

ORIGINAL

IN THE SUPREME COURT OF OHIO

CASE NO. 2012-1774

MICHAEL LINGO, et al.
Plaintiff-Appellants

-vs-

STATE OF OHIO, et al.
Defendant-Appellees

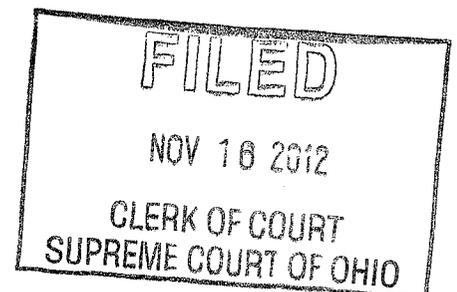
ON APPEAL FROM THE EIGHTH DISTRICT
COURT OF APPEALS CASE NO. 97537

MEMORANDUM IN OPPOSITION TO JURISDICTION OF AMICUS CURIAE THOMAS E. DAY JR., CLERK OF COURTS OF THE BEDFORD MUNICIPAL COURT, VICTORIA DAILEY, CLERK OF COURTS OF THE CHARDON MUNICIPAL COURT, AND LISA MASTRANGELO, CLERK OF COURTS OF THE WILLOUGHBY MUNICIPAL COURT

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I. THIS CASE IS NOT OF PUBLIC OR GREAT GENERAL INTEREST

The decision of the Eighth District Court of Appeals is entirely consistent with the precedent established by this Court on the issues of *res judicata* and subject matter jurisdiction. While Plaintiffs-Appellants twist and distort a singular sentence from the Eighth District Court of Appeals' decision in an effort to create controversy and confusion when none should exist, a fair reading of the Eighth District's opinion indicates that it did nothing more than to affirm well-founded principles of law pertaining to void and voidable judgments. It is Plaintiff-Appellants who seek to create confusion with class action litigation designed to re-open hundreds of thousands of municipal court criminal convictions decided over the past ten years. This Court should decline to accept jurisdiction and allow the Eighth District's sound decision to stand.

A. The Interests of the Amicus Curiae in This Case.

The Clerks for the Bedford Municipal Court, Willoughby Municipal Court, and Chardon Municipal Court (collectively the "Amicus Clerks") and all statutorily created courts throughout the State of Ohio are caught squarely in the cross-hairs of this litigation. The same group of class action plaintiff lawyers in the case *sub judice* have initiated substantially similar litigation against the Amicus Clerks and 10 other defendant clerks in the case of *Gregory B. Williams, et al. v. Deborah F. Comery, Clerk of Courts, et al.*, Cuyahoga County Court of Common Pleas Case No. 768540 (the "Amicus Clerk Litigation"). Additionally, the Plaintiff-Appellants in the case *sub judice* are seeking an order to certify a class of all municipal, county and mayor's court clerks in the state.

There are common questions of law between this case and the Amicus Clerk Litigation. On March 22, 2012, the Amicus Clerk Litigation was stayed *sua sponte* pending the outcome of this case upon the following trial court order:

THIS MATTER IS STAYED PENDING THE OUTCOME OF THE APPEAL OF CASE NO. 564761 WHICH IS CURRENTLY BEFORE THE EIGHTH DISTRICT COURT OF APPEALS (CA-97537). THE DECISION OF THE APPELLATE COURT(S) WILL BE DISPOSITIVE OF THE ISSUES INVOLVED IN THE PRESENT MATTER. AS DUPLICITIOUS LITIGATION OF THE ISSUES DOES NOT SERVE JUDICIAL ECONOMY, THIS MATTER IS STAYED PENDING THE FINAL OUTCOME OF THE PREVIOUS CASE AND WILL ONLY BE RETURNED TO THIS COURT'S ACTIVE DOCKET UPON MOTION OF THE PARTIES. NOTICE ISSUED (EMPHASIS ADDED).

In the case *sub judice*, the Eighth District Court of Appeals correctly determined that a common pleas court lacks subject matter jurisdiction to hear a class action lawsuit seeking to alter the court costs on thousands of municipal court criminal convictions that were never appealed. The instant class action litigation, as well as the Amicus Clerk Litigation, constitutes an improper collateral attack on criminal convictions that were never appealed. The Eighth District's decision is based on well-established principles of Ohio law, is not in conflict with the decisions of other Ohio courts, and accordingly there is no reason for this Court to accept jurisdiction to hear this appeal.

B. Plaintiff-Appellants and The Plaintiffs In The Amicus Clerk Litigation Are Seeking to Pass on the Costs of Their Criminal Convictions to Future Criminal, Traffic and Civil Litigants Who Utilize The Court System.

The Ohio legislature has given municipal courts the power to impose court costs to finance the court system. Municipal courts have a mandatory obligation to impose court costs on those convicted of crimes, and the trial court cannot waive court costs when a defendant is convicted or pleads guilty unless the defendant is indigent. *City of Cleveland v. Tighe*, Eighth District Nos. 81767 and 81795, 2003-Ohio-1845.

Plaintiff-Appellants and the Plaintiffs in the Amicus Clerk Litigation argue that the municipal courts should have charged other offenders more so they could be charged less. Prior to this Court's 2008 decision in *Middleburg Hts. v. Quinones*, 116 Ohio St. 3d 1474, 2008-Ohio-153, 879 N.E.2d 782, some municipal courts calculated court costs on a "per offense" basis, while other courts assessed costs on a "per case" basis. The effect of a policy of charging court costs "per offense" is that offenders who have multiple criminal charges pay more in court costs than do single-offense defendants. Conversely, when court costs are assessed once per case, every offender – no matter how many criminal charges convicted of – pays the same amount in court costs. *Quinones* clarified the confusion as how court costs were to be charged by ruling that court costs should be assessed once per case based on this Court's interpretation of R.C. 2747.23 and R.C. 1901.26. However, this Court recognized that court costs could still be charged "per offense" for court special projects under R.C. 1901.26(B).

The Berea Municipal Court made a policy decision to charge court costs "per offense" as opposed to "per case". This resulted in some criminal defendants (such as DUI defendants with multiple charges) paying more in court costs, with single charge offenders (such as those receiving a speeding ticket) paying less. Seeking to profit from the *Quinones* decision, Plaintiff-Appellants and the Plaintiffs in the Amicus Clerk Litigation are seeking to force every municipal court that charged court costs "per offense" to return all funds collected over the past ten years. However, there is no mechanism in place for municipal courts to recoup additional costs from municipal court litigants who were allegedly "undercharged" court costs over the years. What Plaintiff-Appellants are seeking is an order requiring the Berea Clerk of Courts to pay huge

damages to the plaintiff class which can only be financed by higher court costs assessed on future criminal, traffic and civil litigants who utilize the court system because the magnitude of the costs which are sought are simply not costs any Ohio court can afford.

II. LAW AND ARGUMENT

A. The Amicus Clerks Agree With the Arguments of Defendant-Appellee Raymond Wohl

The Amicus Clerks fully agree with the arguments set forth by Appellee, Raymond Wohl, in opposition to Ohio Supreme Court jurisdiction. The decision of the Eighth District Court of Appeals is entirely consistent with controlling Ohio Supreme Court precedent. There is accordingly no reason for this Court to revisit subject matter jurisdiction and *res judicata* issues which have been determined in prior decisions. Further, although the Eighth District Court of Appeals did not opine on the issue of whether the Berea Municipal Clerk of Courts is entitled to immunity, a review of the Ohio Revised Code and case law demonstrates that the Plaintiff-Appellants' claims are further barred on the grounds of political subdivision tort immunity.

B. Response to Proposition of Law I – the Contention of Plaintiff-Appellants that the Eighth District Adopted a Revolutionary New Rule of Law Concerning Void Judgments

The Eighth District properly affirmed well-established principles of law that appellate remedies are available for the appeal of both void and voidable judgments.

Plaintiff-Appellants have twisted and distorted the following sentence in the Eighth District's opinion in an effort to create a controversy where none should exist:

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, citing *State ex rel Hamilton County Board of Commissioners v. Hamilton County Court of Common Pleas*, 126 Ohio St. 3d 111, 2010-

Ohio-2467, 931 N.E.2d 98; *Keith v. Bobby*, 117 Ohio St. 3d 470, 2008-Ohio-1443, 884 N.E.2d 1067; *In re J.J.*, 111 Ohio St.3d 205, 2006-Ohio-5484, 885 N.E.2d 851.

This Court in the above-referenced cases held that voidable judgments may be directly appealed. However, void judgments -- where the issuing court had no subject matter jurisdiction -- can be attacked through a writ of prohibition. Whether the judgment is voidable (subject to a direct appeal) or void (subject to a writ of prohibition in a court of appeals), the remedy is an action in the court of appeals, NOT a class action collateral attack in the court of common pleas. The Eighth District Court of Appeals thus affirmed long-standing principles of law established by this Court. It is the Plaintiff-Appellants who seek a revolutionary new mechanism in which they can re-open and re-litigate, en masse, hundreds of thousands of municipal criminal convictions dating back ten years. The Eighth District Court of Appeals correctly cited to this Court's decisions in *State ex rel Bell*, *State ex rel. Hamilton County Bd. of Commrs*, *Keith v. Bobby*, and *In re J.J.*, *supra* to point out that Ohio law provides for appellate options for both voidable judgments (direct appeal) and void judgments (writ of prohibition). There is no merit to the Plaintiff-Appellants' request for the adoption of an "en masse collateral attack" on hundreds of thousands of municipal court criminal judgments and for that reason, this Court should decline jurisdiction to review this appeal.

C. Response to Proposition of Law No. II – the Contention that the Imposition of Court Costs by the Berea Municipal Court is Void.

The Eighth District Court of Appeals correctly determined that the criminal court costs sentencing order was voidable, and not void, and that the Common Pleas Court thus lacked subject matter jurisdiction to re-hear and re-open the criminal cases.

No common pleas court possesses “subject matter jurisdiction” to order a municipal court to change its cost assessment policies. Rather, if any municipal court defendant has been overcharged court costs in violation of the standards imposed by the General Assembly, they have a remedy: a direct appeal. Because Plaintiff-Appellants did not appeal their criminal convictions, including the assessment of court costs, their convictions are now *res judicata*, and a common pleas court does not have subject matter jurisdiction to re-open those convictions.

Subject matter jurisdiction refers to the Court’s power to hear and decide a case on the merits. *Morrison v. Steiner* (1972), 32 Ohio St.2d 86, paragraph one of the syllabus. A judicial officer does not lose subject matter jurisdiction simply because he or she acted beyond his sentencing authority or in excess of jurisdiction. See, e.g., *Borkowski v. Abood*, 117 Ohio St.3d 347 (2008), ¶1 of syllabus; *Wilson v. Neu*, 12 Ohio St.3d 102 (1984), ¶1 of syllabus. The assessment of court costs is inherently intertwined with municipal court criminal prosecutions. In *State v. White* (2004), 103 Ohio St.3d 580, 2004-Ohio-5989, 817 N.E.2d 393, this Court held, among other things, that R.C. 2947.23 requires a court to assess “costs of prosecution” against all convicted defendants.

In *State v. Threatt* (2006), 108 Ohio St.3d 277, this Court held, at ¶3 of the syllabus: “A sentencing entry is a final appealable order as to costs.” (emphasis added). In *Threatt*, this Court was asked to examine the question of whether collection of costs is permitted against indigent defendants and, if so, what methods of collection are available. In answering the certified question, this Court held, at its syllabus:

(1) costs may be collected from indigent criminal defendants, (2) the state may use any method of collection that is available to collect a civil money

judgment as well as the method provided in R.C. 5120.133, *and (3) the appeal time for costs begins to run on the date of the sentencing entry.*

Because the sentencing entry constitutes a final appealable order:

An indigent defendant must move a trial court to waive payment of costs at the time of sentencing. If the defendant makes such a motion, then the issue is preserved for appeal and will be reviewed under an abuse-of-discretion standard. *Otherwise, the issue is waived and costs are res judicata.*

Threatt at syllabus (emphasis added). *Threatt* resolves each and every claim made here by the Plaintiff-Appellants. They could have appealed the imposition of the court costs but chose not to do so. Failure to object at sentencing or to file a timely notice of appeal constitutes a waiver and, according precedent, the costs are *res judicata*.

Moreover, *State of Ohio v. Clevenger* (2007), 114 Ohio St.3d 258 directly addresses the issues in the instant matter and provides further support that Plaintiff-Appellants' class action must be dismissed pursuant to the doctrine of *res judicata*. The defendant in *Clevenger* filed a motion to suspend payment of costs and attached an affidavit attesting to his financial status. *Clevenger*, at ¶2. However, this was not done either at the time of original sentencing or at the subsequent hearing on a probation violation. *Id.*, at ¶6. This Court concluded "The costs assessed against him, therefore, are res judicata." *Id.*, at ¶6 (emphasis added).

Other Ohio courts have also recognized that challenges on costs imposed at sentencing should be raised on direct appeals or such issues are barred by the doctrine of *res judicata*. See e.g. *State v. Pasqualone* (1999), 140 Ohio App.3d 650, 657, *State v. Clevenger* (2007), 114 Ohio St.3d 258; *State v. Loyer* (Ohio App. 5th Dist. 2008), 2008-Ohio-5570; *State v. Zuranski* (Ohio App. 8th Dist. 2005), 2005-Ohio-3015. Based on the above, it is clear that an appeal from a sentencing entry is a final appealable order as to

costs and **only** the court of appeals for the county in which the judgment was rendered has the jurisdiction to entertain an appeal from or review of such entry. R.C. 1907.30. A court of common pleas does not have such jurisdiction and cannot act as an appellate court for such review in a separately filed original action.

Plaintiff-Appellants try to side-step this jurisdictional defect by arguing that any municipal court order entered on costs without legislative authorization exceeds the statutory court's subject matter jurisdiction and would have been void *ab initio*. Such statement, however, is misplaced. Ohio Courts recognize two different and distinct layers of subject matter jurisdiction applicable to cases. *Pratts v. Hurley* (2003), 102 Ohio St.3d 81. The first layer of subject matter jurisdiction is a court's power over a type of case. *Id.* This type of jurisdiction is determined as a matter of law and once conferred, it remains. *Id.* A lack of subject matter jurisdiction under this layer renders a trial court's judgment void *ab initio*. *Id.* The second layer of subject matter jurisdiction relates to a court which improperly exercises its subject matter jurisdiction once conferred upon it. Here, any judgments resulting from the improper exercise of jurisdiction are voidable, not void, and properly challenged on direct appeal. *Id.* at 85.

In *Pratts v. Hurley, supra*, a defendant charged with a death penalty offense filed a petition for writ of habeas corpus after a court accepted his guilty plea without first convening a three judge panel as required under R.C. 2945.06. To support the writ, the defendant argued that a court's failure to convene a three-judge panel deprived the court of subject matter jurisdiction in his capital case, thereby rendering his sentencing entry void *ab initio*. *Id.* This Court rejected the defendant's arguments, holding:

Although R.C. 2945.06 mandates the use of a three-judge panel with a defendant is charged with a death-penalty offense and waives the right to a jury, the failure to convene such a panel does not divest a court of

subject-matter jurisdiction so that a judgment rendered by a single judge is void ab initio. Instead, it constitutes an error in the court's exercise of jurisdiction over a particular case, for which there is an adequate remedy at law by way of direct appeal. 102 Ohio St.3d at 86 (emphasis added).

Pratts v. Hurley is directly on point with the facts in the case at bar. The municipal courts named in both cases filed by counsel for Plaintiff-Appellants had the jurisdiction to preside over Plaintiff-Appellants' criminal offenses. Under *Pratts v. Hurley*, once subject matter jurisdiction is conferred, it remains. Thus, even if this Court assumes, for sake of argument only, that each of the allegations asserted against the municipal courts are true, these allegations describe nothing more than the improper exercise of a court's subject matter jurisdiction and under *Pratts v. Hurley*, such decisions are voidable, not void, and properly challenged on direct appeal. Id. at 85.

Plaintiff-Appellants failed to timely appeal their criminal sentences and accordingly waived their right to do so. This litigation is a transparent attempt to take a second bite at the proverbial apple, which is improper because the General Assembly has prescribed that appeals from municipal courts be heard by the Court of Appeals. R.C. 1901.30. Furthermore, this Court has held that a sentencing entry is a final appealable order as to costs. *State v. Threatt, supra*. Thus, this Court has conclusively established that an appeal from a sentencing entry is a final appealable order as to costs and only a court of appeals has jurisdiction to entertain an appeal. The court of common pleas does not have such jurisdiction and cannot act as an appellate court.

The Eighth District correctly determined that issues related to the assessment of court costs was voidable, and not void, and that a common pleas court lacked subject matter jurisdiction to re-open criminal convictions that were never appealed. The Eighth District's decision is soundly based on this court's decisions in *State v. Threatt, Pratts v.*

Hurley, Borkowski v. Abood, State v. Clewenger, and other decisions. There is thus no reason for this Court to accept jurisdiction of this appeal.

D. Municipal Court Clerks are immune pursuant to R.C. 2744

The Eighth District's determination that the common pleas court lacked subject matter jurisdiction rendered all other legal defenses moot. However, it must be mentioned that the Amicus Clerks have many other valid defenses available, including immunity under R.C. Chapter 2744.

Determining whether a political subdivision such as a municipal clerk of courts is immune from liability under R.C. 2744.02 involves a 3-tiered analysis. *Elston v. Howland Local Schools* (2007), 113 Ohio St. 3d 314, 2007-Ohio-2070.

A general grant of immunity is provided within the first tier, which states that "a political subdivision is not liable in damages in a civil action for injury, death, or loss to person or property allegedly caused by any act or omission of the political subdivision or an employee of the political subdivision in connection with a governmental or proprietary function." R.C. 2744.02(A)(1).

The second tier in the immunity analysis focuses on the five exceptions to this immunity, which are listed in R.C. 2744.02(B). *Elston*, 113 Ohio St. 3d 314, 2007-Ohio-2070, 865 N.E. 2d 845, p. 11. If any of the exceptions to immunity are applicable, thereby exposing the political subdivision to liability, the third tier of the analysis assesses whether any of the defenses to immunity contained in R.C. 2744.03 apply to reinstate immunity. *Id.* at p. 12.

Lambert v. Clancy (2010), 125 Ohio St. 3d 231. (Emphasis added).

Municipal clerks of court are entitled to immunity under R.C. 2744 for any "loss" claimed by plaintiffs because their actions are governmental functions which are immune from liability under R.C. 2744.01. None of the exceptions to immunity under R.C. 2744.02(B) apply. The functions of clerks of court are judicial and quasi-judicial in

nature and as will be discussed, Ohio courts have repeatedly and consistently held that clerks of court have immunity for their official functions.

R.C. 2744.01, the definitional section of the act, classifies all functions of a political subdivision as being either “governmental” or “proprietary” in nature. As will be discussed later in this recitation, political subdivisions can be held liable for proprietary functions, however, immunity is provided for almost all governmental functions. Directly applicable to this case is R.C. 2744.01(C)(2), which states in pertinent part:

A “governmental function” includes, but is not limited to the following:

(f) judicial, quasi-judicial prosecutorial, legislative, and quasi-legislative functions;

(i) the enforcement or non performance of any law;

(x) a function that the general assembly mandates a political subdivision to perform.

Conversely, “proprietary functions” is defined under R.C. 2744.01(G)(1) as a function of a political subdivision as defined in R.C. 2744.01(G)(2) or which satisfies both of the following:

- (a) the function is not one described in Division (C)(1)(a) or (b) of this section and is not one specified in Division (C)(2) of this section;
- (b) the function is one that promotes or preserves the public peace, health, safety or welfare and that involves activities that are customarily engaged in by nongovernmental persons.

Ohio courts have repeatedly and consistently held since the enactment of R.C. 2744 in 1985 that the activities of clerks of courts are governmental functions because

the actions of court clerks are judicial and quasi-judicial in nature. *Petho v. Cuyahoga County Court, Clerk's Office*, 2007-Ohio-5710 (Ohio App. 8th Dist. 2007); *Kinstle v. Jennison* (2008), 179 Ohio App. 3d 291, 2008-Ohio-5832; *Blankenship v. Enright* (1990) 67 Ohio App. 3d 303; *Rieger v. Montgomery County Clerk of Courts*, 2009-Ohio-526 (Ohio App. 2nd Dist. 2009); *State of Ohio/City of Akron v. Darulis* (June 23, 1999), Ohio App. 9th Dist. Case No. CA 19331. While the above-referenced cases were decided under R.C. 2744, other Ohio courts have also applied immunity to the actions of clerks of court under the common law judicial immunity doctrine; or the immunity afforded to actions brought under 42 U.S.C. § 1983. See, *Baker v. Court of Common Pleas of Cuyahoga County* (1989), 61 Ohio App. 3d 59 (finding that a court of common pleas and two deputy clerks had absolute judicial immunity); *Foster v. Walsh, Clerk, Akron Municipal Court*, 864 F. 2d 419 (6th Circuit 1988) (finding a municipal clerk to have absolutely immunity for suit under the doctrine of absolute judicial immunity). See also, *Kelley v. Whiting* (1985), 17 Ohio St. 3d 91, which found that a clerk of courts had absolute judicial immunity based on common law, even prior to the enactment of R.C. 2744.

Every court that has considered the issue has consistently determined that the actions of clerks of court are judicial and quasi-judicial in nature. Since the enactment of R.C. 2744 in 1985, there has never been an Ohio court that has determined that the functions of a clerk of courts is proprietary as defined under R.C. 2744.01(G).

There are only five exceptions to immunity for political subdivisions which are listed in R.C. 2744.02(B). None of those exceptions to immunity apply here. R.C. 2744.02(B)(1) provides for governmental liability for motor vehicle accidents with the exception of certain emergency vehicle operations. R.C. 2744.02(B)(2) provides for

municipal liability for proprietary functions. R.C. 2744.02(B)(3) holds municipalities liable in certain circumstances for their negligent failure to keep public roads in repair. R.C. 2744.02(B)(4) provides liability for physical defects with buildings that are used in connection with the performance of governmental functions. Finally, R.C. 2744.02(B)(5) provides for liability against political subdivisions for losses on civil liabilities expressly imposed upon the political subdivision by a section of the Ohio Revised Code. Accordingly, since none of the exceptions to political subdivision immunity are applicable, the third tier of the analysis under R.C. 2744.03 -- which provides additional defense to political subdivision and their employees -- is not applicable in this case. See, *Lambert v. Clancy*, 125 Ohio St. 3d 231.

In a case that is strikingly on point, this Court ruled that a clerk of courts has absolute immunity as it relates to the manner in which court costs are collected. In *Fischer v. Burkhardt* (1993), 66 Ohio St. 3d 189, this Court was presented with the issue of whether judicial immunity applied to a situation in which a mayor's court was not collecting court costs in the manner required by statute. A village mayor had ordered the mayor's court and the clerk of the mayor's court to not collect certain court costs as required by statute. This Court ruled that all persons who were involved in the process of collecting or not collecting court costs -- the mayor, the mayor's court judge and the court clerk had absolute judicial immunity. As this Court noted, "one of a judge's functions is to interpret the law in matters of which the judge has jurisdiction." *Fischer v. Burkhardt*, 66 Ohio St. 3d at 191. To the extent that the defendant court and defendant clerk of courts misinterpreted the pertinent Ohio Revised Code statutory provisions governing court costs, this Court ruled that the defendants "cannot be held civilly liable because the court and its personnel" have the duty to interpret the statutes and

establish court costs schedules and traffic offenses. The *Fischer* Court recognized the doctrine of judicial immunity and ruled that the order not to collect court costs was absolutely immune under the doctrine of judicial immunity and accordingly no civil liability could be imposed for the alleged loss caused by the failure to collect court costs.

Just as a mayor's court and all of its personnel were found to be judicially immune in *Fischer* for not collecting court costs as required by statute, the same result applies to Plaintiff-Appellants' claims here. Even assuming, *arguendo* that municipal clerks of court collected court costs in excess of what was allowed by statute, the same doctrine of judicial immunity applied in *Fischer* will apply here because the actions of a municipal clerk of courts in calculating court costs is a judicial and/or quasi judicial function that is governmental in nature as defined under R.C. 2744.01. Further, no exception to immunity under R.C. 2744.02(B) applies.

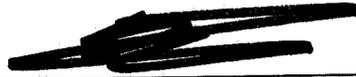
The calculation of criminal court costs by a municipal court clerk is a "governmental function" as defined under R.C. 2744.01. Municipal court clerks are accordingly immune from liability for any "loss" under R.C. 2744.02 caused by the performance of these governmental functions. None of the five exceptions to immunity under R.C. 2744.02(B) apply. Essentially, Plaintiff-Appellants claim municipal court clerks negligently and incorrectly calculated their court costs. Accordingly, all claims against the Berea Clerk of Courts are barred on the grounds of immunity.

III. CONCLUSION

The Eighth District Court of Appeals correctly determined that the Court of Common Pleas did not have subject matter jurisdiction to re-open and re-hear issues related to the imposition of criminal court costs in municipal criminal actions that were

never appealed. The Eighth District's decision is based on well-established and long-standing principles of subject matter jurisdiction and res judicata established by this Court's decisions. There is no need for this Court to accept jurisdiction of this case to hear yet another subject matter jurisdiction appeal – this Court has decided many such cases in recent years. Moreover, there were additional grounds which the Eighth District could have used to find in favor of the Defendant Berea Municipal Clerk, including immunity under R.C. 2744 for claims of "loss" which are caused in connection with the performance of governmental functions. Accordingly, the Amicus Clerks respectfully request that this Court decline jurisdiction to hear this appeal.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The foregoing has been served, via email and First-Class United States Mail, postage prepaid, this 16th day of November, 2012, upon:

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