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**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

AMY MCFALLS, <i>et al.</i>	:	
	:	
<i>Petitioners,</i>	:	No. 4 MD 2021
v.	:	Class Action
	:	Original Jurisdiction
38 <sup>TH</sup> JUDICIAL DISTRICT, <i>et al.</i>	:	
	:	
<i>Respondents.</i>	:	
	:	

**PETITIONERS’ RESPONSES AND OBJECTIONS TO THE  
PRELIMINARY OBJECTIONS OF RESPONDENTS THE 38TH  
JUDICIAL DISTRICT, THE HON. THOMAS M. DEL RICCI,  
AND MICHAEL R. KEHS (“JUDICIAL RESPONDENTS”)**

**Responses to Judicial Respondents Objections**

1. Admitted in part; denied in part. Admitted that “this class action concerns the alleged imposition of duplicative court costs against Petitioners and other proposed class individuals ... in the Court of Common Pleas of Montgomery County.” The remaining averments in this paragraph are conclusions of law to which no responsive pleading is required. To the extent a

response is required, Petitioners deny that the alleged duplicated costs are “part of their criminal convictions and sentences.”

2. Admitted.

3. Admitted in part; denied in part. Admitted that “President Judge Del Ricci and Court Administrator Kehs are sued in their official capacities only.” The remaining averments of the paragraph are conclusions of law to which no responsive pleading is required. To the extent a response is required, the remaining averments of the paragraph are denied.

4. Admitted.

5. Admitted.

6. Admitted in part; denied in part. Admitted to the extent that these averments reflect Section VII (p. 40) of Petitioners’ Petition for Review (“Petition”), where Petitioners’ requests for relief are expressly laid out. Denied to the extent that these averments in any way modify Petitioners’ expressly articulated claims and requests for relief. By way of further response, Petitioners have lodged state and federal constitutional claims as well as a state law claim.

7. Denied. The averments in this paragraph are conclusions of law to which no responsive pleading is required. By way of further response, Petitioners’ duplicative charges arose out of the same occurrences, with respect to each Petitioner. Petition ¶¶ 39, 43, 47, 51, 55. Moreover, Petitioners’ Proposed Class is defined to be limited to those criminal defendants “against

whom any duplicated costs have been or will be imposed in one criminal case when the charges arise out of the same occurrence.” Petition ¶ 89.

8. Denied. By way of further response, Petitioners allege that Respondents’ policies allow for judges to exercise *arbitrary* discretion to impose duplicative, *ultra vires* costs on criminal defendants in charges arising out of the same occurrence, and that Respondents’ policies and practices actually impose these arbitrary and *ultra vires* costs. *See, e.g.*, Petition ¶¶ 1, 36.

9. Denied. The averments in this paragraph are conclusions of law to which no responsive pleading is required.

10. Denied. The averments in this paragraph are conclusions of law to which no responsive pleading is required.

11. Denied. The averments in this paragraph are conclusions of law to which no responsive pleading is required.

12. Denied. The averments in this paragraph are conclusions of law to which no responsive pleading is required.

13. Denied. The averments in this paragraph are conclusions of law to which no responsive pleading is required.

14. Denied. The averments in this paragraph are conclusions of law to which no responsive pleading is required.

15. Denied. The averments in this paragraph are conclusions of law to which no responsive pleading is required. By way of further response, Petitioners object that a pleading of “immunity from suit” is only appropriately

raised as a New Matter and this objection should therefore be stricken from the pleading. Pa.R.C.P. 1030(a).

16. Denied. The averments in this paragraph are conclusions of law to which no responsive pleading is required.

17. Denied. The averments in this paragraph are conclusions of law to which no responsive pleading is required.

18. Denied. The averments in this paragraph are conclusions of law to which no responsive pleading is required. By way of further response, preliminary objections later argued in a brief but not raised initially in pleadings are waived. *See Buehl v. Beard*, 435 M.D. 2009, 2010 WL 9519016 (Pa. Cmwlth. Dec. 22, 2010) (unpublished); *see also* Pa.R.C.P. 1017(a)(4), 1028(b).

**Preliminary Objections to Judicial Respondents Objections**

19. Petitioners object that a pleading of “immunity from suit” is only appropriately raised as a New Matter. Pa.R.C.P. 1030(a). Therefore objection ¶ 15 should be stricken from the pleading.

WHEREFORE, Petitioners respectfully request that the Preliminary Objections of Respondents the 38th Judicial District, the Hon. Thomas M. Del Ricci, and Michael R. Kehs be overruled or stricken.

Respectfully submitted,

Date: March 8, 2021

/s/ John J. Grogan

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38 <sup>TH</sup> JUDICIAL DISTRICT, <i>et al.</i>	:	
	:	
<i>Respondents.</i>	:	
	:	

**[PROPOSED] ORDER**

**AND NOW**, this \_\_\_\_\_ day of \_\_\_\_\_, 2021,  
upon consideration of Respondents the 38th Judicial District, the Hon.  
Thomas M. Del Ricci, and Michael R. Kehs Preliminary Objections to the  
Petition for Review, and Petitioner’s Responses and Objections, it is  
**ORDERED** that the Preliminary Objections are **OVERRULED**.

\_\_\_\_\_  
J.

**CERTIFICATE OF SERVICE**

I certify that on this day I caused the foregoing response to be served on all parties through this Court's ECF system.

Dated: March 8, 2021

/s/ John J. Grogan  
John J. Grogan