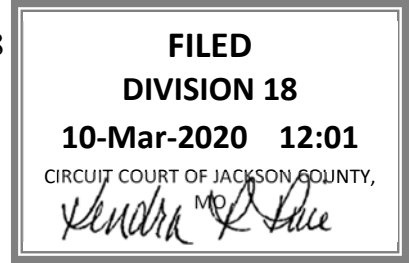


**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY**

DAVEN FOWLER et al.)
)
 Plaintiffs,)
)
 v.)
)
 MISSOURI SHERIFF’S RETIREMENT)
 SYSTEM,)
)
 Defendant.)

Case No. 1716-CV18662

Division No. 18



FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. In this action, Plaintiffs Fowler and Keller seek “restitution” under a claim of “unjust enrichment” for a surcharge that the Clerk of the Kansas City Municipal Division of the Circuit Court of Jackson County assessed to them after they pled guilty to violating Kansas City municipal traffic ordinances and a declaration that the surcharge is unconstitutional in Municipal Divisions of the Circuit Courts as violative of Article I, section 14 of the Missouri Constitution.

2. Section 57.955.1, RSMo states:

There shall be assessed and collected a surcharge of three dollars in civil actions filed in the courts of this state and in all criminal cases including violation of any county ordinance or any violation of criminal or traffic laws of this state, including infractions, but no such surcharge shall be assessed when the costs are waived or are to be paid by the state, county or municipality or when a criminal proceeding or the defendant has been dismissed by the court. . . . The clerk responsible for collecting court costs in civil and criminal cases, shall collect and disburse such amounts as provided by sections 488.010 to 488.020. Such funds shall be payable to the sheriffs’ retirement fund. Moneys credited to the sheriffs’ retirement fund shall be used only for the purposes provided for in sections 57.949 to 57.997 and for no other purpose.

3. On April 17, 2013, a Missouri Attorney General opinion concluded that “the legislature intended that the surcharge be collected in municipal courts.” Op. Mo. Att’y Gen. 20-2013 (2013); Pet. ¶ 10.

4. On August 16, 2013, the Missouri Supreme Court issued an Order directing that the surcharge be collected in all divisions of the Missouri Circuit Courts—including the Municipal Divisions.

5. In May 2017, Plaintiffs received citations for municipal ordinance violations.

6. Plaintiffs each engaged attorney Christopher Gahagen (one of the counsel for Plaintiffs in this Lawsuit), to handle their respective citations.

7. Plaintiffs did not challenge their citations in municipal court but instead, through counsel, pled guilty to amended charges.

8. Subsequent to their pleas of guilt, per Section 57.955.1, Plaintiffs were assessed court costs and a surcharge.

9. Without objection, the surcharge was collected in both cases by the Clerk of the Municipal Division of the Circuit Court of Jackson County.

10. Plaintiff Fowler’s (hereinafter Fowler), mother remitted payment to Fowler’s attorney, who paid Fowler’s surcharge. Plaintiff Keller’s (hereinafter Keller) attorney paid the surcharge for Keller. Neither plaintiff objected to the payment of the surcharge or filed for an application for trial *de novo* in the Associate Division of the Circuit Court of Jackson County.

11. On August 3, 2017, Plaintiffs filed this action alleging that the \$3.00 surcharge impermissibly burdened their access to Missouri’s courts and asserting claims against Defendant Missouri Sheriff’s Retirement System (hereinafter Retirement System) for conversion and unjust enrichment.

12. The Retirement System moved to dismiss both claims. The Court granted the Retirement System's motion as to Plaintiffs' conversion claim, but denied the motion as to Plaintiffs' unjust enrichment claim.

13. Plaintiffs' unjust enrichment claim is the surviving claim.

14. A bench trial was commenced on November 4, 2019 and concluded on November 7, 2019.

15. Highly summarized, Plaintiffs testified that they knew nothing about the surcharge at the time they received their citations; hired an attorney; entered into guilty pleas and paid the surcharge.

16. Keller testified that even had he known of the surcharge, he would have still pled guilty and paid the surcharge to avoid the hassle of dealing with the citation and taking time away from his business.

17. Fowler testified that his mother assisted him regarding his citation including payment of the fine and surcharge.

18. Unlike Fowler, Keller testified that he knew of his right to file an application for trial de novo in Associate Circuit Court.

19. Both Plaintiffs testified that they were not required to pay the surcharge to present a defense to their citations.

20. Both Plaintiffs testified that they were not forced or threatened to pay the surcharge.

21. Both Plaintiffs testified that there were no direct payments by them or their counsel to the Retirement System.

22. At trial, Plaintiffs called Megan Pfannenstiel, the Administrator and Court Clerk of the Kansas City Municipal Division of the Circuit Court of Jackson County, Missouri.

23. Pfannenstiel testified that the surcharge is assessed and collected in the Municipal Division because the Missouri Supreme Court has issued an Order requiring the collection of the surcharge by her as Court Clerk.

24. Pfannelstiel testified that the Retirement System has no role in assessment and collection of the surcharge but rather the surcharge is assessed and collected by the Court Clerk and sent to the Retirement System.

25. Pfannelstiel testified that a defendant is not required to pay anything or make any deposit into the Court, including the surcharge, in order to defend against a municipal citation.

26. Pfannelstiel testified that a defendant is not required to pay the surcharge in order to file an application for trial de novo at the Associate Circuit level.

27. Pfannelstiel testified that if a defendant fails to appear, a Municipal Judge may issue a warrant for their arrest and that the defendant may be arrested by a Sheriff or Deputy Sheriff and possibly held in a county jail.

28. Pfannelstiel testified that if a Municipal Division defendant is convicted or pleads guilty to a Municipal citation, that a convicted defendant may be held in a county jail.

29. Pfannelstiel testified that the city of Kansas City does not own or operate a jail. Instead, it contracts with the Platte County Sheriff, the Vernon County Sheriff and the Johnson County Sheriff and a private company to house Kansas City Municipal arrestees and convicts.

30. Pfannelstiel testified that prior to June 26, 2019, the Jackson County Jail provided 275 beds a day for the Kansas City Municipal Court arrestees and inmates.

31. Pfannenstiel testified that the City is in negotiations with the Jackson County Sheriff and other Missouri Sheriffs to house additional Kansas City Municipal arrestees/inmates.

32. Deposition testimony of Gregory Linhares, former State Court Administrator for Missouri, was introduced. Linhares testified generally about the differing opinions regarding whether the surcharge applied to Municipal Divisions.

33. Plaintiff asserted that Linhares' testimony was that once the Missouri Supreme Court issued its August 16, 2013 Order (Ex. 104), mandating that the surcharge be assessed and collected in all Municipal Divisions, that the Office of State Courts Administrator (OSCA) issued its "cost cards" to all Municipal Divisions directing them that the surcharge should be assessed and collected per Missouri Supreme Court Order.

34. Deposition testimony of Clarence Barnes, retired Executive Director of the Retirement System,¹ was introduced where he testified that the Retirement System does not assess or collect the surcharge but rather receives payments from Court Clerks who assess and collected the surcharge.

35. The testimony was that the Retirement System invests the payments received and pays benefits to retired Sheriffs and their surviving spouses per directions of the Board of Directors of the Retirement System.

36. Plaintiffs also introduced deposition testimony of Tami Jaegers, Assistant Secretary of Operations of the Missouri Local Government Employees Retirement System (LAGERS).

37. Ms. Jaegers testified that LAGERS is a voluntary system by which local governmental units within Missouri can participate and fund pensions for the employees of those governmental units.

¹ Barnes had served in that position from August 2000 to March 2019.

38. Ms. Jaegers testified that out of the 114 counties in Missouri, only 60 counties actually participate in LAGERS. Of those 60 counties, the elected Sheriff is permitted to participate in LAGERS. The other 54 elected Sheriffs are not allowed to participate in LAGERS due to those counties having not opted into LAGERS.

39. Plaintiffs introduced the affidavit of Michelle Chrisman (Ex. 59), the Interim Director of Human Resources for Jackson County, Missouri.

40. In her affidavit, Ms. Chrisman stated that Jackson County has its own pension plan and that the Jackson County Sheriff is permitted to participate in that plan. It further stated that the benefits that would be paid under the pension plan (to a retired Jackson County Sheriff) are reduced by any amounts paid by the Retirement System for service as the Jackson County Sheriff.

41. Defendant, in their case in chief, called Major Michael Montgomery² of the Jackson County Sheriff's Office. Major Montgomery testified that from January 1, 2019 to June 25, 2019, the Jackson County Jail accepted arrestees and inmates from the Kansas City Municipal Court Division.

42. Major Montgomery testified that the Jackson County Sheriff provides all security at all Jackson County Courthouses, including the Downtown Courthouse, the Independence Courthouse, the Historic Independence Courthouse, the Juvenile Justice Center and the Criminal Justice Annex.

² Major Montgomery has been employed by the Jackson County Sheriff for more than 28 years and has been responsible for supervising all of the divisions of the Sheriff's office. Since January 1, 2019, the Jackson County Sheriff has operated the Jackson County Jail following a period of time where the jail was overseen and operated by a department within the County. Major Montgomery currently reports directly to the Jackson County Sheriff regarding operations of the county jail.

43. Major Montgomery testified that all applications for trial *de novo* from the Kansas City Municipal Division are heard at the Jackson County Courthouses, where the Jackson County Sheriff provides security.

44. Major Montgomery testified that the Jackson County Municipal Division hears all Jackson County ordinance citations at the Independence Courthouse. Citations for violations of Jackson County ordinances are issued by Jackson County Sheriff Deputies employed by the Jackson County Sheriff.

45. Major Montgomery testified that when Jackson County Sheriff Deputies detain suspects that are determined to have outstanding municipal warrants, those suspects will be taken into custody pending further direction from the Municipal Division or police agencies.

46. Major Montgomery testified that the Jackson County Sheriff provides a wide range of services to municipalities and municipal police forces within Jackson County including but not limited to: back up to police forces that do not have 24/7 police coverage or do not have sufficient officers on duty to handle multiple calls for service; dispatch and 911 services; training services including a gun range made available to municipal police officers; specialized law enforcement services such as tactical squads; mobile command units; major crime investigation services; K-9 services; search and rescue; missing person and drug interdiction.

47. Major Montgomery provided examples where the Jackson County Sheriff Deputies monitor all dispatch in municipalities such as Lake Tapawingo, Lone Jack and Buckner to provide immediate assistance without any request from that municipality.

48. Defendant called Retired Lake Tapawingo Police Chief Ken Bergman. Bergman testified that during his tenure in Lake Tapawingo, the Jackson County Sheriff provided all dispatch and 911 service to Lake Tapawingo.

49. Chief Bergman testified that prior to March 2018, Lake Tapawingo had its own Municipal Court. Bergman testified that in March 2018, the Municipal Division was abolished and all Lake Tapawingo municipal ordinance violations were removed to the Jackson County Courthouse, where the Jackson County Sheriff provides security.

50. Chief Bergman testified that the Jackson County Sheriff provided backup service to Lake Tapawingo Police Officers and also functioned as primary law enforcement personnel during times when there are no Lake Tapawingo Police Officers on duty or officers are tied up on other calls.

51. Chief Bergman testified that the Jackson County Sheriff provides training services including a gun range made available to municipal police officers; specialized law enforcement services such as tactical squads; mobile command units; major crime investigation services; K-9 services; search and rescue; missing person and drug interdiction.

52. Deposition testimony of Clay County Sheriff Paul Vescovo was presented. Sheriff Vescovo testified that he has served as Clay County Sheriff since 2013.

53. Sheriff Vescovo testified that his office provides law enforcement services throughout Clay County pursuant to agreements with the cities of Avondale, Mosby, Holt, Glenaire and Missouri City. The evidence was that the citations issued for municipal violations in those cities are all heard in the Associate Circuit Court of Clay County.

54. Sheriff Vescovo testified that all applications for trial *de novo* from the Municipal Divisions in Clay County are heard at the Clay County Courthouse.

55. Sheriff Vescovo testified that his office provides all security at the Clay County Courthouse, including acting as bailiffs for each judge.

56. Sheriff Vescovo testified that he operates the Clay County Jail where he houses municipal arrestees and inmates Gladstone, North Kansas City, Liberty, Smithville, Kearney, Excelsior Springs, Claycomo and Pleasant Valley.

57. Sheriff Vescovo testified that his office provides video conferencing from the Clay County Jail to the Municipal Courts of Gladstone, North Kansas City, Liberty and Pleasant Valley to reduce the need for transport of municipal arrestees and inmates.

58. Sheriff Vescovo testified that his deputies arrest detainees with outstanding municipal warrants pending transport of those detainees or processing them into the Clay County Jail.

59. Sheriff Vescovo testified that the Clay County Sheriff provides a wide range of services to municipalities and municipal police forces within Clay County. These include but are not limited to: back up to police forces that do not have 24/7 police coverage or do not have sufficient officers on duty to handle multiple calls for service; dispatch and 911 services; training services including a gun range made available to municipal police officers; specialized law enforcement services such as tactical squads; mobile command units; major crime investigation services; K-9 services; search and rescue; missing person and drug interdiction.

60. Defendant called Platte County Sheriff Mark Owen. Sheriff Owen testified that he has been the Platte County Sheriff since 2013.

61. Sheriff Owen testified that his office provides law enforcement services throughout Platte County pursuant to agreements with the cities of Houston Lake, Dearborn and Camden Point.

62. The evidence was that the Platte County Sheriff issues the citations for municipal violations in those cities and those cases are heard in the Associate Circuit Court of Platte

County—except Dearborn citations, which are heard in the Dearborn Municipal Court—where the Platte County Sheriff also provides security.

63. Sheriff Owen testified that all applications for trial de novo from Municipal Divisions are heard at the Platte County Courthouse.

64. Sheriff Owen testified that his office provides all security at the Platte County Courthouse, including acting as bailiffs for each judge.

65. Sheriff Owen testified that he operates the Platte County Jail where all Municipal Divisions in Platte County send their arrestees and inmates. The evidence was that Platte County has an agreement with the Kansas City Municipal Court to house inmates at the Platte County Jail.

66. Sheriff Owen testified that his deputies arrest detainees with outstanding municipal warrants pending further transport or processes them into the Platte County Jail.

67. Sheriff Owen testified that the Platte County Sheriff provides a wide range of services to municipalities and municipal police forces within Platte County. These include but are not limited to: back up to police forces that do not have 24/7 police coverage or do not have sufficient officers on duty to handle multiple calls for service; dispatch and 911 services; training services including a gun range made available to municipal police officers; specialized law enforcement services such as tactical squads; mobile command units; major crime investigation services; K-9 services; search and rescue; missing person and drug interdiction.

68. Sheriff Owen testified that Missouri Sheriffs are barred by state statute from participating in Missouri County Employees' Retirement Fund (CERF).

69. Defendant called Henry County Sheriff Kent Oberkrom.

70. Sheriff Oberkrom has served as Henry County Sheriff since 1997.

71. Sheriff Oberkrom testified that his office provides law enforcement services throughout Henry County pursuant to agreements with the cities of Windsor, Calhoun, Montrose and Urich.

72. The evidence was that the Henry County Sheriff issues the citations for municipal violations in those cities and those cases are heard in the Circuit Court of Henry County where the Henry County Sheriff provides security, including acting as bailiffs for each judge.

73. Sheriff Oberkrom testified that he operates the Henry County Jail which is the only jail in Henry County. He further testified that the only Municipal Court in Henry County is the Clinton Municipal Division. The evidence was that all arrestees and inmates from the Clinton Municipal Division are held in the Henry County Jail.

74. Sheriff Obekrom testified that all applications for trial de novo from the Clinton Municipal Division are heard at the Henry County Courthouse, where his office provides all security, including acting as bailiffs for each judge.

75. Sheriff Oberkrom testified that his deputies arrest detainees with outstanding municipal warrants pending further transport or processes them into the Henry County Jail.

76. Sheriff Oberkrom testified that the Henry County Sheriff provides a wide range of services to the Clinton police—which is the only municipal police force in Henry County. These include but are not limited to: back up and assist Clinton police; training services made available to municipal police officers; specialized law enforcement services such as tactical squads; mobile command units; major crime investigation services; K-9 services; search and rescue; missing person and drug interdiction.

77. Sheriff Oberkrom testified that his office provides transport of arrestees and inmates from the Henry County Jail to court appearances in the Clinton Municipal Division.

78. Sheriff Oberkrom testified that Henry County does not participate in LAGERS and thus the Henry County Sheriff is not eligible for LAGERS.

79. Sheriff Oberkrom also testified that Missouri Sheriffs are barred by state statute from participating in CERF.

80. Defendant called retired Cass County Sheriff Dwight Diehl.

81. Sheriff Diehl served as Cass County Sheriff from 1997 to 2017.

82. Sheriff Diehl testified that his office provided law enforcement services throughout Cass County.

83. Sheriff Diehl testified that he operated the Cass County Jail. The Cass County Jail is the only jail in Cass County other than the City of Belton Jail.

84. The Cass County Jail houses arrestees and inmates from all municipal courts in Cass County except Belton and Harrisonville (Harrisonville sends its arrestees and inmates to the Belton Jail). The Cass County Jail also houses some inmates from Lee's Summit Municipal Court.

85. Pleasant Hill, Raymore, Garden City, Peculiar and Lake Winnebago Municipal Courts all send their arrestees and inmates to the Cass County Jail.

86. The cities of East Lynne and Lake Annette send their municipal citations to Cass County Circuit Court where the Cass County Sheriff provides all security and acts as bailiffs for each judge.

87. Sheriff Diehl testified that all applications for trial *de novo* from any Cass County Municipal Division are heard in the Circuit Court of Cass County, where the Cass County Sheriff provides security and acts as bailiffs for the judges.

88. Sheriff Diehl testified that his deputies arrested detainees with outstanding municipal warrants pending further transport or processes them into the Cass County Jail.

89. Sheriff Diehl testified that the Cass County Sheriff provides a wide range of services to municipal police in Cass County. These include but are not limited to: back up and assistance to the police department; training services made available to municipal police officers; specialized law enforcement services such as tactical squads; mobile command units; major crime investigation services; K-9 services; search and rescue; missing person and drug interdiction.

90. Sheriff Diehl testified that his office operated a police academy for training and continuing certification for deputies and municipal police—without charge.

91. Sheriff Diehl testified that his office provided input and maintenance of warrants for all municipal courts in Cass County, except for Harrisonville, Belton, Pleasant Hill and Raymore.

92. Sheriff Diehl testified that Missouri Sheriffs are barred by state statute from participating in (CERF).

93. Defendant called Mercer County Sheriff Steve Stockman.

94. Sheriff Stockman has served as Mercer County Sheriff since 2008.

95. Sheriff Stockman testified that his office provides law enforcement services throughout Mercer County since there is no municipal police force in Mercer County.

96. Pursuant to an agreement with the City of Princeton, the Mercer County Sheriff issues citations for municipal violations. All municipal citations issued by the Mercer County Sheriff are heard in the Circuit Court of Mercer County where the Sheriff provides security and acts as bailiffs for the judges.³

³ Until recently the City of Mercer had the same agreement with the Mercer County Sheriff.

97. Sheriff Stockman testified that he operates the Mercer County Jail which is the only jail in Mercer County.

98. Sheriff Stockman testified that his deputies arrest detainees with outstanding municipal warrants pending further transport or processes them into the Mercer County Jail.

99. Sheriff Stockman testified that Mercer County does not participate in LAGERS.

100. Sheriff Stockman testified that Missouri Sheriffs are barred by state statute from participating in (CERF).

101. The Court took judicial notice of RSMo 57.100 which states “Every sheriff shall quell and suppress assaults and batteries, riots, affrays and insurrections; shall apprehend and commit to jail all felons and traitors, and execute all process directed to him by legal authority, including writs of replevin, attachments and final process issued by circuit and associate circuit judges.”

102. The Court took judicial notice of RSMo 57.090 which states that “The several sheriffs shall attend each division of the circuit court presided over by a circuit or associate circuit judge held in their counties, when so directed by the court; and it shall be the duty of the officer attending any court to furnish stationery, fuel, and other things necessary for the use of the court whenever ordered by the court.”

103. The Court also took judicial notice of RSMo 50.100 (8) which provides, in part, that Missouri Sheriffs cannot participate in CERF. Section 50.100(8).

104. RSMo 57.317 sets the compensation for Missouri Sheriffs. Compensation for Missouri Sheriffs other than in a first class chartered county varies, based upon County Property Assessed Valuation from \$36,000 to \$64,000 per year.

I. THRESHOLD ISSUES

105. Prior to determining the constitutionality of the surcharge as applied, the Court is vested in first deciding all other threshold issues. *Matal v. Tam*, 137 S. Ct. 1744, 1755 (2017) (“it is important to avoid the premature adjudication of constitutional questions,” and courts ought not to decide “questions of constitutionality unless such adjudication is unavoidable.”).

A. STANDING

106. Missouri courts require that “the parties seeking relief must have some personal interest at stake in the dispute, even if that interest is attenuated, slight or remote.” *Ste. Genevieve Sch. Dist. R II v. Bd. of Aldermen of City of Ste. Genevieve*, 66 S.W.3d 6, 10 (Mo. banc 2002).

107. Defendant’s argue that a party who does not “directly pay” a challenged fine has “suffered no injury.” *Hargis v. Access Capital Funding, LLC*, 674 F.3d 783, 791-92 (8th Cir. 2012) (citing *Bauer Dev. LLC v. BOK Fin. Corp.*, 290 S.W.3d 96, 100 (Mo. App. 2009)).

108. At bench, both Plaintiffs admit that they did not directly pay the surcharge, but instead, relied upon their attorneys to do so.⁴

109. In *City of Slater v. State*, 494 S.W. 3d 580, 590 n. 6, the Missouri Court of Appeals noted “where the plaintiffs who had paid a fine sought a refund of the fine and/or compensatory damages” standing would exist.

110. Although initially paid on their behalf, the Court finds Plaintiffs have paid all fines, costs and the \$3.00 surcharge.

111. The Court finds Plaintiffs have personal interests at stake in this matter and standing to challenge the constitutionality of Mo. Rev Stat § 57.955.1.

⁴ Fowler’s mother reimbursed his attorney, and Keller reimbursed his attorney, who paid the fine, costs and surcharge on his behalf.

B. WAIVER

112. The Missouri Supreme Court has held “failure to raise constitutional questions in Municipal Court is not considered a waiver of the same.” *State ex rel Kansas City v. Meyers*, 513 S.W.2d 414, 418 (Mo. banc 1974); *see also City of Ferguson v. Nelson*, 438 S.W.2d 249, 252 (Mo. 1969) (where constitutional question raised in circuit court for first time, no waiver where claim not raised at municipal level).

113. In Missouri, circuit courts “have original jurisdiction over all cases and matters, civil and criminal....” *Id.* at 263. Moreover “[t]he judicial power of the state shall be vested in a supreme court, a court of appeals consisting of districts as prescribed by law, and circuit courts.” Mo. Const. Art. 5, §1.

114. Municipal Courts are merely divisions of Missouri’s circuit courts, and “the presiding judge of the circuit shall have general administrative authority” over municipal divisions of the Circuit Court. Mo. Ct. Rule 37.04. Municipal court judges “shall hear and determine violations of municipal ordinances”, not the constitutionality of a surcharge mandated by state statute. Mo. Const. art. 5 § 23.

115. Because Circuit Courts have “general administrative authority” over the Municipal Divisions and the mandated fees and surcharges assessed therein, the Court finds Plaintiffs have not waived their constitutional challenge as to the \$3.00 surcharge.⁵

⁵ Defendants argue Plaintiffs’ failure to challenge the surcharge either in the Municipal Division or in the Associate Circuit Division is a waiver of their constitutional claim. It is not lost on this Court that in order for Plaintiffs to challenge the \$3.00 surcharge in the Circuit Division, Plaintiffs would have had to pay a \$30.00 filing fee.

C. VOLUNTARY PAYMENT

116. “Missouri law recognizes the voluntary payment doctrine as a defense to claims for unjust enrichment . . .” *Smith v. City of St. Louis*, 409 S.W.3d 404, 419 (Mo. App. 2013).

117. “Under the voluntary payment doctrine, a person who voluntarily pays money with knowledge of all the facts in the case, and in the absence of fraud and duress, cannot recover the payment, even if the money is paid without sufficient consideration and under protest.” *Id.*

118. “Missouri courts have consistently recognized that money voluntarily paid to another under a claim of right to the payment, and with knowledge⁶ of the facts by the person making the payment, is not recoverable on the ground that the claim was illegal or that there was no liability to pay in the first instance.” *Id.*

119. The Court finds Plaintiffs have not waived their constitutional challenge by way of voluntary payment since Plaintiffs’ payments were tendered without their knowledge of the surcharge in that the surcharge was not an itemized calculation of the court costs and conspicuously identifiable.

D. FAILURE TO JOIN AN INDISPENSABLE PARTY

120. “A trial court’s judgment does not bind one not before the court.” *Kadisha Cemetery Ass’n v. Reno*, 525 S.W.3d 201, 204 (Mo. App. 2017).

121. Under Rule 52.04, “A person shall be joined to a proceeding if there cannot be complete relief for those already parties in his absence or if his interests are necessarily affected

⁶ Plaintiffs testified that they were unaware of the surcharge at the time they pled guilty and paid their fine. Defendant’s adduced testimony that the information of the surcharge was obtainable by Plaintiffs had they sought such information. The Court distinguishes “with knowledge” from capable of knowing for which Defendants assert (at least tacitly) Plaintiffs should have known. While distinguished, the Court does not find Plaintiffs acted under duress, in that as a practical matter, a person cannot make a payment under duress if that person does not know he is making such payment.

by the outcome.” *Fogle v. State*, 295 S.W.3d 504, 511 (Mo. App. 2009) (internal quotation marks omitted).

122. “A necessary party is one who is so vitally interested in the subject matter of controversy that a valid judgment cannot be effectively rendered without the party’s presence.” *Id.* (internal quotation marks omitted).

123. “An indispensable party is a necessary party who cannot feasibly be joined at the time but whose absence is so critical that equity and good conscience will not permit the matter to proceed without him.” *Pauli v. Spicer*, 445, S.W.3d 667, 674 (Mo. App. 2014).

124. A party is indispensable where “the remedies requested . . . in the petition and the relief [sought] will all require some action by the [party] or directly impact the [party].” *Jones v. Jones*, 285 S.W.3d 356, 361 (Mo. App. 2009).

125. If a missing party “is both necessary and indispensable, the action must be dismissed.” *Harness v. Richardson*, 436 S.W.3d 581, 584 (Mo. App. 2014).

126. Plaintiffs, in advancing their cause, rely heavily on *Harrison*⁷ where the plaintiff in that case sought to invalidate Senate Bill 601 which provided for the assessment of additional court costs in civil cases. The Missouri Supreme Court noted that the plaintiff named as defendants the County; the County Treasurer; the Associate Circuit Clerk; the Circuit Clerk; the State Treasurer and the State of Missouri.

127. The Court finds Plaintiffs have failed to assert a claim and seek declaratory or injunctive relief against Municipal Division Clerks of the Circuit Court who assess and collect the surcharge.

⁷ *Harrison v. Monroe County*, 716 S.W.2d 263, 267, 279 (Mo. banc 1986)

128. The Court further finds that a Judgment in Plaintiffs favor would not relieve Municipal Division Clerks of their Missouri Supreme Court Order and statutory obligations of assessing, collecting, and remitting the surcharge to the Retirement System.

129. Consequently, the Court finds that due to Plaintiff's failure to join the Municipal Division Clerks as necessary and indispensable parties to this action, this matter must be and is dismissed. *See Harness*, 436 S.W.3d at 584.

E. FAILURE TO JOIN AN INDISPENSABLE PARTY

130. "The right to restitution for unjust enrichment presupposes: (1) that the defendant was enriched by the receipt of a benefit; (2) that the enrichment was at the expense of the plaintiff; (3) that it would be unjust to allow the defendant to retain the benefit." *S&J, Inc. v. McLoud*, 108 S.W.3d 765, 768 (Mo. App. 2003).

131. "In determining whether it would be unjust for the defendant to retain the benefit, courts consider whether any wrongful conduct by the defendant contributed to the plaintiff's disadvantage." *Id.* (citing *Graves v. Berkowitz*, 15 S.W.3d 59, 61 (Mo. App. 2000)).

132. "*There must be some something more than passive acquiescence*, such as fault or undue advantage on the part of the defendant, for the defendant's retention of the benefit to be unjust." *Id.* (emphasis added).

133. Defendants argue and evidence was presented that the Retirement System has no role in the assessment or collection of the surcharge. As such, Defendants hold firm that the Retirement System acted with no more than passive acquiescence.

134. In contradiction, Plaintiffs adduced evidence that the Retirement System bore out a plan to expand the surcharge to Municipal Divisions to make up for some of its lost investment funds. The evidence was that the Retirement System sought three opinions from Missouri's

Attorney General in an effort to support the idea of expanding the surcharge to Municipal Divisions as well as requested OSCA to instruct Municipal Courts to collect the surcharge.

135. While the Court refrains from making a determination as to whether it would be unjust for Defendant to retain its benefit, it is worth noting, that the Retirement System in addressing this issue, undertook more interest and eagerness than mere passive acquiescence, and Defendant's argument to the contrary falls a few donuts short of a dozen.

II. THE SURCHARGE IS CONSTITUTIONAL

A. THE SURCHARGE DOES NOT VIOLATE ARTICLE I, SECTION 14 OF THE MISSOURI CONSTITUTION

136. As explained above, prior to deciding the issue of the constitutionality of the surcharge as applied, the Court must first decide all other threshold issues. *Matal v. Tam*, 137 S. Ct. 1744, 1755 (2017) ("it is important to avoid the premature adjudication of constitutional questions," and courts ought not to decide "questions of constitutionality unless such adjudication is unavoidable.").

137. If Plaintiffs' unjust enrichment claim fails, this Court has no basis to "formulate a rule of constitutional law"; doing so in the absence of a viable claim for relief would "run contrary to the fundamental principle of judicial restraint." *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 449-50 (2008).

138. If the Court must reach the issue of the constitutionality of the surcharge in the Municipal Divisions, the Court is compelled to reject Plaintiffs assertion that the assessment and collection of the surcharge violates Article I, Section 14 of the Missouri Constitution.

139. This Court must resolve "all doubt in favor of [§ 57.955.1's] validity." *Id.* (internal quotation marks omitted).

140. Plaintiffs have “the burden of proving [that it] clearly and undoubtedly violates the constitution.” *Williams v. Mercy Clinic Springfield Communities*, 568 S.W.3d 396, 406 (Mo. banc 2019) (internal quotation marks omitted).

141. The power of the Missouri General Assembly to impose court costs is “a matter primarily within legislative discretion.” *Spitcaufsky v. Hatten*, 182 S.W. 2d 107, 129 (Mo. banc 1944).

142. The only “constitutional” claim made by Plaintiffs is that the assessment and collection of the surcharge violates Article I, Section 14 of the Missouri Constitution.

143. The Missouri Constitution states “that the courts of justice shall be open to every person, and certain remedy afforded for every injury to person, property or character, and that right and justice shall be administered without sale, denial or delay.” Mo. Const. art. I, sec. 14.

144. The requirement that “right and justice shall be administered without sale, denial, or delay” is often called the “open courts provision.” *See, e.g., Ambers-Phillips v. SSM DePaul Health Ctr.*, 459 S.W.3d 901, 909 (Mo. banc 2015).

145. States have adopted the “open courts” provisions in their constitutions “not to guarantee that access to justice will be free of charge but to guarantee that no one shall have to bribe or make arbitrary payments to officials in order to obtain justice.” *Trieber*, 398 N.W.2d at 762.

146. Missouri courts have long acknowledged that Missouri’s “open courts” provision shares the same origin and purpose. Article I, sec. 14 “embodies the principle found in Chapter 40 of the Magna Carta that ‘To no one will We sell, to no one will We deny or delay, right or justice.’” *Harrison v. Monroe Cnty.*, 716 S.W.2d 263, 267 (Mo. banc 1986).

147. Seen in this historical context, the assessment and collection of the surcharge in the Municipal Divisions of the Circuit Courts cannot violate the “open courts” provision of the Missouri Constitution because the surcharge is assessed and collected only *after* the defendant has had their day in court (emphasis added).

148. As testified to by Municipal Division Clerk Pfannenstiel, a Municipal Division defendant is not required to make any payment or make any deposit in order to appear and defend in Municipal Court. Instead, the surcharge is assessed and collected only after the defendant appears and defends and either pleads guilty or is found guilty after trial.

149. The facts regarding assessment and collection of the surcharge in Municipal Divisions should be distinguished from Plaintiff’s reliance in Circuit Court civil actions as is the case in *Harrison id.*

150. In *Harrison*, the Plaintiff challenged Senate Bill 601 “which approves additional compensation for certain county officials, funded by the assessment of additional court costs in civil cases.” *Harrison* at 264. The Plaintiff sued the County, the County Treasurer, the Associate Circuit Clerk, the Circuit Clerk, the State Treasurer and the State of Missouri. *Id.* at 264.

151. The Missouri Supreme Court in *Harrison* found that “under our system of cost assessment [in the Circuit Court Division] the filing fee is deposited as the initial security for anticipated court costs. Rule 77.02. The prevailing party generally does not bear final responsibility for court costs. Under Rule 77.01, court costs are paid by the losing party.” *Id.* at 265.

152. Rules 77.01 and 77.02 regarding civil court costs do not have any application to the assessment of the § 57.955 surcharge in Municipal Division cases. Rather, “Rule 37 governs the procedure in all courts of this state having original jurisdiction of ordinance violations and the

disposition of any such violation in a violation bureau.” Rule 37.01. Rule 37 does not require payment of court costs or “deposit” of court costs when a Municipal Division proceeding is initiated.

153. Thus, the surcharge is not subject to Art. I, section 14 review because it is not paid by a Municipal Division defendant as a prerequisite, requirement or condition to seek justice and the Municipal Division defendant as immediate access to the courts “without sale, denial or delay.” *Id.* at 268.

154. Consequently, the Court cannot find that the surcharge is a type of “official exactions made as the price of delaying or expediting justice.” *Treiber v. Knoll*, 398 N.W.2d 756, 761 (Wis. 1987).

155. Moreover, even if the Court found that the “open courts” provision of the Missouri Constitution applied to the surcharge, the Court still finds that the surcharge does not violate the Missouri Constitution.

156. As applied to Senate Bill 601, the Missouri Supreme Court held in *Harrison* that “the proper test is whether the court costs required are reasonably related to the expense of the administration of justice.” *Id.* at 267.

157. The Missouri Supreme Court has not defined “administration of justice” as it applies to the validity of court costs.

158. However, courts in other jurisdictions have held that the term “administration of justice” includes the basic functions of law enforcement.⁸

⁸ See *State v. Lindsey*, 973 A.2d 312, 316-18 (N.H. 2009) (noting that the New Hampshire resisting arrest statute “reflects the policy that individuals follow the commands of law enforcement officials, because doing so fosters the effective *administration of justice*”) (quoted in *State v. Ajak*, 543 S.W.3d 43, 52 (Mo. banc 2018) (Powell, J., dissenting) (emphasis added); *People v. Barbee*, 681 N.W.2d 348, 350-51 (Mich. 2004) (“we find that the phrase

159. The Missouri General Assembly has explained that administering justice includes keeping county jails, conducting sheriffs' sales, and maintaining custody of persons "accused or convicted of any offense or municipal violation." Section 575.320.1 (defining the offense of "misconduct in administration of justice" to include misconduct in these functions).

160. It is uncontroverted that Missouri Sheriffs perform a multitude of services relating to the "administration of justice" including but not limited to: policing, administering county jails, detaining and transporting municipal arrestees and inmates, dispatch and 911 services, enforcing warrants, acting as bailiffs and providing courthouse security, backup coverage and assistance to the municipal police forces, training services, mobile command centers, specialized law enforcement services and investigative support, search and rescue, and tactical response squads.

161. The Court finds that the County Sheriffs⁹ are essential and necessary to the "administration of justice" and provide indispensable services relating to the administration of justice in Missouri municipalities and Municipal Courts.

162. Under Missouri law, payments made to a public retirement system are deferred obligations to public officials that those officials have earned during their employment—not after they retire. *See Mo. Prosecuting Attorneys v. Barton Cnty.*, 311 S.W.3d 737, 743 (Mo. banc 2010).

'interfered with or attempted to interfere with the administration of justice' encompasses more than just the actual judicial process. Law enforcement officers are an integral component in the administration of justice, regardless of whether they are operating directly pursuant to a court order. In *Hewitt v. White*, 78 Mich. 117, 119, 43 N.W. 1043 (1889), this Court referred to the *sheriff's duties* as relating to 'the administration of civil and criminal justice.' Similarly, in *White v. East Saginaw*, 43 Mich. 567, 570, 6 N.W. 86 (1880), this Court referred to the *sheriff's duties* as 'more or less directly connected with the administration of justice,' quoting *People v. Edwards*, 9 Cal. 286 (858). It is certainly interference with the *administration of justice* to provide *law enforcement officers* with a false name.' (emphasis added)).

⁹ Plaintiffs argue Retired Sheriffs do not provide services to the administration of justice, however this Court accepts and gives credit to those men and women, who during active duty, rendered their services in the administration of justice with the understanding and expectation of deferred benefits post their active duty.

163. The Sheriff's Retirement System was established "for the administration and the investment of the funds [paid into the] Sheriffs' Retirement Fund," just like the Prosecuting Attorneys' Retirement System. *See* § 57.952.

164. The annuity it pays out to a retired Sheriff "is not earned on the last day of employment . . . but is . . . attributable to the entire period in which it was accumulated." *Prosecuting Attorneys*, 311 S.W.3d at 743.

165. The annuity is part of the "salary, fees, pay, remuneration for official services performed" during the Sheriff's active employment. *State ex rel. Emmons v. Farmer*, 196 S.W. 1106, 1108 (Mo. banc 1917).

B. THE SURCHARGE SURVIVED "RATIONAL BASIS" REVIEW

166. If the surcharge does not offend Art. I, section 14 of the Missouri Constitution, Plaintiffs default assertion is that the surcharge fails the "rational basis" test.

167. "[W]hen a statute does not impinge upon a fundamental right, the challenger normally must demonstrate that the statute in question bears no rational relationship to a legitimate state interest." *Coyne v. Edwards*, 395 S.W.3d 509, 517 (Mo. banc 2013).

168. "Rational basis review, however, does not require that the fit between the classification and government interest be exact, but merely 'reasonable,' and 'this Court will not substitute its judgment for that of the legislature as to the wisdom, social desirability or economic policy underlying a statute.'" *Glossip v. Missouri Dept. of Transp. and Highway Patrol Employees' Retirement System*, 411 S.W.3d 796, 807 (Mo. banc 2013).

169. As stated above, because Missouri Sheriffs provide vital and essential services relating to the administration of justice in municipalities and Municipal Divisions of the Circuit Courts, the surcharge withstands the "rational basis" review.

170. The fact that some Missouri Sheriffs may also be eligible for LAGERS is not an issue for review by this Court as the General Assembly is well within its power to determine what retirement benefits should be provided to retired Sheriffs.

171. Given the myriad of services provided by the Sheriffs to Missouri counties, municipalities, all divisions of the Circuit Courts, including Municipal Divisions, this Court concludes that there is a “rational basis” for the Missouri General Assembly to incentivize attracting and retaining more qualified individuals to become Missouri Sheriffs.

III. CONCLUSION

172. Based upon the foregoing, the Court finds in favor of Defendant on the claims and for the reasons stated above and enters judgment in favor of Defendant and assesses all costs against Plaintiffs.

March 10, 2020

DATE



KEVIN D. HARRELL

CERTIFICATE OF SERVICE

A copy of the foregoing was e-filed this 6th day of December, 2019 with the Circuit Court of Jackson County, Missouri which will send electronic notice to all parties of record.

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