IN THE SUPREME COURT OF FLORIDA
CASE NO. SC10-1317; SC10-1319

CHARLIE CRIST, et al.,

Appellants,

v.

ROBERT M. ERVIN, et al.,

Appellees.

INITIAL BRIEF OF APPELLANTS

On Appeal from a Decision of the Second Judicial Circuit,
in and for Leon County
Case No. 2009 CA 001386

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STATEMENT OF THE CASE AND FACTS

This case involves the question of the constitutionality of filing fees on judicial proceedings. Specifically, the issue is whether a statutory requirement that $80 of each filing fee in a civil case filed in circuit or county court be deposited into the general revenue fund violates the right of access to courts or other provisions of the Florida Constitution.

In 1998, the voters — by constitutional amendment — decided that a significant portion of the responsibility for funding the Florida justice system[1] should be transferred from the counties to the state. *See* Art. V, §14, Fla. Const. [appendix 1]; Amendments to Fla. Rules of Judicial Admin., 774 So. 2d 625, 625 (Fla. 2000) ("On November 3, 1998, the voters of Florida adopted Revision 7, which amended Article V of the Florida Constitution to shift a significant portion of the responsibility for funding the trial courts from the counties to the state."). Funding for the justice system is to "be provided from state revenues appropriated by general law." Art. V, §14(a), Fla. Const.[2]

[1] Under article V, the Legislature must provide funding for the following: the state courts system, state attorneys' offices, public defenders' offices, court-appointed counsel, and clerks' offices of the county and circuit courts. Art. V, §§ 14(a) & (b), Fla. Const.

[2] For Fiscal Year 2008-2009, the Legislature appropriated over one billion dollars from the general revenue fund to support these components of the court system. (Continued…)

The Constitution Revision Commission's Revision 7 "dramatically amended" article V to "introduce[] a three-part plan to fund the judicial system using state and county funding *in addition to a system that will be funded by user fees and costs*." *See* William A. Buzzett & Deborah K. Kearney, Commentary, art. V, § 14, 26 Fla. Stat. Ann. (West Supp. 2010) (emphasis added). Additionally, section 14(b) of article V explicitly made the imposition of court filing fees a permissible and central source of state revenues to fund court functions:

> (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*** and service charges and costs for performing court-related functions as required by general law. Selected salaries, costs, and expenses of the state courts system ***may be funded from appropriate filing fees for judicial proceedings*** and service charges and costs for performing court-related functions, as provided by general law.

Art. V, § 14(b), Fla. Const. (2010) (emphasis added).

Consistent with these provisions, the Legislature statutorily directed that a portion of each civil filing fee paid by plaintiffs in circuit and county courts be deposited into the general revenue fund to reimburse that fund for money appropriated for the justice system. § 28.241, Fla. Stat. (2009) ($80 of each civil litigant's filing fee in circuit court "must be remitted by the clerk to the

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Ch. 2008-152, § 4, at 131-161, & § 7, at 379, Laws of Fla.; Ch. 2009-1, §4, at 63, & § 7, at 116, Laws of Fla.

Department of Revenue for deposit into the General Revenue fund"); § 34.041, Fla. Stat. (2009) (requiring same for filing fees in county courts); *see also* § 28.2455, Fla. Stat. (2009) (ordering annual transfer of any excess funds from Clerk of Court trust fund to the general revenue fund) [appendix 2]. These statutory provisions (the "Filing Fee Statutes") are the subject of this appeal.

The Filing Fee Statutes were amended in 2004 in direct response to Revision 7. *See* Fla. H.R. Comm. on Approp., HB 113-A (2003) Staff Analysis 1 (May 27, 2003) (stating that "this bill continues the implementation of Constitution Revision 7 to Article V"). This 2004 amendment required that fifty dollars of each filing fee be deposited into the general revenue fund. *See* Ch. 2003-402, § 32, Laws of Fla. This new state revenue was meant to "offset [the] costs" of funding the administration of justice. Fla. H.R. Comm. on Approp., HB 113-A (2003) Staff Analysis 1 (May 27, 2003). Those fees and the portion of them deposited into the general revenue fund were increased to their current amounts in 2008, at the recommendation of the Clerks of Court Operations Corporation, in order to fund the administration of justice. *See* Fla. S. Comm. on Crim. & Civil Just. Approp., CS/SB 1790 (2008) Staff Analysis 2-3 & 9 (April 2, 2008).

Attorneys Robert M. Ervin and Davisson F. Dunlap (collectively, "Ervin") challenged the validity of these statutory provisions by filing in this Court an

application for a writ of quo warranto against a variety of Florida state officials.[3] [R1 17-65][4] Ervin alleged that he has paid "many thousands of dollars" in Florida court filing fees through the years. [R1 26] He challenged the deposit of court filing fees into the general revenue fund on the ground that the Filing Fee Statutes violate, among other constitutional provisions,[5] the constitutional right of access to the courts, [R1 19] which provides that "[t]he courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay." Art. I, § 21, Fla. Const.

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[3] The writ in this Court named as respondents: the Florida Legislature, the president of the Florida Senate, the speaker of the Florida House of Representatives, Governor Charlie Crist, Attorney General Bill McCollum, Chief Financial Officer Alex Sink, Commissioner of Agriculture Charles Bronson, the Florida Cabinet, the Florida Clerks of Court Operations Corporation, the Florida Association of Court Clerks, Inc., the Department of Revenue, the Clerk of the Courts Trust Fund, the Executive Council of the Florida Clerks of the Court Operations Corporation, and various circuit court clerks that comprise the executive council of that corporation. [R1 17]

[4] Record citations are [R* #] where * is the volume number and # is the page number.

[5] Ervin also challenged the fee provisions as violating his right of trial by jury in article I, section 22; the separation of powers limitation in article II; the exclusive administrative supervision of all courts by this Court in article V, section 2(a); provisions of article VII, section 1 and article III, section 19 regarding court funding and other state budget matters; and his right to equal protection under article I, section 2. [R1 19-20]

This Court transferred the matter to Leon County Circuit Court, [R1 5-6] which ordered responses to the writ. [R1 104] Following those responses, Ervin amended his pleading to include a request for a declaratory judgment,[6] alleging that the Filing Fee Statutes constitute an illegal tax and violate his rights of access to the courts, due process of law, equal protection, and adequate funding of the court system. [R7 1223] The trial court granted the Defendants' motions to dismiss in part, dismissing the applications for writs of quo warranto and mandamus. [R8 1543] The court denied the motions to dismiss as to the declaratory judgment and injunction counts. Id.

Ervin filed a motion for summary judgment, asserting that the Filing Fee Statutes, as a matter of law, violate his right of access to the courts [R9 1614] and are an improper transfer of funds under Florida law. [R9 1632] Ervin also argued (in the conclusion section of his motion) that the Filing Fee Statutes deprive the courts of adequate funding in violation of article V, section 14, and violate the due process, equal protection, and right to jury trial provisions of the Florida Constitution. [R9 1640]

[6] The amended complaint listed as defendants the members of the Florida Cabinet; the Department of Revenue; and the Clerks of the Court Trust Fund within the Justice Administrative Commission and its members (collectively the "State"; excepting CFO Alex Sink). [R7 1193]

Defendant Sink responded to the summary judgment motion, a response the State adopted. [R13 2415; R13 2432] The response noted that Ervin ignored the undisputed material fact that "vastly more money from the General Revenue Fund is appropriated and spent to fund the administration of justice in the State of Florida than the General Revenue Fund receives in deposits from civil filing fees." [R13 2415 (noting that about $765 million was appropriated from the general revenue fund to support the administration of justice in the 2009-2010 general appropriations act)] The response also noted that Ervin failed to prove his allegation that the funds obtained via the Filing Fee Statutes are appropriated to support programs outside the justice system. [R13 2419-2420] Additionally, CFO Sink's response noted that Ervin's conclusory allegations and legal arguments failed to justify his claims that the Filing Fee Statutes deprived the courts of adequate funding in violation of article V, section 14, or that they violated the due process, equal protection, and right to jury trial provisions of the Florida Constitution. [R13 2417-2418]

On June 4, 2010, Judge Frank Sheffield entered final summary judgment for Ervin, holding that the Filing Fee Statutes are facially unconstitutional. [R13 2434-2449] The court concluded that the deposit of filing fees into the general revenue fund transformed the fees into an unlawful tax that infringed on Ervin's right of access to courts. [R13 2443] It further determined that the filing fees collected "are

not being used for court-related functions." [R13 2444] Relying on this Court's test in Mitchell v. Moore, 786 So. 2d 521, 527 (Fla. 2001), the trial court determined that the State and CFO Sink failed to show (1) an overpowering public necessity for the infringement; and (2) that no alternative methods were available to remedy the problem. [R13 2444] The court noted that for Fiscal Year 2008-2009, the court-related collections deposited into the general revenue fund amounted to $186,961,960.23.[7] [R13 2435] While noting that the State and CFO Sink asserted that the justice system received funds from general revenue that far exceeded the amount deposited from filing fees, the trial court dismissed this point as not material and simply "argument." [R13 2437]

Briefly and without explanation, the trial court also held that the Filing Fee Statutes deny Ervin his rights to: adequately funded courts, trial by jury, due process, and equal protection. [R13 2447] The State and CFO Sink appealed the judgment to the First District, [R13 2450, 2468] which transferred the case to this Court, certifying that it involved an issue requiring immediate resolution and of

[7] This figure was taken from a document attached to CFO Sink's May 2009 response to the writ of quo warranto, [R1 143] and was also cited in Ervin's motion for summary judgment. [R9 1601] It includes the $50 then taken from each civil filing fee, plus fees for pro hac vice attorneys, a $33 million remit from January 2009 under section 28.3704, and $73 million in "additional revenue." [R1 143] As CFO Sink's initial brief in this Court explains, however, the trial court record "contains no figure at all reflecting the total amount of money derived only from 'the first $80' fee portions at issue in this case." [CFO Sink's Init. Br. 20]

great public importance. Case Nos. 1D10-2972, 1D10-2978 (orders filed July 7, 2010). This Court accepted jurisdiction on July 22, 2010.

SUMMARY OF ARGUMENT

The Filing Fee Statutes at issue, which allow the collection and deposit of court filing fees into the general revenue fund, are not facially unconstitutional. Instead, the filing fees provide a small portion of the state revenues necessary to finance the operation of the justice system. For example, even using the trial judge's figure for fiscal year 2008-2009, the court-related collections amounted to less than twenty percent of the state funds appropriated to finance the administration of justice and fulfill the Legislature's article V obligation that same year. Article V, section 14 of the Florida Constitution obligates the Legislature to fund the various entities of the justice system; it neither prescribes nor prohibits any particular accounting measure. Indeed, article V, section 14(b), of the Florida Constitution specifically allows the use of filing fees to fund the state court system, thereby undermining the trial court's conclusion that such filing fees are facially invalid as deprivations of access to court.

The trial court's ruling was inconsistent with this Court's decisions as well as those of nearly every other state court to confront this issue. Under those decisions, court filing fees are constitutional so long as they are used to support the administration of justice. Because the entire amount of the filing fees deposited into the general revenue fund is ultimately appropriated to fund Florida's justice

system, the filing fees are not a facially unconstitutional tax on litigants' right of access to the courts or a violation of any other asserted constitutional right.

ARGUMENT[8]

I. The Filing Fee Statutes, Which Allow the Deposit of Filing Fees Into the General Revenue Fund, Are Valid Because the Entire Amount of Those Fees Are Appropriated for the Administration of Justice.

The Filing Fee Statutes do not infringe on the right of access to the courts and are facially constitutional. The right of access to the courts, which is recognized in Florida's constitution as well as those of thirty-nine other states,[9] does not categorically prohibit such fees. This Court, and all but one of the other state courts to have considered this issue,[10] concluded that when filing fees are used to fund the administration of justice, they in no way impede the litigant's court access, and they do not constitute taxes. *See, e.g.*, Farabee v. Bd. of Trs., Lee County Law Library, 254 So. 2d 1, 5 (Fla. 1971) (holding that a filing fee whose

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[8] **Standard of Review:** A decision on the constitutionality of a statute presents a pure issue of law, and accordingly is reviewed de novo. Zingale v. Powell, 885 So. 2d 277, 280 (Fla. 2004). A challenged statute is presumptively constitutional, St. Vincent's Med. Ctr., Inc. v. Mem'l Healthcare Group, 967 So. 2d 794, 799 (Fla. 2007) ("When a court has declared a state statute unconstitutional, the reviewing court must begin the process with a presumption that a statute is valid.") (citation omitted), and all doubts are resolved in favor of its validity. Dep't of Legal Affairs v. Rogers, 329 So. 2d 257, 263 (Fla. 1976). A statute is only facially unconstitutional if this Court concludes that "no set of circumstances exists under which the statute could be valid." Fla. Dep't of Revenue v. City of Gainesville, 918 So. 2d 250, 256 (Fla. 2005).

[9] Thomas R. Phillips, The Constitutional Right to a Remedy, 78 N.Y.U. L. Rev. 1308, 1311-1312 (2003).

[10] *See* infra pp. 16-19.

proceeds pay for something that "is essential to the administration of justice today, … is appropriate[ly] … assessed against those who make use of the court systems of our state.").

A. The filing fees are used to finance the justice system and are not impermissible taxes.

In concluding that the right of access to courts is infringed, the trial court failed to recognize the fungible nature of money and the nature of the state funding process. For Fiscal Year 2008-2009, the Legislature appropriated over one billion dollars to fund the administration of justice as article V requires. Ch. 2008-152, § 4, at 131-161 (justice administration appropriations), & § 7, at 379 (judicial branch appropriations), Laws of Fla.; Ch. 2009-1, § 4, at 63, & § 7, at 116 (reductions in 2008-09 appropriations).[11] In contrast, the trial court determined that

[11] In response to Ervin's motion for summary judgment, CFO Sink noted that the amount appropriated from the general revenue fund for the administration of justice was $765 million in Fiscal Year 2009-2010. [R13 2415]; *see also* Ch. 2009-81, §4, at 161 & § 7, at 378. The trial court deemed the amount of money appropriated from the general revenue fund to the administration of justice to be "legal argument," and therefore refused to make any factual findings on this topic. [R13 2437] As shown, however, the amount of money appropriated by the Legislature to the administration of justice is a matter of legislative record published each year in the Laws of Florida. Pursuant to section 90.201(1), Florida Statutes, the trial court should have and this Court can (and should) take judicial notice of these facts in the general appropriations acts. If the Court desires further factual development as to the amount spent by the Legislature on the administration of justice, it should remand to the trial court with instructions to consider this evidence. In his amended petition, however, Ervin made clear that he believed his argument succeeded notwithstanding "the fact that perhaps the (Continued…)

in that same year, the total *court-related* collections deposited into the general revenue fund amounted to just $186,961,960.23 [R13 2435][12]

The funds appropriated for the justice system therefore come, in part, from the challenged filing fees. Because the total amount of all filing fees deposited into the general revenue fund are less than the cost of the administration of justice, they are not used for other general revenue purposes. Moreover, because more funds have been expended on the justice system than are collected via the filing fees, it cannot be concluded that the Filing Fee Statutes are facially unconstitutional as illegal taxes on litigants' access to the courts.

Nearly forty years ago, this Court held that if the proceeds of a filing fee are used to fund matters that are "essential to the administration of justice today, … it is appropriate that [the] cost be assessed against those who make use of the court

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Legislature might appropriate [the court filing fees] back to the Clerks' operations and/or the state court system," and therefore did not dispute the figure put forth by the appropriation bill. [R2 257] Because the benefit of any inferences at summary judgment should be for the non-moving party, the Court should, if necessary, presume that the number from the Laws of Florida is correct and take note that it is higher than the amount alleged to have been transferred from the clerks' offices to the general revenue fund for the same fiscal year.

[12] That amount was presented to the trial court in an exhibit attached to CFO Sink's May 2009 response to the writ of quo warranto, [R1 143] and the figure and its components were also cited by Ervin in his motion for summary judgment. [R9 1601] As explained above, hard numbers for the amount transferred under the Filing Fee Statutes are now available. *See* supra n.7. But it is worth noting that the trial court's constitutional analysis fails even relying on the figure it used.

systems of our state." Farabee, 254 So. 2d at 5. Nevertheless, the trial court interpreted this Court's caselaw to support its holding that the deposit of court filing fees into the general revenue fund deprives litigants of access to the courts. [R13 2445] This conclusion is not supported under either Farabee or Flood v. State, 117 So. 385 (Fla. 1928). Both cases involved fees placed on court filings that were used for funding law libraries. Farabee, 254 So. 2d at 2; Flood, 117 So. at 386. In Farabee, the fee was deemed constitutional, 254 So. 2d at 5, and in Flood, the fee was deemed an unconstitutional tax on the right to court access, 117 So. at 387. The key difference in the cases was explained in Farabee:

> We deem it especially significant in Flood, that the balance of the funds remaining after adequate provision for the law library were to be used for "general county purposes" as directed by the board of county commissioners. Since at least part of the fee was available to the county for the building of roads, schools, and so on, it could not be said that the fee levied was a cost of the administration of justice. In the instant case, however, we think such a statement can be made. Although there is some language in Flood which indicates that the Court felt even a levy specifically for a law library was not a necessary cost of the administration of justice, we conclude that it is in the case sub judice. To the extent that such an inference can be drawn from the language of Flood, we recede from Flood.

Farabee, 254 So. 2d at 6. This language indicates that if all proceeds from a court filing fee go to fund the administration of justice, the fee is not an unconstitutional tax on the right of access to the courts. At no point did the Court indicate that the mere fact that fees were transferred into a general revenue fund as an accounting procedure somehow transformed an otherwise valid filing fee into an

unconstitutional tax. To the extent these cases are applicable,[13] the current fees under review are constitutional.

Moreover, in neither case was the excess money "appropriated" by the counties back to the administration of justice. In contrast, here the total amount of all filing fees transferred into the general revenue fund is subsequently appropriated for the justice system. The filing fees transferred to the general revenue fund make up just a small portion of the funds appropriated to the justice system — there is no balance of funds remaining after the reimbursement.

This Court's jurisprudence on the question of whether a fee constitutes a tax does not support either Ervin's argument or the trial court's conclusion. This Court's precedent uniformly holds that when a charge is not an "enforced burden" or when it is placed on a specific category of citizens, it is not a tax, but rather a fee charged in exchange for a particular governmental service. State v. City of Port Orange, 650 So. 2d 1, 3 (Fla. 1994) (fees "are paid by choice, in that the party paying the fee has the option of not utilizing the governmental service and thereby

[13] Because the two cases dealt with court funding issues prior to Revision 7 in 1998, the fees gathered were used to fund *county* law libraries. In contrast to the limited authority of counties at that time, the Legislature here is exercising its plenary authority to appropriate state funds. No state dollars, no matter what "fund" they are held in, can be spent without an appropriation. Art. VII, § 1(c), Fla. Const. ("No money shall be drawn from the treasury except in pursuance of appropriation made by law."). Therefore, even though the cases support the State's position, they provide guidance only and cannot control state funding issues.

avoiding the charge"); State ex rel. Gulfstream Park Racing Ass'n v. Fla. State Racing Comm'n, 70 So. 2d 375, 379 (Fla. 1953) ("a tax is a forced charge or imposition, it operates whether we like it or not and in no sense depends on the will or contract of the one on whom it is imposed").

Because the filing fees at issue are used to provide a special benefit to the payers, i.e., court services, they do not have the "indicia" of a tax. Pinellas County v. State, 776 So. 2d 262, 267-68 (Fla. 2001). And, in step with this Court's decision in Farabee, it is how the fee is *used* that is a critical factor in determining whether it is actually a tax in disguise. *See* Alachua County v. State, 737 So. 2d 1065, 1068 n.1 (Fla. 1999) (noting that "the use of the fee indicates that it is an unlawful tax" because the proceeds were *directed* to general revenue *purposes* other than the utility right of way for which they were charged). Because the entire amount of the filing fees is used to fund the administration of justice via the general revenue fund, these fees cannot be deemed a tax.

B. The Legislature need not use any particular accounting method.

The gist of Ervin's challenge is to the *manner* in which the Legislature accounts for the funds ultimately appropriated for the justice system. Ervin did not contest that the funds appropriated from the general revenue fund exceed the amount of filing fees placed in the fund; nor does he challenge the amount of the filing fees or the amount appropriated for the administration of justice. His

challenge, therefore, is only to the method of accounting for the fees and funds, which places form over substance. If the Legislature simply changed the nature of the account into which filing fees are deposited and from which money is appropriated for the justice system, the logic of his position (and that of the trial court) crumbles. Instead of a general revenue fund, the new account would be deemed a separate fund through which the filing fees would pass. While this would affect the accounting practices of the various state agencies involved in the administration of justice, it would have no bearing on a litigant's access to the courts. A mere change in form rather than substance cannot be the basis for deeming a statute unconstitutional. State ex. rel Davis v. City of Largo, 149 So. 420, 421 (Fla. 1933) ("courts will not declare an act of the Legislature invalid because it may be violative of the best policy").

Indeed, Ervin considers the filing fees to be an unlawful tax the moment they are placed in the general revenue fund, "notwithstanding any subsequent efforts by the Legislature to redirect these [filing fees] back into the court system through a general appropriations statute." [R7 1213] Ervin points to no precedent or authority in Florida law to support his claim that a particular type of accounting device is required. Even if Ervin's legal argument prevailed, it would accomplish little. Filing fees could still be charged to litigants, but the Legislature would only

have to require that they be placed in a specific fund from which they would be appropriated to fund the justice system.

Trust funds are created and, with some exceptions not relevant here,[14] remain in existence entirely at the discretion of the Legislature. *See* art. III, § 19(f)(1), Fla. Const. ("No trust fund of the State of Florida or other public body may be created or re-created by law without a three-fifths vote of the membership of each house of the legislature in a separate bill for that purpose only."); art. III, §19(f)(2), Fla. Const. ("By law the legislature may set a shorter time period for which any trust fund is authorized."). Nothing in the Constitution requires the Legislature to establish or maintain any trust fund. The money in a trust fund is state revenue; indeed, the constitution demands that when a trust fund expires, the money in it must go to the general revenue fund. Art. III, §19(f)(4), Fla. Const. ("All cash balances and income of any trust funds abolished under this subsection shall be deposited into the general revenue fund."). Therefore, a filing fee is transformed into state revenue once it is paid to the clerk's office. *See* § 215.31, Fla. Stat. ("Revenue, including … fees … received under the authority of the law of the state by … the judicial branch shall be promptly deposited in the State Treasury … ."). Thereafter, it constitutionally may be accounted for in whatever manner the Legislature sees fit, so long as it is ultimately *used* to support the

[14] Art. III, § 19(f)(3), Fla. Const.

administration of justice. Money is fungible and *all* of the filing fees at issue are appropriated to the justice system, either directly from the Clerk of Court Trust Fund or indirectly via the appropriation of funds from the general revenue fund.

The trial court's reasoning is similar to that rejected by the Alabama and Oklahoma high courts. *See* Fox v. Hunt, 619 So. 2d 1364, 1367 (Ala. 1993); Fent v. State, 2010 WL 165086, at *4 (Okla. Jan. 19, 2010). In Fox, the Alabama Supreme Court dealt with an identical issue when the state's jury trial filing fees were challenged as unconstitutional taxes because those fees were deposited into the "state general fund." 619 So. 2d at 1365. That court found it dispositive that Alabama spends more money out of its general fund than it collects in fees. The court noted that it would have to "deny the economic reality of the Legislature's funding of an accounting artifice in order to hold that any portion of the jury trial fees collected by the circuit court clerks actually went to programs, other than the judiciary, funded through the state's general fund." Id. at 1367. The same is true in this case.

This year, the Oklahoma high court decided a challenge to a statute that directed portions of its court filing fees to non-judicial programs. Fent, 2010 WL 165086, at *1. That court explained that if money deposited from fees to general revenue was less than the cost to general revenue of maintenance of the clerks' offices and the courts, then the fee was constitutional. Id. at *3 (citing In re Lee,

168 P. 53 (Okla. 1917)) (including among those court costs the "salaries of the justices, commissioners, marshal, and other expenses of maintaining the court"). After reviewing other state court cases,[15] including Farabee, the Oklahoma court provided the following key explanation of the holdings of the majority of courts on the topic:

> The rationale of these cases is that the purpose of court fees is to reimburse the state for money that otherwise would have to be appropriated for the maintenance of the courts. The legislature may impose court costs and not violate the 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.

[15] Other state cases on point include: Safety Net for Abused Persons v. Segura, 692 So. 2d 1038, 1041 (La. 1997) (holding that because money collected by court charge "goes, not to court services nor to any other entity associated with the judicial system, but to a private, nonprofit corporation to be used at its discretion for domestic violence programs," it is an unconstitutional tax); Crocker v. Finley, 459 N.E.2d 1346, 1351 (Ill. 1984) (holding that court filing fee that went to fund shelters and other services for domestic violence victims infringed on right to access the courts). In the probate filing fee context, the Ohio Supreme Court long ago held that the fee was properly charged "whether the amount to be paid therefor goes to the officer, or into the public treasury, provided no more is exacted than is just and reasonable for the facilities afforded, and the services performed." State v. Judges, 21 Ohio St. 1, 12 (1871).

Id. at *4. Because the particular programs at issue in Oklahoma did not maintain or support the court system and the fees did not "defray expenses of the court system," however,[16] they were impermissible. Id. at *7.

The only decision in the country to the contrary is Lecroy v. Hanlon, 713 S.W.2d 335 (Tex. 1986). There, the Texas court held that a statute directing the deposit of $40 of each filing fee into the state's general revenue fund violated the open courts provision of the state constitution. Id. at 340. The court determined that because the fees were used for other programs[17] they were an unconstitutional tax. Id. at 342.

The majority opinion in Lecroy, however, completely ignored the amount of money appropriated from the state fund back to the justice system. This glaring omission was highlighted by the dissent: "The state's annual share of the filing fee is expected to be approximately $11,000,000 while the State's annual cost [to fund the judiciary] will be over $52,000,000." Id. at 345 (Gonzalez, J., dissenting). The

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[16] The Oklahoma fees went to non-court state services, including the Voluntary Registry and Confidential Intermediary program, counties' multi-disciplinary child abuse response teams, and the Oklahoma Attorney General's Victims Services Unit. Id. at *7.

[17] Like the court below, the Texas court ignored the fungible nature of the money and determined: "The $11 million in general revenues raised from the fee flows out of the treasury at random. Since the judiciary accounts for only approximately 1/2 of 1% of state funding, 99.5% of the revenue generated from the fee must go to other programs besides the judiciary." Lecroy, 713 S.W.2d at 341 n.9.

dissent concluded that the majority improperly shifted the burden to the state and elevated form over substance, creating an "absurd" constitutionally-required "accounting device." Id. at 345.

The trial court's reliance on Lecroy was misplaced, and its conclusion that the decisions of other state courts supported its determination was mistaken. The deposit of filing fee proceeds into the general revenue fund does not transform the fee into a tax. The proceeds merely replenish a small portion of the funds appropriated out of the general revenue fund to support article V entities and the administration of justice. Ervin did not meet his heavy burden to show that the Filing Fee Statutes are facially unconstitutional. This Court should adopt the more sound and well-reasoned logic of Fox, Farabee, and the Texas dissent that as "long as the State pays more in financing the judiciary than the courts receive in user fees, the [trial] court's logic is flawed." Lecroy, 715 S.W.2d at 345. The filing fees do not infringe on Ervin or any litigant's right of access to the courts.[18]

C. The Filing Fee Statutes do not violate any other constitutional provisions.

The remainder of the trial court's order is deficient in its perfunctory conclusion that the Filing Fee Statutes "also deny the citizens of this state the right

[18] As such, the test relied on by the trial court from Mitchell v. Moore, 786 So. 2d 521, 527 (Fla. 2001), is not applicable because the two-part strict scrutiny analysis in that case was used only after the Court concluded that the "right to gain access to courts itself has been denied."

to have their courts adequately funded, in violation of Article V, Section 14, and the due process, equal protection, right to jury trial guarantees of accorded under [sic] the Florida Constitution." [R13 2447] Given the absence of analysis for this conclusion, it is difficult to pinpoint how the trial court arrived at its judgment.

It is entirely unclear how the imposition of constitutionally-permissible filing fees under article V, section 14 could result in a violation of that portion of the Constitution. Indeed, as explained above, filing fees are used in their entirety to fund the administration of justice, which forms no basis for a constitutional violation.

Neither the trial court nor Ervin demonstrate what specific due process rights of court litigants are infringed due to the deposit of filing fees into the general revenue fund. Nor do they clearly identify what fundamental right is at stake that demands heightened scrutiny under substantive due process or equal protection analyses. No protected class is at issue, and the Filing Fee Statutes easily meet rational basis analysis because the Legislature ultimately appropriates the filing fees collected and placed in the general revenue fund to the article V functions it is obligated to fund. Finally, filing fees can have no adverse impact on a litigant's right to trial by jury where those fees are used to fund court services. As such, the trial court's entry of summary judgment on these additional grounds should be reversed.

CONCLUSION

The trial court erred in facially invalidating the Filing Fee Statutes, which merely authorize the collection of civil filing fees that are deposited into the general revenue fund and ultimately appropriated for use in funding the administration of justice. The filing fees are not taxes and do not infringe on litigants' rights of access to the courts. As such, this Court should reverse the trial court order.

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE/SERVICE

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