SUPREME COURT OF FLORIDA

CASE NO.: SC10-1317
Lower Tribunal No(s): 1D10-2972, 2009-CA-001386

CHARLIE CRIST, ET AL. **vs.** **ROBERT M. ERVIN ET AL.**

CASE NO.: SC10-1319
Lower Tribunal No(s): 1D10-2978, 2009-CA-001386

ALEX SINK, CHIEF FINANCIAL OFFICER, ETC. **vs.** **ROBERT M. ERVIN, ET AL.**

Appellant(s) **Appellee(s)**

ANSWER BRIEF OF APPELLEES

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STATEMENT OF THE CASE AND STATEMENT OF THE FACTS

This appeal arises from an Final Summary Judgment entered on June 4, 2010 by the Second Judicial Circuit Court for Leon County which (1) declared civil action filing fee statutes which impose illegal taxes unconstitutional on their face; (2) declared the filing fee statutes unconstitutional as applied to Plaintiffs and (3) enjoined the diversion to the General Revenue Fund of filing fees collected by court clerks as a condition of lodging civil actions in the Florida courts. This court accepted jurisdiction of this appeal by order dated July 22, 2010 pursuant to Article V, Section 3(b)(5) of the Constitution of Florida as a question certified by the First District Court of Appeal as a question of great public importance requiring immediate resolution by this Court.

COURT FUNDING IN FLORIDA

Prior to 1998, the Florida state court system was funded with state, county, and municipal revenues. Since the modernization of the state court system by constitutional amendment in 1972, the responsibility for funding the courts and other judicial branch entities has been unclear. See Bell v. State, 281 So.2d 361 (Fla. 2nd DCA 1973); Office of State Attorney v. Polites, 904 So.2d 527 (Fla. 3d DCA 2005); City of Ft. Lauderdale v. Crowder, 983 So.2d 37 (Fla. 4th DCA 2008); Lewis v. Leon County, 15 So.3d 777 (Fla. 1st DCA 2009). In the ensuing years, counties and local governments were saddled with an increasing proportion of the

rising costs of the state court system. In fiscal year 1984-85, counties began paying more than the state for Article V costs. In fiscal year 1995-96, counties spent nearly $614 million on Article V compared to the state's expenditure of $513 million. (AE-Appx. Tab I, No.8) State and local governments struggled to fund all of the costs of the state court system, while ensuring the rights of people to have access to a functioning and efficient judicial system. (Statement of Intent, Article V, Section 14, Florida Constitution) (AE-Appx Tab G) This burden became especially onerous in times of economic hardship, as state and local legislatures enacted across-the-board reductions for all government branches. (Id.) These traditional reductions were visited upon the state court system, a separate branch of government, by across the board cuts to salaries, costs and expenses of justices and judges, court clerks, court-appointed counsel, expert witness fees, court reporting services, court interpreters, state attorneys, public defenders, and other core functions and requirements of the state court system. (Id.) Options grew even more scarce as wealthy urban counties exhausted the allowable millage rates on ad valorem property taxes to raise sufficient revenues necessary to pay for the rising costs. Poor counties ran frequent deficits.

NEW FUNDING FORMULA

On November 3, 1998, the citizens of Florida passed Revision 7 which amended Article V, Section 14 of the Florida Constitution to clearly and

substantially shift the significant portion of the responsibility for funding the state court system ("SCS") from the counties to the state. Amendment to Florida Rules of Judicial Administration, 774 So.2d 625 (Fla.2000); Office of State Attorney v. Polites, 904 So.2d 527,530 (Fla.3d DCA 2005).

Revision 7 was proposed to the electorate by Florida's 1998 Constitution Revision Commission. Revision 7 segregated court functions and revised their funding. Under the new funding formula the state would be responsible for funding the SCS, state attorneys offices, public defenders offices, and court-appointed counsel not funded by the counties. The clerks of court would be funded primarily by revenue generated from "user fees" such as court costs and civil action filing fees. Any necessary supplemental funding would be provided from state general revenue appropriated by the Legislature. Prior to Revision 7, the revenue derived from court user fees comprised approximately 18% ($204,064,753) of the total Article V expenditures (AE Appx. Tab I, No. 8) Under Revision 7, court users were expected to provide a significantly larger portion (approximately 30%) of Article V funding.

INCREASE IN FILING FEES AFTER REVISION 7

Revision 7 was required to be fully implemented and effectuated by July 1, 2004. See Chapter 2000-237, Laws of Florida. Office of State Attorney v. Polites,,

904 So.2d 527 (Fla. 3d DCA 2005). The implementing legislation was passed in Chapter 2004-265 and Chapter 2004-268, Laws of Florida.

Beginning in 2004, the amount of various filing fees and service charges required to be paid to clerks of court as a condition of lodging a civil action in court began to steadily climb. See Chapter 2004-265, Laws of Florida. In 2004, the filing fees for trial and appellate proceedings were raised from $40 to $250. See § 28.241(1)(a), Fla. Stat. (2004). These same filing fees were raised in 2008 from $250 to $295. See Chapter 2008-111, Laws of Florida. In 2009, filing fees were $295 to $395. See Chapter 2009-204, Laws of Florida. Other statutes requiring the payment of filing fees and service charges in county and circuit cases saw similar increases. See § 28.241(2), Fla. Stat. (2009); § 34.041(1)(b), Fla. Stat. (2009); § 28.241(1)(a)(1), Fla. Stat. (2009); and § 28.241 (1)(a)(2)(d), Fla. Stat. (2009).

EARMARKS ON CIVIL ACTION FILING FEES TO GENERAL REVENUE

In the four decades preceding Revision 7, civil action filing fee statutes expressly required that some portion of the fees be "earmarked", signifying that immediately after collection by a clerk they were to be deposited directly into the State General Revenue Fund (GR). For instance, from 1977 through 1990, the Circuit Court civil action filing fee statute provided that "An additional service charge of $2.50 shall be paid to the clerk for each civil action filed, $2 of such

charge to be remitted by the clerk to the state treasurer for deposit into the General Revenue Fund unallocated." § 28.241(1), Fla. Stat. (1990) This statutorily mandated $2 "earmark" to the General Revenue Fund was increased in 1991: $7 out of the additional $8 service charge was to be remitted to General Revenue. § 28.241(1), Fla. Stat. (1991). This statutorily mandated $7 earmark to General Revenue was increased in 2004 to $50. See Chapter 2003-402, Laws of Florida. The 2004 statute required $50 of the first $57.50 in filing fees be remitted by the Clerk to the Department of Revenue for deposit into the General Revenue Fund. § 28.241(1)(a), Fla. Stat. (2004). In 2008, this earmark was increased to $80. See Chapter 2008-111, Laws of Florida. The 2008 statute required that $80 of the first $85 in filing fees must be remitted by the clerk to the Department of Revenue for deposit into the General Revenue Fund. § 28.241(1)(a), Fla. Stat. (2008). When the filing fees were raised in 2009, the $80 earmark remained a constant. See Chapter 2009-204, Laws of Florida. The increases are reflected as follows:

SUMMARY OF INCREASES IN CIVIL AND APPELLATE FILING FEES IMPOSED BY F.S. § 28.241(1) AND PARTIAL DIVERSIONS TO GENERAL REVENUE

YEAR DIVERSION TO GR	FILING FEE	PARTIAL
1977	Service Charge $30.00	$2 to GR "Unallocated"
1985	Service Charge $30.00	$2 to GR "Unallocated"
1991-2003	Service Charge $40.00	$7 to GR "Unallocated"
2004-2007*	Filing Fee $250	$50 to GR
2008**	Filing Fee $295	$80 to GR
2009***	Filing Fee $395	$80 to GR

*Chapter 2004-265, Laws of Florida

** Chapter 2008-111, Laws of Florida

***Chapter 2009-204, Laws of Florida

EARMARKS ON APPELLATE FILING FEES TO GENERAL REVENUE

Statutory earmarks have also been imposed on appellate filing fees commanding their direct deposit into the General Revenue Fund. In 1985, a service charge of $50 was imposed on any party filing a notice of appeal from an inferior court and $25 for filing a notice of appeal to a higher court. See § 28.241(3), Fla. Stat. (1985). These service charges were increased in 2003 to $75 for filing a notice of appeal from an inferior court and $50 for filing a notice of appeal to a higher court. See § 28.241(3), Fla. Stat. (2003). Until 2004, no statutory earmarks were imposed

on appellate filing fees. However, in 2004, appellate filing fees were increased to $250, and for the first time, a statutory earmark of $50 was placed on them. See Chapter 2003-402, Laws of Florida; § 28.241(2), Fla. Stat. (2003). This inaugural earmark on appellate filing fees was increased from $50 to $80 in 2008. See Chapter 2008-111, Laws of Florida.

EARMARKS ON OTHER FILING FEES TO GENERAL REVENUE

A myriad of earmarks have also been imposed by statute on other filing fees in addition to those detailed. These earmarks were initiated by Chapter 2003-402, Laws of Florida and were effective July 1, 2004. Appellant CFO Alex Sink filed an affidavit in the proceedings below which summarized "the total cumulative court related collections deposited into the General Revenue Fund". The chart below details the statutory earmarks on filing fees and resulting revenues for fiscal year 2008-2009. (R.-Vol. 10; Ptf. Exh.78; AE. Appx. Tab H)

Statute	Description	Total
28.241(2)	First $50 of $250 appellate filing fee	574,311.06
28.241(6)	$100 fee for attorneys (pro hac vice in circuit court)	116,233.35
34.041(8)	$100 fee for attorneys (pro hac vice in county court)	10,140.00
34.041(1)(b)	First $50 of up to $250 filing fee for county civil claims	13,181,901.70
28.241(1)(a)	$50 of first $55 in filing fees for circuit civil action	38,936,579.47
28.37(4)	Remit during month of January only	33,376,827.35
28.241(1)(c)	$295 counterclaim filing fee for circuit civil action	3,706,944.20
Chapter 2008-111 Additional Revenue	Chapter 2008-111 Florida Laws Additional Revenue	73,373,892.69
34.041(1)(c)	$295 counterclaim filing fee for county civil action	485,130.41
	Fund swept from clerk fund to GR	23,200,000.00
	Total GR	$186,961,960.23

MINISTERIAL DEPOSIT OF FILING FEE EARMARKS TO GENERAL REVENUE

Pursuant to these specific statutes, the 67 clerks of court have since collected civil action filing fees as a condition of lodging civil actions in court and have ministerially remitted the earmarks to the Department of Revenue for deposit into the General Revenue Fund. (R.-Vol. 13, Ptf. Exh.74, 78, 83, 84, 98) There is no discretion employed by the clerks of court or the Department of Revenue in the direct transmittal of these earmarked filing fees into the General Revenue Fund.

(R.-Vol. 13, T-104 (testimony of Leon County Deputy Clerk Betsy Coxen); T.-88 (testimony of DOR employee David Ansley).

Pursuant to Florida Statute §28.245, all monies collected by the clerks of court must be transmitted electronically to the Department of Revenue by the 20th day of the month following which the monies are collected. That statute also provides "all monies collected by the clerks of court for remittance to any entity must be distributed pursuant to the law in effect at the time of collection." To facilitate the electronic transfer, DOR has established an electronic web portal for the clerks to use that acts as a conduit for the earmarked revenue to pass through and get to the appropriate trust fund. (R.-Vol. 13, T.-77;T-98-99; T.-102) When the clerk collects the filing fees, they are immediately identified as earmarked according to the specific statutes which required their collection. The earmarked filing fees are electronically collated and placed into a separate identified statutory account. (R.-Vol.13,T-102) The Clerk thereafter determines the total amount of each earmarked filing fee, accesses the DOR website portal, finds each statutory earmark account, enters the earmarked monies collected under each particular earmark statute, balances the account, and submits the account for automatic transfer to DOR. (R.-Vol. 13, T-102) When the earmarked filing fees are electronically received by DOR, the funds are electronically deposited directly into

General Revenue through an electronic ACH debit (Rule 12-28.002(2), F.A.C.) (R.-Vol.13, T-85)

FOLLOWING THE EARMARKED MONEY

While it is true that all of the statutorily earmarked filing fees end up in the State Treasury, it is not technically correct that they are completely commingled because they continue to be accounted for and identified by their "earmarks" by all governmental entities who are responsible to account for them. Thus, each of the 67 court clerks and the DOR maintain detailed accounting records on each category of the earmarked filing fees. (R.-Vol. 13, T-78, 80; T-102; Ptf. Exh. 74, 78, 83, 84, 98) (AE Appx. Tab H) From these records, it is therefore possible to ascertain, for example, that the additional General Revenue generated just by the increases in earmarked filing fees from the passage of Chapter 2008-111, Laws of Florida, was $73,373,892.69. (R.-Vol.13, Ptf. Exh.78)

It is also apparent from the record that the Legislature did not in 2008 reappropriate any of the general revenue from increased filing fees back into the state court system. The earmarks alone totaled $42,700,000 (R-Vol. 2, p318; AE Appx. Tab Q) The April 23, 2008 report of the Legislative Conference Committee Of the House and Senate Safety and Security Council and Criminal and Civil Justice Appropriations shows that the state court system received zero dollars from

"General Revenue ADD BACK From Increased Fees". (R.-Vol. 7, p.318; Ptf. Exh. 46, p872; AE Appx. Tab L).

THE CURRENT LAWSUIT

At the present time, "the courts are underfunded in Florida." (R.-Vol.13 at T-109) Trial Court Judges salaries have been cut 2%. (Id) Civil Action filing fees have continually been increased over the last decade from $40-$395. Plaintiff Robert M. Ervin was admitted to the Florida Bar in 1947 and has been a member for 63 years. (R.-Vol.13 at T66-68) Plaintiff Davisson F. Dunlap joined the Florida Bar in 1948 and has been a member for 61 years (R.-Vol. 13 at T-71). Plaintiffs together paid the appellate filing fees to file their initial Petition for Writ in this Court on April 9, 2009. (R.-Vol.1 at 17-65). After this Court transferred this case to the circuit court, Plaintiffs were required to again pay the civil action filing fees to lodge their Petition for Writ in the circuit court. (R.-Vol.13 at T-67, 71; Ptf. Exh.75, 76). Plaintiffs Amended their Petition to add a count for Declaratory and Injunctive Relief on September 18, 2009 (R-Vol. 7 at 1193-1332).

THE CHALLENGED STATUTES

Appellees challenged the constitutionality of the following statutes:

1) § 28.241(2), Fla. Stat. (2009) which provides that the clerk shall charge and collect filing fees in appellate proceedings. It also provides in pertinent

part: "The clerk shall remit the first $80 to the Department of Revenue for deposit into the General Revenue Fund."

2) § 34.041(1)(b), Fla. Stat. (2009) which provides that a party instituting a civil action shall pay certain enumerated filing fees. It also provides in pertinent part: "The first $80 of the filing fee collected under subparagraph (a)4 shall be remitted to the Department of Revenue for deposit into the General Revenue Fund."

3) § 28.241(1)(a), Fla. Stat. (2009) which provides for the payment of filing fees for trial proceedings. It also provides in pertinent part: "Of the first $85 in filing fees, $80 must be remitted by the clerk to the Department of Revenue for deposit into the General Revenue Fund... ."

4) § 28.241(1)(a)(1), Fla. Stat. (2009) which provides for the payment of filing fees for circuit civil actions. It also provides in pertinent part: "Of the first $265 in filing fees, $80 must be remitted by the clerk to the Department of Revenue for deposit into the General Revenue Fund... ." This provision was amended in Section 5 of Chapter 2009-61 Laws of Florida, effective June 1, 2009.

5) § 28.241(1)(a)(2)(d), Fla. Stat. (2009) which provides for the payment of "graduated" filing fees for circuit civil actions relating to real property or mortgage foreclosure. For cases in which the value of the claim is $50,000 or less and less than five defendants, the filing fee is $395. The statute also provides in

pertinent part: "the first $265 in filing fees, $80 must be remitted by the clerk to the Department of Revenue for deposit into the General Revenue Fund... ." This provision was amended in Section 5 of Chapter 2009-61, Laws of Florida, effective June 1, 2009.

6) § 28.2455, Fla. Stat. (2009) enacted by Section 15 of Chapter 2009-61, Laws of Florida, effective June 1, 2009. This provision states: "Transfer of trust funds in excess of amount needed for clerk budgets. By June 20th of each year, the Florida Clerks of Court Operations Corporation shall identify the amount of funds in the Clerks of Court Trust Fund in excess of the amount needed to fund the approved clerk of court budgets for the current state fiscal year. The Justice Administrative Commission shall transfer the amount identified by the Corporation from the Clerks of Court Trust Fund to the General Revenue Fund by June 25th of each year."[1]

[1] It should be noted that other related filing fee statutes not included in this challenge also earmark the diversion of filing fees to the General Revenue Fund. These additional related statutes are identified in the chart summary on page 8 infra. See also, F.S. § 25.241(3)(b) (2009) (Supreme Court cross appeal fee). F.S. § 28.241(1)(a)2(d)(I), (II), and (III) (2009) initiated the new "graduated" filing fees for circuit civil actions relating to real property or mortgage foreclosures. For cases in which the value of the claim was between $50,000 and $250,000 the filing fee is $900. Cases involving claims valued between $250,000 or more with less than five defendants requires a $1900 filing fee. In both of these instances $80 is expressly earmarked: "... $80 must be remitted by the clerk to the Department of Revenue for deposit into the General Revenue Fund... ."

Appellees did not ask for a refund, nor did they ask for an award of attorneys fees. Appellees do not contest the amount of the filing fees or their obligation to pay a reasonable fee as a condition of lodging their case in court. Appellees filed their Motion for Temporary Injunction on October 23, 2009. (R-Vol. 7 at 1360-1393). The trial court held a hearing on the Motion for Temporary Injunction on November 18, 2009. (R.-Vol 13 at T-1-133) Appellees' Motion for Summary Judgment was filed on March 9, 2010.(R-Vol. 9 at 1586 1687)

THE SUMMARY JUDGMENT UNDER REVIEW

In the Final Summary Judgment under review, the trial court found that Plaintiffs had standing to challenge the constitutionality of the earmarked filing fee statutes relating to unlawful spending of public funds both as taxpayers under Chiles v. Phelps, 714 So.2d 453, 456 (Fla. 1998) and by special injury under Rickman v. Whitehurst, 73 Fla. 152, 157; 74 So.205, 207 (1917). The trial court also found these statutes visited an adverse impact on the fundamental rights of access to the courts while failing to satisfy the dual "rational basis/strict scrutiny" tests in Mitchell v. Moore, 786 So.2d 521 (Fla. 2001). The statutes impose an unconstitutional $80 tax on litigants unrelated to the cost of the administration of justice or the cost of providing access to court services. The trial court decided that it did not matter whether the Legislature ultimately funds the court system with more than it receives from the Clerk. Therefore, the trial court found that the

statutory earmarks which ministerially diverted filing fees to the General Revenue Fund are a tax resulting in denial of Appellees' constitutional rights to access to courts, right to have their courts adequately funded, and rights to due process, equal protection, and jury trial under the Florida Constitution. The trial court found the subject statutes unconstitutional on their face and as applied to the Appellees. In addition to declaring the subject statutes unconstitutional, the Trial Court enjoined their enforcement. The trial court entered its Summary Judgment on June 4, 2010. (R.-Vol 13 at 2434-2449)

Notice of Appeal to the First District Court of Appeal was filed on April 19, 2010. (R.Vol 13 at 2432-2433). The First District Court of Appeal entered its order on July 7, 2010 certifying that this appeal requires immediate resolution by the Supreme Court of Florida and is of great public importance and will have a great effect on the proper administration of justice in this state. The Supreme Court of Florida entered its order on July 22, 2010 accepting jurisdiction.

STANDARD OF REVIEW

The standard of review for the trial court Summary Judgment on the constitutionality of a statute is de novo since the issue is purely one of law. Zingale v. Powell, 885 So.2d 277, 280 (Fla. 2004). The question of the constitutionality of a statute on its face is purely a question of law for the court. Cates v. Graham, 427 So 2d 290, 291 (Fla. 3d DCA 1983, affirmed 451 So.2d 475 (Fla. 1984))

SUMMARY OF THE ARGUMENT

The Summary Judgment entered by the Trial Court properly found that the subject civil action filing fee statutes unlawfully impinge on fundamental rights including access to courts, court funding, due process, equal protection and jury trial, and are unconstitutional on their face and as applied to the Plaintiffs. The purpose of the filing fee statutes is to fund the costs of operating the state clerks of court offices with "adequate and appropriate filing fees for judicial proceedings". Art. V, §14(b), Fla. Constit. The statutory earmarking and diversion of the first $80 of these user fees to general revenue is an illegal tax that significantly interferes with the court related functions of the offices of the clerks and their ability to provide access to the courts.

The earmarked filing fee statutes fail to pass the applicable "rational basis" and "strict scrutiny" tests for constitutionality. The subject statutes operate to unlawfully assess and collect surplus general revenue under the guise of user fees. On their face, the statutes earmark the first $80 of the filing fees assessed and collected by the clerks of court and require their ministerial diversion into The General Revenue Fund. When the earmarked fees are collected by the clerks, they are deposited in the clerks bank account, transferred to the Department of Revenue (DOR) bank account, transferred to the General Revenue bank account, and then

subjected to the legislative general appropriations process whereby the earmarked fees may be reappropriated back to the state court system.

Because the filing fees are desperately needed by the clerks of court to operate their offices, there is no rational basis for these fees to be diverted and delayed from immediately paying the costs of operating the state court system. The interference with the efficient operation of the clerks offices results in a denial of fundamental rights of access to courts and court funding. The courts in Florida are underfunded. There is no compelling state interest in "churning" the filing fees through multiple state bank accounts and subjecting the filing fees to endure the general appropriations process of the legislature before being re-appropriated for subsequent use by the clerks to pay their bills. It is less intrusive on the fundamental rights of access to courts and court funding if the filing fees are not diverted to general revenue but are immediately available to pay the costs of the administration of justice. Even if the earmarked filing fee statutes do not expressly require the Legislature to re-appropriate the fees back to the state court system, the statutes would still be facially unconstitutional. These earmark statutes act to unlawfully tax litigants while providing a windfall of general revenue to other citizens who are not users of the court system.

The trial court also properly severed the unconstitutional statutory provisions diverting the earmarked filing fees to General Revenue from the lawful provisions

providing for the assessment and collection of the filing fees. The trial court's injunction prohibited only the unlawful diversion of the earmarked filing fees to General Revenue. Therefore, the injunction was specifically limited, narrowly tailored, and did not infringe upon the Legislature's authority to fix appropriations. The summary judgment should properly be affirmed**.**

ARGUMENT

I. THE CONSTITUTIONALITY OF THE FILING FEE STATUTES IS PURELY A LEGAL ISSUE PROPERLY DISPOSED OF BY SUMMARY JUDGMENT

A facial constitutional challenge asserts that the statute cannot be constitutionally applied to any factual situation. Voce v. State, 457 So.2d 541 (Fla. 4th DCA 1984). A facial challenge considers only the text of the statute, not its application to a particular set of circumstances, and the challenger must demonstrate that the statute's provisions pose a present total and fatal conflict with applicable constitutional standards. Cashatt v State, 873 So.2d 430, 434 (Fla. 1st DCA 2004). Accordingly, the facts which arise in a particular case are irrelevant to a determination of the facial constitutional validity of a statute. Department of Revenue v. Florida Home Builders Association, 564 So.2d 173, 175 (Fla. 1st DCA 1990), Sims v State, 510 So.2d 1045 (Fla. 1st DCA 1987).

In the case at bar, the trial court properly determined upon the record before him that the issue involving the facial constitutionality of the subject statutes was purely an issue of law. Specifically, the trial court found that the Appellants' supposed factual issue (that the state funds the court system with more than it receives from the clerk) did not alter the pure question of law before him. The Appellants concede the Final Summary Judgment "makes plain that it is the mere deposit of funds into the General Revenue Fund that the lower tribunal deems to be impermissible as a matter of law." (CFO brief at p15) Since that is the pith of the legal issue, the Appellants conjectured factual dispute is not pertinent to a consideration of facial constitutionality of the statutes. The reason for this is clear. Since the mere deposit of funds into the General Revenue Fund constitutes an illegal tax, the Legislature cannot "cure" this invasion of rights by subsequent proof that all of these illegal taxes are ultimately appropriated at the end of the year back into the state court system to pay for the essential costs of the administration of justice. Nor can the Legislature "cure" the imposition of these illegal taxes by showing that the "State funds the court system with more than it receives from the clerk." Even though it is not critical to a determination of the facial constitutionality of the statutes, it is undisputed that the courts in Florida are underfunded. Therefore, it must also be undisputed that the Legislature has

underfunded the Florida court system even if it has appropriated more general revenue than it received from the earmarked filing fees.

Contrary to the suggestion of CFO Sink, there are no factual issues in the summary judgment. The only case cited by Appellant CFO, Cox v. CSX Intermodal, Inc., 732 So.2d 1092 (Fla.1st DCA 1999), is a breach of contract case that does not involve the facial constitutionality of a statute. Appellant admits the filing fee statutes earmarking the first $80 to be deposited in the General Revenue Fund were properly enacted. (AE Appx. Tabs C, D) Appellant admits that the statutes permit no discretion whatsoever concerning the duty to remit these earmarked filing fees to the General Revenue Fund. Appellant also admits that the duty of the clerks and the Department of Revenue (DOR) to divert these monies to general revenue is totally ministerial. Finally, Appellant admits that the filing fees have actually been deposited by the clerks and DOR into the General Revenue Fund pursuant to the statutes. Appellant did not object when the trial court took judicial notice that "the courts are underfunded in Florida." (R.-Vol. 13 at T-109) It is also clear that the Appellees paid the filing fees in the instant case which were subject to the earmarked statutes under review. Therefore, the trial court had a well-developed record from which he could determine that the necessary facts were crystallized upon which to declare the filing fee statutes facially unconstitutional. While it may be possible to conceive of a case involving the

facial constitutionality of a statute which presents mixed questions of fact and law, this case is not the one. Compare State Department of Health and Rehabilitative Services v. Cox, 627 So.2d 1210, 1212 (Fla. 2nd DCA 1993) (There was "virtually no evidence in the record" which was "very limited") and Glendale Federal Savings and Loan v. State Department of Insurance, 485 So.2d 1321, 1324 (Fla. 1st DCA 1986) ("The rule followed by the Florida courts, as we interpret prior decisions, is that the question of the constitutionality of a statute is an issue of law, or of mixed fact and law, depending upon the nature of the statute brought into question and the scope of its threatened operation as against the party attacking the statute." citing Lykes Bros.,Inc v. Board of Com'rs of Everglades Drainage Dist., 41 So.2d 898 (Fla. 1949).

Appellants' contention that it must be presumed the Legislature returns all of the earmarked filing fees back into the state court system is not only impertinent but also speculative. Two examples explain why. First, Florida enacted a constitutional amendment approving a State Lottery whose proceeds were intended to supplement education funding in the state. Did the Legislature appropriate the same General Revenue to education after the Lottery became operational? The answer is no. Instead, the Legislature underfunded the education system and used the General Revenue intended to supplement education elsewhere. Thereafter, Florida amended the Constitution to compel the Legislature to do what the people

intended initially. (Article X, Section 15(c)(1): "On the effective date of this amendment, the lotteries shall be known as the FLORIDA EDUCATION LOTTERIES. Net proceeds derived from the lotteries, shall be deposited to a state trust fund, to be designated THE STATE EDUCATION LOTTERIES TRUST FUND, to be appropriated by the Legislature.") The second example showing that presumptions concerning the Legislature's expected behavior are uncertain involves the Lawton Chiles Endowment Fund created in 1999 whose earnings were earmarked to help fund specific programs in health and human services. Instead, the FY2009 annual budget passed in June 2008 transferred $354,437,854 in principal from the fund to the Department of Financial Services Tobacco Settlement Clearing Trust Fund to pay for other appropriations. Further, Chapter 2010-152, Laws of Florida (H.B. No. 5001) authorized up to $1 billion to be transferred from the fund to cover a budget deficit under certain conditions.

These examples demonstrate that despite the infinite wisdom attributed to the Legislature it cannot be presumed the Legislature will always necessarily repatriate the earmarked filing fees back to the state court system at the end of the fiscal year. The statutes certainly don't mandate much action. Furthermore, it is clear that any filing fees, once collected, cannot be used for General Revenue purposes in the first instance. See In Re: Advisory Opinion to the Governor, 509 So.2d 292, 303 (Fla. 1987)

II. THE STATUTES EARMARKING FILING FEES FOR DEPOSIT INTO THE GENERAL REVENUE FUND ARE UNCONSTITUTIONAL ON THEIR FACE

In Florida, the right of access to courts is "fundamental" in nature and guaranteed by Article I, Section 21 of the Florida Constitution which provides: "The Courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay." The origin of Florida's rights of access to the courts is rooted in Chapter Forty of the Magna Carta written in 1215 and exported to the American colonies as part of the common law of England. See Article I, Section 21: Access to Courts in Florida, 5 Fla. St. U. Law Rev. 871,873 (1977). The common law of England and the statutes in aid thereof, down to the 4th year of James I, were adopted by the Legislature of Florida on September 2, 1822 to take effect in East Florida on October 1, 1822 (pursuant to the Laws of 1822, p. 53). See Hart v. Bostwick, 14 Fla. 162,173 (1872). The common and statute laws of England were again enacted by the Legislature on June 29, 1823. Beginning with the Florida Constitution of 1838, this fundamental, self executing, mandatory and all-encompassing right has been embodied in every Florida Constitution for over 173 years. §2.01, Florida Statutes. If the statutes under review are given their plain meaning, they were intended to impose "user fees" upon litigants as a condition of lodging a civil action in the state courts.

Ordinarily, a statute is presumed to be constitutional and the challenging party has the burden of proof to demonstrate otherwise. However, whereas here, when statutes impinge on certain fundamental rights, just the opposite is the case. The act is judged under an enhanced standard and is presumptively unconstitutional unless proven valid by the state. See North Florida Women's Health and Counseling Services, Inc. v. State, 866 So.2d 612, 626 (Fla. 2003). Therefore, since the earmarked filing fee statutes under review impinge upon the fundamental right of access to courts, the burden of proof shifts to the state to justify the intrusion. Chiles v. State Employees Guild, 734 So.2d 1030, 1033 (Fla. 1999) (right of privacy); Winfield v. Division of Pari-Mutuel Wagering, Department of Business Regulation, 477 So.2d 544, 547 (Fla. 1985) (right of privacy). Furthermore, under the court's decision in Mitchell v. Moore, 786 So.2d 521,527-528 (Fla. 2001), the state must show that the subject earmarked filing fee statutes pass both the "strict scrutiny" and "rational basis" tests for constitutionality. Under strict scrutiny, where the legislation impinges on fundamental rights, the law is presumptively unconstitutional and the burden of proof is on the state to prove that the legislation furthers a compelling state interest through the least intrusive means. In re T.W., 551 So.2d 1186, 1193 (Fla. 1989); Winfield v. Division of Pari-Mutuel Wagering, Department of Business Regulation, 477 So.2d 544, 547 (Fla. 1985). To withstand a rational basis review,

the law must bear some rational relationship to legitimate state purposes. Pinellas v. Cedars of Lebanon Hospital Corporation, 403 So.2d 365, 367 (Fla. 1981).

The trial court properly found that the plain language of the statutes in question impose an adverse impact upon the fundamental rights of access to the courts and there is no targeted evil or other legitimate reason for the Legislature to earmark the first $80 of a civil action filing fee for deposit in the General Revenue Fund. The trial court further found that the intent and purpose of the statutes is to impose a reasonable "user fee" upon litigants with which to fund the Court System. If not exorbitant and reasonably related to the government service provided, user fees are presumptively valid. State v. City of Port Orange, 650 So.2d 13 (Fla. 1994) ("User fees are charges based upon the proprietary right of the governing body permitting the use of the instrumentability involved. Such fees share common traits that distinguish them from taxes; they are charged in exchange for a particular government service which benefits the party paying the fee in a manner not shared by other members of society and they are paid by choice, in that the party paying the fee has the option not utilizing the governmental service and therefore avoiding the charge"); Rainey v. Rainey, 38 So.2d 60, 61 (Fla. 1948) (exorbitant special master fees). However, the trial court found that the diversion of earmarked filing fees to the General Revenue Fund was not rationally related to the statutes purpose of funding the court system. This Court has previously

confirmed that any fees not directly related to the administration of justice cannot be used for General Revenue purposes. In re: Advisory Opinion to the Governor, 509 So.2d 292, 303 (Fla. 1987)

In fact, the trial court found that by not spending the earmarked filing fees on court related services at the outset, it must be concluded that these monies were not reasonably necessary to provide access to court services at all. In making this determination, the trial court properly relied upon this Court's prior access to court decisions in Flood v. State ex rel Homeland Company, 95 Fla. 1003, 117 So. 385 (1928) and Farrabee v. Board of Trustees, Lee County Law Library, 254 So.2d 1 (Fla. 1971). These decisions reaffirm the fundamental nature of the constitutional rights of access to the courts.

Appellants offer several arguments in response to the trial court's finding of facial invalidity of the earmarked filing fee statutes. First, Appellants claim that Flood and Farrabee only involved statutes which diverted court filing fees into the county "public treasury", whereas the case at bar involves deposit into state coffers. However, regardless of whether the filing fees are diverted into county or state general revenue accounts, the constitutional principles applicable to access to courts is the same. Appellants next contend that Flood and Farrabee are obsolete and should be overruled. Actually, far from being obsolete, the Flood and Farrabee decisions have been widely accepted and cited with approval not only in

Florida, In Re: Advisory Opinion to the Governor, 509 So.2d 292, 303 (Fla. 1987); G.B.B. Investments, Inc. v. Hinterkoph, 343 So.2d 899 (Fla. 3rd DCA 1977), but also throughout the country. LeCroy v. Hanlon, 713 SW. W. 2d 335 (Tex. 1986); Fent v. State of Oklahoma ex.rel. Department of Human Services, 2010 Wl 165086 (Okla.Supreme Court opinion filed January 19, 2010); Janice Marie Crocker v. Morgan M. Finley, 99 Ill. 2d 444, 459 N.E. 2d 1346;(Ill.1984); Safety Net For Abused Persons v. Honorable Robert Secura and Honorable Kathryn Boudreaux, 692 So. 2d 1038 (La. 1997). In fact, the only court in the country which has not cited Flood and Farrabee with approval is Fox v. Hunt, 619 So.2d 1364 (Ala. 1993) decided by the Alabama Supreme Court. It should be noted that Alabama law is not the same as Florida regarding the fundamental right of access to courts. The Alabama courts do not follow the highest standard (the dual test of strict scrutiny/rational basis) followed by Florida in Mitchell v. Moore, supra, when weighing the facial constitutionality of statutes alleged to impinge on the fundamental rights of access to courts. In any event, the Flood and Farrabee decisions are far from obsolete, and one could say with the January 2010 decision in Fent v. Oklahoma, that the Florida decisions are experiencing a resurgence.

The Appellants insist the state has a compelling interest to shuffle the filing fees from account to account to account and then back to the clerk's trust fund following the cumbersome appropriations process. If the purpose of the filing fee

is to efficiently pay for the costs of operating the clerk's offices, the circuitous shuffling of the filing fees is hardly the least intrusive means to accomplish the state's purpose. Indeed, the irrational shuffling of filing fees through multiple state coffers and then through the legislative appropriations process is perhaps the most intrusive alternative method that could interfere with access to the courts and efficient court funding. The state has failed to show a compelling need to use this cumbersome process which is unreasonably intrusive.

Appellants' remaining argument is that the trial court allowed no factual inquiry into whether any of the earmarked filing fees deposited in general revenue were ever actually spent by the Legislature on the civil justice system. Appellants urge that this Court remand this case to add that information into the record. This argument is likewise meritless. Not only were Appellants provided ample opportunity to enter such evidence as they saw fit into the record, but also Appellants introduced "Defendants Exhibit 1" which summarized the total appropriations from General Revenue in support of the administration of justice contained in the 2009-2010 GAA: $765 million attached as Appendix 1 to Appellant CFOs Brief (CFO brief at page 16). Further, as the trial court correctly determined, the facial constitutionality of the subject statutes is purely a question of law for the trial court. Appellants repeated attempts to interject facts into this analysis is futile.

III. THE STATUTES EARMARKING FILING FEES TO GENERAL REVENUE ARE UNCONSTITUTIONAL AS APPLIED TO APPELLEES

The trial court not only properly found the subject statutes unconstitutional on their face but also as applied to the Appellees. The statutes were correctly determined to deny Appellees' rights to access to courts and to deny the constitutional funding requirements of the state court system provided in Article V, Section 14. In making this determination, the trial court not only considered the plain meaning, form, and substance of the statutes, but also their practical operation and effect. The rule is universal that the practical operation, not the form of a statute, is the criterion by which to judge its constitutionality, when the validity of the act is judicially brought in question. Jacksonville Port Authority v. State, 161 So. 2d 825,828 (Fla. 1964)(citing State ex. rel. Mittendorf v. Hoy, 112 Fla, 526, 151 So.1 (1933)). The practical operation of the earmarked filing fee statutes involves an illegal taxing scheme under the guise of imposing user fees. The civil action filing fees are first earmarked by the express terms of the statute for deposit into General Revenue. The intent in earmarking these user fees is to exact a tax directing the fees into the General Revenue Fund thus allowing the Legislature to spend the money anyway it wishes when it reaches the General Revenue Fund. The clerks of court and Department of Revenue are ministerial

pawns in the scheme to divert the illegally earmarked user fees. They collect the user fees, earmark them expressly according to the statutes, separate them by earmark into the separate accounts, remit them to DOR who then deposits the earmarked funds into the General Revenue Fund. The illegal taxing scheme is complete upon deposit of the funds into General Revenue.

In response, Appellants assert without citation of authority that "no provision of the Florida Constitution prohibits the Legislature from requiring the deposit of some or all of the proceeds of civil filing fees into the General Revenue Fund of the State Treasury." (CFO brief at p. 24) However, as demonstrated previously, if a filing fee/user fee taxing scheme practically operates to substantially impair the fundamental constitutional rights of access to courts, the courts in Florida and elsewhere have not been reticent to strike it down on constitutional grounds. Appellants next argue it cannot be presumed that the diversion of filing fees to General Revenue leads to underfunding of the court system which leads to the provision of inferior court services to Appellees. This ignores the basic fact that the very constitutional indicia of filing fees rests on the premise that their amount is not exorbitant and their expenditure for maintenance of the court system promotes access to courts. The Trial Court recognized this when he quoted the following from the Oklahoma case of Fent v. State, supra: "A Legislature may impose court costs and not violate open access or sale of justice

clause when such costs are in the nature of reimbursement to the state for services rendered by the courts. The connection between filing fees and the services rendered by the courts or maintenance of the courts is thus established."

Appellants also argue that the constitutional violations are somehow "cured" by subsequent efforts by the Legislature to reappropriate the earmarked filing fees back into the state court system. The sole case relied upon by appellants is Fox v. Hunt, 619 So.2d 1364 (Ala. 1993) In that case, an Alabama statute imposed a $50 civil jury trial fee on litigants while earmarking $40 of the fee for deposit in the General Revenue Fund. The evidence showed that while only $500,000 was collected in these earmarked filing fees, over $59 million was appropriated by the Legislature to run the judicial system. Based on this evidence, the Alabama Supreme Court held the operation of the statute did not act as an unconstitutional tax on the right to litigate or on the right to a jury trial in a civil case. The Fox v. Hunt case is easily distinguishable from the case at bar. First, while Florida primarily funds its court system by the state government through General Revenue and user fees, on the other hand, Alabama primarily funds its court system by the local governments. Thus, in Florida the earmarked filing fees deposited in General Revenue for FY 2008-09 amounted to $186 million which is much more significant than the corresponding $500,000 in earmarked fees collected by Alabama which were found to be de minimis. Second, Alabama does not have the

settled law of stare decisis based on Flood and Farrabee, supra. State v. J.P., 907 So.2d 1101, 1108 (Fla. 2004). ("It is an established rule to abide by former precedents, stare decisis, where the same points come again in litigation, as well to keep the scale of justice even and steady, and not liable to waiver with every new judge's opinion….") Third, Alabama does not employ the highest constitutional standard (dual strict scrutiny/rational basis tests) for testing statutes alleged to impair fundamental constitutional rights of access to courts set forth in Mitchell v. Moore, supra. Moreover, while Appellants introduced no evidence supporting their contention that it must always be presumed the Legislature re-appropriates the earmarked filing fees back into the Florida state court system, there is record evidence to the contrary (Vol. 7, Plt. Exh. 46, page 872, AE Tab. L)

Appellants further attempt to justify the unconstitutional operation of the earmarked filing fee statutes by emphasizing that the Legislature appropriates more total dollars to the state court system ($765 million in FY 2009-2010) than siphoned off to the General Revenue Fund by the earmarks ($186,961,960.23). Further, Appellants insist that Appellees introduced no evidence in the record showing that the Legislature does not always reappropriate the filing fees deposited to General Revenue back into the state court system. Therefore, Appellants argue in the absence of evidence to the contrary, it must be presumed all of the filing fees deposited to general revenue are always re-appropriated by the Legislature back

into the state court system. The fallacies in this argument are threefold. First, the earmarked filing fee statutes on their face do not provide that the first $80 of the filing fees deposited in general revenue "must thereafter be re-appropriated back to the state court system in the next general appropriations act." Appellants seek to rewrite the statute to add this provision which does not currently exist. Only the Legislature can rewrite the statute, not the Appellants and not the Courts. This argument is a red herring since it is also clear that filing fees cannot be used for General Revenue purposes in any event. In Re: Advisory Opinion to the Governor, 509 So.2d 292, 303 (Fla. 1987). The second fallacy is that Appellants have mistaken their burden of proof on this issue. Since the subject statutes impinge on fundamental rights, the burden of proof is on the state, not the Appellees, to prove that the statutes are constitutional. North Florida Women's Health and Counseling Services Inc. v. State, supra, 866 So.2d at 626. Appellants have failed to carry their burden of proof requiring them to introduce evidence that the Legislature always re-appropriates the diverted filing fees back into the state court system in the next general appropriations act. The third fallacy is that the record evidence shows that in 2008, the Legislature did not re-appropriate back to the state court system the General Revenue generated from increased filing fees. (R.-Vol. VII, Pltf. Exh. 46, AE Appx. Tab. L at p.872) The record shows that for FY 2007-08 the filing fee revenue directed to General Revenue was $42.7 million.

(R.-Vol. Pltf. Exh. 11; AE Appx Tab. Q) In 2008 the Legislature's appropriation from "trust funds" to the Department of Corrections was $79,571,754. (R.-Vol. 7, Ptf Exh. 46 at p. 864; AE Appx. Tab L)

Another objection to the Trial Court's Final Summary Judgment raised by Appellants is the finding that the subject statutes violate the fundamental constitutional court funding requirements contained in Article V, Section 14 of the Florida Constitution. The trial court found that the operation of the earmarked filing fee statutes denied the right of Florida citizens to have their court system adequately funded in violation of Article V, Section 14. In construing that provision of the Constitution, the trial court found that its intent was to "alleviate prior inequities created by funding the state court system at the local level rather than the state level." The trial court observed that part of the funding requirement includes the collection by the clerk of filing fees or user fees. Specifically, Section (b) of Article V, Section 14 provides in pertinent part: "(b) All funding for the offices of the clerks of the circuit and county courts performing court related functions, except as otherwise provided in this subsection and subsection(c), shall be provided by adequate and appropriate filing fees for judicial proceedings... ." The use of the word "shall" indicates that the duty to fund the clerks' offices is mandatory. Furthermore, it is mandatory that the Legislature fund the expenses of the clerks' offices by "adequate and appropriate" filing fees for judicial

proceedings. Since it was never the intent of Revision 7 to impose a tax upon users of the courts, the trial court found that the amount of "user fees" diverted to the General Revenue Fund must "not be reasonably necessary to provide access to court services." Therefore, the trial court found that the Legislature decided to exact more than was "adequate and appropriate" to pay for the reasonable cost of court services. The court concluded that the portion of the fee not reasonably necessary to provide access to court services was, in reality, an unlawful tax. The Court's ruling is correct since in this case, as in Chiles v. Children A,B,C, D, E and F, 589 So.2d 260, 267 (Fla. 1991), "no surpluses have been claimed to exist and the facts indicate that entities of state government (i.e. the clerks), will not even be able to fulfill their legal responsibilities."

The Appellants argue that the trial court's Summary Judgment misconstrues Article V, Section 14 to mandate "the right to have their courts adequately funded." (Appellant CFO brief at page 26) Appellants also argue that there is no fundamental constitutional right at all to have the court system funded by "adequate and appropriate" filing fees for judicial proceedings. Appellants further contend that the Legislature has the sole "option" (permissive rather than mandatory) to provide by its exclusive appropriations authority such filing fees as it deems in its infinite discretion to be wise. Finally, Appellants assert that the invocation of the trial court's "inherent powers" to determine the amount of

constitutionally required "adequate and appropriate" filing fees violates the separation of powers doctrine.

This Court has previously recognized that Legislative attempts to extract “General Revenue” funds in the guise of “user fees” constitute illegal taxes. Collier County v. State, 733 So.2d 1012, 1014 (Fla. 1999). (“Interim Governmental Services Fee” enacted to fund police power services stricken as unconstitutional tax); State v. City of Port Orange, 650 So.2d 1 (Fla. 1994) (“transportation utility fee” on property owners to pay for local roads stricken as illegal tax in the guise of a user fee.)

This court has never previously decided whether the constitutional right under Article V, Section 14 that the court system be funded by "adequate and appropriate" filing fees is a fundamental right warranting application of the "strict scrutiny" constitutional test or even the highest standard under Mitchell v. Moore, supra (requiring the dual strict scrutiny/rational basis tests). A "fundamental right" is one which has its source in and is explicitly guaranteed by the Florida Constitution. State v. T.M., 784 So.2d 442,443 fn.1 (Fla. 2001). It is settled law that each of the personal liberties enumerated in the Declaration of Rights of the Florida Constitution is a fundamental right. State v. J.P., 907 So.2d 1101, 1109 (Fla. 2004). To be sure, the fundamental right of access to courts and due process contained in the Declaration of Rights is inextricably intertwined with the court

funding rights provided in Article V, Section 14. The "Statement of Intent Article V, Section 14" promulgated by the 1998 Constitution Revision Commission and published in its Journal, recognized that court funding was "necessary to ensure the protection of due process rights" and "necessary to insure the rights of people to have access to a functioning and efficient judicial system." (AE Appx. Tab G(3)) Moreover, the court's inherent powers to protect its fundamental right of the independence of the Judiciary as a co-equal branch of government under the separation of powers doctrine is also implicated in the rights to constitutional court funding. Chiles v. Children A,B,C,D,E. and F, 589 So.2d 260, 269 (Fla. 1991) ("This Court has an independent duty and authority as a constitutionally co-equal and coordinate branch of government of the State of Florida to guarantee the rights of the people to have access to a functioning and efficient judicial system."), see also Rose v. Palm Beach County, 361 So.2d 135, 137 (Fla. 1978); Makemson v. Martin County, 491 So.2d 1109, 1112 (Fla. 1986); Satz v Perlmutter, 379 So.2d 359, 360 (Fla.1980)(stating "We think it is appropriate to observe here that one of the exceptions to the separation of powers doctrine is in the area of constitutionally guaranteed or protected rights." Citing Dade County Classroom Teachers Association v. Legislature, 269 So.2d 684, 686 (Fla. 1972)), See also Maron v. Silver, 2010 NY Slip. Op. 01528 (N.Y. 2/23/2010) (N.Y. 2010) (State defendants failure to consider judicial compensation on the merits violates the separation of

powers doctrine); See also, dissenting opinion of Judge Newman in Beer v. United States, 592 F.3d 1326, 1327 (Fed. Cir. 2010). For these reasons, Appellees submit that the constitutional right of court funding is a "fundamental" right which justifies the application of the dual “rational basis/strict scrutiny" test of constitutionality applicable to the statutes in question.

Notwithstanding the constitutional test applied, it is clear that the Summary Judgment finding the subject statutes violative of the constitutional right to court funding in Article V, Section 14 was correct and should be affirmed. The earmarked filing fee statutes charge what Appellees believe to be just and reasonable for the facilities afforded and the court services provided. Appellees do not contest the amount of the filing fees charged to them. However, it must also follow, that all of the filing fees charged and collected are necessary to pay for the court services provided. Surely, even the Appellants would have to agree that if all of the earmarked civil action filing fees collected from litigants were deposited into the General Revenue Fund and ultimately spent to defray the costs of operating the prison system, such operation of the statutes would impair the clerks’ ability to efficiently operate their offices. If the earmarked filing fees (the first $80) constitute "surplus general revenue", they are unrelated to the reasonable costs of the court system and constitute an illegal tax under Flood, Farrabee, and In Re: Advisory Opinion to the Governor, 509 So.2d 292, 303 (Fla. 1987) decisions. The

Legislature has no compelling reason to collect "surplus general revenue" from litigants. If the Legislature wishes to generate surplus general revenue, it must do so under its taxing power and not under the guise of "user fees." Appellants have advanced no compelling justification to the contrary.

Moreover, the diversion of filing fees to General Revenue undermines the ability of the clerks to provide a "functioning and efficient judicial system" required under Article V, Section 14. An analogous diversion of funds by a private voucher system in Bush v. Holmes, 919 So.2d 322, 409 (Fla. 2006) was held to be an unconstitutional denial of the state's obligation to provide a uniform, high quality system of free public education. The diversion of these monies to private schools was not deemed as "supplemental" in nature. Similarly, the diversion of filing fees to General Revenue cannot be viewed as a supplemental funding system to the courts since it undermines their mission.

In addition to the constitutional rights of access to courts and court funding, the Trial Court Final Summary Judgment also found the subject statutes violative of the Appellees' rights to due process, equal protection and jury trial. Each of these is a fundamental right guaranteed in the Declaration of Rights set forth in Article I of the Florida Constitution. Article I, Section 2 (equal protection); Article I, Section 9 (due process); Article I, Section 22 (trial by jury). This Court has previously declared unlawful taxing statutes violative not only of the constitutional

guarantee of access to courts but also these additional enumerated constitutional guarantees. Gay v. Bessemer Properties, Inc., 32 So. 2d 587,591 (Fla. 1947)(intangibles tax on stock declared violative of equal protection and access to courts); Getzen v Sumter County, 89 Fla.45, 103 So.104,106 (Fla. 1925)(Organic rights of due process, equal protection and access to courts provide limitations on taxing power of government). To the extent that underfunding the court system impairs the ability of the clerks to do their work and keep the courthouses open, it also follows that the right to jury trial will also be impinged both in civil and criminal cases. Civil cases are adversely impacted by being pushed to the back of long dockets by speedy trial driven criminal cases and the explosion of foreclosure cases. The inability to try criminal cases within speedy trial limitations is directly related to the inability of the clerks to facilitate these trials in a timely fashion. For these reasons, the Trial Court's Final Summary Judgment in the case at bar properly relied upon these constitutional underpinnings in support of his order.

IV. THE TRIAL COURT'S INJUNCTION WAS NARROWLY TAILORED WITHOUT INFRINGING THE LEGISLATURES PREROGATIVE TO FIX APPROPRIATIONS

The Final Summary Judgment properly provided not only declaratory but also injunctive relief. The Trial Court noted that the provisions of the subject earmarked filing fee statutes providing for assessment and collection of the user

fees were valid and enforceable. Appellees never contested the amount of the filing fees or the right of the clerks to charge them as a condition of lodging a civil action in court. The Trial Court also observed that the unconstitutional provisions of the statutes diverting the filing fees to the General Revenue Fund were severable from the valid provisions. Therefore, the Trial Court carefully fashioned an injunction which was narrowly tailored to enjoin only the unlawful diversion of the filing fees to the General Revenue Fund.

Appellants object to the injunction while alleging that the Order is too confusing for them to follow. Appellants maintain that the valid portions of the statutes (assessment and collection) are not severable from the invalid portions (diversion of fees to General Revenue). Appellants also insist that the only valid injunction would prohibit assessment, collection and diversion of the fees. Finally, Appellants argue that the injunction interferes with the Legislature's prerogative to fix appropriations by law established in Article V, Section 14(d).

The Appellants' concerns are meritless. The settled law in Florida is that an unconstitutional portion of a general law may be deleted and the remainder allowed to stand provided: (a) the unconstitutional provision can be logically separated from the remaining valid provisions, (b) the Legislative purpose expressed in the valid provisions can be accomplished independently of those which are void, (c) the good and bad features are not so inseparable in substance

that it can be said that the Legislature would have passed the one without the other and, (d) an act complete in itself remains after the invalid provisions are stricken. Presbyterian Homes v. Wood, 297 So.2d 556, 559 (Fla. 1974); Moreau v. Lewis, 648 So.2d 124, 127 (Fla. 1995) (severability analysis limited to the appropriations context); Seay Outdoor Advertising, Inc., v. City of Mary Esther, Florida, 397 F.3d 943, 949-950 (11th Cir. 2005). ("According to Florida law, then, the unconstitutional part of a challenged statute should be excised, leaving the rest intact and in force, when doing so does not defeat the purpose of the statute and leaves in place a law that is complete.") Coral Springs Street Systems, Inc. v. City of Sunrise, 371 F. 3d 1320, 1348 (11th Cir. 2004).

The Trial Court properly followed Florida law on severability by excising only the unconstitutional part of the challenged statutes and leaving the rest intact without defeating the purpose of the statutes. The clerks continue to be permitted to routinely assess and collect the civil action filing fees and use them for the operation of the court clerks' offices. The funds are accounted for and there is no injunction against the Legislature appropriating the funds kept in the Clerks of the Court Trust Fund. There is no uncertainty created by the Trial Court's injunction. Appellants' fears that there will be a flood of lawsuits seeking refunds of previously paid filing fees is sheer folly. Appellees have never challenged the amount of the filing fees as unreasonable. Nor did the Trial Court rule that the

amount of the filing fees was unreasonable. Accordingly, the Trial Court's Summary Judgment does not establish any predicate for a refund by prior litigants.

CONCLUSION

The Trial Court properly determined that the earmarked filing fee statutes in question impinge on the fundamental constitutional rights of access to courts and court funding to such an extent that they unlawfully interfere with the rights of people to have access to a functioning and efficient judicial system. The material facts in the record were not in dispute. The earmarked filing fee statutes are unconstitutional on their face by unlawfully extracting General Revenue taxes under the guise of user fees. The mode of operation of the statutes is unconstitutional as applied since the ministerial diversion of the first $80 of the filing fees to General Revenue is irrational and justified by no compelling state interest. In its Final Summary Judgment, the Trial Court properly construed the Florida Constitution and correctly followed the settled stare decisis rendered in this Court's prior Flood and Farrabee decisions on the same points of law. The Trial Court's injunction was narrowly tailored to sever only the unconstitutional statutory provisions while preserving the Legislature's prerogative to fix appropriations in its absolute discretion. The Final Summary Judgment of the Trial Court should be affirmed.

Respectfully submitted this 30th day of August 2010.

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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this brief complies with the font requirements set forth in Florida Rule of Appellate Procedure 9.210 by using Times New Roman 14-point font.

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