STATE OF MICHIGAN

IN THE MICHIGAN SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant

Supreme Court No. 155849
Court of Appeals No. 330876
Circuit Court No. 13-1315 FH

-v-

SHAWN LOVETO CAMERON, JR.,

Defendant-Appellant
_____/

AMICUS CURIAE BRIEF OF THE CRIMINAL DEFENSE ATTORNEYS OF MICHIGAN, THE AMERICAN CIVIL LIBERTIES UNION FUND OF MICHIGAN AND THE LEGAL SERVICES ASSOCIATION OF MICHIGAN

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STATEMENT OF INTEREST OF AMICUS CURIAE

The Criminal Defense Attorneys of Michigan (CDAM) is an organization consisting of hundreds of criminal defense attorneys licensed to practice in this state. CDAM was organized for the purposes of: promoting expertise in criminal and constitutional law; providing training for criminal defense attorneys to improve the quality of representation; educating the bench, bar, and public of the need for quality and integrity in defense services; promoting enlightened thought concerning alternatives to an improvements in the criminal justice system; and guarding against erosion of the rights and privileges guaranteed by the United States and Michigan Constitutions and laws. *CDAM Constitution and By-laws*, Art 1, sec 2. CDAM was invited to file an amicus brief in this matter. *People v Cameron*, 501 Mich 986; 907 NW2d 604 (2018).

The Legal Services Association of Michigan (LSAM) is a Michigan nonprofit organization incorporated in 1982. LSAM's members are thirteen of the largest civil legal services organizations in Michigan and collectively provide legal services to low-income individuals and families in more than 50,000 cases per year.[1]

LSAM members have long been aware of Michigan policies on fees, fines and costs. LSAM members have daily contact with low income persons directly affected by fees and costs imposed under MCL 769.1k and have seen how those policies impact and harm low income families and low income communities. This impact is exacerbated because the collection of these

[1] LSAM's members are: the Center for Civil Justice, Elder Law of Michigan, Lakeshore Legal Aid, Legal Aid and Defender, Legal Aid of Western Michigan, Legal Services of Eastern Michigan, Legal Services of Northern Michigan, Michigan Advocacy Program, Michigan Indian Legal Services, Michigan Migrant Legal Assistance Program, Michigan Legal Services, Michigan Poverty Law Program, and the University of Michigan Clinical Law Program.

fees and costs and the enforcement actions relating to the non-payment of these fees and costs are managed by the criminal justice system.[2]

LSAM members share a deep institutional commitment to ensuring that our court system is accessible to low-income persons and that low income persons are treated with fairness and dignity in the judicial system. The impact of MCL 769.1k is to fund our court system through a fee and cost system imposed on unwilling participants in the criminal justice system and disproportionately imposed on low income persons and minorities. These policies create hardships for the individual who is ordered to pay the costs of operating the court system—but they also create hardships for the families and loved ones of those fined individuals (who often use their own resources to pay a fine or cost to avoid a negative criminal outcome for a family member).

The American Civil Liberties Union (ACLU) of Michigan is the Michigan affiliate of a nationwide nonpartisan organization of approximately 1.6 million members dedicated to protecting the liberties and civil rights guaranteed by the United States Constitution. The ACLU of Michigan regularly and frequently participates in litigation in state and federal courts seeking to protect the constitutional rights of people in Michigan.

For the last decade, the ACLU of Michigan has helped lead an effort in the state to draw attention to the problem associated with Michigan's heavy reliance on court-imposed assessments to fund the judicial system, particularly the problem of debtors' prisons resulting from the inability of many defendants to pay those assessments. In October 2010, the ACLU published the report *In for a Penny: The Rise of America's New Debtors' Prisons*, containing a detailed section discussing issues in the Michigan courts relating to legal fines and obligations, including the

[2]LSAM members participated on the Court's Ability to Pay Task Force and advocated for the Court's Ability to Pay Court Rule, see MCR 6.425, adopted May 25, 2016.

problems created when excessive court-imposed costs lead to incarceration of the indigent.[3] In 2011, the ACLU of Michigan engaged in court watching around the state and filed emergency appeals in five district-court cases in order to draw attention to the widespread problem of "pay or stay" sentences.[4] In 2012 and 2013, the ACLU of Michigan again engaged in court watching and found that the practice of imposing so-called "pay or stay" sentences without an indigency hearing remains endemic throughout the state. The ACLU has filed numerous cases challenging "pay or stay" sentencing, including *In re Anderson*, 15-2380 (Macomb Cir. Court), a superintending control action to halt "pay or stay" sentencing practices in the 38th district court. The ACLU of Michigan also worked closely with judges and other stakeholders on the revisions to the Michigan Court Rules to address constitutional deficiencies in the collection of costs imposed on defendants, and has worked in the legislature to promote sustainable and equitable funding streams for the judiciary. Given the interconnection between unconstitutional "pay or stay" sentencing and the increasing costs imposed on indigent defendants, the ACLU of Michigan believes that, as an *amicus*, it can contribute to the Court's understanding of the present case.

[3] <http://www.aclu.org/prisoners-rights-racial-justice/penny-rise-americas-new-debtors-prisons.
[4] See ACLU, *ACLU Challenges Debtors' Prisons Across Michigan* (Aug. 4, 2011) , http://www.aclumich.org/article/aclu-challenges-debtors-prisons-across-michigan, accessed July 10, 2018.

STATEMENT OF QUESTION PRESENTED

I. THE COUNTY HAS THE OBLIGATION TO PAY FOR THE COURTHOUSE AND COURT OPERATIONS, AN OBLIGATION IT HAS TRADITIONALLY FUNDED THROUGH THE IMPOSITION OF TAXES. DOES THE 2014 AMENDMENT TO MCL 769.1K, AUTHORIZING JUDGES TO IMPOSE AND COLLECT "COSTS" IN CRIMINAL CASES FOR THE SALARIES OF COURT PERSONNEL AND OPERATION AND MAINTENANCE OF THE COURTHOUSE, CONSTITUTE AN UNCONSTITUTIONAL TAX?

Trial court answered: No Answer

Court of Appeals answered: No

Appellant answers: Yes

Appelle answers: No

Amicus for CDAM, ACLU, and LSAM answers: Yes

STATEMENT OF FACTS

Amici rely on the Statement of Facts set forth by the parties.

ARGUMENT

Defendant Cameron has fully briefed the two questions before the Court. Amici write to offer additional perspective on the first question posed by this Court: "[W]hether court costs under MCL 769.1k(1)(b)(iii) should be classified as a tax, a fee, or some other category of charge[.]" *People v Cameron*, 501 Mich 986; 907 NW2d 604 (2018). As explained below, the Court should hold that these costs are taxes. The answer to that question determines the answer to the second question – whether such a tax is unconstitutional – for the reasons set forth in Defendant Cameron's supplemental brief.

I. THE COUNTY HAS THE OBLIGATION TO PAY FOR THE COURTHOUSE AND COURT OPERATIONS, AN OBLIGATION IT HAS TRADITIONALLY FUNDED THROUGH THE IMPOSITION OF TAXES. THE 2014 AMENDMENT TO MCL 769.1K, AUTHORIZING JUDGES TO IMPOSE AND COLLECT "COSTS" IN CRIMINAL CASES FOR THE SALARIES OF COURT PERSONNEL AND OPERATION AND MAINTENANCE OF THE COURTHOUSE, CONSTITUTES AN UNCONSTITUTIONAL TAX.

The cost of operating the government, including the salaries and benefits of court personnel and the cost of operating and maintaining the county courthouse, are costs borne by the public as a whole and not by individual litigants. The 2014 amendment of MCL 769.1k, authorizing trial judges to assess costs for the "[s]alaries and benefits for relevant court personnel[,]" for "[g]oods and services necessary for the operation of the court[,]" and for "[n]ecessary expenses for the operation and maintenance of court buildings and facilities," MCL 769.1k(1)(b)(iii)(A)-(C), creates an unconstitutional tax.

Funding of government operations for the benefit of the public is the responsibility of the legislative branch. "Government is instituted for their [the people's] benefit, security and

protection." Const 1963, art 1, § 1. "The legislature shall impose taxes sufficient with other resources to pay the expenses of state government." Const 1963, art 9, § 1.

The historical tradition of circuit court funding through county taxes illustrates why the costs authorized by MCL 769.1k(1)((b)(iii) are in reality a tax. The Court will also find a tax by applying the legal test set forth in *Bolt v City of Lansing*, 459 Mich 152, 161; 587 NW2d 264 (1998). Finally, the Court should consider the constitutional independence of the judiciary. Courts do not levy taxes and they should not be forced to fund their own operations.

This Court should conclude that the costs permitted under MCL 769.1k(1)(b)(iii) are in reality a disguised tax.

Historical Funding of the Circuit Courts

Although the circuit court is a state court, it has traditionally operated by means of funding provided by the county.

The circuit court is a state court and considered part of state government. "The circuit court . . . has always been a state court held by judges paid by the state, and is no sense a local court." *Whallon v Ingham Circuit* Judge, 51 Mich 503, 511-512; 16 NW 876 (1883). The circuit court is "regarded as part of state government." *Grand Traverse County v State*, 450 Mich 457, 474; 538 NW2d 1 (1995). "It has been uniformly held in this state that the circuit courts are in no sense county agencies or instrumentalities." *Whallon*, 51 Mich at 518. The judicial branch performs services "on behalf of the state." *People ex rel Royce v Goodwin*, 22 Mich 496, 499 (1871). See also *Stowell v Jackson Co Bd of Supervisors*, 57 Mich 31, 34; 23 NW 557 (1885) (circuit court performs state function).

The Michigan Legislature possesses the constitutional obligation to tax and appropriate funds for the expenses of state government. Const 1963, art 9, § 1. Nevertheless, the historical

practice has been to shift funding of the circuit court – in particular the cost of building the courthouse and funding its operations – to the county. "Despite the fact that the courts have always been regarded as part of state government, they have operated historically on local funds and resources." *Grand Traverse County*, 450 Mich at 474. The state is "not required to pay the entire cost of trial court obligations" and may shift some costs to the county. *Id.* at 472-477. Funding by the county was considered "a fair way of apportioning public expenses." *Hart v Wayne Co*, 396 Mich 259, 272; 240 NW2d 697 (1976). "[W]e have also held that the expenses of justice are incurred for the benefit of the state, and only charged against the counties in accordance with old usage, as a proper method of distributing the burden." *Stowell v Jackson Co Supervisors*, 57 Mich 31, 34; 23 NW 557 (1885). See also *Whallon*, 51 Mich at 512 (tracing the circuit court to territorial times and discussing the county's obligation to provide the courthouse).

The fact that courthouses are funded by counties apparently evolved from the practical realities of providing justice in the 1800s. Circuit judges travelled the state. *Lapeer County Clerk v Lapeer Circuit Court*, 469 Mich 146, 157; 665 NW2d 452 (2003), quoting Metzger & Conley, *Relationship of the county clerk to the circuit court*, 60 Mich BJ 849 (1981). There was no constitutional requirement that the circuit court hear cases at the county seat. *Whallon*, 51 Mich at 512. The "seat of justice" and the "county seat" were not synonymous. *Id.* at 511. Yet the county seat was the place of doing county business and included the probate court, a local county court,[5] and other county offices:

> The county seat has always been the place designated for doing the county business; the place at which the public buildings were to be erected; the place where the probate and county courts were to be held, and the offices of the county clerk,

[5]The county court was established in 1815 and abolished in 1833. *Whallon*, 51 Mich at 510. It lived again for a short period of time during the mid-1840s. See *Streeter v Paton*, 7 Mich 341, 349 (1859) (county court established by statute in 1846 and abolished by the 1850 Constitution).

> county treasurer, and register of deeds were to be located, and the board of supervisors were to hold their several sessions there. [*Whallon*, 51 Mich at 511.]

Court Funding Thru County Taxation

The counties laid taxes to finance the courthouse and its operations:

> The board of supervisors are to the county what the legislature is to the state, with administrative as well as legislative duties. The taxes are laid and collected through county machinery; moneys are raised and accounts liquidated, not only for county business, but to meet the county liability in court expenses and incidentals, laid on the county by the state. [*Whallon*, 51 Mich at 519.]

Counties continued to fund the circuit courts through taxes. This Court recognized county taxation as a means to support circuit court operations in *Grand Traverse County, supra* (a 1995 case). There the Court concluded the counties had responsibility for circuit court funding and noted that "statistics on which the funding units rely arguably are not part of the record, [but] it would certainly not be surprising to learn that varying levels of taxation are devoted to court funding in different jurisdictions." 450 Mich at 477-478. See also MCL 600.591(1) (county board of commissioners in each county "shall annually appropriate, by line-item or lump-sum budget, funds for the operation of the circuit court in that county").[6]

Trial court funding through taxes is also made clear from this Court's decision in *46th Circuit Trial Court v Crawford County*, 476 Mich 131; 719 NW2d 553 (2006). There, the Court concluded the judiciary had the inherent authority to compel county funding for reasonable and necessary expenses of the circuit court. The Court began its reasoning with this opening line: "This case involves a conflict between the legislative branch's exercise of the 'legislative power' to appropriate and to tax and the judicial branch's inherent power to compel sufficient appropriations to allow the judiciary to carry out its essential judicial functions." *Id.* at 134.

[6] Other portions of MCL 600.591 were declared unconstitutional in *Judicial Attorneys Ass'n v Michigan*, 459 Mich 291, 294; 586 NW2d 894 (1998).

Taxation, whether by state or county,[7] continues to be the proper way to fund the circuit courts.[8] State government exists for the "benefit, security and protection" of the people. Const 1963, art 1, § 1. The judicial branch is an inseparable part of state government. Const 1963, art 3, § 2. "It is clear that our Constitution established an independent co-equal judicial branch of government. It is clear that the operation of this co-equal branch of government is one of the proper expenses of state government, for which taxes must be levied . . . ." *Judges for Third Judicial Circuit v Wayne Cty*, 383 Mich 10, 22; 172 NW2d 436 (1969), superseded by 386 Mich 1; 190 NW2d 228 (1971

"A tax is an enforced contribution for the payment of public expenses. It is laid by some rule of apportionment according to which the persons or property taxed share the public burden, and whether taxation operates upon all within the state, or upon those of a given class or locality, its essential nature is the same." *Houck v Little River Drainage Dist*, 239 US 254, 265; 36 S Ct 58, 61; 60 L Ed 266 (1915). "'Taxes are the enforced proportional contributions from persons and property, levied by the state by virtue of its sovereignty, for the support of government and for all public needs.'" *Cooper, Wells & Co v City of St Joseph*, 232 Mich 255, 260; 205 NW 86 (1925), quoting 1 Cooley on Taxation [4th Ed.] p. 61.

[7] The county's general power to tax is found in Const 1963, art 7, § 2.

[8] Amici take no position in this brief on whether the State of Michigan should assume all or part of circuit court funding. The legislature created the Trial Court Funding Commission, effective September 28, 2017, to study this issue (i.e., trial court funding) and file a report with the governor and legislature by September 28, 2019. MCL 600.11101 *et seq*. The Trial Court Funding Commission was created with the express directive "to review and recommend changes to the trial court funding system in light of People v Cunningham, [496 Mich 145; 852 NW2d 118 (2014)]." MCL 600.11103(2). Amici submit that the question of establishing sustainable, appropriate and constitutionally sound system of trial court funding is a pressing matter. The stopgap measure created by MCL 769.1k(1)(b)(iii) is not only an unconstitutional tax, but it also has a negative and disproportionately severe impact on low-income defendants who have the least ability to pay for the operational expenses of the state's trial courts.

Court Costs Cannot Include Core Government Operating Expenses

Amici acknowledge the legislature may pay the expenses of state government through "taxes *sufficient with other resources*."[9] These "other resources" may include filing fees (to offset the expense of initiating a case) and other costs that are tied directly to litigation of the case. See e.g. MCL 600.2529 (filing fees); MCL 600.2421b (definition of "costs and fees" in civil matters); MCL 600.2405 (taxable costs); MCL 600.2441 (sundry costs in civil actions); MCR 2.625 (taxation of costs).

Costs, however, should not include "the expenses of holding required terms of the circuit court." *People v Hope*, 297 Mich 115, 117; 297 NW2d 206 (1941), quoting *People v Robinson*, 253 Mich 507, 511; 235 NW 236 (1931) (Wiest, J., concurring in part). Instead, "costs are expenses incident to a prosecution[.]" *Hope*, at 118-119, quoting *Robinson* at 512 (Wiest, J. concurring in part). Costs do not include "the maintenance and functioning of governmental agencies that must be borne by the public irrespective of specific violations of the law." *People v Teasdale*, 335 Mich 1, 6; 55 NW2d 149 (1952).

Concededly the *Hope*, *Robinson* and *Teasdale* cases were based on statutory language that did not include "salaries and benefits" and "operation and maintenance of court buildings and facilities," as found MCL 769.1k(1)(b)(iii)(A)-(C). Yet the principles articulated in these cases remains valid. In *Teasdale*, the statute in question authorized costs for the "expenses, *direct and indirect*, as the public has been or may be put to in connection with the apprehension, examination, trial and probationary oversight of the probationer." 335 Mich at 4-5 (emphasis added). This Court concluded that the statutory language "necessarily implies" that the expenses would be those "incurred in connection with the particular case" and costs could not include

[9] Const 1963, art 9, § 1 (emphasis added).

court operating expenses because "the maintenance and functioning of government agencies [] must be borne by the public irrespective of specific violations of the law." *Id*. at 6. *Teasdale*, and the earlier cases holding the same, supports the proposition that court operating expenses are not a proper cost of a criminal prosecution.

The legislature does not have unbridled authority to authorize "costs" for court salaries and operating expenses. This Court determines whether a legislative "cost" is a tax in disguise. See *City of Dearborn v Michigan State Tax Commission*, 368 Mich 460, 471-472; 118 NW2d 296 (1962) (legislative terminology is not controlling). "A tax is a tax by whatever name it may be called." *Union Steam Pump Sales Co v Deland*, 216 Mich 261, 264; 184 NW 353 (1921).

The "Costs" of MCL 769.1k(1)(b)(iii) Are Not a User Fee

Amici join in Defendant Cameron's arguments that the costs permitted under MCL 769.1k(1)(b)(iii)(A)-(C) are not a user fee. Applying the three-part test set forth in *Bolt v City of Lansing*, *supra*, these costs are not voluntarily assumed. It is hardly a privilege to pay for one's own prosecution. See *Doe v Snyder*, 101 F Supp 3d 672, 712 (ED Mich, 2015), rev'd and rem'd on other grounds 834 F 3d 696 (CA 6, 2016) ("SORA is hardly a privilege that registrants pay for their own benefit"; concluding SORA registration fees constitute a "tax").

If, as the prosecution argues, a defendant chooses to commit crime and thus voluntarily submits to prosecution and costs, by logical extension a defendant voluntarily submits to incarceration. Yet the well understood definition of "prison" is a place of *involuntary* confinement. See *People v Armisted*, 295 Mich App 32, 43; 811 NW2d 47 (2011) (prison is "'any place of confinement or involuntary restraint [citation omitted],'" and state prison is "any facility operated by the Department to confine or involuntarily restrain persons committed to its jurisdiction.")

This Court should conclude, as the prosecutor earlier conceded in this case and the Court of Appeals correctly held, that defendant's commission of a crime does not render court costs voluntary in nature. See *People v Cameron*, 319 Mich App 215, 227; 900 NW2d 658 (2017).

The costs of MCL 769.1k(1)(b)(iii) are also not proportionate. Apart from the inherent inequities of a one size fits all approach (ignoring the substantial costs of trial versus guilty plea), Amici would point out that subsection (1)(b)(iii)(C) allows costs for "maintenance of court buildings and facilities." The word "maintenance" generally refers to "[t]he care and work put into property to keep it operating and productive; general repair and upkeep," *Black's Law Dictionary* (10th ed). Under this definition, the circuit court could assess costs for replacement of the courthouse roof or heating system, and justify the costs as a necessary operating expense. In doing so, defendants would pay for benefits bestowed on the public for decades to come. This is not a proportionate fee, but rather a long-term investment in infrastructure. See *Bolt*, 459 Mich at 163-162 (storm water service charge was not fee structured to defray cost of a regulatory activity, but rather a charge to fund a long-term investment in infrastructure for the benefit of the public).

Costs for the salary and benefits of court personnel are also likely to be disproportionate to the expenses incurred by the vast majority of criminal defendants. Subsection (1)(b)(iii)(A) says nothing about calculating these costs based on the duration of the criminal case. To the contrary, MCL 769.1k(1)(b)(iii) specifies that these costs may be calculated "without separately calculating those costs involved in the particular case." Yet one troubling assumption built into the State Court Administrative Office's guidance memo (pages 55a-58a of Defendant Cameron's Appendix) is these costs may be calculated using the *annual* expenses of the court (or an average of annual expenses over a period of three years). The SCAO method appears to conflict with this

Court's Caseflow Management Guidelines for felony cases, where the vast majority of criminal cases are to be resolved in five months or less: 70% within 91 days, 85% within 154 days, and 98% within 301 days. Administrative Order No. 2013-12. Using the SCAO calculation, the majority of defendants convicted of felony charges will be paying for the annual expenses of the circuit court when they "used" that court for no more than five months. This is not a proportionate cost.

Finally, applying the last of the *Bolt* criteria, this Court should conclude that the costs permitted under subsection (1)(b)(iii)(A)-(C) are for the purpose of generating revenue and funding basic trial court operations. There appears to be no plausible argument to the contrary. See *Cameron*, 319 Mich App at 222-224 (concluding MCL 769.1k(1)(b)(iii) "functions to raise revenue for the courts.").

The prosecution characterizes the costs of MCL 769.1k(1)(b)(iii) as reimbursement for the "administration of a government service," but this characterization severely misleads. The salaries and benefits of court personnel, together with the costs of operating and maintaining court buildings, are not services provided to litigants. These are constitutional obligations required by our state system of government. The circuit court must exist, and it must hear cases at least four times per year whether any individual litigant files a case. Const 1963, art 6, §11.

Justice Markman, writing as the Court of Appeals dissenting judge in *Bolt* (this Court later reversed the majority decision of the Court of Appeals) offered perhaps the best explanation of why charges for core government operating expenses do not constitute a "service" for which a user fee may be charged:

> Finally, I note a troubling logical implication of the majority opinion. Nothing in the majority's reasoning would prevent municipalities from supplementing existing tax revenues with police, fire, or a myriad of other "fees" on the ground that such services are disproportionately utilized by property owners.

> Such a characterization of new taxes as police "fees" or fire "fees" or park "fees" could erode altogether the Headlee Amendment. Cf. *United States v. City of Huntington West Virginia*, 999 F.2d 71, 74 (C.A. 4, 1993). During oral argument, counsel for the Lansing Regional Chamber of Commerce, which supported the ordinance, acknowledged that, if this charge passes constitutional muster, nothing would bar a local government unit from redefining any discrete—and previously tax-supported—government activity as a "service" for which a "fee" may be charged. This would effectively abrogate all Headlee limits on the power of taxation and, concomitantly, on government spending. While a system in which user "fees" are substituted for taxes may well be worth public consideration and debate, it is an issue that cannot be considered without reference to the constitutional requirements of the Headlee Amendment.
>
> What properly characterizes most public safety functions, such as core police and fire services, as being beyond the purview of governmental activity that might be subject to a user fee is that the benefits derived from these functions benefit the entire community generally. Not coincidentally, that is also what insulates public safety officials from potential tort liability under the gross negligence exception of the government immunity act, M.C.L. § 691.1407(2)(c); M.S.A. § 3.996(107)(2)(c); the negligent acts of public safety officials are considered to violate their duty to the public at large, rather than any duty to a particular individual. *White v. Beasley,* 453 Mich. 308, 552 N.W.2d 1 (1996) (discussing the public-duty doctrine). Similarly, criminal activities are investigated and prosecuted in the name of the "People," all of whom are considered to suffer harm from the commission of such activities, not in the names of individual victims. The preservation of public safety is a quintessential function that government provides to the community as a whole. [*Bolt v City of Lansing*, 221 Mich App 79, 98–99; 561 NW2d 423 (1997) (Markman, J., dissenting), *rev'd*, 459 Mich 152; 587 NW2d 264 (1998).]

The Michigan Supreme Court in *Bolt* reached a similar conclusion:

> We conclude that the storm water service charge imposed by Ordinance 925 is a tax and not a valid user fee. To conclude otherwise would permit municipalities to supplement existing revenues by redefining various government activities as "services" and enacting a myriad of "fees" for those services. To permit such a course of action would effectively abrogate the constitutional limitations on taxation and public spending imposed by the Headlee Amendment, a constitutional provision ratified by the people of this state. In fact, the imposition of mandatory "user fees" by local units of government has been characterized as one of the most frequent abridgments "of the spirit, if not the letter," of the amendment. [*Bolt*, 459 Mich at 169.]

The courts exist for the benefit of the public. The community benefits from peaceful resolution of matters and justice accessible to all. Criminal prosecutions, in particular, benefit

the public by removing "evil-doers" from the community. See *Whitney v Township Bd of Grand Rapids*, 71 Mich 234, 244; 39 NW 40 (1888) (Sherwood, C.J., concurring) (addressing the police power (the same could be said of the judicial power) that "controls men in the community until they can be brought into proper relations with each other in a state of society. It is that power which protects and enables the law to become supreme; thereby securing to the people civilization, liberty, peace, and prosperity[.]")

The courts, as a matter of constitutional imperative, exist for the benefit of the public and to serve the community.

Courts Are Not Tax Gatherers

Finally, the Court should consider the threat posed to judicial independence by MCL 769.1k(1)(b)(iii)(A)-(C).

One of the disconcerting aspects of the statute is that it makes the courts, not the county, the collector and beneficiary of costs meant to defray the expenses of court operations. Yet the state and county have the constitutional obligation to fund trial court operations. The statute also, by logical implication, allows the courts to retain the money as no transfer of funds is specified once the costs are collected.[10] In effect, the statute renders the courts "tax-gatherers" on behalf of the county and state. See *People v Barber*, 14 Mich App 395, 405; 165 NW2d 608 (1968) ("courts are not tax-gatherers").

In this tax-gathering scheme, the courts also have an obvious conflict of interest. Judges are incentivized to convict and order costs for the benefit of their courtrooms, for the benefit of

[10] In contrast, the minimum state costs go to the justice system fund. MCL 769.1j(6). Criminal fines are paid to the library fund. Const 1963, art 8, § 9. Civil filing fees that are collected in the circuit court are paid in part to the county treasurer but in large part to the state's civil filing fee fund. MCL 600.2529.

the courthouse, and to support the salaries and benefits of court staff. If a judge acquits, no money comes to the court. If a judge convicts, the court may order a statutorily unlimited amount of costs (subject only to a "reasonably related" test, MCL 769.1k(1)(b)(iii)) that resulted here in costs of $1,611 against Mr. Cameron. This conflict of interest, where the court itself has a financial interest in convicting the defendant, threatens the independence of the judiciary:

> It is the courts that we turn to ensure that conflicts are resolved peacefully and according to the rule of law, that rights are protected, and that government actors operate according to the limits of the law. The predictability provided by the impartial application of law sustains our social and economic relationships. It is the decisional independence of judges to make their determinations according to the law without interference from other government actors or even the majority will of the moment, and the institutional independence of the courts to operate without undue influence of the other branches of government that enable the courts to perform their constitutionally prescribed role. The Commission of the 21st Century Judiciary expressed concerns that without sufficient funding, the institutional independence of the courts and the judiciary's capacity "to preserve itself as a separate and co-equal branch of state government' would be threatened. [American Bar Association, *Report on State Court Funding* (August 2004) p 40.]

When courts "are over-dependent on fees, such reliance can interfere with the judiciary's independent constitutional role, divert courts' attention away from their essential functions, and, in its most extreme form, threaten the impartiality of judges and other court personnel with institutional, pecuniary incentives." Brennan Center for Justice, *Criminal Justice Debt: A Barrier to Reentry* (2010) p 30.

It is the legislative function to provide proper funding of the courts. *46th Circuit Trial Court*, 476 Mich at 141-142. "A working justice system and corrections system is the responsibility of all citizens, and should be funded accordingly." Kevin R. Reitz, *The Economic Rehabilitation of Offenders: Recommendations of the Model Penal Code (Second)*, 98 Minn L Rev 1735, 1749-1750 (2015). "Courts should be entirely and sufficiently funded from general governmental revenue sources to enable them to fulfill their mandate. Core court functions

should generally not be supported by revenues generated from court-ordered fines, fees, or surcharges." Conference of Chief Justices and Conference of State Court Administrators, Resolution 4, adopted January 31, 2018.

Amici respect the struggles of both the counties and state to fund the trial courts. Taxes are unpopular and subject to a number of constitutional restrictions. Yet the legislative taxing authority is uniquely suited for funding the expenses of state government, and in particular the expenses of core government operations. "The power to tax defines the extent to which economic resources will be apportioned between the people and their government . . . ." *46th Circuit Trial Court*, 476 Mich at 141.

In summary, the courts are not a private enterprise. They do not exist for private benefit alone. Criminal defendants in particular are not a special class of citizens upon whom the expenses of state government should be laid:

> Convicted felons have committed crimes and we punish them for doing so. They may be fined, incarcerated, or placed under other forms of supervision and restrictions upon their conduct. However, they remain citizens of our state. Whatever their conduct, they do not constitute a special class upon whom the courts may assess higher taxes or fees to pay for the expense necessary to maintain the constitutionally required operations of government. As held in [*People v*] *Dilworth* [291 Mich App 399; 804 NW2d 788 (2011)] and *Teasdale*, if a particular case requires a court to incur specific costs, then those costs may be assessed. However, the costs of operating the government itself is borne by all Michigan residents not merely or particularly by those that run afoul of the law. [*People v Cunningham (After Remand)*, 301 Mich App. 218, 225; 836 NW2d 232 (2013) (Shapiro, J., dissenting), rev'd *People v Cunningham*, 496 Mich 145; 852 NW2d 118 (2014).]

This Court should conclude that the Michigan Legislature created a tax in MCL 769.1k(1)(b)(iii)(A)-(C). The tax is unconstitutional for the reasons set forth by Defendant Cameron in his supplemental brief. The Court should reverse.

RELIEF REQUESTED

WHEREFORE, this Court should find an unconstitutional tax and reverse the decision of the Court of Appeals.

Respectfully submitted,

/s/ Anne Yantus

BY:_____

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