1504.1 (West 2012)), as well as sections 7.30 and 7.31 of the Illinois Housing Development Act (Act) (20 ILCS 3805/7.30, 7.31 (West 2012)). Section 15-1504.1 of the Code created a $50 filing fee for residential mortgage fore-

closure cases. 735 ILCS 5/15-1504.1 (West 2012). Sections 7.30 and 7.31 of the Act created programs funded by the fee created in section 15-1504.1. 20 ILCS 3805/7.30, 7.31 (West 2012). The circuit court of Will County determined that these statutes violate the free access, due process, equal protection, and uniformity clauses of the Illinois Constitution of 1970. III. Const. 1970, art. I, §§ 2, 12, art. IX, § 2. For the following reasons, we affirm the order of the circuit court and remand for further proceedings.

¶ 2 BACKGROUND

¶ 3 This case involves two underlying residential mortgage foreclosure lawsuits. In April 2012, plaintiff Reuben D. Walker filed a mortgage foreclosure complaint in Will County. In August 2015, plaintiff M. Steven Diamond filed a mortgage foreclosure complaint in Cook County. In filing those cases, each plaintiff paid a $50 "add on" filing fee under section 15-1504.1 of the Code.

¶ 4 In October 2012, Walker filed a putative class action complaint against the clerk of the circuit court of Will County, challenging, *inter alia*, the constitutionality of section 15-1504.1. The trial court certified a class of plaintiffs, consisting of all individuals and entities who had paid the $50 filing fee up to the time Walker had filed his mortgage foreclosure action, and a class of defendants consisting of all circuit court clerks in Illinois. The State, through the Attorney General, was allowed to intervene in the matter. *See* Ill. S. Ct. R. 19 (eff. Sept. 1,2006); 735 ILCS 5/2-408(c) (West 2012).

¶ 5 In November 2013, the trial court granted partial summary judgment in favor of Walker, finding

that circuit court clerks fall within the judicial fee officer prohibition in article VI, section 14, of the Illinois Constitution (Ill. Const. 1970, art. VI, § 14) and that the provision in section 15-1504.1 authorizing 2% of the filing fee to be retained by the clerk for administrative expenses creates an impermissible fee office (735 ILCS 5/15-1504.1 (West 2012)). The trial court declared the statute unconstitutional on its face.

¶ 6 On September 24, 2015, this court reversed and remanded the case, holding that circuit court clerks did not fall within the state constitutional provision prohibiting fee officers in the judicial system. *Walker v. McGuire*, 2015 IL 117138. This court did not address the other constitutional claims raised by Walker.

¶ 7 On June 9, 2016, following remand, plaintiffs' counsel amended their complaints to add Diamond as an additional named party. On December 4, 2018, plaintiffs filed a second amended complaint. The second amended complaint asserted a putative class action against the Illinois circuit court clerks. Plaintiffs sought, *inter alia*, a permanent injunction prohibiting enforcement of the statutes at issue and return of monies collected.

¶ 8 Relevant to this appeal, plaintiffs' second amended complaint alleged, *inter alia*, that section 15-1504.1 of the Code (735 ILCS 5/15-1504.1 (West 2012)) and sections 7.30 and 7.31 of the Act (20 ILCS 3805/7.30, 7.31 (West 2012)) violate the equal protection, due process, and uniformity clauses of the Illinois Constitution of 1970 (Ill. Const. 1970, art I, § 2, art. IX, § 2). Plaintiffs also alleged that the statutes violate the constitutional right to obtain justice freely (the "free access" clause) (Ill. Const. 1970, art. I, § 12).

Plaintiffs sought declaratory and injunctive relief and a return of all filing fees paid pursuant to section 15-1504.1. Defendants maintained that the statutes are constitutional. The Cook County circuit clerk also argued that the voluntary payment doctrine precluded plaintiffs' claims because they did not pay the filing fee "under protest."

¶ 9 The parties filed cross-motions for summary judgment. The trial court granted partial summary judgment in favor of plaintiffs. The court determined that the plaintiffs paid the fee under duress and that, therefore, the voluntary payment doctrine did not apply. The court further found that the statutes at issue are facially unconstitutional because the challenged provisions violate the free access, equal protection, due process, and uniformity clauses of the Illinois Constitution of 1970.

¶ 10 The trial court entered a permanent injunction enjoining the Illinois circuit courts from enforcing and following the statutes at issue as they are currently enacted. The court stayed enforcement of the injunction to provide this court an opportunity to review the case.

¶ 11 The Illinois Attorney General, on behalf of the State of Illinois, the Cook County circuit clerk, and the Will County circuit clerk filed separate direct appeals. *See* Ill. S. Ct. R. 302(a) (eff. Oct. 4, 2011). This court consolidated those appeals. The Attorney General and the Cook County circuit clerk filed separate briefs in this appeal. This court granted the Will County circuit clerk leave to join and adopt the Attorney General's brief.

¶ 12 ANALYSIS

¶ 13 This matter comes for our review on the circuit court's grant of summary judgment in favor of plaintiffs. Summary judgment is appropriate if the pleadings, depositions, admissions, and affidavits on file establish that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2018); *Coleman v. East Joliet Fire Protection District*, 2016 IL 117952, ¶ 20. A circuit court's order granting summary judgment is reviewed *de novo*. *Cohen v. Chicago Park District*, 2017 IL 121800, ¶ 17.

¶ 14 In these proceedings, plaintiffs challenged the constitutionality of section 15-1504.1 of the Code (735 ILCS 5/15-1504.1 (West 2012)) and sections 7.30 and 7.31 of the Act (20 ILCS 3805/7.30, 7.31 (West 2012)).[1] These statutes were enacted as part of the "Save Our Neighborhoods Act," in response to the mortgage foreclosure crisis of 2010. The legislative goal was to "create[] additional programs for people in foreclosure problems" and to "help people who needed help with their mortgage situations and in our foreclosure-plagued society." *See* General Assembly, House Civil Judiciary Comm. Transcripts (May 7,2010) at 10:11-16, 4:16 to 6:1; 6:19-21.

¶ 15 Section 15-1504.1 of the Code requires mortgage foreclosure plaintiffs to pay the clerk of the circuit court an additional fee for the Foreclosure Program Prevention Fund. 735 ILCS 15/15-1504.1

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[1] We note that the statutes at issue have been amended several times since their adoption. All parties agreed below that the various amendments did not materially change the provisions relative to the issues presented in this appeal.

(West 2012). Section 15-1504.1(a-5) further requires a portion of the fees to be deposited into the Abandoned Residential Property Municipality Relief Fund (Abandoned Residential Property Fund). *Id.* § 15-1504.1(a-5). The clerk of the court retains 2% of the fee collected and remits the remainder to the state Treasurer for the Foreclosure Prevention Program Fund and the Abandoned Residential Property Fund. *Id. §* 15-1504.1(a-5)(2).

¶ 16 In turn, section 7.30 of the Act requires the Illinois Housing Development Authority (Housing Authority) to grant 25% of the Foreclosure Prevention Program Fund to approved housing counseling agencies outside Chicago, based in part on the number of foreclosures, and 25% to approved counseling agencies in Chicago for housing counseling or foreclosure prevention services. 20 ILCS 3805/7.30(b)(1), (2) (West 2012). Section 7.30 also requires the Housing Authority to grant 25% to approved community-based organizations outside Chicago for approved foreclosure prevention outreach and 25% for such programs in Chicago. *Id.* § 7.30(b)(3), (4). "'Approved community-based organization'" is defined as a "not-for-profit entity that provides educational and financial information to residents of a community through in-person contact" but excludes organizations providing legal services. *Id.* § 7.30(b-5). An "'[a]pproved foreclosure prevention outreach program'" includes prepurchase and postpurchase home counseling and education regarding the foreclosure process. *Id.*

¶ 17 Section 7.31 of the Act requires the Housing Authority to distribute 30% of the proceeds from the Abandoned Residential Property Fund for grants to municipalities in Cook County, other than the City of

Chicago, and to Cook County. *Id.* § 7.31(b)(1). Section 7.31 requires 25% of these funds for grants to the City of Chicago; 30% of these funds for grants to municipalities in Du Page, Kane, Lake, McHenry, and Will Counties and to those counties; and 15% of those funds for grants to municipalities and counties in Illinois other than Cook, Du Page, Kane, Lake, McHenry, and Will Counties. *Id.* § 7.31(b)(2)-(4).

¶ 18 Section 7.31(a) provides that the monetary grants may be used for such things as cutting grass at abandoned properties, trimming trees and bushes, extermination of pests, removing garbage and graffiti, installing fencing, and demolition. *Id.* § 7.31(a). Section 7.31(a) also contains a catchall provision that further widens permissible expenditures to include general "repair or rehabilitation of abandoned residential property." *Id.*

¶ 19 Voluntary Payment Doctrine

¶ 20 Before we address the constitutionality of the statutes, we must address a preliminary issue that may make it unnecessary to reach the constitutional issues. *See Coram v. State of Illinois*, 2013 IL 113867, ¶ 56 (a court must "consider nonconstitutional issues first and consider constitutional issues only if necessary to the resolution of [the] case"). The clerk of the circuit court of Cook County argues that the voluntary payment doctrine bars plaintiffs' claims for fees paid under section 15-1504.1 because plaintiffs failed to establish proof of either involuntary payment or an exception to the doctrine. The clerk submits that the decision of the circuit court should be reversed on that basis and that this court need not reach the merits of the constitutional claims. The clerk

argues that, if plaintiffs' claim fails under the voluntary payment doctrine, then the plaintiff class claims fail as well.

¶ 21 Plaintiffs respond that the circuit court properly found that the duress exception applied to the voluntary payment doctrine. Therefore, the voluntary payment doctrine does not apply to this case.

¶ 22 "The common-law voluntary payment doctrine embodies the ancient and 'universally recognized rule that money voluntarily paid under a claim of right to the payment and with knowledge of the facts by the person making the payment cannot be recovered back on the ground that the claim was illegal.'" *McIntosh v. Walgreens Boots Alliance, Inc.*, 2019 IL 123626, ¶ 22 (quoting *Illinois Glass Co. v. Chicago Telephone Co.*, 234 Ill. 535, 541 (1908)). To avoid application of the voluntary payment doctrine, "it is necessary to show not only that the claim asserted was unlawful but also that the payment was not voluntary, such as where there was some necessity that amounted to compulsion and payment was made under the influence of that compulsion." *Id.* ¶ 23. "In addition to compulsion or duress, other recognized exceptions to the voluntary payment doctrine include fraud or misrepresentation or mistake of a material fact." *Id.* ¶ 24.

¶ 23 In finding that the duress exception applied to the voluntary payment doctrine, the circuit court relied on *Midwest Medical Records Ass'n v. Brown*, 2018 IL App (1st) 163230. The Cook County circuit clerk contends that the circuit court's reliance on *Midwest Medical Records* was misplaced and that plaintiffs did not make a showing of duress.

¶ 24 We find *Midwest Medical Records* persuasive. In that case, the plaintiffs brought an action alleging that a $60 fee they paid to the Cook County circuit clerk for filing motions to reconsider interlocutory orders in their underlying cases violated the Clerks of Courts Act (705 ILCS 105/1 *et seq.* (West 2014)). *Midwest Medical Records*, 2018 IL App (1st) 163230, ¶¶ 3-4. The circuit court dismissed plaintiffs' action based on the voluntary payment doctrine, rejecting the plaintiffs' claims that they paid the fees involuntarily and under duress because they would have been denied their constitutional right to challenge interlocutory orders and suffered detrimental consequences and adverse judgments against them if they had not paid the fees. *Id.* ¶ 7.

¶ 25 In examining the voluntary payment doctrine, the appellate court in *Midwest Medical Records* noted that "'[t]he kind of duress necessary to establish payment under compulsion has been expanded over the years.'" *Id.* ¶ 24 (quoting *Smith v. Prime Cable of Chicago*, 276 Ill. App. 3d 843, 848 (1995)). The appellate court in *Midwest Medical Records* observed that duress may be implied and has included duress of property and compulsion of business. *Id.* ¶¶ 25-28. The appellate court recognized that

> "[i]n determining whether payment is made under duress, the main consideration is whether the party had a choice or option, *i.e.*, whether there was 'some actual or threatened power wielded over the payor from which he has no immediate relief and from which no adequate opportunity is afforded the payor to effectively resist the demand for payment.'" *id.* 28 (quoting *Smith*, 276 Ill. App. 3d at 849).

The appellate court in *Midwest Medical Records* concluded that duress existed because the plaintiffs "could not avail themselves of the judicial process without payment" and that the "[p]laintiffs' refusal to pay the fee would have immediately resulted in loss of access to the courts to challenge orders entered against them." *Midwest Medical Records*, 2018 IL App (1st) 163230, ¶ 32.

¶ 26 In this case, after a hearing on the issue, the circuit court found that the duress exception applied for two "independently sufficient reasons." First, following the reasoning of *Midwest Medical Records*, the court found that plaintiffs in this case would have been restricted from reasonably accessing the court system because they would have lost a substantial right if they did not pay the fee. The court noted that, at the hearing on this issue, the Illinois Attorney General conceded that duress necessarily and inherently exists in court-filing fee cases. Second, the court recounted Walker's testimony at the hearing that he was anxious to get his foreclosure case filed and exercise his rights as a mortgagee due to concerns of fraud and other complications in the underlying case. Walker understood that he was required to pay the fee to file his lawsuit. He was not aware that he could pay the fee under protest and believed he was ineligible for a fee waiver. Walker further testified that, if the Will County circuit clerk had informed him that the filing fee was voluntary and not required, he would not have paid the fee. The court found that Walker's testimony was compelling and credible. For these reasons, the court found that Walker established he was under duress when he paid the filing fee and that the

voluntary payment doctrine did not defeat plaintiffs' claims.

¶ 27 The Cook County circuit clerk submits that the circuit court overread the holding in *Midwest Medical Records* and that it offers no aid to plaintiffs here. According to the clerk, the holding in *Midwest Medical Records* was nuanced where the appellate court found the trial court erred in holding that plaintiffs' claims were insufficient to plead duress and failed to show they were denied access to a service that was necessary to them. According to the Cook County circuit clerk, *Midwest Medical Records* held that, at a minimum, the court should not have resolved the issue of duress as a matter of law on the pleadings, as it is generally a question of fact. The clerk also argues that the circuit court erred in relying on comments made by the Attorney General during the hearing. The comments are not proof, and they do not constitute evidence of alleged duress. The clerk also argues that Walker's testimony was insufficient to support a factual finding that he was under duress when he paid the fee because Walker also testified that he never directed his attorneys to ask for a waiver of the fee or for the court not to charge the fee.

¶ 28 We agree with the circuit court that the duress exception applies in this case. Clearly, when a filing fee is required for filing a mortgage foreclosure, the fee implicates access to the court system, and plaintiffs would have lost reasonable access to the judicial process without payment. Plaintiffs' refusal to pay the fee would have resulted in loss of access to the courts to pursue a mortgage foreclosure, a property right. In our view, when a mandatory filing fee is required to access the judicial process, duress may be

implied. Indeed, the Illinois Attorney General conceded this at the hearing on the issue, and neither the Attorney General nor the Will County circuit clerk have joined in the Cook County circuit clerk's argument that the voluntary payment doctrine bars plaintiffs' constitutional claims. We also agree with the circuit court that Walker's testimony was sufficient to establish that he was under duress when he paid the filing fee. We therefore hold that the voluntary payment doctrine does not bar plaintiffs from challenging the constitutionality of the statutes at issue in this appeal. We next consider the constitutionality of the statutes at issue in this appeal.

¶ 29 Constitutionality of the Statutes

¶ 30 The constitutionality of a statute is a question of law that is reviewed *de novo*. *Dynak v. Board of Education of Wood Dale School District* 7, 2020 IL 125062, ¶ 15. Statutes carry a strong presumption of constitutionality, and this court will construe a statute to preserve its constitutionality if reasonably possible. *People v. Masterson*, 2011 IL 110072, ¶ 23. The party challenging the constitutionality of a statute bears the burden of establishing the statute's invalidity. *Id.*

¶ 31 Here, the circuit court determined that the statutes are facially unconstitutional. As the circuit court properly recognized, "[a] facial challenge to the constitutionality of a legislative enactment is the most difficult challenge to mount successfully [citation], because an enactment is facially invalid only if no set of circumstances exists under which it would be valid." *Napleton v. Village of Hinsdale*, 229 Ill. 2d 296, 305-06 (2008). "Successfully 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." (Emphasis in original.) *In re MT*, 221 Ill. 2d 517, 536 (2006). A successful attack voids a statute for all parties in all contexts, and for that reason, findings of facial invalidity are made only as a last resort. *See Pooh-Bah Enterprises, Inc. v. County of Cook*, 232 Ill. 2d 463, 473 (2009).

¶ 32 We now examine the trial court's decision that section 15-1504.1 of the Code (735 ILCS 5/15-1504.1 (West 2012)) and sections 7.30 and 7.31 of the Act (20 ILCS 3805/7.30, 7.31 (West 2012)) violate the right to obtain justice freely (the "Free Access" clause) (Ill. Const. 1970, art. I, § 12). Article I, section 12, of the Illinois Constitution of 1970 provides:

> "Every person shall find a certain remedy in the laws for all injuries and wrongs which he receives to his person, privacy, property or reputation. He shall obtain justice by law, freely, completely, and promptly."

¶ 33 Provisions similar to article I, section 12, of the Illinois Constitution of 1970 were contained in the constitutions of 1870 Ill. Const. 1870, art. II, § 19), 1848 (Ill. Const. 1848, art. XIII, § 12), and 1818 (Ill. Const. 1818, art. VIII, § 12). *See*, *e.g., Sullivan v. Midlothian Park District*, 51 Ill. 2d 274, 277 (1972). That every wrong shall have a remedy and that justice shall be obtained by law, freely, completely, and promptly have long been foundational principles in English and American jurisprudence. *See Solem v. Helm*, 463 U.S. 277, 285 n.10 (1983) ("There can be no doubt that the Declaration of Rights guaranteed at least the liberties and privileges of Englishmen. *See* A. Nevins, The American States During and After the

Revolution 146 (1924) (Declaration of Rights 'was a restatement of English principles the principles of Magna Charta . . . and the Revolution of 1688'); A. Howard, The Road from Runnymede: Magna Carta and Constitutionalism in America 205-207 (1968).") These principles date back more than 800 years to article 40 of the Magna Carta of 1215: "To no one will we sell, to no one will we refuse or delay, right or justice." Magna Carta 1215, 17 John, art. 40.

> "This language recognized as the first codification of the right to a remedy-was a capstone provision in a document designed in significant part to secure a judicial system that would respect and enforce individual rights. We can readily trace this language from its codification in Magna Carta to its elaboration by Sir Edward Coke in his Second Institutes, to Blackstone's restatement in his Commentaries, and ultimately to state constitutional provisions operative today." Benjamin P. Cover, *The First Amendment Right to a Remedy*, 50 U.C. Davis L. Rev. 1741, 1755 (2017) (citing Edward Coke, 2 Institutes of the Lawes of England 45, 55 (1642), and 1 William Blackstone, Commentaries on the Laws of England *32-33 (1768)).

¶ 34 Indeed, this court has long held that a general revenue law that has the effect of "compel[ling] a man to buy justice" is unconstitutional in that "every person in this State ought to obtain right and justice freely, and without being obliged to purchase it, completely and without denial, promptly and without delay, conformably to the laws." *Wilson v. McKenna*, 52 Ill. 43, 48-49 (1869); *see also Reed v. Tyler*, 56 Ill.

288, 292 (1870) (same); *Senichka v. Lowe*, 74 Ill. 274, 277 (1874) (same).

¶ 35 The test of a law's constitutionality depends largely on the nature of the right that is claimed. *See In re D.W.*, 214 Ill. 2d 289, 310 (2005). As this court recognized in *In re D.W:*

> "Classification of the right affected is critical because the nature of the right dictates the level of scrutiny courts employ in determining whether the statute in question passes constitutional muster. Unless a fundamental constitutional right is implicated, the rational basis test applies, and the statute will be upheld so long as it bears a rational relationship to a legitimate state interest. [Citation.] However, where the constitutional right at issue is one considered 'fundamental,' the presumption of constitutionality is weaker, and courts must subject the statute to the more rigorous requirements of strict scrutiny analysis. [Citations.]" *Id.*

Here, as well as in the circuit court, the parties dispute whether strict scrutiny or the rational basis test applies to plaintiffs' constitutional claims. "To withstand the strict scrutiny standard, a statute must serve a compelling state interest, and be narrowly tailored to serve the compelling interest, *i.e.*, the legislature must use the least restrictive means to serve the compelling interest." *Lulay v. Lulay*, 193 Ill. 2d 455, 470 (2000). Under the rational basis test, a court will uphold a statute if it bears a rational relationship to a legitimate legislative purpose and is not arbitrary or unreasonable. *Village of Lake Villa v. Stokovich*, 211 Ill. 2d 106, 122 (2004).

¶ 36 In *Crocker v. Finley*, 99 Ill. 2d 444, 451 (1984), this court recognized that the central issue in a claim that a filing fee violates the free access and due process clauses of the Illinois Constitution was whether the legislature may impose a fee on a limited group of plaintiffs when the funds went to the state treasury to fund a general welfare program. This court applied the rational basis test in *Crocker* but did not explain why that was the proper test for either of the constitutional claims.

¶ 37 We find that the rational basis test is generally applicable to free access clause claims involving court filing fees. First, the fee in *Crocker* charged to petitioners filing for a dissolution of marriage did not involve a suspect classification such as race, national origin, or gender. In cases not involving a suspect classification, the rational basis test applies. *See People v. Botruff*, 212 Ill. 2d 166, 176-77 (2004). Second, while there is a fundamental right to access the courts, there is not a fundamental right to such access without expense. *Crocker*, 99 Ill. 2d at 454-55. For these reasons, the rational basis test applies to a claim alleging that a filing fee violates the free access clause when the fee does not involve a suspect classification. Accordingly, we must determine whether the additional $50 filing fee imposed on residential mortgage foreclosure litigants under the statutes at issue in this appeal meets the rational basis test.

¶ 38 The circuit court relied on *Crocker's* rationale to determine that the statutes violate the free access clause. In *Crocker*, this court considered the constitutionality of a $5 additional filing fee imposed on petitioners filing for dissolution of marriage. The additional filing fee was to be used to fund shelters

and other services for victims of domestic violence. Although the $5 charge was referred to as a fee by the statute, this court deemed the charge a litigation tax rather than a fee. *Id.* at 452. "[C]ourt charges imposed on a litigant are fees if assessed to defray the expenses of [a party's] litigation. On the other hand, a charge having no relation to the services rendered, assessed to provide general revenue rather than compensation, is a tax." *Id.*

¶ 39 *Crocker* recognized, however, that statutes imposing litigation taxes do not necessarily offend the free access clause. *Id.* This court then examined the purposes for which taxes may be imposed on litigants. All cases in which this court previously considered challenges to court filing-fee statutes involved a fee or tax collected for court-related purposes. *Id.* at 453. This court had previously upheld a county law-library tax on litigants, fees on litigants who file jury demands, and filing fees for tax objections collected to defray court expenses, and in each of those cases, the relationship between the tax or fee and the court system was clear. *Id.* In *Crocker*, this court concluded that "court filing fees and taxes may be imposed only for purposes relating to the operation and maintenance of the courts. We consider this requirement to be inherent in our Illinois constitutional right to obtain justice freely." *Id.* at 454. Indeed, in reference to the free access clause, *Crocker* restated these important principles:

> ""The constitution does not guarantee to the citizen the right to litigate without expense, but simply protects him from the imposition of such terms as unreasonably and injuriously interfere with his right to a remedy in the law or impede the due

> administration of justice * * * .'" *Id.* at 454-55 (quoting *Ali v. Danaher*, 47 Ill. 2d 231, 236 (1970), quoting *Williams v. Gottschalk*, 231 Ill. 175, 179 (1907), quoting *Adams v. Corriston*, 7 Minn. 456, 461 (1862)).

See also Sanko v. Carlson, 69 Ill. 2d 246, 250 (1977).

¶ 40 Applying these principles, we concluded that the $5 charge in *Crocker* interfered unreasonably with plaintiffs' access to courts. *Crocker*, 99 Ill. 2d at 455. We reasoned that litigants

> "should not be required, as a condition to their filing, to support a general welfare program that relates neither to their litigation nor to the court system. If the right to obtain justice freely is to be a meaningful guarantee, it must preclude the legislature from raising general revenue through charges assessed to those who would utilize our courts." *Id.*

¶ 41 This court found that the relationship between domestic shelters and programs was "simply too remote" to save the $5 tax from its constitutional shortcomings. *Id.* We found "no rational basis for imposing this tax on only those petitioners filing for dissolution of marriage, thereby causing members of that class to bear the cost of maintaining the public welfare program provided, while excluding other classes of taxpayers." *Id.* at 457. Thus, *Crocker* rejected arguments that the $5 litigation tax would improve the overall administration of justice, finding that the asserted relationship was "too remote" and concluding that the service-funding scheme, if permitted, would open the door to "countless other social welfare programs." *Id.* at 455-56.

¶ 42 This court has also found a statute requiring county clerks to place part of the marriage license fee into a domestic abuse fund to be unconstitutional where the relationship between those who were being taxed and those who were benefitting from the tax was too remote. *Boynton v. Kusper*, 112 Ill. 2d 356, 367-68 (1986). As the circuit court correctly concluded, the relationship between the fee and its impact on the operation and maintenance of the courts cannot be too attenuated; rather, it must be relatively direct, clear, and ascertainable.

¶ 43 Here, the $50 filing charge established under section 15-1504.1 of the Code, although called a "fee," is, in fact, a litigation tax, as was the charge in *Crocker*. The charge here has no direct relation to expenses of a petitioner's litigation and no relation to the services rendered. Rather, the charge is assessed solely to raise revenue for the Foreclosure Prevention Fund and the Abandoned Residential Property Fund. Thus, the $50 additional foreclosure filing charge is a tax on litigation.

¶ 44 According to the State and the Will County circuit clerk, however, the foreclosure fee is reasonably related to court operations and maintenance because it is designed to reduce foreclosures and their attendant social problems. The State and the Will County circuit clerk also argue that the Abandoned Property Fund is reasonably related to reducing the courts' caseloads because its grant program could mitigate the many ill effects of property abandonment that give rise to litigation from increased criminal prosecutions, tort actions, and foreclosure proceedings. The State and the Will County circuit clerk acknowledge that the grant funds may be used for cutting neglected grass and

weeds; removing nuisance bushes and trees; exterminating pests; removing debris and graffiti; and closing off, demolishing, or rehabilitating abandoned residential property. However, according to the State and the Will County circuit clerk, these things are directly related to combating blight and severe negative effects caused by property abandonment and remediating those effects reduces litigation and strains on the judicial system.

¶ 45 Similarly, the Cook County circuit clerk argues before this court that the foreclosure fee and distributions from the fund provide services to prevent foreclosure actions, thus reducing the number of mortgage foreclosures. According to the Cook County circuit clerk, the fee and funds facilitate the smooth functioning of the court system.

¶ 46 We find that the relationship asserted by the State, the Will County circuit clerk, and the Cook County circuit clerk is too remote. The fees, instead, are a revenue-raising measure designed to fund a statewide social program administered by the Illinois Housing Development Authority. The Illinois Housing Development Authority utilizes these funds to make monetary grants to approved counseling agencies for housing counseling and to community organizations for foreclosure prevention programs and to finance such things as cutting grass, tree trimming, and rehabilitating abandoned residential property. The benefits for foreclosure prevention programs are indirect at best and have no direct relation to the administration of the court system. Any relation of the filing fee to maintenance and operation of the courts is too attenuated and represents the type of social welfare program tax that *Crocker* found prohibited by the free access

clause. The grants for repair and rehabilitation of abandoned properties, cutting grass, picking up trash, etc., are even further removed than the counseling services from the operation and maintenance of the courts. As the circuit court recognized, "the statutory scheme is tantamount to a litigation-tax funded neighborhood beautification plan."

¶ 47 We agree with the circuit court and conclude that the statutes violate the free access clause because the $50 fee unreasonably interferes with foreclosure litigants' access to the courts. Under the free access clause, court filing fees must be related to services rendered by the courts or maintenance of the courts. *Crocker*, 99 Ill. 2d at 454-55. "If the right to obtain justice freely is to be a meaningful guarantee, it must preclude the legislature from raising general revenue through charges assessed to those who would utilize our courts." *Id.* at 455.

¶ 48 We therefore hold that there is no rational basis for imposing this filing fee on mortgage foreclosure litigants, requiring them to bear the cost of maintaining a social welfare program, while excluding other classes of taxpayers from the burden. The statutes therefore violate the free access clause.

¶ 49 We need not address whether the statutes violate any other provisions of the Illinois Constitution because we have already determined that the statutes at issue are facially unconstitutional as violative of the free access clause. *See Hertz Corp. v. City of Chicago*, 2017 IL 119945, ¶ 31. We therefore affirm the judgment of the circuit court and remand the cause to the circuit court of Will County for further proceedings.

¶ 50 CONCLUSION

¶ 51 For the foregoing reasons, we affirm the judgment of the circuit court of Will County and remand the cause for further proceedings consistent with this opinion.

¶ 52 Circuit court judgment affirmed.

¶ 53 Cause remanded.

DISSENTING OPINION OF JUSTICE THEIS

¶ 54 JUSTICE THEIS, dissenting:

¶ 55 I respectfully disagree with the majority's holding that there is no rational basis for imposing a $50 filing charge on residential mortgage foreclosure litigants and that therefore the charge violates the free access clause of the Illinois Constitution. The majority reaches this conclusion by improperly applying a heightened scrutiny rather than the proper rational basis standard. Compounding this problem, the majority renders its determination without ever even considering, let alone analyzing, the context surrounding the imposition of these charges. When viewed under the proper legal framework and the settled legal principles that apply to this case, the majority's holding is conclusory and untenable.

¶ 56 It is well settled that the free access clause of the state constitution does not create a fundamental right to litigate without expense. *Crocker v. Finley*, 99 Ill. 2d 444, 454 (1984). Instead, it simply protects from the imposition of terms that unreasonably and injuriously interfere with the right to a remedy in the law or impede the due administration of justice. *Ali v. Danaher*, 47 Ill. 2d 231, 236 (1970).

¶ 57 Where, as here, a statute does not affect fundamental rights or affect a suspect class, we apply a rational basis test to assess its constitutionality. *People v. Breedlove*, 213 Ill. 2d 509, 518 (2004). Although the majority frames the issue as whether the filing fee imposed on residential mortgage foreclosure litigants "meets the rational basis test" (*supra* ¶ 37), the majority

fails to fully explain and fully consider the contours of rational basis review here.

¶ 58 Under rational basis review, we generally determine "whether there is a legitimate governmental interest behind the legislation and, if so, whether there is a reasonable relationship between that interest and the means the governing body has chosen to pursue it." (Emphasis added.) *LMP Services, Inc. v. City of Chicago*, 2019 IL 123123, ¶ 17. Further, when considering whether a legislative enactment survives rational basis review, courts do not consider the wisdom of the enactment or whether it is even the best means of achieving its goal. *Arangold Corp. v. Zehnder*, 204 Ill. 2d 142, 147 (2003) ("The judgments made by the legislature in crafting a statute are not subject to courtroom fact-finding and may be based on rational speculation unsupported by evidence or empirical data.").

¶ 59 More fundamentally, the test does not require narrow tailoring; it only requires rationality and is highly deferential. Thus, under the rational basis test, "'the court may hypothesize reasons for the legislation, even if the reasoning advanced did not motivate the legislative action.'" (Emphasis omitted.) *Piccioli v. Board of Trustees of Teachers' Retirement System*, 2019 IL 122905, ¶ 20 (quoting *Moline School District No. 40 Board of Education v. Quinn*, 2016 IL 119704, ¶ 24). "'If there is any conceivable basis for finding a rational relationship, the law will be upheld.'" *Id.* (quoting *People ex rel. Lumpkin v. Cassidy*, 184 Ill. 2d 117, 124 (1998)). Not every provision in a law must share a single objective. *See Crusius v. Illinois Gaming Board*, 216 Ill. 2d 315, 333 (2005). Moreover," '[w]hether a statute is wise and whether it is the best means to

achieve the desired result are matters for the legislature, not the courts.'" *Piccioli*, 2019 IL 122905, ¶ 20 (quoting *Moline School District No. 40 Board of Education*, 2016 IL 119704, ¶ 28).

¶ 60 The free access clause qualifies the rational basis standard generally applied to the broader concept of due process by identifying in advance the legitimate governmental interest of the legislature the operation and maintenance of the court system. Thus, the charges need to be rationally related to the operation and maintenance of the court system. *Crocker*, 99 Ill. 2d at 454.

¶ 61 The enactment at issue here is presumed to be constitutional, and the party challenging the legislative enactment bears the burden of proving a clear violation. *People v. Coty*, 2020 IL 123972, 1 22. We must uphold its constitutionality if reasonably possible to do so. *Id. It* is against this backdrop of legal authority that we must consider this case.

¶ 62 The majority reasons that the charges are not rationally related to court operations or maintenance because the charges that fund the foreclosure prevention programs are too "remote" and have no "direct relation" to the administration of the court system. *Supra* ¶ 46. The majority additionally finds the charges that fund the abandoned property fund are further attenuated and are tantamount to a "'neighborhood beautification plan.'" *Supra* ¶ 46.

¶ 63 To be sure, the rational relationship requirement does not mean that filing fees must remain with the court itself or benefit a particular plaintiff or his case directly. Rather, as long as a filing fee relates generally to the overall operation of the court system,

including providing benefits to litigants or conserving court resources, it will be upheld under rational basis review. *See Rose v. Pucinski*, 321 Ill. App. 3d 92, 99 (2001) (upholding arbitration fee that funded third parties because it "serves solely to improve the overall administration of the court system," which benefitted the plaintiffs "by freeing the litigation calendars, courtrooms, judges, and ancillary personnel that otherwise would be engaged in such arbitrable cases to attend to matters which may well include cases in plaintiffs' categories"); *Mellon v. Coffelt*, 313 Ill. App. 3d 619, 631 (2000) (upholding mandatory arbitration fee that "may operate to expedite cases within the court system"); *Wenger v. Finley*, 185 Ill. App. 3d 907, 914-15 (1989) (upholding dispute resolution fee remitted to non-court-annexed domestic resolution centers that provide services to litigants despite arguments that these centers were not related to the judicial system).

¶ 64 The majority arrives at its conclusion that the connection to court operations and maintenance is too remote without even mentioning, let alone analyzing or assessing the relevant context of, these foreclosure litigation charges or the relevant legislative history and purpose of the legislation. As seen under the appropriate legal framework and in the proper context, it is evident that the charges at issue here are indeed rationally related to tackling a foreclosure "tsunami" affecting the ability of the court system to function. Simply put, that is all that is required to sustain rational basis review.

¶ 65 At the time this legislation was added by Public Act 96-1419 (eff. Oct. 1, 2010), the country was mired in a mortgage foreclosure crisis. Nationally, it was recognized that, "[f]rom July 2007 through August

2009, 1.8 million homes were lost to foreclosure and 5.2 million more foreclosures were started. One in eight mortgages [were] in foreclosure or default. Each month, an additional 250,000 foreclosures [were] initiated." Congressional Oversight Panel, *October Oversight Report: An Assessment of Foreclosure Mitigation Efforts After Six Months*, at 3 (Oct. 9, 2009), https://web.archive.org/web/20100203000339/http://cop.senate.gov/documents/cop-100909-report.pdf [https://perma.cc/6AJ5-ZDVS].

¶ 66 In response, both the federal and state governments jumped into the fray to stop the hemorrhaging. The Attorney General of Illinois recognized that "tens of thousands of Illinoisans [were] poised to lose their homes in the collapse of the subprime mortgage industry" and called for a coordinated statewide effort to "curb abuses in the mortgage lending industry." *Madigan Announces Comprehensive Strategy to Address Looming Home Foreclosure Crisis in Illinois*, Ill. Att'y Gen. Press Release (Mar. 26, 2007), https://www.illinoisattorneygeneral.gov/pressroom/2007_03/20070326b.html [https://perma.cc/KY9A-Z5FE]. The Attorney General noted that foreclosure filings statewide jumped 55% in 2006, totaling 72,455, and that those numbers were expected to spike even higher. *Id.* She recognized the critical need for "everyone with a stake in the problem—state and local government, lenders, regulators, and housing advocates—[to] come together <u>now</u> to implement solutions." (Emphasis in original.) *Id.*

¶ 67 Among the many solutions were efforts to stem the foreclosure crisis in the courtroom. As an indicator of the seriousness of the crisis, the Attorney General noted that the Cook County circuit court had

reported a "a more than 50 percent increase in foreclosure filings in the first two months of 2007." *Id.* At that rate, the court was on track to handle a record 33,000 foreclosure cases that year. *Id.; see also* Cook County Cir. Ct. Gen. Admin. Order 2010-01 (Apr. 8, 2010), http://www.cookcountycourtorg/Portals/0/Chancery%20Division/General%20Administrative%20Orders/GO%2010-01.pdf [https://perma.cc/33DJ-N9T4] (noting that filings increased from 16,494 in 2005 to 47,049 in 2009). By 2012, an astronomical 78,000 cases were pending in Cook County, where 11 judges were assigned to hear mortgage foreclosure cases. Maria Kantzavelos, *Housing Crisis Intervention: Foreclosure Mediation in Illinois*, 100 Ill. B.J. 296, 297 (2012). Efforts were being taken to address a "drastic increase in mortgage foreclosure cases and the resultant burden on judicial circuits throughout the state." *See* Ill. S. Ct. R. 99.1, Committee Comments (adopted Mar. 1, 2013). The burden on the court system was evident—one foreclosure could impose up to $34,000 in direct costs on local government, including court actions. William C. Apgar, Mark Duda, and Rochelle Nawrocki Gorey, Homeownership Preservation Foundation, *The Municipal Cost of Foreclosures: A Chicago Case Study*, at 2 (Feb. 27, 2005), https://www.issuelab.org/resources11772/1772.pdf [https:// perma.cc/T6LG-LGH5].

¶ 68 In the wake of the crisis, the mortgage foreclosure article of the Code of Civil Procedure was amended to provide that, with respect to residential real estate, a lender filing a foreclosure complaint shall pay the clerk of the court a $50 fee for deposit into the Foreclosure Prevention Program Fund. 735 ILCS 5/15-1504.1(a) (West 2014). Under that provision,

the clerk of the court retains 2% of the fee and remits the remainder to the state treasurer exclusively for the Foreclosure Prevention Program Fund. *Id.* Notably, this funding mechanism was specifically negotiated directly with the financial institutions that would be paying the fee in most cases. See 96th III. Gen. Assem., House Proceedings, May 7, 2010, at 21 (statements of Representative Lyons) ("This $50 fee was language that was given to us by the financial institution[s].").

¶ 69 In 2013, section 15-1504.1 was amended. *See* Pub. Act 97-1164, § 15 (eff. June 1, 2013); Pub. Act 98-20, § 15 (eff. June 1, 2013). The amendments included an added fee for foreclosure filings based on a sliding scale depending on the number of foreclosure complaints filed by the lender in the prior year. 735 ILCS 5/15-1504.1(a-5) (West 2014). The revenue from the fee is deposited into the Foreclosure Prevention Program Graduated Fund and the Abandoned Residential Property Municipality Relief Fund. *Id.* This provision is currently scheduled to sunset in 2023. 735 ILCS 1504.1(a-5)(1) (West Supp. 2019) (amended by Pub. Act 101-10, § 50-25 (eff. June 5, 2019)).

¶ 70 During the third reading of the amendatory bill in the House of Representatives, Representative Zalewski sought to specifically address the intent of the proposed legislation and its relation to the court system:

> "Foreclosures and abandoned properties create huge problems for neighborhoods and for local government. It seems like foreclosures and vacant properties also <u>place huge burdens on our courts</u>. These properties have lots of foreclosure violations that local governments try to address in court, an abandoned

> property to check the legal activity and those cases wind up in court. And if the properties don't get cleaned up, then surrounding property values go down and you wind up with more vacant properties, more code violations, more crime and even greater burden on the courts. It is the intention of this Bill to reverse this cycle to get money to local governments to help clean up these properties which will then reduce the volume of cases that the courts need to handle and allow courts to operate more efficiently?" (Emphases added.) 97th Ill. Gen. Assem., House Proceedings, Dec. 4, 2012, at 32 (statements of Representative Zalewski).

¶ 71 Representative Lyons, one of the bill's sponsors, responded, "Yes, Representative Zalewski, that's the intent of this legislation." *Id.* (statements of Representative Lyons).

¶ 72 With respect to the Foreclosure Prevention Program Fund and its grants for housing counseling, Representative Zalewski further inquired about their relationship to the court system:

> "And it seems to me that the money this Bill will provide for housing counseling won't just help homeowners, it will also help the courts. We know that housing counseling helps people find alternatives to foreclosure and that means that housing counseling will reduce the number of foreclosure cases that are burdening our court system. Is it an intention of this Bill to create funding for housing counseling in order to reduce the number of foreclosure cases which burden the system

> . . . the court system in the state and therefore, help the courts deal more efficiently with the huge volume of foreclosure cases?" (Emphasis added.) *Id.* at 32-33 (statements of Representative Zalewski).

¶ 73 Representative Lyons responded, "Yes. Again, Representative Zalewski, that is the intention of this legislation." *Id.* at 33 (statements of Representative Lyons).

¶ 74 As part of this same amendatory act, the General Assembly added express findings in the mortgage foreclosure article directly related to both the Foreclosure Prevention Program Fund and the Abandoned Residential Property Fund. 735 ILCS 5/15-1108 (West 2014). The General Assembly found that "housing counseling has proven to be an effective way to help many homeowners find alternatives to foreclosure." *Id.* Accordingly, it reasoned that such counseling—provided by the Foreclosure Prevention Program—would "reduce[] the volume of matters which burden the court system in this State and allow[] the courts to more efficiently handle the burden of foreclosure cases." *Id.*

¶ 75 With respect to abandoned property, the General Assembly specifically found that "residential mortgage foreclosures and the abandoned properties that sometimes follow create enormous challenges for * * * the courts" by "reducing neighboring property values, reducing the tax base, increasing crime, [and] placing neighbors at greater risk of foreclosure." *Id.* Thus, it concluded that "maintaining and securing abandoned properties" through the Abandoned Property Fund would reduce these negative effects and "mak[e] a substantial contribution to the operation and main-

tenance of the courts of this State by reducing the volume of matters which burden the court system." *Id.*

¶ 76 When later debating whether to extend the amendment beyond its initial sunset date, the legislators again acknowledged that, when this legislation was initially implemented, "there was a tsunami of foreclosures" and that the General Assembly took measures, "working with the financial services industry, to try to remediate the problems associated with that." 100th Ill. Gen. Assem., Senate Proceedings, May 2, 2017, at 60 (statements of Senator Nybo).

¶ 77 Viewed in the context of the legislative history and the express findings of the General Assembly, this case is wholly distinguishable from *Crocker*, upon which the majority relies. In *Crocker*, this court found a charge imposed on divorce litigants to support domestic violence shelters violated the free access clause because there the charges were too remote from any court-related purpose. *Crocker*, 99 Ill. 2d at 455.

¶ 78 Unlike the situation in *Crocker*, here, the General Assembly has made it clear that section 15-1504.1(a) and (a-5) were intended to effectuate a legitimate legislative purpose of dealing directly with a foreclosure crisis in the courts. These provisions were negotiated with the banks, and subsection (a-5) has a sunset provision. It is entirely rational to conclude that the charges here are imposed for a court-related purpose and that there is a reasonable, nonarbitrary relationship between the purpose of the charges-improving the administration of the courts in a time of crisis—and the means adopted to achieve that purpose, imposing the charge on parties initiating residential foreclosure litigation.

¶ 79 That the legislature chose this particular means of attempting to tackle the court crisis is not the court's concern. It is enough that these programs, just as those in *Wenger, Mellon*, and *Rose*, were intended to reduce court backlog resulting from the foreclosure crisis and conserve court resources, improving the overall operation of the court system. The connection to the operation and maintenance of the court system was demonstrably apparent to the legislature. *See In re J.W.*, 204 Ill. 2d 50, 72 (2003) ("If there is any conceivable basis for finding a rational relationship, the statute will be upheld."). For this court to hold that the foreclosure charges are too remote to be reasonably related to the maintenance and operation of the court system flies in the face of the express legislative findings and declaration of the General Assembly. The majority's view is, at a minimum, contrary to its own acknowledged requirement that we must resolve any doubts in favor of the statute's validity. *People v. Rizzo*, 2016 IL 118599, ¶ 23.

¶ 80 When examined in the proper context and under the appropriate legal standards, it is more than reasonably possible to uphold the constitutionality of section 15-1504.1 under the free exercise clause. The majority's reasoning is as faulty as it is conclusory. I respectfully dissent from this untenable and unprecedented departure from our traditional notions of rational basis review.

¶ 81 JUSTICE NEVILLE took no part in the consideration or decision of this case.

STATE OF ILLINOIS RESPONDENT'S MOTION TO DISMISS PURSUANT TO 735 ILCS 5/2-619 (APRIL 8, 2025)

IN THE COURT OF CLAIMS OF THE STATE OF ILLINOIS

REUBEN WALKER, and STEVEN DIAMOND,ET AL.,

Claimants,

v.

STATE OF ILLINOIS,

Respondent.

No. 25CC2922

MOTION TO DISMISS PURSUANT TO 735 ILCS 2-619

NOW COMES Respondent, State of Illinois, by and through its attorney, KWAME RAOUL, Illinois Attorney General, and for its Motion to Dismiss pursuant to 735 ILCS 5/2-619 based upon Claimants' failure to timely file their Complaint for Restitution under 705 ILCS 505/22, for lack of jurisdiction to hear equitable claims for restitution, and in the alternative for lack of jurisdiction over class actions:

1. Claimants filed their Complaint for Restitution on March 4, 2025, on behalf of themselves and "for the benefit of the taxpayers and on behalf of all other individuals or institutions who paid foreclosure fees to the State of Illinois." *Complaint for Restitution*, generally.

2. Claimants' claims were first filed in the Will County Circuit Court as 12 CH 05275 by Mr. Walker as a class action alleging that the foreclosure fees under 735 ILCS 5/15-1504.1 ("Statute") were unconstitutional and requesting reimbursement of the fee paid. *See, Complaint in 12 CH 0527*, a copy of which is attached as Exhibit A Respondent's memorandum in support of this motion, which is being filed contemporaneously hereto and is incorporated herein.

3. In November of 2013, the circuit court granted partial summary judgement in favor of plaintiffs, finding the Statute facially unconstitutional.

4. Pursuant to § 22 of the Court of Claims Act, unless "otherwise sooner barred by law" all claims that are not filed with the Clerk of the Court within the limitations set forth in § 22 are barred from prosecution. 705 ILCS 505/22. Specifically, 22(h) provides that "all other claims must be filed within two years after it first accrues" and would apply to the instant claim. 705 ILCS 505/22(h).

5. Claimants failed to timely file their Complaint for Restitution under § 22(h) and their Complaint for Restitution must therefore be dismissed. *See*, 705 ILCS 505/22, 74 Ill. Admin. Code 790.60, 790.90.

6. "Restitution is an equitable remedy and the basis of liability is unjust enrichment." *Pawlikowski*

v. Toyota Motor Credit Corp., 309 Ill. App. 3d 550, 565, 722 N.E.2d 767, 778 (2nd Dist. 1999).

7. The Court of Claims lacks jurisdiction to hear claims for equitable relief. *Ace Coffee Bar v. State*, 51 Ill. Ct. Cl. 395 (1999).

8. Therefore, the Court of Claims lacks jurisdiction to hear Claimants claim for restitution, and the Claimants' Complaint for Restitution must be dismissed.

9. In addition, Claimants have filed this case as a class action complaint "for the benefit of the taxpayers and on behalf of all other individuals or institutions who paid foreclosure fees to the State of Illinois."

10. The Court of Claims does not have jurisdiction to hear class action complaints. *Radke v. State*, 72 Ill. Ct. Cl. 82, 85 (2015) (finding that § 11 of the Court of Claims Act provides for filing by a single claimant, and that "all potential claimants must file individual petitions and have such individual petitions verified by the claimant, his agent, or attorney").

11. Therefore, Claimants' Complaint for Restitution must be dismissed for lack of jurisdiction.

12. Respondent incorporates herein its Memorandum of Law in Support of its Motion to Dismiss, filed contemporaneously herewith.

WHEREFORE, based upon the foregoing, Respondent respectfully requests that this Court dismiss this Claim with prejudice for failure to timely file its complaint, and dismiss the Complaint for Restitution for lack of jurisdiction to hear both equitable claims and class action claims.

Respectfully submitted,

STATE OF ILLINOIS, by:

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WALKER AND DIAMOND PLAINTIFFS-APPELLEES' RESPONSE BRIEF, SUPREME COURT OF ILLINOIS, RELEVANT EXCERPTS (AUGUST 14, 2024)

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.

No. 130288

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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ORAL ARGUMENT REQUESTED

[Plaintiffs-Appellees' Response Brief, pp. 8, 12-15]

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

[. . .]

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.

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 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).

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.

[. . .]

[Plaintiffs-Appellees' Response Brief, pp. 21-28]

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 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)[1] 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.

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

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

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 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 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.

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.

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.[2] 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

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[2] 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.

would not happen to individual filers such as Reuben Walker.

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.

[Plaintiffs-Appellees' Response Brief, p. 47]

Respectfully submitted,

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