

IN THE SUPREME COURT OF OHIO

CASE NO. 2012- 12-1774

**MICHAEL LINGO, et al.
Plaintiff-Appellants**

-vs-

**STATE OF OHIO, et al.
Defendant-Appellees.**

**ON APPEAL FROM THE EIGHTH JUDICIAL DISTRICT
COURT OF APPEALS CASE NO. 97537**

**MEMORANDUM IN SUPPORT OF JURISDICTION OF
PLAINTIFF-APPELLANTS, MICHAEL A. LINGO, et al.**

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STATEMENT OF PUBLIC AND GREAT GENERAL INTERESTS

This class action lawsuit poses a fundamental question of governmental trust and ethics: Should municipal court clerks be allowed to routinely charge court costs in excess of their statutory authority, and required to tender a refund only in the rare instances that a defendant successfully pursues a direct appeal of the entry?

Following several years of litigation, Judge Dick Ambrose determined that Defendant-Appellee, Raymond J. Wohl ("Wohl"), Clerk of the Berea Municipal Court, had been systematically imposing costs in violation of the governing statutes in three separate respects. *Apx. 00043-44, ¶50-52*. Plaintiff-Appellant, William Glick, had been charged \$510.00 in court costs after pleading guilty to reckless operation, of which \$85.00 was found to be unauthorized. *Id., 00046, ¶56*. Partial summary judgment was entered in favor of Plaintiffs and a class of similarly situated individuals was approved. *Id., 00042-51 ¶48-69*. Clerk Wohl promptly secured a stay of the injunction that had been imposed, thereby allowing the unlawful cost inflating practices to be resumed.

In the ensuing appeal, the Eighth Judicial District did not disturb Judge Ambrose's findings with regard to the inappropriateness of Clerk Wohl's court cost calculations. Instead, the panel accepted the Clerk's contention that he is only required to refund overpayments when a defendant successfully overturns the municipal court's entry through a timely direct appeal. In order to reach this troubling result, the appellate court upended decades of established case law uniformly recognizing that rulings entered in excess of statutory subject matter jurisdiction are void and must be disregarded as nullities. At least in Cuyahoga County, void entries that are never appealed somehow acquire *res judicata* effect. *Apx. 00012-17, ¶17-26*.

The Eighth District appeared to be unconcerned that Clerk Wohl had unsuccessfully pressed the same ill-conceived jurisdictional argument in this Court only a few years earlier. *Case No. 08-0408*. He had been unable in that instance to convince

a single Justice that Judge Ambrose patently and unmistakably lacked authority to adjudicate Plaintiffs' claims for class-wide relief as a result of their failure to pursue individual direct appeals. *Id.*

If left intact, the pernicious impact of the appellate court's startling new precedent will be difficult to overstate. Entries issued without legal authority now somehow possess legal force, and must be followed in all future proceedings. Orders imposed before valid service was perfected upon, or proper jurisdiction was secured over, a defendant can no longer be discarded as mere nullities. And in cases, such as this, where directly appealing or seeking to vacate thousands of jurisdictionally flawed orders one-at-a-time is financially unrealistic, widespread abuses will be allowed to continue unchecked in perpetuity.

Unfortunately, the Berea Municipal Court is not the only tribunal that has discovered this enticing revenue stream. While the majority of jurisdictions appear to have no trouble complying with the legislative standards while remaining financially solvent, several have started to impose costs upon offenses that have been dismissed and impermissibly multiplying them for each infraction.¹ Imaginative new types of costs are also being devised without regard to the limitations that have been established by the General Assembly. Since pursuing a direct appeal requires a financial commitment that almost always (if not always) exceeds the amount that can be recovered, there is no meaningful recourse against the increasingly widespread abuse of the legal system.

But for nothing else, this Court should intercede to rectify the Eighth District's unprecedented disruption of the legal standards governing void entries. Unless overturned, the opinion that was rendered below will be cited again and again for the proposition that "whether void or voidable, the remedy lies in a direct appeal, not a

¹ A second lawsuit is pending in the Cuyahoga County Court of Common Pleas against thirteen municipal and county court clerks. *Williams v. Comery*, Cuyahoga C.P., Case No. 768540. Motions to Dismiss were denied and the action was stayed pending the outcome of the instant proceedings.

collateral attack on the judgment in a different court.” *Apx. 00012, ¶18* (citations omitted). By effectively eliminating the familiar distinction between void and voidable entries, the Eighth District has sowed the seeds for confusion and uncertainty for decades to come. Substantial issues of public and great general interest are indeed at stake in this appeal.

STATEMENT OF THE CASE AND FACTS

A. PLEADINGS AND MOTION PRACTICE

Plaintiff-Appellants, Michael A. Lingo (“Lingo”), Gregory B. Williams (“Williams”), and William Glick (“Glick”), filed their Class Action Complaint against Defendant, State of Ohio (“State”), on June 8, 2005. *R. 1*. They maintained, on behalf of themselves and the proposed class, that they had been overcharged court costs in excess of the jurisdictional authority afforded to the statutorily created municipal, county, and Mayor’s courts in which they had appeared. After a Motion to Dismiss was overruled on September 14, 2005, the State generally denied Plaintiffs’ allegations in an Answer dated September 27, 2005. *R. 20 & 23*. In accordance with Civ. R. 23, Plaintiffs moved for class certification on August 25, 2005. *R. 11*.

Defendant-Appellant Clerk Wohl was joined to the proceeding as a New-Party Defendant in a First Amended Class Action Complaint that was filed on September 13, 2006. *R. 56*. As the common pleas court’s docket attests, the parties thereafter engaged in substantial motion practice as well as significant discovery.

A lengthy and convoluted motion for summary judgment was submitted on Clerk Wohl’s behalf on December 6, 2006. *R. 77 (“Defendant’s Motion for Summary Judgment”)*. Although he maintained *inter alia* that each of the class members had knowingly and voluntarily agreed to pay costs beyond that which was permitted by statute as part of their plea agreements, no evidence complying with Civ. R. 56(E) was submitted confirming that any one of them had actually ever done so. Not a single

judgment entry or transcript was furnished establishing that one of the Plaintiffs or proposed class members had knowingly and voluntarily accepted charges that otherwise were not owed.

Plaintiffs' timely Memorandum in Opposition and Cross-Motion for Summary Judgment followed on February 20, 2007. *R. 93* ("Plaintiffs' Memorandum and Cross-Motion"). Deposition transcripts and exhibits were presented verifying that thousands of defendants had been systematically overcharged excessive costs in the Berea Municipal Court.

On October 30, 2007, Clerk Wohl opposed Plaintiffs' motion for class certification. *R. 122*. Seemingly as an afterthought, he filed a Motion to Dismiss for Lack of Subject Matter Jurisdiction at the same time. *R. 123*. Over the course of the previous thirteen months, the issue of the common pleas court's subject matter jurisdiction had never been seriously questioned and had been mentioned only in passing. For example, none of the Affirmative Defenses set forth in Clerk Wohl's Answer of November 8, 2006 suggested that subject matter jurisdiction was lacking. *R. 64*. Likewise, the Clerk's twenty-seven page Motion for Summary Judgment contained no meaningful reference to subject matter jurisdiction. *R. 77*. A timely Memorandum in Opposition was nevertheless submitted on Plaintiffs' behalf on November 9, 2007. *R. 124*.

B. THE SUPREME COURT PROCEEDINGS

Less than three months after the briefing had closed on the belated Motion to Dismiss for Lack of Subject Matter Jurisdiction, Clerk Wohl sued Judge Ambrose in the Supreme Court of Ohio on February 22, 2008. *Case No. 08-0408*. His Complaint sought a writ of prohibition based upon the same jurisdictional arguments that had been raised in the pending Motion to Dismiss. Clerk Wohl demanded that this Court preclude the common pleas judge from continuing to preside over the class action

lawsuit. No explanation was offered for why it had taken Clerk Wohl well over a year to realize that the trial court “patently and unambiguously lacked jurisdiction[.]”

On March 20, 2008, the Cuyahoga County Prosecutor filed a Motion to Dismiss Clerk Wohl’s Original Action in Prohibition. Shortly thereafter, Plaintiffs tendered a Motion to Intervene as Respondents. Clerk Wohl filed his Memorandum Opposition to the Motion to Dismiss at the same time, in which he argued a great length that the only remedy for recovering improper court costs was through a direct appeal.

In a ruling dated April 23, 2008, the Supreme Court granted the County Prosecutor’s Motion to Dismiss Clerk Wohl’s Complaint. *Case No. 08-0408*. Not one Justice dissented. *Id.* Plaintiffs’ Motion to Intervene was denied as moot. *Id.*

C. THE FINAL ORDER AND APPEAL

Once the *Lingo* class action litigation returned to the common pleas court, the motion practice resumed. Following nearly six and a half years of litigation, Judge Ambrose issued his comprehensive Opinion and Journal Entry on November 1, 2011. *Apx. 00020*. After granting summary judgment in favor of the State, Clerk Wohl was found to have violated statutory regulations governing court costs collection practices in three separate respects. Defendants were routinely overcharged by improperly (1) multiplying special project costs by each offense cited, (2) charging costs upon offenses that had been dismissed, and (3) imposing a “processing fee” intended for credit card transactions even though payment was being made in cash. *Id.*, *00043-44*, ¶50-52. A narrowly tailored class was certified to afford appropriate declaratory, equitable, and injunctive relief to those citizens who had been similarly overcharged. *Id.*, *00046-51*, ¶57-69.

Clerk Wohl commenced an appeal of the ruling on November 9, 2011. *R. 143*. Plaintiffs responded with their own cross-appeal six days later.

Following briefing and oral argument, the Eighth District issued a decision on

May 31, 2012. *Apx. 0001*. No criticism was offered of Judge Ambrose's finding that Clerk Wohl had been systematically overcharging court costs. The entry of summary judgment in favor of Plaintiffs and certification of the class was reversed solely on the grounds that subject matter jurisdiction was supposedly lacking as a result of the failure to undertake direct appeals of each municipal court entry. *Id.*, 00010-17, ¶ 14-26. The dispute over whether the portions of the orders authorizing the excessive costs were either void or just voidable was never explicitly resolved. *Id.* Instead the panel held that in either instance a timely direct appeal is necessary or else even an order entered without proper statutory authority is entitled to *res judicata* effect. *Id.*, 00012-17, ¶17-26.

Plaintiffs promptly sought *en banc* review as a result of the conflict that had been created with the Eighth District authorities that had recognized (as many, many other courts had) that void orders are mere "nullities." *State v. Cole*, 8th Dist. No. 96687, 2011-Ohio-6283, 2011 W.L. 6146185, ¶18 (Dec. 8, 2011); *State v. Taogaga*, 8th Dist. No. 79845, 2002-Ohio-5062, 2002 W.L. 31122774, ¶36 (Sept. 26, 2002). They further observed that by requiring Judge Ambrose to abide by municipal court rulings that had been entered in excess of jurisdictional authority, the appellate court had effectively overturned the maxim that such a "judgment is void everywhere and for every purpose." *State ex rel. Mayfield Hts. v. Bartunek*, 12 Ohio App. 2d 141, 145, 231 N.E. 2d 326 (8th Dist. 1967), quoting 14 OHIO JURISPRUDENCE 2D 512, Courts, Section 94. [emphasis added].

Although further review was denied in an 11-1 decision on September 6, 2012, the *en banc* court declined to endorse the panel's conclusion that void and voidable entries alike remain enforceable until they are successfully appealed. *Apx. 00019*. Instead the ruling cryptically announced that:

We find no conflict between the panel's decision and the decision in *State ex rel Mayfield Heights v. Bartunek*, 12

Ohio App.2d 141, 145, 231 N.E.2d 326 (1967). The principle that a judgment entered without jurisdiction is void is not in question here. The principle that void judgments are not final and therefore are not appealable has been adopted by the Ohio Supreme Court, so if the panel's decision conflicts with this principle, it is an error, not an intradistrict conflict. [emphasis added]

Id., 00019. Given that the panel had indeed found that even a void judgment must be appealed (*Apx. 00012*), the existence of a grave error no longer appears to be in dispute.

Plaintiffs now seek further review in this Court of the issues of public and great general importance that have been implicated by the Eighth District's indefensible reversal of the common pleas judge.

ARGUMENT

Fundamental concerns for responsible government lie at the heart of this appeal. No one disputes that court clerks are entitled to immunity from damages, and even commendations, when they perform their public duties in accordance with the controlling law. But when citizens are overcharged by governmental officials, whether inadvertently or deliberately, prompt refunds should be in order under principles of equity. Adhering to this ethical and moral principle will foster public confidence in the operation of local governments, at a time when distrust and cynicisms are the prevailing attitudes.

PROPOSITION OF LAW I: A VOID ORDER IS A LEGAL NULLITY AND MAY BE DISREGARDED BY ANY COURT

A. THE TRADITIONAL EFFECT OF VOID JUDGMENTS

Prior to the *Lingo* ruling, the Eighth District had recognized that void orders that had been entered without proper subject matter jurisdiction are mere nullities. *Cole*, 2011-Ohio-6283, ¶18; *Taogaga*, 2002-Ohio-5062, ¶36. The parties are deemed to have returned to the position that they held before the ineffective ruling was issued. *State v. Thomas*, 8th Dist. No. 87201, 2006-Ohio-4750, 2006 W.L. 2627463, ¶9 (Sept. 14, 2006); *State v. Bridges*, 8th Dist. No., 94469, 2010-Ohio-6359, 2010 W.L. 5486840, ¶8 (Dec.

23, 2010). This Court had explained forty-five years ago that:

The effect of determining that a judgment is void is well established. It is as though such proceedings had never occurred; the judgment is a mere nullity (*Tari v. State*, 117 Ohio St. 481, 498, 159 N.E. 594, 57 A.L.R. 284; 31 Ohio Jurisprudence 2d 706, Judgments, Section 250) and the parties are in the same position as if there had been no judgment. *Hill v. Hill*, 299 Ky. 351, 185 S.W.2d 245, and 30A American Jurisprudence 198, Judgments, Section 45. [emphasis added]

Romito v. Maxwell, 10 Ohio St.2d 266, 267, 227 N.E.2d 223, 224 (1967). Indeed, a void judgment is not even appealable. *State ex rel. Carnail v. McCormick*, 126 Ohio St.3d 124, 131, 2010-Ohio-2671, 931 N.E.2d 110, 117 ¶36; *Faralli Custom Kitchen & Bath, Inc. v. Bailey*, 107 Ohio App. 3d 598, 600, 669 N.E. 2d 270 (8th Dist. 1995); *State v. Keith*, 8th Dist. No. 81125, 2002-Ohio-7250, 2002 W.L. 31875968, ¶8 (Dec. 26, 2002).

B. THE NEW LINGO RULE

As the *en banc* court tacitly acknowledged below, the panel's criticisms of Plaintiffs and the class members for failing to appeal the municipal court entries – “whether void or voidable” - were thus legally unfounded. *Apx. 00012*, ¶18. The costs charged in excess of the court's statutory authority simply were not subject to review through a direct appeal. *Carnail*, 126 Ohio St. 3d at 131, ¶36. Judge Ambrose was therefore fully entitled instead, even though he sits on the Court of Common Pleas, to find “that to the extent the Berea Municipal Court acted outside its jurisdiction in imposing costs, the order of costs was made without subject matter jurisdiction and is void *ab initio*.” *Apx. 00038*, ¶43 (citation omitted).

But now the *Lingo* decision squarely holds that:

*** [W]hether void or voidable, the remedy lies in a direct appeal, not a collateral attack on the judgment in a different court. [citations omitted]

Apx. 00012, ¶18. Not only has the panel erroneously ruled that void judgments are now appealable, but has also effectively subverted those Supreme Court and appellate court

decisions uniformly holding that they are just nullities that may be disregarded. *Romito*, 10 Ohio St. 2d at 267; *Mayfield Hts.*, 12 Ohio App. 2d at 145. The opinions allowing collateral attacks on void judgments have also been overridden by the Eighth District. *State v. Fischer*, 128 Ohio St. 3d 92, 100, 2010-Ohio-6238, 942 N.E. 332, 341, ¶30; *State v. Topping*, ___ Ohio App. 3d ___, 2012-Ohio-2259, 970 N.E. 2d 1193, 1195 (12th Dist. 2012).

The Eighth District's panel decision is especially bewildering in that Clerk Wohl never time-stamped the Berea Municipal Court Entry that Plaintiff Glick was supposed to appeal. This was hardly an isolated episode, as the appellate court had addressed an earlier appeal involving another entry that Clerk Wohl had neglected to properly journalize. *Strongsville v. Feliciano*, 194 Ohio App. 3d 476, 2011-Ohio-3266, 956 N.E. 2d 921 (8th Dist. 2011). The Court held in that instance that a final appealable order did not exist as a result of the lack of a time-stamp, but reached just the opposite conclusion with respect to Plaintiff's Glick's order. *Apx. 0002*, ¶18. Although Clerk Wohl had conceded that a final appealable order had never been issued in Plaintiff Glick's municipal court case, the Eighth District ordered Judge Ambrose to grant summary judgment against him and the rest of the class members. *Id.*, 00017, ¶26.

None of the decisions that have been cited in support of *Lingo's* revolutionary holding go so far as to suggest that void entries remain enforceable unless they are successfully appealed. *Apx. 00012-13*, ¶18. In each instance, the judgments at issue were found to be voidable, not void. *In re J.J.*, 111 Ohio St. 3d 205, 2006-Ohio-5484, 855 N.E. 2d 851, 854, ¶15 (transfer of a permanent-custody case to a visiting judge was voidable, not void); *State ex rel. Bell v. Pfeiffer*, 131 Ohio St. 3d 114, 118, 2012-Ohio-54, 961 N.E. 2d 181, 185, ¶20 (judgment was voidable, and thus reversible through a direct appeal, since common pleas court possessed jurisdiction over the dispute); *Keith v. Bobby*, 117 Ohio St. 3d 470, 2008-Ohio-1443, 884 N.E. 2d 1067, ¶14 (recognizing that

an allegedly improper assignment of a judge can be reviewed through a direct appeal); *State ex rel. Hamilton Cty. Bd. of Commrs. v. Hamilton Cty. Court of Common Pleas*, 126 Ohio St. 3d 111, 120, 2010-Ohio-2467, 931 N.E. 2d 98, 107-108 (holding that writ of prohibition was unavailable since court did not patently and unambiguously lack jurisdiction and the ruling could be challenged on appeal). None of these courts concluded that void entries are either directly appealable or entitled to *res judicata* effect. The Eighth District is the first to do so in modern Ohio jurisprudence. *Apx. 00012, ¶18*.

C. IMPACT OF THE LINGO RULE

If left undisturbed, the revolutionary rule that has been established in *Lingo* will have profound implications upon further proceedings in Cuyahoga County, and likely throughout the state. In the criminal context, defendants have traditionally been able to set aside void sentences years after they have been entered. See *State v. Siwik*, 8th Dist. No. 92341, 2009-Ohio-3896, 2009 W.L. 2400271 (Aug. 6, 2009) (serial sex offender was entitled to resentencing over three years after sentence was imposed without proper postrelease controls.) In the civil realm, void judgments are routinely discarded once ineffective service of process had been established. *Alborn v. Feeney*, 8th Dist No. 79408, 2001-Ohio-4257, 2001 W.L. 1474705 (Nov. 15, 2001) (trial court justifiably vacated a \$500,000.00 default judgment as void *ab initio* for improper service even though the motion had been filed almost fourteen months afterward); *Money Tree Loan Co. v. Williams*, 169 Ohio App. 3d 336, 340, 2006-Ohio-5568, 862 N.E. 2d 885, 888 (8th Dist. 2006) (holding that the trial court erred by denying a motion to vacate on the grounds of ineffective service that was filed approximately six years after a judgment had been entered in default); *Patterson v. Patterson*, 8th Dist. No. 86282, 2005-Ohio-5352, 2005 W.L. 2471012 (Oct. 6, 2005) (holding that a hearing was necessary after the former husband moved to vacate a contempt order that had been entered approximately

5 months earlier on the grounds of insufficient service). None of these precedents can be reconciled with *Lingo*, which now holds that void and voidable judgments alike cannot be challenged collaterally and are only subject to timely direct appeals. *Apx. 00012, ¶18.*

In opposing Plaintiffs' requests for reconsideration and *en banc* review, Clerk Wohl theorized that the void judgments could always be rendered ineffective by filing a motion to vacate with the original issuing court. Apart from the assumption that the judge who had previously exceeded his or her authority will promptly acknowledge and correct the error, it makes no sense to require a defendant to incur additional legal fees to avoid the consequences of an order that is supposed to be a legal nullity. And when the defendant is unable or unwilling to undertake the effort as a result of the expense required, an enforceable judgment will remain that was entered without valid subject matter jurisdiction. Such judicial abominations cannot be tolerated.

PROPOSITION OF LAW II: ANY ATTEMPT BY A MUNICIPAL COURT TO IMPOSE ADDITIONAL COURT COSTS BEYOND THAT WHICH IS AUTHORIZED BY STATUTE IS VOID AND NOT MERELY VOIDABLE

A. THE PARTIALLY VOID SENTENCING ENTRIES

This distinction between void and voidable judgments was once well recognized, as this Court had commented that:

In general, a void judgment is one that has been imposed by a court that lacks subject-matter jurisdiction over the case or the authority to act. *State v. Payne*, 114 Ohio St.3d 502, 2007-Ohio-4642, 873 N.E.2d 306, ¶ 27. Unlike a void judgment, a voidable judgment is one rendered by a court that has both jurisdiction and authority to act, but the court's judgment is invalid, irregular, or erroneous." *State v. Simpkins*, 117 Ohio St.3d 420, 2008-Ohio-1197, 884 N.E.2d 568, at ¶ 12.

Fischer, 128 Ohio St. 3d at 94, ¶16. Ohio had only been a state for roughly forty-five years when this Court explained that:

Whether a judgment is voidable depends generally upon the

question whether the court rendering the judgment has jurisdiction. In the case of *Lessee of Paine v. Moreland*, 15 Ohio Rep. 445, this court say: "The distinction is between the lack of power or want of jurisdiction in the court, and a wrongful or defective execution of power. In the first instance, all acts of the court not having jurisdiction or power are void, in the latter voidable only. A court then may act, first, without power or jurisdiction; second, having power or jurisdiction, may exercise it wrongfully; or third, irregularly. In the first instance, the act or judgment of the court is wholly void, and is as though it had not been done. The second is wrong and must be reversed upon error. The third is irregular, and must be corrected by motion. [emphasis added]

Cochran's Heirs' Lessee v. Loring, 17 Ohio 409, 423, 1848 W.L. 122 (1848).

Although the appellate opinion rendered below briefly referenced the venerable distinction between void and voidable entries, the panel stopped short of explicitly overturning Judge Ambrose's determination that the imposition of costs beyond that which is statutorily allowed falls into the former category. *Apx. 00012*, ¶18. The court tip-toed around the issue by holding that both void and voidable entries must be directly appealed in order to avoid *res judicata* effect. *Id.*

The logic that Judge Ambrose followed in concluding that the relevant portions of the municipal court entries are void is unassailable. *Apx. 00037-39*, ¶42-43. As directed in R.C. 2947.23(A)(1), the cost of prosecution must be included in the sentence. *State v. Joseph*, 125 Ohio St. 3d 76, 81, 2010-Ohio-954, 926 N.E. 2d 278, 283, ¶27. In Ohio, the authority to tax costs is strictly a matter of legislative control. *Centennial Ins. Co. v. Liberty Mut. Ins. Co.*, 69 Ohio St.2d 50, 51, 430 N.E.2d 925, 926 (1982); *State v. Fitzpatrick*, 76 Ohio App.3d 149, 153, 601 N.E.2d 160, 162 (8th Dist. 1991). Only those costs that have been explicitly approved by the General Assembly can be charged. *State v. Christy*, 3rd Dist. No. 16-04-04, 2004-Ohio-6963, 2004 W.L. 2940888 ¶ 21-22 (December 20, 2004); *State v. Watkins*, 96 Ohio App.3d 195, 198-199, 644 N.E.2d 1049, 1051 (1st Dist. 1994). This Court has explicitly held that: "Ordinarily, a court may impose as court costs only those costs specifically authorized by statute." *Middleburg*

Hts. v. Quinones, 120 Ohio St. 3d 534, 537, 2008-Ohio-6811, 900 N.E. 2d 1005, 1008, ¶9 (citations omitted).

Any municipal court order that is entered without legislative authorization exceeds the court's subject matter jurisdiction. *Davis v. Wolfe*, 92 Ohio St.3d 549, 552, 2001-Ohio-1281, 751 N.E.2d 1051, 1055; *State of Ohio v. Lawless*, 5th Dist. No. 03CA30, 2004-Ohio-5344, 2004 W.L. 2260699, pp. *2-4 (Sept. 28, 2004). Accordingly, an excessive sentence is properly viewed as void, and not just voidable. See e.g. *Cincinnati v. Howard*, 179 Ohio App. 3d 60, 62, 2008-Ohio-5502, 900 N.E. 2d 689, 690-691, ¶4 (1st Dist. 2008) (holding that portion of municipal court's sentencing order imposing thirty hours of community service, in addition to a \$150.00 fine, was void); *State v. Roach*, 4th Dist. No. 11CA12, 2012-Ohio-1295, 2012 W.L. 103463 (following *Howard* and holding that excessive prison term was void). This Court has reasoned that:

*** Crimes are statutory, as are the penalties therefor, and the only sentence which a trial court may impose is that provided for by statute. A court has no power to substitute a different sentence for that provided by statute or one that is either greater or lesser than that provided for by law. [citation omitted]

Colegrove v. Burns, 175 Ohio St. 437, 438, 195 N.E. 2d 811, 812 (1964). "Any attempt by a court to disregard statutory requirements when imposing a sentence renders the attempted sentence a nullity or void." *State v. Beasley*, 14 Ohio St. 3d 74, 75, 471 N.E. 2d 774, 775 (1984);² see also *State v. Fischer*, 128 Ohio St. 3d 92, 94-95, 2010-Ohio-6238, 942 N.E. 2d 332, 337, ¶8-9; *State v. Crosswhite*, 8th Dist. No. 89104, 2008-Ohio-1816, 2008 W.L. 1747428 ¶18 (April 10, 2008); *State v. Sanders*, 2nd Dist. No. 95CA11, 1995 W.L. 634371, *3. The assessment of court costs falls within this fundamental principle. *Rothwell v. Winterstein*, 42 Ohio St. 249, 1884 W.L. 234 (1884), paragraph three of the syllabus; *Sayer v. Waldenmyer Ents.*, 5th Dist. No. 93AP-120085, 1994 W.L.

² Unrelated aspects of *Beasley* were superseded by statute as explained in *State v. Singleton*, 124 Ohio St. 3d 173, 2009-Ohio-6434, 920 N.E. 958.

198772 (May 11, 1994); *State v. Veal*, 51 Ohio Misc. 61, 64, 366 N.E.2d 304, 307 (Muni. 1977).

Significantly for purposes of the instant action, any order entered without valid subject matter jurisdiction can be challenged at any time.³ *Davis*, 92 Ohio St.3d at 552, 751 N.E.2d at 1054-1055; *Lisboa v. Karner*, 167 Ohio App. 3d 359, 365 2006-Ohio-3024, 855 N.E. 2d 136 (8th Dist. 2006); *Flowers v. Ohio Dept. of Comm.*, 8th Dist. No. 86765, 2006-Ohio-2585, 2006 W.L. 1430222, p. *3 (May 25, 2006). Since the Plaintiffs and the class members are still lawfully entitled to contest any costs imposed against them without proper statutory authority, the doctrine of *res judicata* can have no application. *State ex rel. Brookpark Ent., Inc. v. Cuyahoga Cty. Bd. of Elec.*, 60 Ohio St.3d 44, 46-47, 573 N.E.2d 596, 599-600 (1991); *Pravitsky v. Halczysak*, 8th Dist. No. 82295, 2003-Ohio-7057, 2003 W.L. 23009105, p. *2 (Dec. 24, 2003); *State, ex rel. Lawrence Devel. Co. v. Weir*, 11 Ohio App.3d 96, 97, 463 N.E.2d 398, 399-400 (10th Dist. 1983).

B. THE EIGHTH DISTRICT'S REASONING

In *Lingo*, the Eighth District remarked that:

*** [I]t is well settled that when a judge or judicial officer acts "in excess" of the court's jurisdiction, as opposed to in the absence of all jurisdiction, the act, which is authorized by law, is voidable, not void. [citations omitted]

Apx. 00012, ¶18. The decision that was cited in support of this proposition, *Wilson v. Neu*, 12 Ohio St. 3d 102, 465 N.E. 2d 854 (1984), concerned whether a mayor forfeited his immunity from a claim of damages when he ordered a traffic offender to be jailed for a misdemeanor in violation of his lawful authority. *Id.*, 12 Ohio St. 3d at 102. The opinion never addressed the distinction between void and voidable entries. The court

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³ Plaintiffs are not suggesting that defendants who have been overcharged costs can seek refunds in perpetuity. Such a recovery can be secured only through an action for equitable restitution or disgorgement, which are required by R.C. 2305.14 to be filed within ten years from the accrual of the cause of action.

had simply commented that the immunity remained intact even if the mayor's order was "voidable." *Id.*, at 104. The Court cited *Wade v. Bethesda Hosp.*, 337 F. Supp. 671 (S.D. Ohio 1971), in support of this analysis, which had explained that when a judge acts without lawful authority, and the order is "therefore void," immunity is not necessarily forfeited. *Id.*, at 673. The immunity against damages that is afforded to judicial acts has nothing to do with whether the offending entry is void or voidable for *res judicata* purposes.

The inescapable fact that the imposition of excessive court costs in violation of law is void for lack of statutory authority serves to distinguish this action from all of the authorities that had been cited in *Lingo* dealing with the necessity of timely direct appeals and *res judicata*. *Apx. 00012-17, ¶17-25*. Judge Ambrose's entry of summary judgment in favor of Plaintiffs and certification of a class had been founded squarely upon both the undisputed facts and controlling precedents, and could only be reversed through a counter-intuitive new rule that requires void and voidable entries alike to be directly appealed. *Apx. 00012, ¶18*.

CONCLUSION

Before the Eighth District's unprecedented ruling irreparably disrupts the time-honored principle that void entries are mere nullities that must be disregarded in every courtroom, this Court should accept jurisdiction over the issues of public and great general importance that are now at stake.

Respectfully Submitted,



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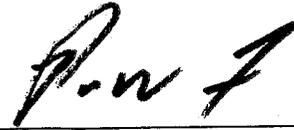
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CERTIFICATE OF SERVICE

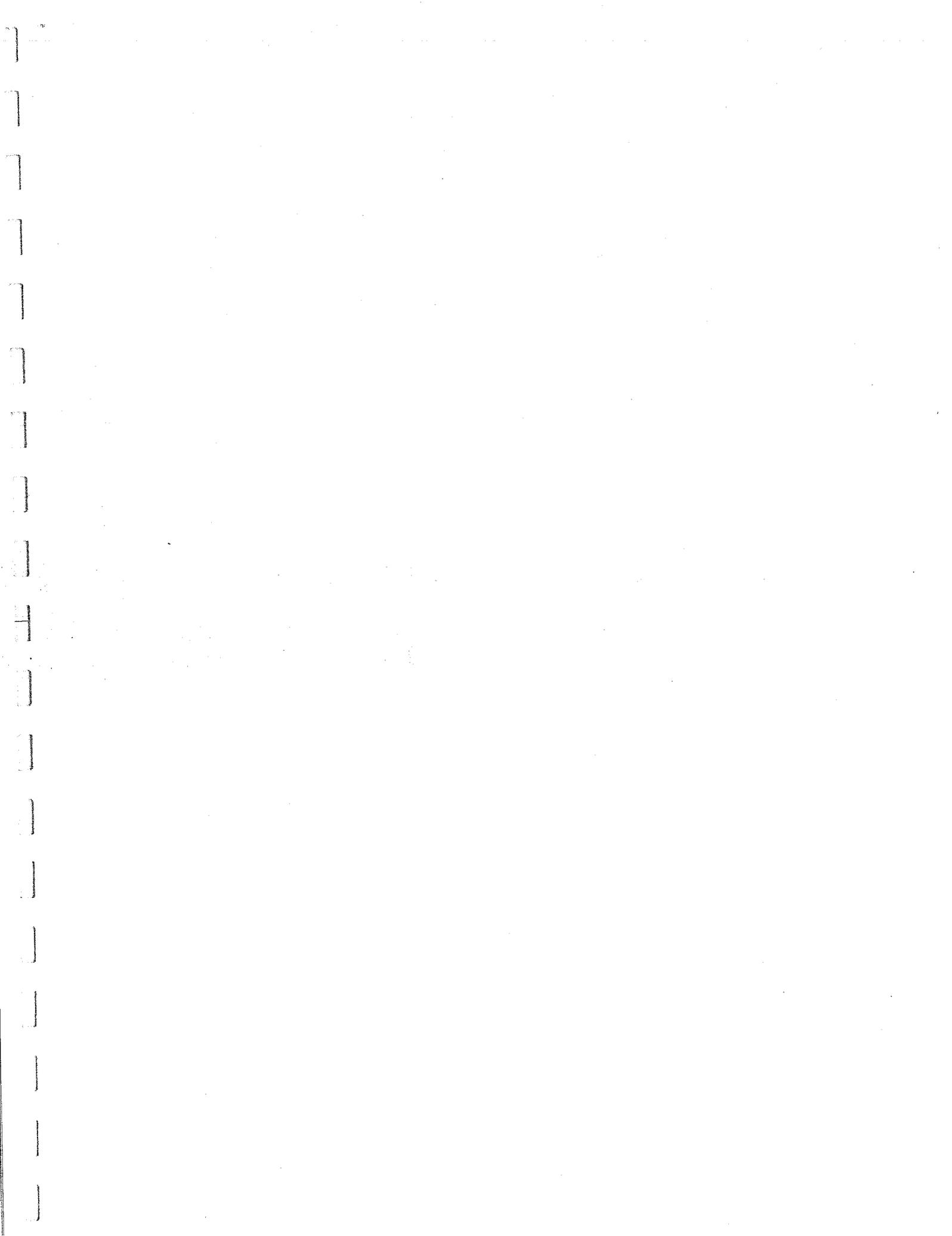
I hereby certify that a copy of the foregoing **Memorandum** has been sent by e-mail and regular U.S. Mail, on this 19th day of October, 2012 to:

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Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 97537

MICHAEL A. LINGO, ET AL.

PLAINTIFFS-APPELLEES

vs.

STATE OF OHIO, ET AL.

DEFENDANTS

**[APPEAL BY RAYMOND J. WOHL, CLERK OF
BEREA MUNICIPAL COURT**

DEFENDANT-APPELLANT]

**JUDGMENT:
REVERSED AND REMANDED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-564761

BEFORE: Cooney, J., Celebrezze, P.J., and Keough, J.

RELEASED AND JOURNALIZED: May 31, 2012

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PER APP.R. 22(C)

MAY 31 2012

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COLLEEN CONWAY COONEY, J.:

{¶1} Defendant-appellant Raymond J. Wohl ("Wohl"), the Clerk of Court of the Berea Municipal Court, appeals the trial court's certification of a class action against him, in his official capacity, and grant of a declaratory judgment, an injunction, and equitable restitution related to the alleged overcharge of court costs. Plaintiffs-appellees, Michael A. Lingo ("Lingo"), Gregory B. Williams ("Williams"), and William C. Glick ("Glick") (collectively referred to as "appellees"), who represent the class, cross-appeal the trial court's definition of the class, the court's refusal to certify a class of defendants, and the court's exclusion of "special project costs" from the list of damages. We find merit to Wohl's appeal and reverse.

{¶2} In August 2004, Middleburg Heights police stopped Glick for driving under the influence of alcohol ("DUI"). The city charged him with two violations: DUI and a lane violation ("weaving"). Glick appeared before the Berea Municipal Court on those charges and, with assistance of counsel, entered into a plea agreement wherein he pled guilty to an amended charge of reckless operation. The DUI and lane violation charges were dismissed. Glick admitted at deposition that he agreed to pay court costs for both charges as part of the plea agreement even though the lane violation charge was dismissed. Glick readily paid the court costs for both the reckless operation and the lane violation charges, and never appealed his conviction or sentence.

{¶3} As a result of Glick's case in the Berea Municipal Court and Lingo's and Williams's similar experiences in the Parma and Rocky River Municipal Courts, the three men instituted this class action. In their first amended complaint, appellees allege that municipal, county, and mayor's courts ("statutory courts") throughout Ohio have been "exceeding their jurisdiction and authority" by impermissibly imposing excessive court costs against defendants who appear in those courts. Appellees allege they were charged in excess of the statutorily authorized amount of court costs on a "per offense" basis rather than a "per case" basis.

{¶4} Appellees also allege that statutory courts, including the Berea Municipal Court, have been charging costs for offenses that have been nolleed or dismissed, and have been assessing "special project fees" at the conclusion of cases rather than upon filing, as required by statute. They assert that these practices deny defendants the right to know what a plea to any particular charge will cost prior to entering a guilty or no contest plea.

{¶5} In their prayer for relief, appellees requested a declaratory judgment against Wohl, the Berea Municipal Court, and other Ohio statutory courts, declaring that court costs assessed against misdemeanants are permitted solely on a "per case" and not a "per offense" basis. They also sought restitution of improperly collected court costs and an injunction to enjoin courts from imposing unlawful court costs on other defendants.

{¶6} Appellees moved for class certification, asserting that their claims represent the claims of all similarly situated misdemeanants throughout Ohio. As part of the action, they sought certification of a defendant class, consisting of clerks of every municipal, county, and mayor's court, who "exceeded their jurisdiction" by collecting excessive fees as alleged in the complaint.¹

{¶7} Wohl filed a motion to dismiss and a motion for summary judgment arguing that appellees' claims should be dismissed for lack of subject matter jurisdiction and as barred by res judicata. He argued that appellees' claims were barred by res judicata because they should have filed a direct appeal of their sentences to challenge the imposition of court costs rather than filing a separate lawsuit in the common pleas court. In this same vein, Wohl claimed that because appellees had a remedy by direct appeal, the trial court lacked subject matter jurisdiction to review the allegedly erroneous imposition of court costs. The trial court rejected these arguments and found that "to the extent that the Berea Municipal Court acted outside its jurisdiction in imposing costs, the order of costs * * * is void ab initio."

{¶8} Wohl also argued that both he and the Berea Municipal Court are immune from liability under the doctrine of judicial immunity, and that

¹Appellees originally sued the state of Ohio and later amended the complaint to include the Ohio Treasury Department as defendants because some of the funds collected by statutory courts are deposited with the Ohio Treasury Department. The trial court granted summary judgment in favor these defendants, and appellees do not challenge those judgments on appeal.

appellees' claims are moot under the doctrine of release and satisfaction. The trial court disagreed and found that Wohl unlawfully charged court costs on a dismissed charge, which is outside the court's directive, and is therefore not protected by immunity. The court also found that judicial immunity does not protect against claims for equitable relief, including the declaratory judgment, injunction, and restitution sought by appellees.

{¶9} The court granted appellees' motion for summary judgment in part, and denied it in part. It granted appellees' claims for declaratory judgment and held:

{50} * * * Plaintiff Glick was charged the following fees multiple times; General Court Costs, Computer Maintenance Fund, Computer Research Fund, Construction Fund, and Processing Fee. The Court hereby finds and does declare that each of these fees, with the exception of "General Court Costs," constitute special project fees and thus may be assessed on a "per charge" basis. O.R.C. 1901.26(B); See *City of Middleburg Hts. v. Quinones*, 120 Ohio St.3d 534, 2008-Ohio-6811. General Court Costs do not fall under O.R.C. 1901.26(B) and thus must be charged on a "per case" basis. The Court hereby declares that the Plaintiff was improperly charged General Court Costs a second time, when he should have been charged only once.

{51} This Court further declares that the Computer Maintenance Fee, Computer Research Fee and Construction Fee were improperly charged a second time. Although these fees may be assessed on a "per charge" basis, they may not be assessed on dismissed claims. *City of Cleveland v. Tighe* (April 10, 2003), 8th Dist. No. 81767, 2003-Ohio-1845. As the Weaving Count against the Plaintiff, William Glick, was dismissed and only the Reckless Operation Count remained, this Court finds and does declare that Defendant Raymond Wohl improperly charged the Computer Maintenance Fee,

the Computer Research Fee and Construction Fee on the dismissed charge.

{52} In addition, the Court does hereby find and declare that the \$2.00 Processing Fee identified in the Berea Municipal Court schedule of court costs was improperly charged for each instance that it was assessed. This Processing fee is to be applied when Court Costs are paid by credit card. Deposition of Raymond Wohl at p.51.^[2] The Plaintiff's receipt from the Clerk's Office reflects that the costs were paid in cash and therefore the \$2.00 Processing fee was improperly charged. Plaintiff's Cross Motion for Summary Judgment Exhibit 2 p. 16.

{¶ 10} In granting appellees' claims for injunctive relief, the court ordered:

{55} * * * The Defendant Raymond Wohl, Clerk of the Berea Municipal Court is hereby ordered to refrain from charging costs on dismissed counts, to refrain from charging "general court costs" on a per charge basis, and to refrain from charging offenders a processing fee when they pay their costs in cash.

{¶ 11} As for appellees' claims for equitable relief, the trial court ordered:

{56} * * * This Court having already determined that the Defendant Raymond Wohl, Clerk of the Berea Municipal Court, improperly collected court costs, finds it unjust to allow Defendant Wohl to retain such funds and hereby finds in favor of Plaintiff William Glick on his claim for restitution. The improperly collected funds are as follows: General Court Costs \$56.00 (1x), Computer Maintenance Fee \$7.00 (1x), Computer Research Fee \$3.00, Construction Fund \$15.00 (1x), and Court Processing Fee (2x). The total of the improperly collected and unjustly retained funds is \$85.00. This Court hereby grants Plaintiff's Motion for Summary Judgment on their claim for Restitution and hereby orders that the Defendant issue a refund to the Plaintiff William Glick in the amount of \$85.00.

²Wohl testified at deposition that he is not sure whether this fee is charged to everyone or whether it is limited to those who use a credit card. He stated he is authorized by statute to charge this processing fee.

{¶12} Appellees proposed alternative groups to represent the class including: "All individuals who paid court costs on or after June 8, 1995 to an Ohio court, or mayor's court in excess of the amount specially permitted by a valid statute."

{¶13} The trial court granted appellees' motion to certify a class action, but amended the definition of the class as follows:

ALL INDIVIDUALS WHO PAID COURT COSTS ON OR AFTER JUNE 8, 1995 TO THE BEREA MUNICIPAL COURT UNDER ANY OF THE FOLLOWING CIRCUMSTANCES:

A. PAYING "GENERAL COURT COSTS" ON A "PER OFFENSE" INSTEAD OF A "PER CASE" BASIS.

B. PAYING COSTS UPON OR IN CONNECTION WITH ANY OFFENSE THAT DID NOT RESULT IN A CONVICTION, EXCEPT WHERE THE INDIVIDUAL AFFIRMATIVELY AGREED TO ACCEPT SUCH CHARGES AS PART OF A PLEA AGREEMENT MEMORIALIZED IN A VALID JOURNAL ENTRY.

C. BEING ASSESSED A "PROCESSING FEE" WHEN PAYING FOR COURT COSTS IN CASH.

{¶14} Wohl now appeals, raising nine assignments of error. Appellees cross-appeal and raise three assignments of error. We turn first to Wohl's ninth assignment of error because it is dispositive.

{¶15} In this assigned error, Wohl argues the trial court erred by granting appellees' motion for class certification. He contends the trial court abused its discretion by certifying the class for several reasons including the fact that appellees lack standing to pursue their claims because their claims were barred

by res judicata. In separate assignments of error, Wohl argues that because appellees had an adequate remedy at law through a direct appeal, their claims are barred by res judicata and the trial court lacked subject matter jurisdiction to hear this case. Although the denial of dispositive motions involving res judicata and lack of subject matter jurisdiction are generally not final, appealable orders, they are relevant to our review of the trial court's decision to certify this case as a class action.³ R.C. 2505.02(B)(5) expressly provides that class certification is a final, appealable order.

{¶16} A trial court has broad discretion in determining whether a class action may be maintained and such determination will not be disturbed absent a showing of an abuse of discretion. *Marks v. C.P. Chem. Co.*, 31 Ohio St.3d 200, 509 N.E.2d 1249 (1987). However, the trial court's discretion in deciding whether to certify a class action is not unlimited, and "is bounded by and must be exercised within the framework of Civ.R. 23." *Hamilton* at 70. The court's power to certify a class action is also limited to the extent of its jurisdiction. If

³Jurisdiction is relevant when determining class certification because in order to represent the class, class members must have proper standing. *Hamilton v. Ohio Sav. Bank*, 82 Ohio St.3d 67, 70, 1998-Ohio-365, 694 N.E.2d 442. If the representative member's claims are barred by res judicata, he lacks standing and cannot represent the class. *Sierra Club v. Morton*, 405 U.S. 727, 731-32, 92 S.Ct. 1361, 31 L.Ed. 636 (1972). Individual standing is a threshold to all actions, including class actions. *Id.*; see also *Warth v. Seldin*, 422 U.S. 490, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975).

the court lacks subject matter jurisdiction to hear the case, it also lacks authority to certify the case as a class action.

{¶17} Under the doctrine of res judicata, “[a] valid, final judgment rendered upon the merits bars all subsequent actions based upon any claim arising out of the transaction or occurrence that was the subject matter of the previous action.” *Grava v. Parkman Twp.*, 73 Ohio St.3d 379, 1995-Ohio-331, 653 N.E.2d 226, syllabus. “[A]ny issue that could have been raised on direct appeal and was not is res judicata and not subject to review in subsequent proceedings.” *State v. Saxon*, 109 Ohio St.3d 176, 2006-Ohio-1245, 846 N.E.2d 824, ¶ 16.

{¶18} Appellees assert their claims are not barred by res judicata because their judgments of conviction were not final, appealable orders. They claim that Wohl exceeded his jurisdiction by imposing unlawful court costs and that, as a result, the judgments imposing court costs are void. However, it is well settled that when a judge or judicial officer acts “in excess” of the court’s jurisdiction, as opposed to in the absence of all jurisdiction, the act, which is not authorized by law, is voidable, not void. *Wilson v. Neu*, 12 Ohio St.3d 102, 104, 465 N.E.2d 854 (1984), citing *Wade v. Bethesda Hosp.*, 337 F.Supp. 671 (S.D. Ohio 1971). Moreover, whether void or voidable, the remedy lies in a direct appeal, not a collateral attack on the judgment in a different court. *State ex rel. Bell v. Pfeiffer*, 131 Ohio St.3d 114, 2012-Ohio-54, 961 N.E.2d 181, ¶ 20, citing *State ex*

rel. Hamilton Cty. Bd. of Commrs. v. Hamilton Cty. Court of Common Pleas, 126 Ohio St.3d 111, 2010-Ohio-2467, 931 N.E.2d 98, ¶ 36; *Keith v. Bobby*, 117 Ohio St.3d 470, 2008-Ohio-1443, 884 N.E.2d 1067, ¶ 14; *In re J.J.*, 111 Ohio St.3d 205, 2006-Ohio-5484, 855 N.E.2d 851, ¶ 10-16.

{¶19} In *State v. Lester*, 130 Ohio St.3d 303, 2011-Ohio-5204, 958 N.E.2d 142, the Ohio Supreme Court held that “[a] judgment of conviction is a final order subject to appeal under R.C. 2505.02 when it sets forth (1) the fact of the conviction, (2) the sentence, (3) the judge’s signature, and (4) the time stamp indicating the entry upon the journal by the clerk.” *Id.* at paragraph one of the syllabus.⁴ As a final appealable order, a defendant must file a direct appeal to challenge a sentence “or be forever barred from asserting it.” *Grava* at 382, quoting *Natl. Amusements, Inc. v. Springdale*, 53 Ohio St.3d 60, 62, 558 N.E.2d 1178 (1990). Furthermore, a sentencing entry is a final, appealable order as to court costs. *State v. Threatt*, 108 Ohio St.3d 277, 2006-Ohio-905, 843 N.E.2d 164, paragraph three of the syllabus.

{¶20} This court’s decision in *State v. DeBolt*, 8th Dist. No. 93315, 2009-Ohio-6650, illustrates this point. In *DeBolt*, the defendant appealed the denial of his motion to reconsider the court costs imposed by the Berea Municipal

⁴Appellees do not dispute that these four elements were included in Glick’s judgment of conviction. Although appellees complain that the specific terms of Glick’s plea agreement were not contained in the final judgment, such information is not required for a final, appealable order under *Lester*.

Court. However, instead of filing a timely appeal of his sentence and the court costs, he filed a motion to reduce costs almost two months after the deadline for filing a notice of appeal had passed. He argued his appeal was properly before the court because he timely appealed a final order denying his motion to reduce costs. In affirming the trial court's judgment, we held that Ohio courts have no authority to reconsider valid final judgments in criminal cases. *Id.* at ¶ 4, citing *State v. Myers*, 8th Dist. No. 65309, 1993 WL 483554 (Nov. 18, 1993); *State v. Bernard*, 2d Dist. No. 18058, 2000 WL 679008 (May 26, 2000); *State v. Mayo*, 8th Dist. No. 80216, 2002 WL 853547 (Apr. 24, 2002). We also explained that "to the extent that DeBolt's motion asked the trial court to reconsider the sentence or costs that it previously imposed, the motion was a nullity because *the court lacked jurisdiction to reconsider its own valid final judgment.*" (Emphasis added.) *Id.*, citing *State v. Wilson*, 10th Dist. Nos. 05AP-939, 05AP-940 and 05AP-941, 2006-Ohio-2750, ¶ 9; and *State ex rel. Hansen v. Reed*, 63 Ohio St.3d 597, 599, 589 N.E.2d 1323 (1992).

{¶21} More recently, the Ohio Supreme Court reaffirmed this principle in *State v. Carlisle*, 131 Ohio St.3d 127, 2011-Ohio-6553, 961 N.E.2d 671. In *Carlisle*, the trial court sentenced the defendant in 2007. Two years later, the defendant asked the trial court to reconsider and modify his sentence, which had not yet been "executed" due to a prior appeal of his convictions. The Ohio Supreme Court succinctly held that, absent statutory authority, a trial court

may not modify a defendant's sentence after a valid judgment of conviction has been journalized. *Id.* at ¶ 1, 13-15.

{¶22} Just as the common pleas court lacks jurisdiction to review its own final orders, it lacks jurisdiction to review orders from municipal courts. Judicial power is granted to Ohio courts in Section 1, Article IV of the Ohio Constitution. Section 4(B) of Article IV of the Ohio Constitution grants the common pleas court "original jurisdiction over all justiciable matters and such powers of review of proceedings of administrative officers and agencies as may be provided by law." Hence, the common pleas court's jurisdiction to act as a reviewing court is limited to administrative appeals. In contrast, Section 3(B)(2) of Article IV authorizes appellate courts "to review final orders or judgments of the inferior courts in their district."

{¶23} Additionally, R.C. 1901.30(A), which governs appeals from municipal courts, provides that "appeals from the municipal court may be taken * * * [t]o the court of appeals in accordance with the Rules of Appellate Procedure and any relevant sections of the Revised Code." The statute does not permit appeals from a municipal court to a common pleas court. Therefore, the common pleas court is without jurisdiction to review the Berea Municipal Court's imposition of court costs.

{¶24} Furthermore, appellees' claims against Wohl for excessive court costs constitutes a collateral attack on their judgments of conviction. Past

convictions cannot be collaterally attacked. *State v. Brooke*, 113 Ohio St.3d 199, 2007-Ohio-1533, 863 N.E.2d 1024, ¶ 9; *State v. Phillips*, 12th Dist. No. CA2009 09 242, 2010-Ohio-1941, ¶ 6. In a closely analogous case, a criminal defendant filed a writ of mandamus seeking an order compelling the common pleas court to correct its failure to comply with Crim.R. 32(C) by properly completing omitted entries from the court's journal. *State ex rel. Galloway v. Lucas Cty. Court of Common Pleas*, 6th Dist. No. L-10-1132, 2011-Ohio-1876. The appellate court denied the writ on grounds that the defendant had an adequate remedy at law through a direct appeal. *Id.* at ¶ 8.

{¶25} It is undisputed that the class representatives paid the costs associated with their municipal court cases and declined to file a direct appeal or seek a stay of their sentences. Consequently, their current attempt to collaterally challenge those costs is barred by res judicata and their claims are moot. Without a live case or controversy, the court lacks subject matter jurisdiction over the case. *Morrison v. Steiner*, 32 Ohio St.2d 86, 290 N.E.2d 841 (1972), paragraph one of the syllabus. If a court acts without jurisdiction, then any proclamation by that court is void. *Patton v. Diemer*, 35 Ohio St.3d 68, 518 N.E.2d 941 (1988). Therefore, the trial court's judgment granting class certification is void, and the trial court should have dismissed the case as barred by res judicata and for lack of subject matter jurisdiction.

{¶26} Accordingly, Wohl's ninth assignment of error is sustained, and the remaining assignments of error are moot. We reverse the trial court's judgment and remand the case for the trial court to vacate its judgment granting class certification and to grant summary judgment for Wohl.

It is ordered that appellant recover of said appellees costs herein taxed.

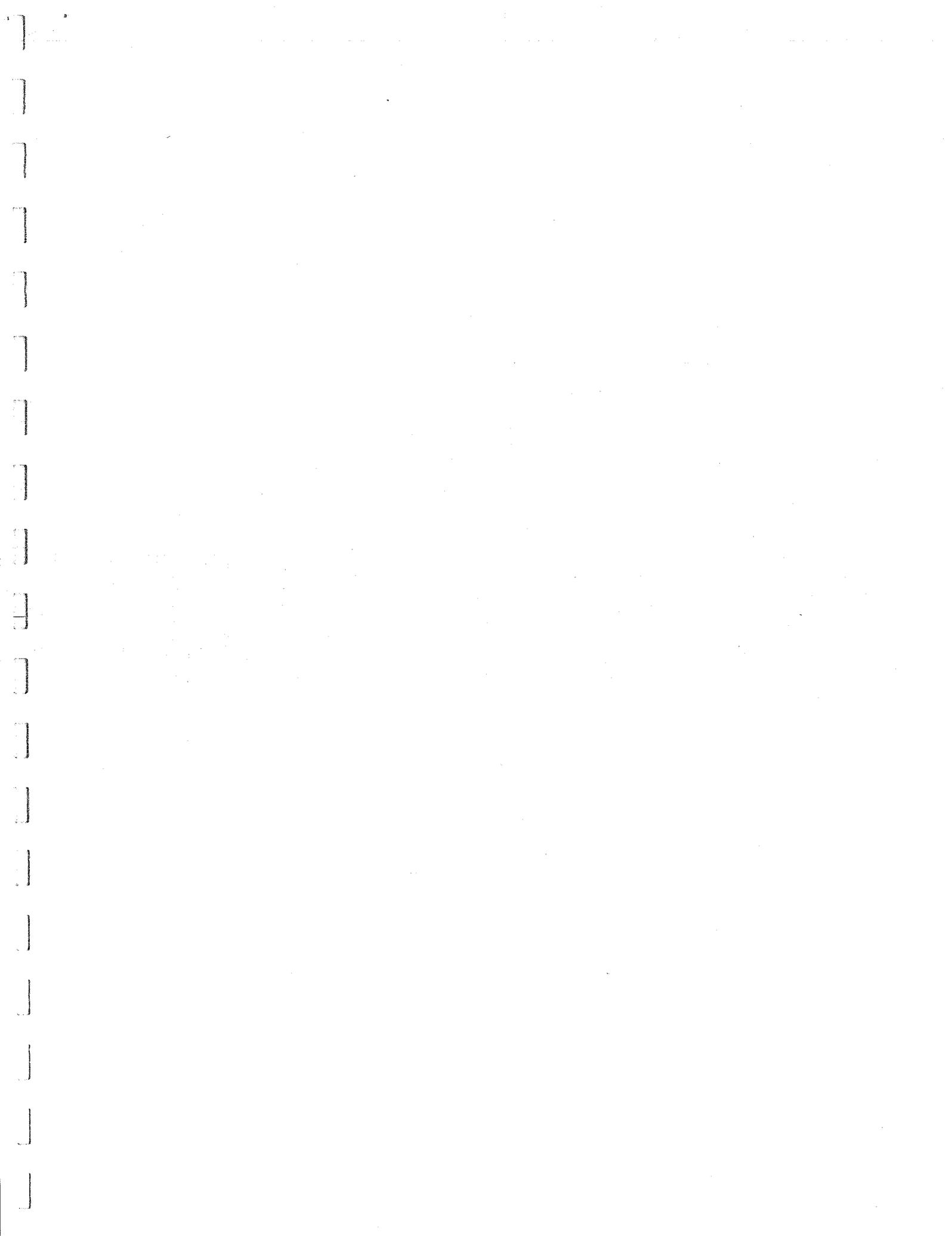
The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.


COLLEEN CONWAY COONEY JUDGE

FRANK D. CELEBREZZE, JR., P.J., and
KATHLEEN ANN KEOUGH, J., CONCUR



Court of Appeals of Ohio, Eighth District

County of Cuyahoga
Gerald E. Fuerst, Clerk of Courts

Michael A. Lingo, et al.

Appellees/Cross-
Appellants

COA NO. 97537

LOWER COURT NO.
CP CV-564761

COMMON PLEAS COURT

-vs-

State of Ohio, et al.

Appellants/Cross-
Appellees

MOTION NO. 455902

Date 09/06/2012

Journal Entry

This matter is before the court on appellees' application for en banc consideration. Pursuant to App.R. 26, Loc.App.R. 26, and *McFadden v. Cleveland State Univ.*, 120 Ohio St.3d 54, 2008-Ohio-4914, 896 N.E.2d 672, we are obligated to resolve conflicts between two or more decisions of this court on any issue that is dispositive of the case in which the application is filed.

We find no conflict between the panel's decision and the decision in *State ex rel Mayfield Heights v. Bartunek*, 12 Ohio App.2d 141, 145, 231 N.E.2d 326 (1967). The principle that a judgment entered without jurisdiction is void is not in question here. The principle that void judgments are not final and therefore are not appealable has been adopted by the Ohio Supreme Court, so if the panel's decision conflicts with this principle, it is an error, not an intradistrict conflict.

Therefore, appellees' application for en banc consideration is denied.


PATRICIA A. BLACKMON, ADMINISTRATIVE JUDGE

Concurring:

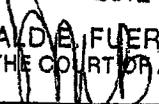
MARY J. BOYLE, J.,
FRANK D. CELEBREZZE, JR., J.,
COLLEEN CONWAY COONEY, J.,
EILEEN A. GALLAGHER, J.,
LARRY A. JONES, J.,
KATHLEEN ANN KEOUGH, J.,
MARY EILEEN KILBANE, J.,
KENNETH A. ROCCO, J.,
MELODY J. STEWART, J., and
JAMES J. SWEENEY, J.

Dissenting:

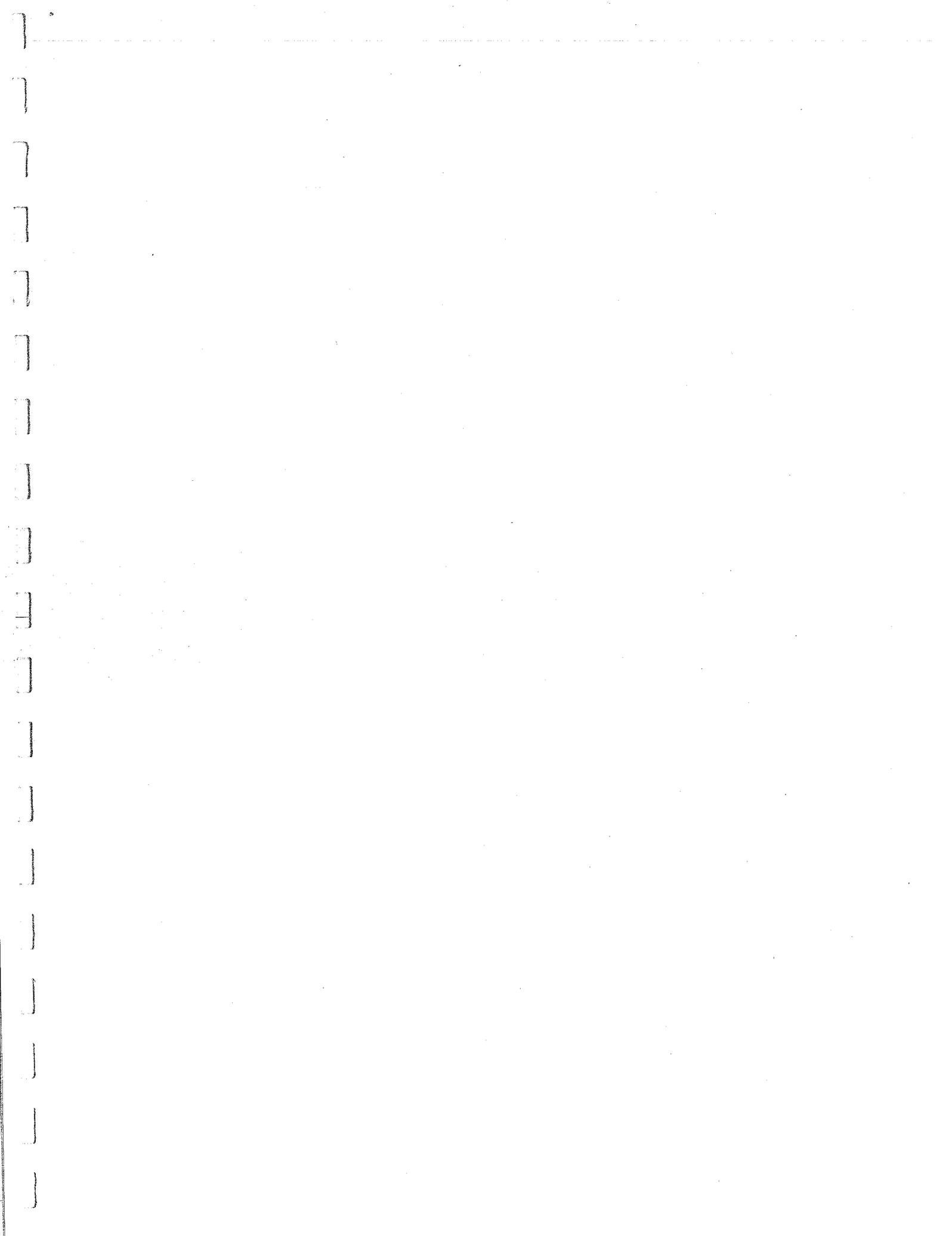
SEAN C. GALLAGHER, J.

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GERALD E. FUERST
CLERK OF THE COURT OF APPEALS
BY  DEP.

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IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

MICHAEL A. LINGO, et al.)	CASE NO. CV-05-564761
)	
Plaintiffs,)	JUDGE DICK AMBROSE
)	
-vs-)	
)	
STATE OF OHIO, et al.)	OPINION &
)	JOURNAL ENTRY
Defendants.)	

{¶1} This case involves claims by Plaintiffs Michael A. Lingo, Gregory B. Williams and William C. Glick and a proposed class of plaintiffs against the State of Ohio, the State of Ohio Department of the Treasury, Raymond J. Wohl, Clerk of the Berea Municipal Court, and a proposed class of defendants for declaratory, injunctive and equitable relief.

PLAINTIFFS' CLAIMS

{¶2} In their First Amended Complaint,¹ Plaintiffs allege that municipal, county, and mayor's courts throughout Ohio are impermissibly assessing multiple court costs per case against individuals charged with a crime and who are convicted of or plead guilty to one or more offenses. Plaintiffs also allege that Defendants are charging costs for offenses that have been nollied or dismissed and that municipal courts have been impermissibly assessing "special project" fees at the conclusion of cases rather than upon filing. More specifically, Plaintiffs assert that municipal, county, and mayor's courts ("Statutory

¹ Plaintiffs' original complaint was filed on 6/8/2005 and named the State of Ohio as the sole defendant. On 9/13/2006, Plaintiffs filed their First Amended Class Action Complaint for Declaratory Judgment, Injunction and other equitable relief and added The State of Ohio Department of the Treasury and Raymond J. Wohl, Clerk of Courts of the Berea Municipal Court as defendants.

Courts”);² which exist solely by legislative decree and may therefore exercise only the authority granted to them by the General Assembly, are routinely assessing court costs against defendants on a “per offense” basis rather than a “per case” basis. Plaintiffs also allege that Defendants are unlawfully charging costs for offenses that do not result in convictions, i.e., dismissed or “nolled” claims. Finally, Plaintiffs accuse municipal courts, and specifically the Berea Municipal Court, of violating the “special projects” provision of R.C. § 1901.26(B)(1), which permits such courts to charge additional costs to fund projects for the efficient operation of the court. Plaintiffs allege that these “special projects” costs are not being imposed “on the filing of each criminal cause” as required by the statute, instead they are being assessed only after a conviction has been entered. According to Plaintiffs, this denies a defendant the right of knowing what a plea to the charge will actually cost.

{¶3} Plaintiffs allege that some funds illegally collected are deposited with the State of Ohio Department of the Treasury (hereinafter, “Treasurer”).³ Plaintiffs further allege that Defendants authorized, encouraged, and facilitated the illegal practice of calculating court costs on the basis of the number of offenses charged rather than on a per case basis. Plaintiffs demand that any funds or profits from these illegal or improper collection activities be disgorged and returned. They also seek declaratory judgment and injunctive relief against Defendants, requesting that this Court declare that court costs assessed by Statutory Courts be permitted solely on a “per case” and not a “per offense basis” and

² The phrase “statutory courts” refers to municipal, county and mayor’s courts created under legislative authority granted by Section 1, Article IV of the Ohio Constitution.

³ The current Treasurer of the State of Ohio is Josh Mandel. When this case was filed, Jeannette Bradley was the Treasurer of State.

that Defendants be prevented from further violating the rights of individuals with respect to the assessment of court costs.

{¶4} Plaintiffs have moved for class certification on the basis that their claims are representative of the claims of all similarly situated individuals throughout the State. Plaintiffs seek certification to bring their claims as a class action and have moved to certify a defendant class consisting of the clerks of every municipal, county and mayor's court who collected excess fees; as alleged in the Amended Complaint.

DEFENDANT'S RESPONSE

{¶5} Defendants have denied Plaintiff's allegations and have filed separate Motions to Dismiss. While these motions were still pending, Defendants filed separate Motions for Summary Judgment.⁴ Defendants assert that dismissal of the First Amended Complaint is appropriate because this Court lacks subject matter jurisdiction. According to the State, this Court lacks jurisdiction because Plaintiffs have failed to allege a real controversy with the Defendants. The Treasurer argues that Plaintiffs have failed to state a claim upon which relief can be granted as the Treasurer receives only those court costs that he is statutorily authorized to collect from Statutory Courts. In his Motion, the Treasurer points out that "Plaintiffs provide no facts that support their allegations that the

⁴ Currently pending before the Court are the State of Ohio's Motion for Summary Judgment and Renewed Motion for Summary Judgment (filed 3/20/2006 and 12/6/2006, respectively); the State of Ohio's Motion to Dismiss Amended Complaint (filed 11/8/2006); the State of Ohio Department of Treasury's Motion to Dismiss Plaintiff's Amended Complaint (filed 11/8/2006); and Motion for Summary Judgment (filed 12/6/2006); Motion for Summary Judgment and Motion to Dismiss for Lack of Subject Matter Jurisdiction of Raymond J. Wohl, Clerk of Court of the Berea Municipal Court (12/6/2006 and 10/30/2007, respectively). In addition, Plaintiffs' Motion for Class Certification (filed 8/25/2005); Plaintiffs' Cross-Motion for Summary Judgment (filed 2/20/2007) and Plaintiffs' Motion to Certify Defendant Class (filed 10/24/2007) are pending before the Court.

Treasurer received any court costs collected from the Plaintiffs beyond the scope of either statute.”

{¶6} As mentioned above, the State of Ohio, the Treasurer and the Clerk of the Berea Court all filed Motions for Summary Judgment. Plaintiffs have filed a Cross-Motion for Summary Judgment. The issues raised in Defendants motions to dismiss are, with few exceptions, identical to those raised on summary judgment. However, due to the different standards of review for motions to dismiss versus motions for summary judgment, the Court will consider these motions separately.

{¶7} In its December 6, 2006 Motion for Summary Judgment, the State of Ohio incorporated the arguments made in its previously filed Motion to Dismiss as well as its March 20, 2006 Motion for Summary Judgment, asserting that Plaintiffs were assessed court costs only one time in accordance with R.C. 2949.091(A), 2743.70(A) and 1901.26(B).

{¶8} The Treasurer also incorporated in his Motion for Summary Judgment, the arguments made in his Motion to Dismiss, stating that the named Plaintiffs failed to allege facts demonstrating how they were improperly assessed court costs.

{¶9} In its motion for summary judgment, the Clerk of the Berea Court argues that it has never been the practice of the Berea Court to charge more than one \$15 court cost under R.C. 2949.091(A) for the Revenue Fund and one \$9 fee mandated by R.C. 2743.70(A) for the Victims of Crime Fund. In addition, the Clerk argues that R.C. 1901.26 permits a court to impose costs and fees on a “per charge” rather than a “per case” basis as Plaintiffs claim. The Clerk also asserts that he is immune from liability regarding the collection of court costs, that the claims raised by Plaintiffs are Res

Judicata, that there is no controversy before the Court, and that Plaintiffs' claims are barred by the doctrine of payment and release.

RELEVANT FACTS AT ISSUE

{¶10} The dispute in this case centers around R.C. 2743.70(A) and R.C. 2949.091(A)(1), which deal with the imposition of court costs.

R.C. 2743.70(A) states:

The court, in which any person is convicted of or pleads guilty to any offenses other than a traffic offense that is not a moving violation, shall impose the following sum as costs in the case in addition to any other court costs that the court is required by law to impose upon the offender:

- (a) Thirty dollars, if the offense is a felony;
- (b) Nine Dollars, if the offense is a misdemeanor

The court shall not waive the payment of the thirty dollar or nine dollar court costs, unless the court determines that the offender is indigent and waives the payment of all court costs imposed upon the indigent offender. All such moneys shall be transmitted on the first business day of each month by the clerk of the court to the treasurer of state and deposited by the treasurer in the reparations fund."

R.C. 2949.091(A)(1) states:

"The Court, in which any person is convicted of or pleads guilty to any offenses other than a traffic offense that is not a moving violation, shall impose the sum of fifteen dollars as costs in the case in addition to any other court costs that the court is required by law to impose upon the offender. All such moneys collected during a month shall be transmitted on or before the twentieth day of the following month by the clerk of the court to the treasurer of state and deposited by the treasurer of state into the general revenue fund. The court shall not waive the payment of the additional fifteen dollar costs, unless the court determines that the offender is indigent and waives the payment of all court costs imposed upon the indigent offender."

When viewed in relation to this case, these statutes require municipal courts to impose \$9.00 and \$15.00 court costs, which are then "required" to be transmitted to the State

Treasurer for deposit into the Reparations (Victims of Crime) and General Revenue Funds.

{¶11} Plaintiffs allege that they were charged in excess of the statutorily authorized amount of court costs as they were charged the \$9.00 and \$15.00 court costs on a "per offense" rather than a "per case" basis. Plaintiff's also allege that they were charged court costs for criminal charges that were eventually dropped or dismissed by the state, contrary to Ohio's statutory scheme for the imposition of court costs, and were assessed multiple court costs at the conclusion of a case when these costs should have been assessed one time at the time of initial filing.

{¶12} Specifically, Plaintiff Michael A. Lingo alleges that he was charged \$204.50 by the Parma Municipal Court for court costs and fees that were assessed on a "per charge" rather than on a "per case" basis. Plaintiff Gregory B. Williams alleges that he was similarly charged \$237.00 by the Rocky River Municipal Court. Finally, Plaintiff William C. Glick alleges that he was charged \$510.00 by the Berea Municipal Court, and that such costs were determined by the number of offenses that had been charged and not on a per case basis. Defendants deny that statutory court costs under R.C. 2743.70(A) and R.C. 2949.091(A)(1) were assessed more than once on a per case basis or that Plaintiffs were assessed costs for nollied or dismissed charges.

{¶13} However, Plaintiffs challenge Defendants' interpretation of a "case", alleging that Defendants practice is to split multiple charges involving the same or similar incident into two or more cases and then assess court costs for each "case". Plaintiffs further allege that claims stated in their Amended Complaint are not limited to the improper assessment of costs under R.C. 2743.70(A) and R.C. 2949.091(A)(1). For example,

Plaintiff Gregory Williams states that he was assessed court costs in the Rocky River Municipal Court for charges of violating marked lanes and speeding even though the first was nollied and the second was dismissed by the Court.

{¶14} Plaintiffs also challenge the inference made in Defendants' Motions that R.C. 1901.26(B), which authorizes court costs to pay for projects of the court, acts as a type of blanket authorization for the assessment of costs the clerk determines to be necessary. In particular, R.C. 1901.26(B)(1) provides that:

The municipal court may determine that, for the efficient operation of the court, additional funds are necessary to acquire and pay for special projects of the court including, but not limited to, the acquisition of additional facilities or the rehabilitation of existing facilities, the acquisition of equipment, the hiring and training of staff, community service programs, mediation or dispute resolution services, the employment of magistrates, the training and education of judges, acting judges, and magistrates, and other related services. Upon that determination, the court by rule may charge a fee, in addition to all other court costs, on the filing of each criminal cause, civil action or proceeding, or judgment by confession. (emphasis added).

Plaintiffs point to the statutory language requiring such "special project" fees to be charged "on the filing of each criminal cause". In addition, Plaintiffs note the lack of evidence put forth by Defendants on this issue – i.e. that charges assessed on the basis of R.C. 1901.26(B)(1), were actually being used for designated "projects" and were assessed at the commencement of the criminal cause, as required by statute.

{¶15} In opposition to Defendants' Motions, Plaintiff Gregory Williams presented evidence that he was charged for items such as "Computer Fund" and "Special Projects Fund" three times for three offenses at the conclusion of his case. Plaintiff William Glick was charged \$75.00 for a motion to amend while his case was pending, and when his action was finally concluded, he was assessed 13 separate fees, which included a

computer maintenance fee (2x), a computer research fee (2x), a construction fund fee (2x), and a court processing fee (2x).

OPINION

I. DEFENDANTS' MOTIONS TO DISMISS

{¶16} Defendants the State of Ohio and Department of the Treasury assert that dismissal of the Amended Complaint is appropriate because this Court lacks subject matter jurisdiction. According to the State in its Motion to Dismiss, the Court lacks jurisdiction because Plaintiffs have failed to allege a real controversy with the Defendants.

{¶17} The State of Ohio further asserts that Plaintiffs have not sufficiently alleged how its authority to create Statutory Courts caused injury to Plaintiffs. The State maintains that the power to create does not include within it the power to superintend and therefore, creation of Statutory Courts does not create a controversy between Plaintiffs and the State.

{¶18} Raymond J. Wohl, Clerk of Court of the Berea Municipal Court filed his Motion to Dismiss on 10/30/2007. In his motion, the Clerk argues that Plaintiffs' claims are essentially an appeal of a criminal sentencing entry on the issue of costs. Defendant argues that the Common Pleas Court does not have subject matter jurisdiction over this issue and it must be brought as a direct appeal in the Court of Appeals.

{¶19} On a motion to dismiss, all allegations in the complaint must be accepted as true and all reasonable inferences be made in favor of the nonmoving party. *Mitchell v. Lawson Milk Co.* (1988), 40 Ohio St.3d 190. In order to grant a dismissal pursuant to Civil Rule 12(B)(6) for failure to state a claim upon which relief can be granted, it must appear beyond doubt that the plaintiff can prove no set of facts entitling him to relief.

O'Brien v. University Community Tenants Union (1975), 42 Ohio St.2d 242, 245. A Plaintiff is not required to prove his case at the pleading stage. The court may not grant a motion to dismiss if there is a set of facts consistent with the complaint which would allow the plaintiff to recover. *York v. Ohio State Highway Patrol* (1991), 60 Ohio St.3d 143, 145.

{¶20} The State's argument in its Motion to Dismiss overlooks the fact that Plaintiffs have alleged that, through the Legislature, the State not only created the system of Statutory Courts, but also directs and maintains them. As noted in Plaintiffs' Memorandum in Opposition, the power to create a court necessarily includes the power to define its jurisdiction and to provide for its maintenance. *State ex rel. Ramey, v. Davis* (1929), 119 Ohio St. 595, 602. Also, the jurisdiction afforded to such tribunals by the legislature includes the power to tax costs. *Rothwell v. Winterstein* (1884), 42 Ohio St. 249. Plaintiffs have alleged facts sufficient to demonstrate a controversy with the State of Ohio regarding improperly assessed court costs. Plaintiffs' Amended Complaint goes beyond merely alleging that a controversy with Defendants exists by virtue of the State's creation of Statutory Courts. Plaintiffs allege that the State supports, directs and maintains the system of Statutory Courts. The State's arguments that Defendants are complying with Ohio law regarding collection of court costs relies on evidence that goes beyond the allegations made by plaintiffs, which cannot form the basis for a dismissal of the Amended Complaint.

{¶21} The State of Ohio also argues in its Motion to Dismiss that Plaintiffs cannot establish that the State has "established, funded, supported, directed and maintained a system of municipal, county, and mayor's courts." The Ohio State Legislature

established the statutory court system. These courts are not independent entities and they derive their authority from the State of Ohio. They are "creatures of the state," and give rise to an inference that when a state agency does something wrong, the State itself is ultimately responsible. See *Santos v. Ohio Bureau of Workers' Comp.* 2004-Ohio-28, 101 Ohio St.3d 74. Also, the State has been determined to be a proper party in fee disputes involving court costs. See, *State ex rel. Brown v. Galbraith* (1977), 52 Ohio St.2d 158 (where the State was determined to be a proper party in a mandamus action against a municipal judge who refused to follow his mandatory duty to collect court costs on behalf of the state under R.C. § 2743.70).

{¶22} In his Motion to Dismiss, the Treasurer has attached unsworn and uncertified dockets from the Parma, Rocky River and Berea Municipal Courts as exhibits. The court may consider such attachments only if it converts the motion to dismiss to a motion for summary judgment. As all Defendants have filed Motions for Summary Judgment, the Court declines to convert the Motions to Dismiss and considers them without their attachments or other matters outside the pleadings.

{¶23} The Treasurer contends that each plaintiff was assessed the court costs mandated by the above statutes only once in each of their respective cases. According to the Treasurer, since these statutory court costs were assessed only once, the transmission of collected costs to the Treasurer was proper and lawful, that no real controversy exists and therefore, the Court lacks jurisdiction to grant Plaintiffs their requested declaratory relief.

{¶24} As was the case with the State's Motion to Dismiss, the Treasurer's motion fails because it is based on a simple denial of Plaintiffs' allegations that court costs were assessed more than once. The Treasurer's motion also fails to address the factual basis

and law in support of Plaintiffs' claims. As the Court must accept as true Plaintiffs' allegations that court costs were assessed more than once, it must therefore deny the Treasurer's motion.

{¶25} Plaintiffs are not required to provide evidence in support of the allegations of their Amended Complaint in order to survive a motion to dismiss. Thus, whether the State is involved in the oversight of statutory courts or whether the Treasurer assessed court costs more than once, are questions that cannot be resolved on a motion to dismiss.

{¶26} The State of Ohio and Treasurer have also moved to dismiss on the additional grounds that Plaintiffs failed to state a claim. In support of this position, Defendants state "It is indisputable that Plaintiffs were assessed the \$15 and \$9 state court costs entirely in compliance with R.C. § 2949.091(A) and 2743.70(A) because they were collected only once from each of the Plaintiffs." However, whether these court costs were collected only once or more than once is an issue of fact not resolved at this stage of the proceedings. Moreover, this is not the only disputed issue in this case. As mentioned previously, the Amended Complaint seeks to remedy all court cost collection abuses. The State's assertion that: "the State of Ohio is fully complying with the law" is simply an affirmative denial of Plaintiffs' allegations and is not a basis upon which the Court can grant a motion to dismiss.

{¶27} Defendant Wohl argues that this Court does not have subject matter jurisdiction over Plaintiffs' Claims as Plaintiff is essentially appealing a Municipal Court Decision. Appeals from a Municipal Court may be brought in the Court of Appeals in the jurisdiction in which the Municipal Court resides. O.R.C. § 1901.30. Further, a Court of

Common Pleas does not have jurisdiction to decide appeals from statutory courts. *Village of Monroeville v. Ward* (1971), 27 Ohio St.2d. 179, 181.

{¶28} Defendant Wohl's attack on this Court's jurisdiction fails, as Plaintiff Glick is not appealing a decision of the Berea Municipal Court, but is in fact requesting relief for the improper acts of Raymond Wohl, the Berea Clerk of Courts, in collecting costs without authority. This Court agrees with Defendant that to the extent Plaintiff Glick's claims represent an appeal of a Municipal Court ruling, the Common Pleas Court would have no jurisdiction over such an action. However, Plaintiff is alleging that the Berea Clerk of Courts improperly collected the funds in question - not pursuant to a Court Order - but under his own authority! This Court finds that the Berea Clerk of Courts is an administrative officer over which this Court can assert jurisdiction pursuant to Section 4, Article IV of the Ohio Constitution. Plaintiff's allegation that the Clerk of Courts was acting outside of the authority set forth by the Berea Municipal Court must be accepted as true for purposes of the Motion to Dismiss.

{¶29} For the foregoing reasons, the Motions to Dismiss filed by the State of Ohio, The Department of the Treasury and Raymond J. Wohl, Clerk of Court of the Berea Municipal Court are all denied.

II. STATE OF OHIO DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT

A. APPLICABLE LAW

{¶30} In considering a motion for summary judgment, a trial court may not grant the motion unless the evidence before the court demonstrates that: (1) no genuine issue as to any material fact remains to be litigated, (2) the moving party is entitled to judgment as a matter of law, and (3) it appears from the evidence that reasonable minds can come to but

one conclusion, and viewing such evidence most strongly in favor of the nonmoving party, that conclusion is adverse to the party against who the motion for summary judgment is made. See, e.g., *Vahila v. Hall* (1997), 77 Ohio St.3d 421, 429-430.

{¶31} Once summary proceedings have been properly initiated, the responding party must set forth specific facts demonstrating triable issues on all essential matters for which he bears the initial burden of proof. Mere reliance upon the pleadings is insufficient. Civ. R. 56(E); see, also, *Celotex Corp. V. Catrett* (1986), 477 U.S. 317, 322-323. The dispute must be "material" in that the facts involved have the potential to affect the outcome of the lawsuit. *Anderson v. Liberty Lobby, Inc.* (1986), 477 U.S. 242, 248. The issue to be tried must also be "genuine," allowing reasonable minds to return a verdict for the nonmoving party. *Id.* at 248-252.

{¶32} Summary judgment is appropriate when the nonmoving party does not produce evidence on any issue for which that party bears the burden of production at trial. *Leibreich v. A.J. Refrigeration, Inc.* (1993), 67 Ohio St.3d 266, 269, citing *Wing v. Anchor Media, Ltd. Of Texas* (1991), 59 Ohio St.3d 108.

B. CHARGES FOR DISMISSED AND/OR MULTIPLE OFFENSES

{¶33} In their opposition to Defendant's Motion for Summary Judgment on the issue of charging costs for dismissed criminal charges, Plaintiffs cite *City of Cleveland v. Tighe* (April 10, 2003), Cuyahoga App. No. 81767, 2003-Ohio-1845, for the proposition that "only in successful prosecution can the costs of the proceedings be assessed to the defendant (citing, *State v. Powers* (1996), 117 Ohio App.3d 124).

{¶34} Noticeably lacking in Plaintiffs' opposition is factual support for their claim that Defendants have been improperly charging costs under § 2949.091(A) and 2743.70(A)

on a “per charge” rather than a “per case” basis. Although this claim was the focus of Plaintiffs original complaint, Plaintiffs’ first Amended Complaint placed the emphasis on “all forms of abusive collection practices.” This reorganization of claims however exposes the deficiencies of Plaintiffs’ original claim and leaves them without a sufficient basis to withstand summary judgment on that issue. Without a factual predicate on which to base Plaintiffs’ claim that Defendants assessed costs on a per charge rather than a per case basis, the claim must fail. The Court therefore grants Defendants’ motion for summary judgment for this claim only.

{¶35} Plaintiffs’ argument that the State of Ohio and State of Ohio Department of the Treasury are responsible for the acts of the Municipal Courts is without merit. Plaintiffs, having failed to provide any evidence to support cost collection abuses based on R.C. § 2949.091(A) and 2743.70(A), assert that the State of Ohio is responsible for cost collection abuses. Plaintiffs’ argument is based on the premise that Municipal Courts are “creatures of the state” and thus when a Municipal Court acts without authority the State is ultimately responsible. *Santos v. Ohio Bureau of Workers’ Comp.*, 101 Ohio St.3d 74, 2004-Ohio-28. Addressing this claim individually and on its merits, and as discussed later in this opinion, the Court finds no evidence to support Plaintiff’s “creatures of the state” argument. This claim is therefore not sufficient to withstand summary judgment on behalf of the State of Ohio.

C. CLAIMS FOR DECLARATORY JUDGMENT

{¶36} Plaintiffs assert causes of action for Declaratory Judgment, Injunctive Relief and Restitution against the State of Ohio and State of Ohio Department of the Treasury. Plaintiffs’ Declaratory Judgment action asks the Court to declare that court costs may

These cost collection abuses are allegedly being committed by the municipal courts in question and not the State of Ohio or State of Ohio Department of Treasury. Although Plaintiffs argue that the State of Ohio is responsible for the municipal court actions injunctive relief is not warranted against the State of Ohio as there is no evidence that the State is assessing or collecting improperly charged costs. Summary Judgment is hereby granted to the State of Ohio and State of Ohio Department of Treasury on Plaintiff's claim for injunctive relief.

E. CLAIMS FOR EQUITABLE RELIEF

{¶38} Plaintiffs' final cause of action against the State of Ohio Defendants, Count III, is entitled Equitable Relief and requests restitution of improperly collected court costs. Count III specifically mentions costs improperly collected under R.C. § 2949.091(A) and 2743.70(A) as well as any other illegal or improperly collected costs. The evidence before the Court shows that the costs chargeable under R.C. § 2949.091(A) and 2743.70(A) were properly collected by the State. As to the other illegal or improperly collected costs, there is no evidence that the State of Ohio Defendants collected any such costs. Therefore, the State of Ohio and State Department of the Treasury are entitled to summary judgment on Plaintiffs' claim for Equitable Relief.

F. CLAIMS FOR RESTITUTION BASED ON "CREATURES OF THE STATE" ARGUMENT

{¶39} The remaining cost collection abuses alleged in the Amended Complaint were ostensibly committed by Municipal Courts against the named Plaintiffs. Plaintiff did not present any evidence that the funds collected went to either of the State of Ohio Defendants, but rather argues that the State of Ohio is responsible because the municipal courts are "creatures of the state", and the State should be held responsible for funds

improperly collected by the municipal courts. In support of this argument Plaintiffs presented the testimony of Supervisor Carol A. Stanton of the Treasurer's Office who stated she does not know if the municipal courts are improperly collecting court costs. *Deposition of Carol Stanton* at pg. 18. Plaintiffs argue that the State is responsible for the illegal cost collection because, as admitted by Supervisor Stanton, the State has not used its authority to stop any illegal municipal court practices.

{¶40} The State of Ohio Defendants argue in opposition that it is not their responsibility to audit municipal courts cost collection practices and further that this Court does not have jurisdiction over the State of Ohio Defendants. Plaintiffs counter this argument by citing to two recent Supreme Court decisions that determined that a common pleas court has jurisdiction to order statewide restitution. *See Judy v. Ohio Bur. of Motor Vehicles*, 2003-Ohio-5277, 100 Ohio St. 3d 122; *Santos v. Ohio Bureau of Workers' Comp.* 2004 Ohio 28, 101 Ohio St.3d 74. In *Judy*, the trial Court determined that the Ohio Bureau of Motor Vehicles improperly collected reinstatement fees two times when they should have only been collected once and the Court ordered restitution of the funds improperly collected. Similarly in *Santos*, the trial court determined that funds were improperly collected by the Ohio Bureau of Workers' Compensation and ordered the Ohio Bureau of Workers' Compensation to return said funds. The Ohio Supreme Court upheld the trial court rulings finding that common pleas courts can exercise jurisdiction over equitable claims for restitution against State Entities. Although the Supreme Court allowed the equitable claims in *Judy* and *Santos, supra*, to proceed in common pleas courts the Court also noted that any claims for money damages against state entities must be brought in the Court of Claims pursuant to O.R.C. 2743.03. *Santos, supra* at ¶ 9.

only be charged once per case, not per charge. To succeed on a claim for Declaratory Judgment a Plaintiff must show (1) a real controversy between adverse parties, (2) which is justiciable in character, and (3) that requires speedy relief to preserve the rights, which may be otherwise impaired or lost. *Fairview Gen. Hosp. V. Fletcher* (1992), 63 Ohio St.3d 146, 148-149. The State of Ohio does not disagree with Plaintiffs' interpretation that costs may be only charged once per case and, in fact, the Ohio Attorney General has issued two opinions stating that the clerks of courts may only collect costs once. 1991 Op. Att'y Gen. No. 022, syllabus at p. 116; 1991 Op. Att'y Gen. No. 039, syllabus at p. 214. As the State agrees with Plaintiffs' interpretation this Court finds that a "real controversy" does not exist between the parties. "A trial court properly dismisses a declaratory judgment action when no controversy or justiciable issue exists between the parties." *Burge v. Ohio Atty. General, 2011-Ohio-3997, at ¶7*. Therefore, the Court grants the State of Ohio and State of Ohio Department of Treasury's Motion for Summary Judgment on Plaintiffs' claim for Declaratory Judgment.

D. CLAIMS FOR INJUNCTIVE RELIEF

{¶37} Plaintiffs' second cause of action requests an injunction ordering the Defendants to stop their improper court cost collection practices including the costs set forth in R.C. § 2949.091(A) and 2743.70(A). This Court having previously determined that the costs set forth in R.C. § 2949.091(A) and 2743.70(A) are being properly collected will address only the other cost collection abuses in the context of Plaintiffs' request for injunctive relief. These alleged abuses include charging costs on nollied/dismissed claims, charging special project fees at the conclusion of a case, charging special project fees without proper authorization and charging special project fees multiple times for each case.

{¶41} Plaintiff Glick's Restitution Claim against the City of Berea Clerk of Courts is similar to the claims brought in *Judy* and *Santos, supra* and is properly before a common pleas court; however, Plaintiffs' Restitution Claim against the State of Ohio and State of Ohio Treasurer does not fall into the category of equitable relief and exclusive jurisdiction therefore lies with the Court of Claims. Plaintiff Glick presented evidence to this Court that the City of Berea Clerk of Courts may have improperly collected court costs and that those funds remained with the City of Berea Clerk of Courts. The Plaintiffs did not offer any evidence that either the State of Ohio or State of Ohio Treasurer collected or retained any improper funds. Plaintiff Glick's claim against the City of Berea Clerk of Courts is for equitable restitution as Plaintiff is requesting the return of funds to which Plaintiff has a statutory right. In contrast, Plaintiffs' restitution claim against the State of Ohio and State of Ohio Treasurer is based on the Defendants' failure to properly audit and oversee the Berea, Rocky River and Parma Municipal Courts. It does not involve the return of funds improperly collected by these defendants. This Court finds that Plaintiffs' claims against the State of Ohio and State of Ohio Treasurer are for money damages, not restitution, and therefore exclusive jurisdiction of these claims lies with the Court of Claims. Plaintiffs' restitution claim against the State of Ohio and State of Ohio Treasurer are therefore dismissed on summary judgment for lack of subject matter jurisdiction.

III. DEFENDANT RAYMOND J. WOHL'S MOTION FOR SUMMARY JUDGMENT

A. CLAIMS NOT BARRED BY DOCTRINE OF RES JUDICATA

{¶42} Defendant Raymond J. Wohl, Clerk of the Berea Municipal Court, filed a Motion for Summary Judgment on December 6, 2006. The Motion requests summary judgment

on each of Plaintiff William Glick's claims in the Amended Complaint.⁵ For the reasons discussed herein, the Court grants Defendant Wohl's Motion for Summary Judgment in part and denies it in part. In his motion, Defendant first argues that Plaintiff's claims are barred by the doctrine of Res Judicata. Specifically, Defendant Wohl asserts that Plaintiff's claim of cost collection abuse stem from a criminal conviction and imposition of court costs in a criminal conviction must be addressed on direct appeal. *State of Ohio v. Zuranski*, Cuyahoga App. No. 85091, 2005-Ohio-3015. In addition, a sentencing entry can still be considered a final appealable order on this issue of costs even if the amount of costs is not specified in the entry. *State v. Threatt*, 108 Ohio St.3d 277, 2006-Ohio-905. In *Threatt* the Court determined that it is typical for a sentencing entry to charge costs in an unspecified amount with an itemized bill to be generated at a later date. The Court found that calculating a bill for costs in a criminal case was merely a ministerial task and thus failing to specify the amount of costs assessed in a sentencing entry did not defeat the finality of the sentencing entry as to costs. However, *Threatt* is distinguishable from the subject case. In *Threatt*, the Defendant was not challenging the calculation of costs and the court's jurisdiction but was rather arguing that costs should not be imposed because the Defendant was indigent. In this case, Glick is arguing that the ministerial task of calculating the court costs was improperly done and the Clerk acted outside his jurisdiction by imposing these improper costs.

{¶43} This Court agrees with Plaintiff that to the extent the Berea Municipal Court acted outside its jurisdiction in imposing costs, the order of costs was made without subject matter jurisdiction and is void *ab initio*. *Patton v. Diemer* (1988), 35 Ohio St.3d 68, 70.

⁵ Plaintiffs Lingo and Williams did not assert claims against Defendant Wohl individually as they were not convicted in Berea Municipal Court. Plaintiffs Lingo and Williams convictions occurred in Parma Municipal Court and Rocky River Municipal Court, respectively, neither of which is a party to this action.

Furthermore, any order issued without subject matter jurisdiction can be challenged at any time and need not be raised on direct appeal. *Davis v. Wolfe* (2001), 92 Ohio St.3d 549, 552. To determine whether the Defendant Raymond J. Wohl was acting outside of the Court's Jurisdiction this Court must look at the sentencing entry in question. Glick was originally charged with both reckless operation and weaving, but the final sentencing entry issued April 15, 2005 found Glick guilty of reckless operation only and ordered that the Defendant be responsible for costs. The Berea Municipal Court docket report reflects two separate charges for several court costs including general court costs (\$56.00 charged two times). Defendant Wohl admitted at deposition that Glick was assessed court costs on both the reckless operation charge and the weaving charge. The final sentencing order did not reference the weaving charge as it had previously been dismissed. The imposition of court costs on the dismissed weaving charge by Defendant Wohl, as Clerk of the Berea Municipal Court, was without authority and outside of the Court's jurisdiction. Therefore, the order to pay costs on the dismissed charge was void *ab initio*. See *City of Willoughby v. Sapina* (Dec. 14, 2001), 11th Dist. No. 2000-L-138, 2001-Ohio-8707. As subject matter jurisdiction can be challenged at any time this Court finds that Plaintiff Glick's claim of cost collection abuse is not barred by the doctrine of Res Judicata and is properly before this Court.

B. CLAIMS INVOLVING R.C. §§ 2949.091(A) and 2743.70(A) COSTS

{¶144} Defendant Wohl next argues that Berea is entitled to summary judgment on Plaintiff's claims involving costs charged under R.C. § 2949.091(A) and 2743.70(A). This Court agrees with Defendant Wohl that the costs associated with R.C. § 2949.091(A) and 2743.70(A) were properly assessed against Glick, in that the evidence

shows the R.C. § 2949.091(A) and 2743.70(A) costs were charged only one time to the Plaintiff. The Court therefore grants Defendant Raymond J. Wohl's Motion for Summary Judgment on Plaintiff's claims for improperly charged costs under R.C. § 2949.091(A) and 2743.70(A).

C. CLAIMS REGARDING SPECIAL PROJECT FEES AND OTHER COSTS

{¶45} Defendant Wohl also argues that the costs charged to Glick as Special Project Fees, pursuant to R.C. 1901.26, were proper and thus the Defendant is entitled to summary judgment. This argument is without merit as Defendant Wohl admitted to charging Glick costs based on the dismissed charge of weaving. The costs charged on the weaving count included general court costs, computer maintenance fees, computer research fees, construction fund fees and court processing fees. Even if these costs could be assessed on a "per charge" rather than a "per case" basis the charges are still improper as they were assessed on a dismissed count. This Court having found that court costs were improperly assessed to Glick on the weaving count, further finds, that Defendant Wohl did not lawfully impose all R.C. § 1901.26 costs and denies Defendant Wohl's Motion for Summary Judgment on that basis.

D. IMMUNITY FOR JUDICIAL OR QUASI-JUDICIAL ACTIVITIES

{¶46} Defendant Wohl further moves for summary judgment on the basis of immunity for judicial or quasi-judicial activities. Judicial immunity only protects a clerk of courts to the extent that the clerk is acting at the Court's directive. *Kelly v. Whiting* (1985), 17 Ohio St.3d 91. In the instant case, Plaintiff Glick alleges that the Clerk is collecting costs without a specific order of the Court, i.e., that he is collecting costs on a dismissed (weaving) charge, which is outside of the Court's directive and is therefore unprotected

by the immunity doctrine. In addition, while judicial immunity almost always applies in actions for monetary damages⁶, courts have afforded exceptions to immunity when requesting equitable relief such as with a request for injunctive relief or claim for equitable restitution such as Plaintiff Glick's claim in this action. *Pulliam v. Allen* (1984), 466 U.S. 522. The common law does not provide an absolute rule of judicial immunity. *Id.* In fact, no federal court of appeals has ever concluded that immunity bars a claim for injunctive relief against a judge. *Id.* Immunity does not extend to injunctive relief because the limitations already imposed by the requirements for obtaining equitable relief are sufficient to curtail the risk that judges will be harassed by disgruntled litigations. *Id.* This Court finds that the claims set forth in this case fall into the equitable relief exception described in *Pulliam* and therefore the Defendant is not entitled to judicial immunity.

E. ADEQUATE REMEDY AT LAW

{¶47} Defendant Wohl also moves for summary judgment on the basis that Plaintiff has an adequate remedy at law; that attorney general opinions are insufficient to sustain a private class action; and that Plaintiff's claims are moot. The Court finds these arguments to be without merit and denies the Defendant's Motion for Summary Judgment on these issues. Therefore, the Court grants Defendant Wohl's Motion for Summary Judgment on Plaintiff Glick's claims for improper fees under R.C. §§ 2949.091(A) and 2743.70(A), but denies the motion as to Plaintiff's remaining claims.

⁶ There is an exception to immunity, even in a claim for monetary damages, when a Court acts with a total lack of jurisdiction as opposed to when the Court is acting in excess of jurisdiction. *Wilson v. Neu* (1984), 12 Ohio St.3d 102. As Glick's case was properly before the Court pursuant to his charge and plea agreement this Court finds the Berea Court was acting in excess of jurisdiction, and not with a total lack of jurisdiction, when it ordered Glick to pay costs on a dismissed charge. As such, judicial immunity would apply to any claim for monetary damages.

IV. PLAINTIFFS' CROSS-MOTIONS FOR SUMMARY JUDGMENT .

A. IMPROPER COSTS UNDER R.C. §§ 2949.091(A) and 2743.70(A)

{¶48} The same rationale by which the Court granted Defendants' Motions for Summary Judgment on Plaintiffs' claim of improper costs under R.C. §§ 2949.091(A) and 2743.70(A) applies to that claim as stated in Plaintiffs' cross-motion for summary judgment. Because there is no factual basis to support Plaintiffs' claim – i.e., that none of the named Plaintiffs can demonstrate that they were improperly charged court costs under R.C. §§ 2949.091(A) and 2743.70(A) in any of their cases, their claims in that regard must fail and their motion for summary judgment for these claims is denied. In addition, as this Court granted the State of Ohio and State of Ohio Treasurer's Motions for Summary Judgment on all of Plaintiffs' claims, this Court will address Plaintiffs' Cross-Motion for Summary Judgment on Plaintiff Glick's claims only, as the only remaining defendant is Raymond Wohl, Clerk of the Berea Municipal Court.

B. PLAINTIFF GLICK'S CLAIMS FOR DECLARATORY JUDGMENT

{¶49} The Court hereby grants Plaintiff William Glick's Motion for Summary Judgment on Count One for Declaratory Judgment in part, and denies it in part. To succeed on a claim for Declaratory Judgment a Plaintiff must show (1) a real controversy between adverse parties, (2) which is justiciable in character, and (3) that requires speedy relief to preserve the rights, which may be otherwise impaired or lost. *Fairview Gen. Hosp. V. Fletcher* (1992), 63 Ohio St.3d 146, 148-149. Plaintiff's declaratory judgment claim asks this Court to declare that court costs must be charged solely on a "per case" and not "per offense" basis. Plaintiff further requests a declaration that the named Plaintiffs were improperly assessed court costs. To the extent that this Court has found that certain court

costs can only be charged on a "per case" basis and that Plaintiff Glick was improperly assessed costs, the Court grants Plaintiff's Motion for Summary Judgment as to Count One of the First Amended Class Action Complaint, in part.

{¶50} A municipal court may, for the efficient operation of the court, raise funds to pay for special projects. *City of Middleburg Heights v. Quinones* (2008), 120 Ohio St.3d 534, 2008 Ohio 6811. "Special Projects of the court include, but are not limited to, the acquisition of additional facilities or the rehabilitation of existing facilities, the acquisition of equipment, the hiring and training of staff . . . and other related services." *Id.* at ¶ 12. The special project fees may be assessed on a "per charge" as opposed to a "per case" basis. O.R.C. 1901.26(B)(1). Plaintiff Glick was charged the following fees multiple times; General Court Costs, Computer Maintenance Fund, Computer Research Fund, Construction Fund and, Processing Fee. The Court hereby finds and does declare that each of these fees, with the exception of "General Courts Costs," constitute special project fees and thus they may be assessed on a "per charge" basis. O.R.C. 1901.26(B); See *City of Middleburg Heights v. Quinones*, 120 Ohio St.3d 534, 2008-Ohio-6811. General Court Costs do not fall under O.R.C. 1901.26(B) and thus must be charged on a "per case" basis. The Court hereby declares that the Plaintiff was improperly charged General Court Costs a second time, when he should have been charged only once.

{¶51} This Court further declares that the Computer Maintenance Fee, Computer Research Fee and Construction Fee were improperly charged a second time. Although these fees may be assessed on a "per charge" basis they may not be assessed on dismissed claims. *City of Cleveland v. Tighe* (April 10, 2003), 8th Dist. No. 81767, 2003-Ohio-1845. As the Weaving Count against the Plaintiff, William Glick, was dismissed and

only the Reckless Operation Count remained, this Court finds and does declare that Defendant Raymond Wohl improperly charged the Computer Maintenance Fee, Computer Research Fee and Construction Fee on the dismissed charge.

{¶52} In addition, the Court does hereby find and declare that the \$2.00 Processing Fee identified in the Berea Municipal Court schedule of court costs was improperly charged for each instance that it was assessed. This Processing fee is to be applied when Court Costs are paid by credit card. Deposition of Raymond Wohl at p.51. The Plaintiff's receipt from the Clerk's Office reflects that the costs were paid in cash and therefore the \$2.00 Processing fee was improperly charged. Plaintiff's Cross Motion for Summary Judgment Exhibit 2 p. 16.

C. PLAINTIFF GLICK'S CLAIMS FOR INJUNCTIVE RELIEF

{¶53} Plaintiff's Motion for Summary Judgment as to his claim for Injunctive relief is hereby granted. Plaintiff's claim for injunctive relief requests this Court to order the Defendant to refrain from overcharging court costs in violation of offenders' legal rights. This Court set forth the improper charges of the Defendant in granting Plaintiff's request for declaratory judgment. Defendant's improper procedures include charging court costs on dismissed counts, charging "general court costs" on a per charge basis, and charging a processing fee when costs are paid in cash. Defendant argues in opposition to the request for injunctive relief that offenders have an adequate remedy at law by way of appeal.

{¶54} In order to succeed on a claim for injunctive relief a plaintiff must show (1) a substantial likelihood of success on the merits; (2) irreparable harm will ensue in the absence of an injunction; (3) an injunction will not cause others to suffer substantial

harm; and (4) the public interest would be served by the preliminary injunction. *Cleveland v. Cleveland Electric Illuminating Co.* (8th Dist. 1996), 115 Ohio App.3d 1.

{¶55} In arguing that there is an adequate remedy at law, Defendants are requesting this Court to allow Defendants to continue to charge court costs in violation of offenders' legal rights, and only be held accountable when an appeal is filed. This procedure would require an appeal to be filed in each case that the Berea Municipal Court charges costs improperly. This type of procedure would be an inefficient use of court resources when compared to an injunction issued by this Court. *Mid-America Tire, Inc. v. PTZ Trading Ltd.*, 95 Ohio St.3d 367, 380, 2002-Ohio-2427. In addition, an appeal may prove problematic as improper court costs charged to offenders have not been included in final sentencing entries. This Court finds that Plaintiff's request for injunctive relief meets the requirements set forth in the *Cleveland Electric Illuminating* case and hereby grants Plaintiff's Motion for Summary Judgment on the claim for Injunctive relief. The Defendant Raymond Wohl, Clerk of the Berea Municipal Court is hereby ordered to refrain from charging costs on dismissed counts, to refrain from charging "general court costs" on a per charge basis and, to refrain from charging offenders a processing fee when they pay their costs in cash.

D. PLAINTIFF GLICK'S CLAIMS FOR RESTITUTION

{¶56} Plaintiff's final count in the complaint requests Equitable Relief in the form of Restitution for improperly collected funds. The Doctrine of Restitution allows a Plaintiff to recover a benefit conferred upon a Defendant when retention of that benefit by the Defendant would be unjust or inequitable. *Kraft Constr. Co. v. Cuyahoga Cty. Bd. Of Commrs.* (8th Dist. 1998), 128 Ohio App.3d 33, 48. The Common Pleas Court has

jurisdiction to issue restitution against a governmental entity. *Judy v. Ohio Bur. of Motor Vehicles*, 100 Ohio St.3d 122. This Court having already determined that the Defendant Raymond Wohl, Clerk of the Berea Municipal Court, improperly collected court costs finds it unjust to allow Defendant Wohl to retain such funds and hereby finds in favor of the Plaintiff William Glick on his claim for restitution. The improperly collected funds are as follows: General Court Costs \$56.00 (1x), Computer Maintenance Fee \$7.00 (1x), Computer Research Fee \$3.00 (1x), Construction Fund \$15.00 (1x), and Court Processing Fee \$2.00 (2x). The total of the improperly collected and unjustly retained funds is \$85.00. This Court hereby grants Plaintiff's Motion for Summary Judgment on their claim for Restitution and hereby orders that the Defendant issue a refund to the Plaintiff William Glick in the amount of \$85.00.

V. PLAINTIFF'S MOTION FOR CLASS CERTIFICATION

{¶57} In light of the Court's rulings on Summary Judgment this Court will address the factors for certifying a class of Plaintiffs against the Defendant Raymond Wohl, Clerk of the Berea Municipal Court only, and not the State of Ohio Defendants. Further, this Court finds Plaintiff's Motion to Certify a Defendant's Class without merit and therefore William Glick is the sole named representative of the Proposed Plaintiff's Class.⁷

{¶58} Plaintiff must meet seven requirements before a case may be maintained as a class action: (1) an identifiable class must exist and the definition of the class must be unambiguous; (2) the named representatives must be members of the class; (3) the class must be so numerous that joinder of all members is impracticable; (4) there must be questions of law or fact common to the class; (5) the claims or defenses of the

⁷ Michael Lingo and Gregory Williams cannot be members of the Plaintiff's class as the only defendant is Raymond Wohl, Clerk of the Berea Municipal Court, and Lingo and Williams were not convicted in the Berea Municipal Court.

representative parties must be typical of the claims or defenses of the class; (6) the representative parties must fairly and adequately protect the interests of the class; and (7) one of the three Civ.R. 23(B) requirements must be satisfied. *Hamilton v. Ohio Savings Bank* (1998), 82 Ohio St.3d 67.

{¶59} Plaintiff presented this Court with the following proposed class definition in their Motion for Class Certification, filed August 25, 2005:

ALL INDIVIDUALS WHO PAID COURT COSTS ON OR AFTER JUNE 8, 1995 THAT WERE IMPROPERLY CALCULATED ON THE BASIS OF THE NUMBER OF OFFENSES CHARGED IN PROCEEDINGS BEFORE ANY OHIO MUNICIPAL COURT, COUNTY COURT, OR MAYOR'S COURT.

Plaintiff then provided alternate class definitions in a supplement to their Motion for Class Certification, filed on February 20, 2007 and a second supplement, filed on August 9, 2007.

{¶60} This Court finds the definitions presented by the Plaintiff to be improper based on the summary judgment rulings made by this Court as well as the factors for certifying a Plaintiff's Class as set forth in Ohio Civ. R. 23. The Court finds that it is necessary to amend the definition so that it is precise enough to permit identification of members of the class with a reasonable effort and further so that the named Plaintiff is a proper representative of the class. *Stammco, L.L.C. v. United Tel. Co. of Ohio*, 125 Ohio St. 3d 91, 2010-Ohio-1042. This Court amends the definition as follows and will address the factors for certifying a Plaintiff's Class based on the amended definition:

ALL INDIVIDUALS WHO PAID COURT COSTS ON OR AFTER JUNE 8, 1995 TO THE BEREA MUNICIPAL COURT UNDER ANY OF THE FOLLOWING CIRCUMSTANCES:

A. PAYING "GENERAL COURT COSTS" ON A "PER OFFENSE" INSTEAD OF A "PER CASE" BASIS.

- B. PAYING COSTS UPON OR IN CONNECTION WITH ANY OFFENSE THAT DID NOT RESULT IN A CONVICTION, EXCEPT WHERE THE INDIVIDUAL AFFIRMATIVELY AGREED TO ACCEPT SUCH CHARGES AS PART OF A PLEA AGREEMENT MEMORIALIZED IN A VALID JOURNAL ENTRY.
- C. BEING ASSESSED A "PROCESSING FEE" WHEN PAYING FOR COURT COSTS IN CASH.

{¶61} The Court finds that, based on this amended class definition, the class is identifiable and further that the definition of the class is unambiguous. Defendant raised many arguments against Plaintiff's proposed class definition stating that it is improperly open-ended and ill-defined. Defendant further argues that it would be administratively impossible to determine the members of the class under Plaintiff's definition. Defendant's arguments do not hold true with respect to the Amended Class Definition set forth by this Court. The Amended Definition is very specific and as the proposed class members were parties to a legal proceeding they will be readily identifiable from the records and data of that proceeding which contained their names, addresses, telephone numbers, social security numbers and amounts paid. *Holznagel v. Charter One Bank, F.S.B.* (December 14, 2000), Cuyahoga App. No. 76822. The Court therefore finds that the first requirement of a class action - an identifiable class and unambiguous definition of the class - is met.

{¶62} William Glick is a member of the Class as defined by this Court. The evidence before this Court on the parties' summary judgment motions shows that Glick was improperly charged costs as defined in the Amended Class Definition and therefore he is a member of the Class.

{¶63} This Court finds that the class is so numerous that joinder of all members is impracticable. The Defendant admitted at deposition that offenders are frequently

charged costs even if not found guilty. Deposition of Raymond Wohl at 19. Although the Court has not been provided with a number for how many offenders are charged costs in the Berea Municipal Court, based on the Defendant's statement, this Court finds that the Class is likely to contain hundreds, if not thousands, of individuals over the defined time period. There is no specific numerical limit that must be satisfied to maintain a class action, but certification of classes in the range of 40-70 members have been upheld. *Vinci v. American Can Co.* (1984), 9 Ohio St.3d 98; See also *Simmons v. American Gen. Life & Acc. Ins. Co.* (6th Dist. 2000), 140 Ohio App.3d 503. Based on the foregoing analysis, this Court finds that the numerosity requirement is met.

{¶64} The Commonality requirement of Ohio Civ. R. 23 is also met. All that is necessary to establish this prong is that there exist "a common nucleus of operative facts, or a common liability issue". *Hamilton v. Ohio Savings Bank* (1998), 82 Ohio St.3d 67. Claims based on statutory construction "share common legal and factual issues" and are thus appropriate for class certification. *Mominey v. Union Escrow Co.*, Cuyahoga App. No. 82187, 2003-Ohio-5933. The Claims set forth in this action are based on statutory interpretation of cost statutes and therefore the requirement for common issues of law is met. In addition, the facts surrounding each of the Plaintiff Class Members will be similar as each class member will have been charged court costs in the Berea Municipal Court. This Court finds that the Commonality requirement is met as the proposed class includes both common questions of law and common questions of fact.

{¶65} This Court further finds that the claims of the representative party are typical of the claims of the class. This requirement is satisfied when "there is no express conflict between the representative parties and the class." *Pyles v. Johnson* (4th Dist. 2001), 143

Ohio App.3d 720. In this action, the claims of the named plaintiff are identical to that of the class, consequently there is no conflict, and the typicality requirement is met.

{¶66} The Plaintiff Class has adequate representation in this action. A representative "is adequate where his or her interest is not antagonistic to that of other class members." *Warner v. Waste Management* (1988), 36 Ohio St.3d 91. As the named Plaintiff shares the same interest as the class members the Court sees no antagonistic interest in this action. In addition, the Court finds that the named Plaintiff hired experienced and competent counsel to represent the Class. As such, the adequacy of representation requirement is met.

{¶67} The final requirement for class certification is that one of the three elements of Ohio Civil Rule 23(B) is met. This Court finds that Ohio Civil Rule 23(B)(2) and 23(B)(3) are met and therefore Class Certification is appropriate.

{¶68} Ohio Civil Rule 23(B)(2) allows certification for purposes of injunctive or declaratory relief when each of the claimants has been victimized by the same policy or practice. *Gottlieb v. City of South Euclid*, 157 Ohio App.3d 250, 2004-Ohio-2705. Each of the proposed class members has been victimized by the same policy of charging court costs in violation of law, and as such class certification is appropriate under Ohio Civil Rule 23(B)(2).

{¶69} Ohio Civil Rule 23(B)(3) applies when questions of law or fact common to the members of the class predominate over any questions affecting only individual members. A court must make the following findings to support class certification under Ohio Civil Rule 23(B)(3): "First, the court must find that common questions predominate over questions affecting only individual members. Second, a class action must be superior to

other available methods for a fair and efficient adjudication of the controversy.” *Farrenholz v. Mad Crab, Inc.* (September 28, 2000), Cuyahoga App. No. 76456. The common questions in this action include statutory interpretation of costs statutes and applying that interpretation to the actions of the Defendant, and determining what is and what is not a proper court cost charge. After determining the common question of what is an improper charge the only individual question to ask is whether the offender was assessed an improper charge. Consequently, common questions do predominate over questions affecting only individual members. In addition, resolving the class members almost identical claims as a whole is far more expedient and efficient than pursuing them individually. The Court finds that the requirement set forth in Ohio Civil Rule 23(B)(3) is met and hereby certifies this case as a Class Action under this Court’s Amended Class Definition.

VI. PLAINTIFFS’ MOTION TO CERTIFY DEFENDANT CLASS

{¶70} Plaintiff requests this Court to certify a class of defendants which would consist of Clerks of municipal and county courts in the State of Ohio that collected court costs in excess of authority from a named Plaintiff or a member of the Plaintiff class. This Court finds that Plaintiff’s request fails to meet the Ohio Civil Rule 23(A) requirements necessary to certify a class of defendants. Plaintiff’s Motion to Certify a Defendant’s Class is hereby denied.

{¶71} This Court finds that numerosity is lacking. Plaintiffs attempt to show numerosity simply by stating that there are 97 municipalities with a municipal court in Ohio. However, Plaintiff’s Complaint fails to support their argument as Paragraph 8 states “Most statutory courts and their clerks recognize that costs may be assessed only once for

each "case". This statement, which this Court must accept as true for purposes of ruling on class certification, states that most of the 97 municipal courts do not violate the cost statutes. In addition, Plaintiff has failed to present this court with any allegation by way of the Complaint or any evidence that the complained of actions extend beyond the Berea Municipal court, Rocky River Municipal Court and Parma Municipal Court. The requirement for numerosity has therefore not been met.

{¶72} This Court further finds that the Commonality and Typicality requirements of Ohio Civil Rule 23(A) have not been met. Plaintiffs argue that there is a common question of law as the statutes defendants are alleged to have violated are state statutes and thus common to all defendants. However, the only costs that would be common to all defendants are the State Victim of Crime Fund and the State Revenue Fund. All other costs assessed by statutory courts differ depending on what local rules are adopted by the Court. In addition, how the court adopts the court costs may also differ as well as how the adopted costs are published to citizens. This Court finds that there is no common nucleus of facts and as such, the defenses offered by Defendant Wohl may not be typical of the defenses of the class.

{¶73} Finally, this Court also finds that the adequacy of representation requirement has not been met. As court cost practices differ between the municipal courts throughout the State, the named Defendant may have interests that are antagonistic to other class members. *Warner v. Waste Management* (1988), 36 Ohio St.3d 91. The named Defendant, Raymond Wohl Clerk of the Berea Municipal Court, has an interest is showing that the actions of his Court were lawful, but if other municipal courts assess

court costs in a manner that differs from the Berea Municipal Court, then the named Defendant has no interest in protecting those class members.

{174} This Court finds that the requirements of Ohio Civil Rule 23(A) have not been met by the Plaintiff and hereby denies Plaintiff's Motion to Certify a Class of defendants.

IT IS SO ORDERED.

10/31/2011

DATE



JUDGE DICK AMBROSE

RECEIVED FOR FILING
NOV 01 2011

GERALD E. HERST, CLERK
By [Signature] Deputy

