STATE OF MICHIGAN

IN THE COURT OF APPEALS

JEFFREY TRANTHAM,

Plaintiff / Appellant,

v

Court of Appeals Docket No. 322289
Court of Claims Case No. 13-162-MM

MICHIGAN DEPARTMENT OF HUMAN SERVICES, OFFICE OF CHILD SUPPORT, and MICHIGAN DISBURSEMENT UNIT,

Defendant / Appellee.

***AMICUS CURIAE* BRIEF**

BY THE COUNTIES OF MACOMB, OAKLAND AND WAYNE

Respectfully submitted by:

The Law Offices of Carson J. Tucker
Carson J. Tucker (P62209)
Attorney for *Amicus Curiae*
3365 Riverbend Dr.
Ann Arbor, MI 48105
(734) 218-3605
cjtucker@comcast.net

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Constitutional Provisions

Statutes

Cases

Unpublished Opinions

Court Rules

Treatises

Law Reviews and Journals

STATEMENT OF JURISDICTION

Amicus curiae agree this Court has jurisdiction over this appeal as stated by the parties in their briefs.

QUESTIONS PRESENTED

Amicus curiae agree with the counter-statement of Questions Presented by the state in its brief to the Court.

STATEMENT OF INTEREST BY *AMICUS CURIAE*

The safety and protection of the citizenry is the number one prerogative of government.[1] *Amicus curiae*, the counties of Macomb, Oakland, and Wayne, bear a large percentage of the costs associated with supporting the administration of the local circuit court Friend of the Court (FOC) offices, and, therefore the costs of the services FOC provides to each of the respective county's citizens. Among these services are programs and systems implemented to protect the safety and welfare of a large number of those who would not otherwise have such protections.

The overall costs of these programs are funded in large part by the administrative fees paid by support payors through the county FOCs or the State Disbursement Unit pursuant to MCL 600.2538. While for the individual payor these fees are quite insignificant ($3.50 per month for months in which support or maintenance payments are due), they generate a significant percentage of the funds used to provide many FOC services. Plaintiff in the case *sub judice* challenges payment of these fees and seeks to have them abolished. Therefore, the outcome of this case is of significant concern to *amicus curiae*, as without these fees all costs of the FOC services would be borne by *amicus curiae*.

[1] *People ex rel Le Roy v Hurlbut*, 24 Mich. 44, 83 (1871) (CAMPBELL, J., concurring).

INTRODUCTION

This is an action brought by Plaintiff alleging that a monthly $3.50 statutory administrative fee taken out of monthly child support and/or spousal maintenance payments made to the friend of the court (FOC) offices or the Michigan State Disbursement Unit is unconstitutional and wrongfully imposed upon him and others similarly situated.[2] Plaintiff has been paying child support through the Oakland County FOC since at least September of 2005. On behalf of the other payors, he filed suit seeking an injunction to restrain Defendant / Appellee (hereafter Defendant) from imposing the administrative fee, for compensation and/or damages, and to compel Defendant to "disgorge" the amounts by which they have been allegedly unjustly enriched as a result of receipt of the fees.

Title IV-D of the Social Security Act (SSA) establishes a federal "child support" program and requires all states' child support programs to meet certain standards and guidelines as a condition of receiving federal funding.[3] Pursuant to "Part D" of Title IV, the federal government reimburses the state 66% of all allowable expenditures for child support enforcement activities (Title IV-D Funds). These "reimbursed" services and activities consist of the following: (1) locating parents; (2) establishing paternity; (3) establishing and enforcing child support orders; (4) reviewing and modifying child support orders; (4) collecting child support payments; (5) distributing support payments; and (6) establishing and enforcing "medical" child support orders.

The remaining expenditures borne by the state and local FOC offices, including *amicus curiae*, are for services provided that are not reimbursed by the federal government and include, *inter alia*, (1) conducting FOC investigations and reporting requirements; (2) scheduling and

[2] MCL 600.2538 provides the statutory authority for the user fee.

[3] 42 USC 655, *et seq*.

coordinating parental visitations; (3) administration of contempt proceedings; (4) processing modifications of parental visitation agreements; and (5) scheduling of mediations. These services are required to be performed by statute, but are not reimbursed by Title IV-D funds. Put another way, the state and local FOC offices are obligated by law to perform these functions, regardless of whether they are funded or not.

Amicus curiae respectfully submit that the Court of Claims properly dismissed Plaintiff's case. First, in light of recent clarifying case law, the administrative fees in the instant case do not implicate the Fifth Amendment Takings Clause of the United States Constitution.[4]

Second, even if the administrative fees do implicate the question of a potential taking of property within the meaning of the Fifth Amendment, the state may constitutionally impose on citizens a portion of the costs associated with administering to an essential function of government to which those citizens have submitted, voluntarily or otherwise. Indeed, as far back as 1871, the Supreme Court of Ohio found there was nothing in the constitution that "forbid exacting from persons requiring and who are especially benefitted by the performance of official services, a reasonable compensation therefor, to be paid into the public treasury to reimburse the public for the expense incurred in providing and maintaining such offices."[5] The Court further noted those providing the services were mere agents of the state for transacting the public business, "and it is, in its nature, a matter wholly immaterial to those requiring their services, whether the amount to be paid therefor goes to the officer, or into the public treasury, provided no more is exacted than is just and reasonable for the facilities afforded, and the services

[4] US Const Am. V ("nor shall private property be taken for public use without just compensation").

[5] *State v Judges*, 21 Ohio St 1, 12 (1871), overruled on other grounds as stated in *State ex rel Guilbert v Lewis*, 69 NE 132 (1903).

performed."[6] In Michigan "courts have consistently adhered to the position that where assessed costs are to be paid to the state for public expenditures, the amount assessed must arise out of the particular case before the court and be directly or indirectly related to that particular case."[7]

The fees at issue in this case go directly towards the support and maintenance of the local FOC departments of *amicus curiae*. Such fees may constitutionally be imposed for purposes that relate to the operation and maintenance of these programs.[8] Such charges, as opposed to fees charged and utilized for programs and services that have *no relation* to the underlying reason the user fees, have been upheld against constitutional challenges that they denied access to justice, deprived the payors of due process, and constituted a taking of private property without just compensation.[9]

"[T]he right to obtain justice does not mean that litigation may be conducted free of reasonable fees."[10] A large number of cases addressing challenges to the payment of fees as a condition to access the courts or court services have found such charges constitutional. Thus, for example, class action challenges to such fees have failed in a variety of cases, e.g., prisoners required to pay civil court filing fees while incarcerated;[11] prisoners required to contribute for

---

[6] *Id*.

[7] Campbell, Marcum and Morris, *Study: The Rationale for Taxing Costs*, 80 U Det Mercy L Rev 205, 209 (2003).

[8] See *United States v Sperry Corp*, 493 US 52 (1989). See also Nowak & Rotunda, Constitutional Law (4th ed), § 11.12, n 79.

[9] *Id*., See also Nowak & Rotunda, *supra* at § 11.9, n 42.

[10] *Sanko v Carlson*, 371 NE2d 613, 615 (Ill. 1977).

[11] *Mehdipour v State ex rel Dep't of Corrections*, 90 P3d 546 (Okla 2004).

administrative fee for inmate account;[12] litigants charged an extra fee for empanelment of a jury in a civil case;[13] litigants charged a fee for upkeep of a county law library;[14] etc.

It is important to note that the monthly administrative fees are required by statute to be paid only for those months in which the Payors are required to make "support or maintenance" payments.[15] And, further, as it relates specifically to *amicus curiae* herein, $2.25 of the total $3.50 paid by the Payors funds the provision of services by the respective county's FOC office.[16]

Moreover, the Payors are required to pay the user fee only *after* they have utilized the court system, and only during those months for which they are deemed to owe "support or maintenance" payments. Constitutional challenges have failed even in cases in which payment of user fees was required *prior to* accessing and using the respective governmental services.[17]

The fees in the case *sub judice* are in no way imposed as a condition of access to justice. Indeed, in no small way, the centralization and management of the support and maintenance payments is, in the majority of cases, fundamental to the orderly and timely distribution of proceeds to those who have been deemed by court order and agreement of the parties to be both entitled to it and in need of it. And, the fees are only charged when the payor must pay monthly

---

[12] *Vance v Barrett*, 345 F3d 1083, 1089-1090 (CA9 2003); *Dudley v United States*, 61 Fed Cl 685, 689 (2004).

[13] *Barzellone v Presley*, 126 P3d 588 (Okla 2005) and *Butler v Supreme Judicial Court*, 611 A2d 987 (Me 1992).

[14] *Ali v Danaher*, 265 NE2d 103 (Ill 1970).

[15] MCL 600.2538(1).

[16] MCL 600.2538(1)(a).

[17] *Sanko*, *supra*.

support and maintenance payments.[18] At least a portion of the fee is utilized directly to fund the processes for disbursement of the monies payors owe to an ex-spouse or for support of a minor child.[19]

The administrative fees in the instant case are not subject to a Takings Clause analysis. Further, even if such an analysis is applied, the nature of the fees fit well within the parameters of the types of fees "designed to reimburse the government for the establishment and operation of" the government service to which it is related.[20] The fee constitutes a "reasonable approximation" of costs for the benefits supplied by the programs the fee supports.[21] In such cases, the courts defer to the legislature's judgment, even if the costs are not precisely matched with the fee.[22]

[18] MCL 600.2538(1).

[19] *Id.*

[20] *Sperry*, *supra*, at 61-63 and n 8.

[21] *Id.* See also Nowak & Rotunda, *supra*, at § 11.12, n 79.

[22] *Id.*

ARGUMENT AND ANALYSIS

THE ADMINISTRATIVE FEES CHALLENGED BY PLAINTIFF FIT WELL WITHIN THE PARAMETERS OF CONSTITUTIONAL AND LEGALLY IMPOSED FEES "DESIGNED TO REIMBURSE THE GOVERNMENT FOR THE ESTABLISHMENT AND OPERATION" OF THE GOVERNMENT SERVICE TO WHICH THE FEE IS DIRECTLY RELATED

A. Standard of Review

Plaintiff appeals from the Court of Claims decision granting summary disposition pursuant to MCR 2.116(C)(8). Such decisions are reviewed *de novo*.[23] Plaintiff challenges the constitutionality of MCL 600.2538. Michigan Courts will begin review of such a challenge with the presumption that the challenged statute is constitutional.[24]

B. Applicable Law

"The Fifth Amendment, made applicable to the States through the Fourteenth Amendment,[25] provides that 'private property' shall not 'be taken for public use, without just compensation.'"[26] "Because the Constitution protects rather than creates property interests, the existence of a property interest is determined by reference to 'existing rules or understandings that stem from an independent source such as state law.'"[27] "[C]onstitutionally protected property rights can-and often do-exist *despite* statutes…that appear to deny their existence."[28]

---

[23] *Maiden v Rozwood*, 461 Mich 109, 118 (1999).

[24] *Cady v City of Detroit*, 289 Mich 499, 505 (1939), citing *Scott v Smart's Executors*, 1 Mich 295 (1849).

[25] *Chicago, B & Q R Co v Chicago*, 166 US 226, 239 (1897).

[26] *Phillips v Washington Legal Foundation*, 524 US 156, 164 (1998).

[27] *Id.*, citing *Board of Regents of State Colleges v Roth*, 408 US 564, 577 (1972).

[28] *Schneider v California Dep't of Corrections*, 151 F3d 1194, 1199 (CA9 1998) (emphasis added) (citing *Webb's Fabulous Pharmacies, Inc v Beckwith*, 449 US. 155 (1980). See also *Phillips*, *supra* at 156.

On the other hand, however, legislatures can legitimately *alter* "substantive [property] rights through enactment of rules of general applicability."[29] One such means by which the legislature can do this is to charge citizens a general "user fee" as a condition or requirement for participating in a particular governmental program.[30]

Moreover, a constitutionally sound "user fee" need not "be precisely calibrated to the use that a party makes of Government services."[31] The "Government [does not] need to record invoices and billable hours to justify the cost of its services."[32] All that is "required is that the user fee be a 'fair approximation of the cost of benefits supplied.'"[33] Where a fee is both reasonable and its use related to the administration of the particular purpose for which it is charged, there is no constitutional deprivation of property stated.[34]

The question of whether the Fifth Amendment applies in a case such as the instant one suffers from a nearly insurmountable body of jurisprudence addressing various categories of takings. To understand where the law stands today, one must understand this background.

---

[29] *United States v Locke*, 471 US 84, 106 n 15, 108 (1985).

[30] See, e.g., *Commonwealth Edison Co v US*, 271 F3d 1327, 1338-39, n 10 (2001) ("although a minority of the Supreme Court has urged that a taking can occur when Congress has imposed an obligation to pay money…five justices of the Supreme Court in *Eastern Enterprises v Apfel*, 524 US 498 (1998), agreed that regulatory actions requiring the payment of money are not takings [and][w]e agree with the prevailing view that we are obligated to follow the views of that majority.") (collecting cases).

[31] See *Baumgardner v Town of Ruston*, 712 F Supp 2d 1180, 1200 (WD Wash 2010) (citing *United States v Sperry Corp*, 493 US 52 (1989)).

[32] *Sperry, supra*.

[33] *Id*.

[34] *Eastern Enterprises, supra*. Compare *Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155, 163-164 (1980) ("*forced* contribution to general government revenue…not reasonably related to the costs of using the court[]" unconstitutional as a deprivation of guarantee against taking of property without just compensation within the meaning of the Fifth Amendment).

Commentators have called this bramble bush "famously incoherent" and "a mess" of Takings Clause jurisprudence.[35]

The Supreme Court's recent decision in *Koontz v St. Johns River Water Management District*[36] provides general guidance on the three analytical rubrics applicable to judicial review of takings clause challenges to different forms of government action. First, if the government "directly seize[s]" a tangible property interest, such as real property or an easement or lien, then "it would have committed a *per se* taking."[37]

Second, if the government does not directly seize property and instead conditions the receipt of a government benefit on the relinquishment of a property interest, another form of *per se* taking may occur.[38] There, the Court explained that "the government can pressure an owner into voluntarily giving up property for which the Fifth Amendment would otherwise require just compensation."[39] In such cases, the condition of **"**just compensation**"** set out in the Takings Clause is met – and no takings violation arises – "so long as there is a 'nexus' and 'rough

[35] See Steven A. Haskins, *Closing the Dolan Deal – Bridging the Legislative/Adjudicative Divide*, 38 Urb Law 487, 487 (Summer 2006) (internal quotations and citations omitted).

[36] 133 S Ct 2586 (2013).

[37] *Id*. at 2598-99. See also *Lingle v Chevron USA, Inc*, 544 US 528, 537 (2005)("The paradigmatic taking requiring just compensation is a direct government appropriation or physical invasion of private property."); *Loretto v Teleprompter Manhattan CATV Corp*, 458 US 419, 426 (1982) ("[A] permanent physical occupation authorized by government is a taking without regard to the public interests that it may serve.").

[38] *Koontz*, *supra*, at 2594.

[39] *Id*.

proportionality' between the property that the government demands and the social costs of the applicant's proposal."[40]

On the other hand, when the government requires the relinquishment of a property interest in exchange for a discretionary government benefit, which "lack[s] an essential nexus and rough proportionality to" the property taken, a *per se* violation of the Takings Clause occurs.[41] The second analytical rubric is not limited to protecting only real property under the Takings Clause. The *Koontz* Court held that the same "*per se* takings approach" articulated in *Dolan* and *Nollan* "is the proper mode of analysis," "when the government commands the relinquishment of funds linked to a specific, identifiable property interest such as a bank account or parcel of real property."[42]

Short of a *per se* taking, the *Koontz* Court also identified a third analytical rubric that applies to "a regulatory taking."[43] Determining whether a regulatory taking has occurred "necessarily entails complex factual assessments of the purposes and economic effects of government actions."[44] "To constitute a regulatory taking, the [g]overnment action must (1)

---

[40] *Id*. at 2595, citing *Dolan v City of Tigard*, 512 US 374, 391 (1994) and *Nollan v California Coastal Comm'n*, 483 US 825, 837 (1987).

[41] *Koontz*, *supra*, at 2600.

[42] *Id*. at 2600-01, citing *Brown v Legal Foundation of Washington*, 538 US 216, 235 (2003) (holding that the state Supreme Court's seizure of *the interest* on client funds held in escrow account was a taking); *Webb's Fabulous Pharmacies, Inc v Beckwith*, 449 US 155 (1980) (holding that a county's taking of *interest* on an interpleader fund violated the Fifth Amendment). See also *Perry Capital LLC v Lew*, ___ F Supp 3d ___, ____ at n 54; 2014 WL 4829559 at **22-23, n 54 (D DC 2014) (Lamberth, J.) (explaining that where plaintiffs have not alleged the government has commanded a relinquishment of funds already owned or possessed *per se* takings analysis per *Koontz*, *supra*, is not the applicable analysis).

[43] *Koontz*, *supra*, at 2600.

[44] *Id*. See also *Brown*, 538 US at 234.

affect a property interest and (2) go 'too far' in so doing (*i.e.* amount to a deprivation of all or most economic use or a permanent physical invasion of property)."[45] The Supreme Court has set out three factors to consider whether the regulation has gone "too far:" (1) "the economic impact of the regulation on the claimant;" (2) "the extent to which the regulation has interfered with distinct investment-backed expectations;" and (3) "the character of the governmental action," particularly "whether it amounts to a physical invasion" or appropriation of property or instead merely affects property interests through "some public program adjusting the benefits and burdens of economic life to promote the common good."[46] "[T]he *Penn Central* inquiry turns in large part…upon the magnitude of a regulation's economic impact and the degree to which it interferes with legitimate property interests."[47]

Significantly for this case, the *Koontz* Court expressly declined to address whether "the government can commit a regulatory taking by directing someone to spend money."[48] Describing "*Penn Central's* essentially ad hoc, factual inquir[y]" as "difficult and uncertain," the *Koontz* Court refused to "extend" that rule "to the vast category of cases in which someone believes that a regulation is too costly."[49] Thus, the majority of the *Koontz* Court left intact the

---

[45] *Full Value Advisors, LLC v SEC*, 633 F 3d 1101, 1109 (CA DC 2011); *Ascom Hasler Mailing Sys v United States Postal Serv*, 885 F Supp 2d 156, 193-94 (D DC 2012).

[46] *Penn Cent Transp Co v City of New York*, 438 US 104, 124 (1978). See also *Full Value Advisors, LLC*, *supra*, at 1109; *Lingle*, *supra*, at 538-40.

[47] *Lingle*, *supra*, at 540 (noting that each of the *Penn Central* factors "has given rise to vexing subsidiary questions" but "have served as the principal guidelines for resolving regulatory takings claims that do not fall within physical takings").

[48] *Koontz*, *supra*, at 2600.

[49] *Id*. (alterations in original) (internal quotations and citations omitted).

plurality view reflected in *Eastern Enterprises v. Apfel*,[50] where Justice Kennedy, in concurrence, joined with four dissenters (Justices Stevens, Souter, Ginsberg and Breyer) "in arguing that the Takings Clause *does not apply* to government-imposed financial obligations that 'd[o] not operate upon or alter *an identified property interest*."[51]

The *Koontz* Court distinguished *Eastern Enterprises* because in *Koontz* "the monetary obligation burdened petitioner's ownership of a specific parcel of land."[52] Indeed, the *Koontz* Court stated "[t]his case therefore does not affect the ability of governments to impose property taxes, user fees, and similar laws and regulations that impose financial burdens on property owners."[53]

Even though the *Koontz* majority stressed that the linkage between the monetary exaction and real property was critical to triggering the *per se* takings analysis, this emphasis was confusingly undermined by the majority's footnote stating that "this case does not implicate the question whether monetary exactions must be tied to a particular parcel of land in order to constitute a taking."[54] Consequently, the dissent cautioned that "[t]he boundaries of the majority's new rule are uncertain."[55]

---

[50] 524 US 498 (1998).

[51] *Koontz*, *supra*, at 2599, citing *Eastern Enterprises*, *supra*, at 540 (Kennedy, J., concurring in judgment and dissenting in part) and at 554-56 (Breyer, J., dissenting)). See also *id.* at 2603-04 (Kagan, J., dissenting) ("*Eastern Enterprises*…held that the government may impose ordinary financial obligations without triggering the Takings Clause's protections").

[52] *Koontz*, *supra*, at 2599; *id.* at 2600 (emphasizing that "[t]he fulcrum this case turns on is the direct link between the government's demand and a specific parcel of real property").

[53] *Id*. at 2600.

[54] *Id*. at 2600, n 2.

[55] *Id*. at 2604. (Kagan, J., dissenting).

These are the boundaries tested in the instant case, where the FOC fee is a monetary exaction that is not linked either to any real estate parcel or other "specific, identifiable property interest."[56]

C. Analysis

Reducing current "takings jurisprudence" to its essence, the reality is the "fees" imposed in this case are nothing more than "a general monetary exaction" which do not qualify as "a specific, identifiable property interest" necessary to serve as a predicate for a potential takings claim.[57] Given that *Koontz* did not alter the majority view of the Supreme Court, as reflected in the plurality opinion in *Eastern Enterprises*,[58] however, the argument stands that a general monetary exaction does not qualify as "a specific, identifiable property interest,"[59] to serve as a predicate for a takings claim.[60]

Given this modern evolution in takings jurisprudence, reliance by Plaintiff on the Supreme Court's decision in *Brown v Legal Foundation of Washington*,[61] is misplaced. First, cases subsequent to that decision, particularly *Koontz*, as explained in detail above, have clarified

---

[56] *Id*.

[57] *Koontz*, *supra*, at 2600.

[58] 524 US 498 (1998).

[59] *Koontz*, *supra*, at 2600.

[60] See, e.g., *Commonwealth Edison Co v United States*, 271 F3d 1327, 1338-39, n 10 (2001) ("although a minority of the Supreme Court has urged that a taking can occur when Congress has imposed an obligation to pay money…five justices of the Supreme Court in *Eastern Enterprises* agreed that regulatory actions requiring the payment of money are not takings [and][w]e agree with the prevailing view that we are obligated to follow the views of that majority.") (collecting cases).

[61] 538 US 216 (2003).

the distinction between cases involving tangible property and property rights and imposition of user fees and administrative charges.[62]

It is clear those in the latter category, as the fees imposed here fall within, are not takings at all, primarily because they are not considered as depriving the complainant of a separate and distinct property interest. Thus, whereas in *Brown* and similar cases, the tangible property defined and at stake was the interest earned from the *other* tangible property of the complainants, namely the funds deposited in client trust accounts, as *Koontz* makes clear, the former category, user fees and administrative costs charged and paid to support the provision of reasonably related government services are not takings at all.[63] So, in the end, at least in the past decade, some clarity has emerged separating property subject to takings analysis and property that is not.

And here is where the Plaintiff in the instant case errs in citing *Koontz* and missing the point of separation that case and *Eastern Enterprises* represent between tangible property that is separated from the individual complainant as a result of the imposition of the government's regulations and the payment of an administrative or other fee (even mandatory ones) to participate in or otherwise comply with a particular government program or system that supports a larger goal and purpose.[64] Plaintiff's reliance on *AFT Michigan v State of Michigan*,[65] is equally unpersuasive for the same reason. There, the claim was that property (particularly benefits) owed to the complainants was diminished in value by the government's measures. Here, again, there is no separation of property belonging to Plaintiff to which he is otherwise

---

[62] *Commonwealth Edison Co, supra*.

[63] *Id*. See also *Eastern Enterprises, supra*.

[64] Plaintiff's Brief on Appeal, p 13.

[65] 297 Mich App 597 (2011).

entitled and from which he is otherwise separated by virtue of paying the administrative fees charged.

In any event, even if the fees "could be viewed as the first step in a 'regulatory taking,'"[66] Plaintiff's claim would still fail to state a cognizable cause of action. The Supreme Court's evaluation of a takings claim predicated on the allegation, similar to the Plaintiff's here, that a regulation imposes an excessive or unfair burden is evaluated under the *Penn Central* factors.[67] The first factor in this analysis of whether a regulation has gone "too far" requires consideration of the economic impact of the regulation on the Plaintiff and those similarly situated. In this regard, the FOC fee is not so burdensome as to deny Plaintiff any "reasonable rate of return."[68] Consideration of this factor, to the extent it can be said to even apply to the fees in the instant case, demonstrates it has only a minimal, if any, economic impact on Plaintiff. Likewise, with respect to the second *Penn Central* factor, the fee does not interfere with any investment-backed expectations of the Plaintiff. Finally, the nature and purpose of the FOC assessment does not involve any physical invasion of Plaintiff's property and it is intended to advance the public purpose of providing a necessary funding mechanism for the state, and local FOC, to support those functions that are not funded by Title IV-D funds. These functions include: (1) conducting FOC investigations and reporting requirements; (2) scheduling and coordinating parenting time; (3) administration of contempt proceedings; (4) processing modifications of parenting time agreements; and (5) scheduling of mediations. These services are required to be performed by statute, but are not reimbursed by Title IV-D funds. Put another way, the state and

---

[66] *Brown*, *supra*, at 234.

[67] *Penn Cent Transp Co v City of New York*, 438 US 104, 124 (1978).

[68] *Penn Central*, *supra*, at 136.

local FOC offices are obligated by law to perform these functions, regardless of whether they are funded or not. The user fees assure that persons with the ability to utilize FOC services that are not funded by Title IV-D will pay a portion of the costs of those services, instead of having those costs borne by the general population of the counties in which the FOC services are provided.

Thus, consideration of all three *Penn Central* factors strongly militates against any finding of a regulatory taking. Even if the fees imposed were susceptible "user fees" subject to a takings analysis, there is sufficient evidence in the record here to show that the fee assessments were a "fair approximation of the cost of the benefits supplied."[69] The "fee is intended to reimburse the costs [to the FOC] in establishing, and supervising the distribution of" child support payments, and in administering to other programs related to the maintenance of the system for the betterment and welfare of its beneficiaries.[70]

[69] *Baumgardner v Town of Ruston*, 712 F Supp 2d 1180, 1200 (WD Wash 2010); *Simon v Weissman*, unpublished opinion of the ED Pa, issued August 27, 2007 (Docket No. CIV.A. 04-941) (available online at 2007 WL 2461707), 2007 WL 2461707 at *4, *aff'd sub nom Simon v Weissmann*, 301 F App'x 107 (CA3 2008).

[70] *Id.*

CONCLUSION

The administrative fees charged to and paid by Plaintiff in the instant case fall in the category of assessments that require no Takings Clause analysis. Thus, there is no constitutional infirmity in the implementation of the statute's requirements to charge the fees at issue. Even if the Takings Clause analysis is applied, the fees fall well within the parameters of those deemed constitutionally appropriate. *Amicus curiae* urges the Court to affirm the decision of the Court of Claims dismissing Plaintiff's suit.

Respectfully submitted,

/s/ Carson J. Tucker

CARSON J. TUCKER (P62209)
Attorney for *Amicus Curiae*
3365 Riverbend Drive
Ann Arbor, MI 48105
(734) 218-3605
cjtucker@comcast.net

Dated: January 23, 2015