IN THE COMMONWEALTH COURT OF PENNSYLVANIA

AMY MCFALLS, JASON CRUNETTI, VINCENT ESPOSITO, GREGORY JACKSON, and BRENDA LACY, on behalf of themselves and all persons similarly situated,	:	No.4 M.D. 2021 Class Action Original Jurisdiction
Petitioners,	:	
v.	:	
38TH JUDICIAL DISTRICT, Hon. THOMAS M. DELRICCI, President Judge (in his official capacity), MICHAEL R. KEHS, Esq. Court Administrator (in his official capacity), and LORI SCHREIBER, Clerk of Courts (in her official capacity),	:	
Respondents.	:	

PETITIONERS' RESPONSE BRIEF TO RESPONDENTS' PRELIMINARY OBJECTIONS[1]

[1] As envisioned in the scheduling order of Feb. 26, 2021, Petitioners submit a single, consolidated brief in response to the separate briefs of Judicial Respondents and Respondent Schreiber. Throughout this brief, Petitioners will refer to the brief of Judicial Respondents as "Jud. Brief" and to that of Respondent Schreiber as "Clerk Brief."

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with Pa.R.A.P. 2135(a)(1) and contains less than 14,000 words, excluding supplementary materials per Pa.R.A.P. 2135(b), according to a word count executed through Microsoft Word, which was used to prepare this brief.

Date: May 14, 2021

/s/David Nagdeman
David Nagdeman

I. QUESTIONS PRESENTED

As to the Preliminary Objections of the Judicial Respondents

1. Should Judicial Respondents' Preliminary Objection as to adequate remedy at law, set forth at ¶ 9 of their Preliminary Objections, be overruled?

2. Should Judicial Respondents' Preliminary Objection as to a collateral attack on criminal sentence, set forth at ¶ 10 of their Preliminary Objections, be overruled?

3. Should Judicial Respondents' Preliminary Objection as to the viability of the *ultra vires* claim, set forth at ¶ 11 of their Preliminary Objections, be overruled?

4. Should Judicial Respondents' Preliminary Objection as to the viability of the Equal Protection and Due Process claims, set forth at ¶ 12 of their Preliminary Objections, be overruled?

5. Should Judicial Respondents' Preliminary Objection as to the doctrine of *Heck v. Humphrey*, set forth at ¶ 13 of their Preliminary Objections, be overruled?

6. Should Judicial Respondents' Preliminary Objection as to the Pennsylvania Constitution, set forth at ¶ 14 of their Preliminary Objections, be overruled?

7. Should Judicial Respondents' Preliminary Objection as to sovereign immunity, set forth at ¶ 15 of their Preliminary Objections, be overruled?

8. Should Judicial Respondents' Preliminary Objection as to standing, set forth at ¶ 16 of their Preliminary Objections, be overruled?

9. Should Judicial Respondents' Preliminary Objection as to the viability of the class claims, set forth at ¶ 17 of their Preliminary Objections, be overruled?

As to the Preliminary Objections of the Respondent Schreiber

10. Should Respondent Schreiber's Preliminary Objection as to adequate remedy at law, set forth at ¶ 10 of her Preliminary Objections, be overruled?

11. Should Respondent Schreiber's Preliminary Objection as to a collateral attack on criminal sentence, set forth at ¶ 11 of her Preliminary Objections, be overruled?

12. Should Respondent Schreiber's Preliminary Objection as to the viability of the Equal Protection and Due Process claims, set forth at ¶ 12 of her Preliminary Objections, be overruled?

13. Should Respondent Schreiber's Preliminary Objection as to the doctrine of *Heck v. Humphrey*, set forth at ¶ 13 of her Preliminary Objections, be overruled?

14. Should Respondent Schreiber's Preliminary Objection as to the appropriateness of relief in her office as Clerk of the Courts, set forth at ¶ 14 of her Preliminary Objections, be overruled?

15. Should Respondent Schreiber's Preliminary Objection as to the Pennsylvania Constitution, set forth at ¶ 15 of her Preliminary Objections, be overruled?

16. Should Respondent Schreiber's Preliminary Objection as to sovereign immunity, set forth at ¶ 16 of her Preliminary Objections, be overruled?

17. Should Respondent Schreiber's Preliminary Objection as to the viability of the class claims, set forth at ¶ 17 of her Preliminary Objections, be overruled?

Suggested Answer as to All: *Yes.*

II. INTRODUCTION

Petitioners and the class of thousands of individuals they seek to represent[2] have all been saddled with illegal duplicate costs upon the disposition of their criminal cases in the 38th Judicial District. The facts alleged in the Petition and set forth in summary here illustrate the Respondents' policy and practice of doing what Pennsylvania law forbids: imposing duplicate costs in criminal cases where a person is convicted of more than one charge and the charges arise out of the same occurrence. The Petition also alleges that Respondents have failed to provide Petitioners a bill of costs at sentencing, which violates Petitioners' rights and has denied them the opportunity to learn

[2] To avoid repetition, for purposes of Petitioners' Brief in Opposition to Respondents' Preliminary Objections and unless otherwise specified, when "Petitioners" are referenced, it should be read to also include putative class members.

of and challenge the illegal costs. Petitioners are then subject to continued threats of punishment if they do not pay these illegal costs. Petitioners seek declaratory and injunctive relief to halt Respondents' illegal practices and prevent future violations of law.

The Preliminary Objections of Judicial Respondents and Respondent Schreiber make no effort to defend the legality of the actions that have harmed and continue to harm Petitioners and the class they represent. They do not even suggest that arbitrary imposition of duplicate costs is consistent with either statutory law or their constitutional obligations. The Judicial Respondents suggest that this Court should "set … aside whether the trial judges have imposed alleged illegal costs," because the Judicial Respondents cannot be held responsible for overseeing systematically wayward judges. Jud. Brief 27-28. Instead of arguing that duplicate costs are legal and that these costs can be imposed without providing any notice to the convicted individual, Respondents rely on procedural dodges, purported immunities and other unpersuasive arguments designed to prevent this Court from addressing the deprivations alleged.

Respondents' arguments rest, in one form or another, on two grave mischaracterizations, one legal and one factual.

First, Respondents rely on a legal error: they mischaracterize costs as part of a criminal sentence. Respondents contend that Petitioners' claims are an effort to collaterally attack their sentences, which would be barred. As discussed below, however, that position is flatly contradicted by rulings of the

Pennsylvania Supreme Court, which has explained that "costs in a criminal proceeding **[are] not part of the sentence**, but [are] an incident of the judgment. … Costs do not form a part of the penalty imposed by statutes providing for the punishment of criminal offenses." *Com. v. Giaccio*, 202 A.2d 55, 58 (Pa. 1964), *rev'd on other grounds sub nom. Giaccio v. State of Pa.*, 382 U.S. 399 (1966) (emphasis added).

Second, Respondents refuse to acknowledge that Petitioners have alleged that Respondents have a policy and practice of permitting the imposition of *illegal* duplicate costs. Petitioners bring an action on behalf of a class of individuals "against whom any duplicated costs have been or will be imposed in one criminal case *when the charges arise out of the same occurrence*." Pet. ¶ 89. This happens in an alarming number of cases. *See, e.g.,* Pet. ¶¶ 1, 36. As Petitioners point out below, their claims cannot be avoided by pretending that they are talking about cases in which there has been a determination that the charges involve multiple occurrences. The Petition is quite specific on this point. This is not an attack on "judicial discretion." No judge has the *discretion* to violate the law, and Respondents do not even argue that the duplicative costs described here are legal.

Petitioners will demonstrate that: (1) they have stated claims against all Respondents; (2) this Court is the proper forum for those claims; and (3) the remedies sought are proper and available in this action. All of Respondents' Preliminary Objections should be overruled.

III. FACTS

Respondents' Policy and Practice of Assessing Illegal Costs

Pennsylvania law provides that individuals convicted in criminal proceedings may be required to pay costs that are specifically enumerated by statute—of which there are approximately two dozen at issue here, each governed by a specific statute that authorizes its assessment. *See* Pet., Exhibit B. Each cost may only be imposed once in a criminal proceeding arising out of a single incident or occurrence, regardless of the number of charges for which that defendant has been found or pled guilty in that case. Pet. ¶ 32. Absent specific statutory authorization (of which there is none), there is no lawful basis to impose such costs more than once in the same case.

Publicly available data and the case histories of the Named Petitioners make clear that Respondents have violated Pennsylvania law by imposing duplicative costs on criminal defendants in many cases and have been doing so for years. Petitioners' research shows that illegal charges were imposed on over 12,900 cases between 2008 and 2018, Pet. ¶ 11, and in over 590 cases between Jan. 1, 2019 and Oct. 26, 2020, Pet. ¶ 10. As the Petition alleges, these duplicate costs are often imposed even in the absence of an express judicial order. Pet. ¶¶ 39, 43, 47, 51, 55. In each of those cases, Respondents have imposed duplicated costs on a single defendant in a single case even though all the charges arise out of the same occurrence.

The illegal imposition of duplicative costs is exacerbated by the other violation of law claimed by Petitioners: Respondents' failure to provide a bill of

costs at sentencing. Under Pennsylvania law, criminal defendants are entitled to a bill of costs that sets forth each individual cost imposed and the amount thereof. Pet. ¶ 29. At each criminal sentencing, the defendant is informed of the specific amount of any fines and restitution at the time of sentencing. Pet. ¶ 85. The Common Pleas Case Management System ("CPCMS"), the statewide computer system used by all criminal courts, including by Respondents, allows the clerk to generate the bill of costs upon sentencing and would allow Respondents to provide that notice to defendants at sentencing. But Respondents do not use this procedure, nor any other, to tell individuals who are being sentenced what costs they will be assessed. Pet. ¶¶ 40, 44, 48, 52, 56.

Nor do Respondents provide an accounting of the costs imposed even after sentencing. Some days or weeks after sentencing, the Clerk of Courts mails a Payment Plan Introduction Letter to convicted individuals, but only those who are not incarcerated. Pet. ¶¶ 70, 73. The payment plan letter states the total amount owed by the defendant. However, the amounts owed are not disaggregated by specific cost nor correlated to specific charges. Pet. ¶ 71. This letter is the only written communication regarding costs that Respondents provide to some defendants (as others receive nothing at all), and it does not list the costs that have been imposed.

If a defendant does not pay the costs imposed, he or she may receive a subsequent collections letter demanding payment and listing a series of adverse consequences that might result from failure to pay. Pet. ¶¶ 58, 74. The threats which accompany the letter include: the institution of contempt proceedings,

issuance of an arrest warrant, revocation of participation in Accelerated Rehabilitation Disposition, and referral to a collection agency that will impact the person's credit rating, *see* Pet. ¶¶ 58, 74 and Ex. H (Form Payment Plan Letter). That letter also does not provide an itemization of costs nor a correlation of costs to specific charges. Pet. ¶ 74.

The only way that a defendant can see what specific costs have been imposed in their case is to search the electronic docket sheets on a website administered by the AOPC. Pet. ¶ 83. Those docket sheets are not updated with costs at the time of sentencing, and it takes days or weeks before that information appears online. Pet. ¶ 81. But Respondents do not inform individuals with criminal convictions of the existence of the electronic docket sheets, or that it would contain information about the costs imposed upon them, let alone serve them with a copy of the docket sheet showing the costs imposed. Pet. ¶¶ 76 and 81. Named Petitioners Crunetti, Pet. ¶ 45, Esposito, Pet. ¶ 49, Jackson, Pet. ¶ 53, and Lacy, Pet. ¶ 56, were never informed about the electronic docket sheet and were unaware that such a docket sheet existed. Moreover, Petitioners Crunetti, Pet. ¶ 45, Esposito, Pet. ¶ 49, Jackson, Pet. ¶ 53, and Lacy, Pet. ¶ 56, were incarcerated as a result of their convictions and therefore did not have the ability to access it.

Those electronic docket sheets include a section which provides an itemization of the various costs, including a description of the costs and references to the statute authorizing the imposition of the costs. Pet. ¶ 77. However, even this electronic docket does not correlate costs imposed with

any specific charge. In other words, even if a defendant learns of the existence of the electronic docket sheet, even if the defendant learns that it contains information about court costs, and even if the defendant has access to the internet and can see it, the electronic docket sheet still does not provide a clear basis for a defendant to determine if unlawful duplicative costs have been assessed. That would require the knowledge and capacity to cross reference the limited information available with other information not contained on the sheet. Pet ¶ 84. This is demonstrated by Petitioner McFalls who, despite being aware of and regularly reviewing the electronic docket sheet on the UJS portal, was unable to determine that she had illegally assessed costs on multiple charges. Pet. ¶ 41. Finally, the electronic docket gives no information about the defendant's right to object or appeal from the imposition of costs. Pet.¶¶ 79-82.

Respondents do not impose duplicative costs in every criminal case, instead, their imposition is arbitrary. Pet. ¶ 59. Moreover, which specific costs are duplicated varies among cases, as some costs that are duplicated in one defendant's case are not duplicated in another's.

However, when duplicative costs are imposed, as they have been in some 13,000 cases since 2008, all persons subject to duplicative costs of any kind, in any amount, suffer the same harms. They can owe hundreds or thousands of dollars in illegal court costs. Respondents can enter a civil judgment against them and put a lien on any real property. *See* 42 Pa.C.S. § 9728(b). Respondents threaten them with the institution of contempt

proceedings, issuance of an arrest warrant, revocation of participation in Accelerated Rehabilitation Disposition, and referral to a collection agency that will impact the person's credit rating, *see* Pet. ¶¶ 58, 74 and Ex. H. This continues for as long as the person owes the money.

The imposition of illegal duplicative costs in the 38th Judicial District is not an accident; it is the result of deliberate decisions by Respondents to allow and effectuate these violations of the law. The ACLU of Pennsylvania, prior to representation of Petitioners, explained to Respondents in a May 29, 2018 letter that these practices were unlawful and needed to be corrected. Pet. ¶ 8. Not only did Respondents fail to take any action to stop the practice, they instead expressly adopted a policy that allows the practice to continue. Pet. ¶ 9. The result is that, from January 1, 2019 through October 26, 2020, this unlawful duplication of court costs occurred in an additional 590 cases. Pet. ¶ 10.

Petitioners seek equitable remedies to end the illegal imposition of duplicative costs by Respondents:

(1) a declaration that the Respondents' policy and practice of imposing duplicative costs in a single criminal matter is unlawful and unconstitutional;

(2) a declaration that the Respondents may not impose costs on a criminal defendant unless it provides timely and effective notice in the form of a bill of costs to be provided at sentencing;

(3) an injunction forbidding Respondents from continuing to impose duplicative costs and from attempting to collect unlawfully imposed duplicative costs;

(4) and an injunction enjoining Respondents to provide notice in the form of a bill of costs at sentencing, to adjust any unpaid balances to remove duplicate costs, to notify individuals and third-party credit agencies that their balances have been adjusted, and to immediately take steps to develop proper processes for use in imposing costs.

IV. LEGAL STANDARD FOR ADDRESSING PRELIMINARY OBJECTIONS

In determining whether to sustain or overrule preliminary objections, the court must "accept as true all well-pleaded, material, and relevant facts alleged in the complaint and every inference that is fairly deducible from those facts." *Raynor v. D'Annunzio*, 243 A.3d 41, 52 (Pa. 2020); *accord Meggett v. Pennsylvania Dep't of Corr.*, 856 A.2d 277, 279 (Pa. Commw. 2004) (citing *Kreamer v. Dep't of Corr.*, 834 A.2d 710 (Pa. Cmwlth. 2003)). If there is any doubt that the complaint is "legally insufficient to establish a right to relief," the objection should be overruled. *Werner v. Zazyczny*, 681 A.2d 1331, 1335 (Pa. 1996)).

V. ARGUMENT

Petitioners will begin by dispensing with Respondents' mischaracterization of their claims as a challenge to the sentences imposed in their criminal cases, a mischaracterization that drives the bulk of Respondents' arguments (Jud. POs ¶¶ 9, 10, 13; Clerk POs ¶ 10, 11, 13). Then Petitioners will demonstrate that they have stated claims against all Respondents (Jud. POs ¶¶ 11, 12, 14; Clerk POs ¶¶ 12, 15); that this Court is the proper forum for those

claims;[3] that Petitioners have standing to assert their claims (Jud. POs ¶ 16); and that the remedies sought are proper (Jud. POs ¶¶ 15; Clerk POs ¶¶ 14, 16).[4] All of Respondents' Preliminary Objections should be overruled.

A. The Costs at Issue Are Not Part of Any Criminal Sentence, Therefore There Are No Issues of Collateral Attack

1. Supreme Court authority, confirmed by statute, dictates that court costs are not part of a criminal defendant's sentence.

The Judicial Respondents' arguments on collateral attack (and much else) rest on a misstatement of the legal nature of court costs. Court costs are *not* part of a defendant's sentence.[5] As the Supreme Court has explained, the "costs in a criminal proceeding **[are] not part of the sentence**, but [are] an incident of the judgment. … Costs do not form a part of the penalty imposed by statutes providing for the punishment of criminal offenses." *Com. v. Giaccio*, 202 A.2d 55, 58 (1964), *rev'd on other grounds sub nom. Giaccio v. State of Pa.*, 382 U.S.

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[3] Although Judicial Respondents brief this issue, it is not listed among their preliminary objections and can and should be overruled as waived on that basis alone. Pa.R.Civ.P. 1028(b); 1032(a).

[4] The Respondents also assert that Petitioners do not meet Rule 1702's class action pleading requirements in their Preliminary Objections (Jud. POs ¶ 17; Clerk POs ¶ 17), listed as the seventh "Question Presented" in their brief, but offer no actual argument. "A party waives a preliminary objection it does not support in its brief." *Phantom Fireworks Showrooms, LLC v. Wolf*, 198 A.3d 1205, 1219 (Pa. Cmwlth. 2018). This preliminary objection should therefore be overruled.

[5] *See* Jud. Brief 2. In contrast to the Judicial Respondents, Respondent Schreiber concedes that the imposition of costs is not a part of the sentence and is "incidental to judgment." Clerk Brief 14 (citing *Com. v. Rivera*, 95 A.3d 913, 916 (Pa. Super. 2014)).

399 (1966) (emphasis added).[6] The Pennsylvania Supreme Court not only distinguished costs from a criminal sentence, but it went on to describe the "civil character of costs" as akin to reimbursement of expenses in civil cases. *Id.* at 58–59. Decades later, the Supreme Court confirmed that this remains the law. *Com. v. Nicely*, 638 A.2d 213, 217 (Pa. 1994) ("The imposition of costs in a criminal case is not part of the sentence, but rather is incident to the judgment.").[7] The separation of costs from the sentence makes them distinct from fines. *See Com. v. Hudson*, 231 A.3d 974, 980 (Pa. Super. 2020) (unlike costs, which are "incident to judgment," "fines are considered direct consequences and, therefore, punishment") (quoting *Com. v. Rivera*, 95 A.3d 913, 916 (Pa. Super. 2014) and *Com. v. Wall*, 867 A.2d 578, 583 (Pa. Super. 2005)).

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[6] In *Giaccio*, the Pennsylvania Supreme Court upheld a state statute that allowed the imposition of costs on a person who had been acquitted of a criminal charge, on the ground that the costs of litigation were not a penalty conditioned on a guilty verdict. *Giaccio*, 202 A.2d at 58. The U.S. Supreme Court reversed and struck the statute down, assuming the non-penal character of costs, for being unconstitutionally vague and failing to provide standards to limit such costs. *Giaccio*, 382 U.S. at 402–403.

[7] That costs are separate from the sentence has been established in Pennsylvania for over a century. The Superior Court reasoned as early as 1901 that the costs were "no part of the penalty" and the "direction to pay them" not a final judgment. *Com. v. Dunleavy*, 16 Pa. Super. 380, 384 (1901); *accord Com. v. Cauffiel*, 97 Pa. Super. 202, 205-06 (1929); *see also Com. v. Moore*, 92 A.2d 238, 239 (Pa. Super. 1952). It remains true today. *See*, *e.g.*, *Com. v. Mulkin*, 228 A.3d 913, 919 (Pa. Super. 2020) ("[A] direction to pay costs in a criminal proceeding is not part of the sentence, but is an incident of the judgment").

The legislature has codified this common law view of costs as separate from the sentence. The statutory framework governing sentences distinguishes between fines and costs. It lists a "fine," but not "costs," as one of the "sentencing alternatives" that the court must consider, along with incarceration and probation. 42 Pa.C.S. § 9721(a). Moreover, if costs were a part of the criminal sentence, then a defendant would never be liable for such costs absent a specific court order setting forth the amount of those costs. *Cf.* 42 Pa.C.S. § 9758(a) (requiring sentencing courts "shall at the time of sentencing specify the amount of the fine up to the amount authorized by law"). But the imposition of costs does not require a judicial order. Instead, 42 Pa.C.S. § 9721(c.1) requires that courts "order the defendant to pay costs," then specifies that even if "the court fails to issue an order for costs" they are nevertheless "imposed upon the defendant under this section. No court order shall be necessary for the defendant to incur liability for costs under this section."

The Judicial Respondents argue that *Giaccio* is an old case. Jud. Brief 18. But age does not overrule a Supreme Court precedent, and they completely ignore the Supreme Court's decision in *Nicely* in 1994 upholding *Giaccio*'s understanding of costs. 638 A.2d at 217. They further ignore the statutory framework that distinguishes between sentencing and the imposition of costs. They cite several Superior Court decisions, as if those decisions could *sub silentio* overrule the Supreme Court or flout the statute. In fact, those cases address only whether a challenge to costs can be raised for the first time on appeal. The

Supreme Court's holdings in *Giaccio* and *Nicely*, and the statutory framework, still control.

Rather than overrule the Supreme Court, the Superior Court cases relied on by Respondents simply, as a prudential matter, permit an appeal of costs as already happens with fines and restitution, even if not properly raised below, because there would be no further proceedings in the case. These decisions provide a process "analogous" to that used for fines so that challenges to costs could be raised for the first time on appeal when the sentencing court acts unlawfully. For example, in *Allshouse,* the court merely looked to cases involving appeals from fines and restitution and explained that the court "analogously conclude[s] this rationale can be applied to the imposition of costs." *Com. v. Allshouse*, 924 A.2d 1215, 1229 n.28 (Pa. Super. 2007), *aff'd on other grounds,* 985 A.2d 847 (Pa. 2009), *vacated and remanded on other grounds sub nom. Allshouse v. Pennsylvania*, 562 U.S. 1267 (2011), and *aff'd,* 36 A.3d 163 (Pa. 2012). The same also occurred in *Garzone*, where the Superior Court drew a distinction between the "legality of the sentence" and a claim about costs that goes to the "legality of *sentencing*," citing to cases about restitution. *Com. v. Garzone*, 993 A.2d 306, 316 (Pa. Super. 2010), *aff'd,* 34 A.3d 67 (Pa. 2012) (emphasis added). These cases are not redefining "costs" as actually being a part of the sentence. Indeed, numerous recent decisions from that court, including *Hudson,* 231 A.3d at 980, and *Mulkin*, 228 A.3d at 919, have affirmed that costs are not (and never

have been) part of the sentence.[8] Nor could they hold otherwise, given *Giaccio* and *Nicely*.[9]

2. This is not a collateral attack on a criminal sentence and the PCRA does not bar petitioners' request for relief.

As noted above, Respondents are incorrect, and "costs" are not part of a criminal sentence but are "merely incident" to it. *See*, *e.g.*, *Rivera*, 95 A.3d at 916; *Giaccio*, 202 A.2d at 58. As a matter of law, therefore, a challenge to court costs is not a collateral attack on a sentence. As a result, Respondents' contention that the appropriate remedy is through the Post-Conviction Relief Act ("PCRA") is misplaced. The PCRA only allows that "persons serving illegal sentences may obtain collateral relief." 42 Pa.C.S. § 9542. But as costs are not a part of the sentence, the illegal costs imposed in Petitioners' cases fall outside

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[8] The non-precedential *en banc* decision in *Com. v. Gary-Ravenell* noted tension between costs not being part of a sentence but a challenge thereto going to the legality of the sentence; ultimately the court decided not to take any action on it. 241 A.3d 460 (Table), 2020 WL 6257159, at *8–9 (Pa. Super. 2020) (en banc) (unpublished). The court, which raised the issue *sua sponte*, did not have the benefit of briefing by the parties to note the distinctions drawn in *Garzone* and *Allshouse*.

[9] It is true that courts, including this Court, have interpreted costs as being "penal" in nature for purposes of applying the rules of construction, 1 Pa.C.S. § 1928. *See*, *e.g.*, *Garzone*, 34 A.3d at 75 (concluding *sua sponte* that "statutes authorizing an assessment of expenses in criminal cases are penal" and subject to strict construction); *Fordyce v. Clerk of Cts.*, 869 A.2d 1049, 1053 (Pa. Cmwlth. 2005) ("[S]tatutory provisions governing the imposition of the costs of prosecution must be strictly construed"). But a recognition that court costs harm defendants and should be narrowly construed, even if not technically "punishment," is a far cry from overruling the precedent stretching back more than a century that continues to treat the imposition of costs as separate from the sentence.

the scope of the PCRA. And since the PCRA "is not intended to limit the availability of remedies . . . to provide relief from collateral consequences of a criminal conviction," the PCRA has no bearing on the ability of Petitioners to seek relief for collateral consequences that are separate from their criminal sentences. 42 Pa.C.S. § 9542; *see Rivera*, 95 A.3d at 916 ("Costs . . . are akin to collateral consequences."); *cf. Com. v. Descardes*, 136 A.3d 493, 501 (Pa. 2016) (defendant *who sought to set aside conviction* because of ineffective assistance of counsel on collateral immigration issues "is seeking relief from his judgment of sentence; thus, the third sentence of Section 9542 is not relevant to the scenario presented in the case sub judice") (emphasis added).

Moreover, this Court has repeatedly rejected claims that challenges to the illegal or unconstitutional assessment of court costs fall under the PCRA or are otherwise outside of this Court's jurisdiction. *See*, *e.g.*, *Saxberg v. Department of Corrections*, 42 A.3d 1210, 1213 (Pa. Cmwlth. 2012) (inmate's challenge to sentencing order that did not provide detail about costs not "an illegal or improper attack on the underlying sentencing order, which he should have brought under a PCRA petition," and within Commonwealth Court's jurisdiction); *Guarrasi v. County of Bucks*, 176 M.D. 2018, 2018 WL 4374280, at *3 (Pa. Cmwlth. Sept. 14, 2018) (unpublished) (following *Saxberg*, challenge to sheriff's transportation costs as court costs not subject to PCRA); *Spotz v. Com.*, 972 A.2d 125, 135 (Pa. Cmwlth. 2009). Accordingly, under this Court's precedents, there is no bar to Petitioners seeking relief in this Court from their illegal court costs.

Finally, other decisions from this Court, including *Guarrasi*, have permitted lawsuits specifically against the clerk of courts for collecting illegally imposed costs. In *Fordyce v. Clerk of Cts.*, 869 A.2d 1049, 1053 (Pa. Commw. 2005), this Court ruled that certain transportation costs were illegal and ordered the clerk of courts to remove them.[10] Respondent Schreiber looks to a similar case, *Com. v. Williams*, 909 A.2d 419, 420 (Pa. Cmwlth. 2006), and wrongly concludes that it means that any challenge to costs must be brought "in the sentencing court." *Williams*, too, involved an inmate who sought a writ of mandamus to compel the clerk of courts to stop collecting illegally imposed costs. The trial court incorrectly held it lacked jurisdiction, but this Court found that the trial court did have jurisdiction for the collateral challenge to the collection of costs, because the clerk was a county official, and remanded. *Id.*[11] *Williams* reflects a finding of jurisdiction for the sentencing court, not a limit of jurisdiction on this Court. It in no way bars this Court's jurisdiction to invalidate court costs that were imposed illegally. For these reasons Judicial

[10] *Fordyce*'s holding as to the illegality of those costs has since been superseded by statute. *See Com. v. Morales-Rivera*, 67 A.3d 1290, 1293 (Pa. Cmwlth. 2013) (citing 42 Pa.C.S. § 9728(g)). This supersession has no bearing on the appropriateness of naming the clerk as party to correct illegal costs.

[11] *Fordyce* and *Williams* predated the Supreme Court's ruling in *Richardson v. Peters,* 19 A.3d 1047 (Pa. 2011), that the clerk of courts is a Commonwealth officer, and thus at the time mandamus jurisdiction was appropriate in common pleas court. The point here is that Respondent Schreiber *is* subject to a lawsuit for unlawful costs, and such action need not be raised in the underlying criminal case.

Respondents' POs ¶¶ 9, 10 and Respondent Schreiber's POs ¶¶ 10, 11 should be overruled.

3. *Heck v. Humphrey* does not bar Petitioners' federal claims.

Both the Judicial Respondents and Respondent Schreiber cite the U.S. Supreme Court's decision in *Heck v. Humphrey*, 512 U.S. 477 (1994), which prohibits the use of federal civil rights claims to collaterally attack a state court sentence. Jud. Brief 19-20; Clerk Brief 11-12. *Heck* only applies where the underlying Section 1983 claim would "necessarily imply" the invalidity of a criminal *conviction*, or "necessarily imply" the invalidity of the *duration* of a criminal sentence.[12] 512 U.S. at 487. *Heck*, therefore, has no application here because, again, costs are not a part of the sentence and thus Petitioners do not attack the validity of any criminal sentence nor its duration. *See Muhammad v. Close*, 540 U.S. 749, 751-752 (2004) (per curiam) (holding that the rule articulated in *Heck* is *only* applicable when the inmate seeks to challenge the validity of a conviction or the duration of the sentence). The challenge to illegal and unconstitutional duplicative costs has nothing to do with the underlying validity of Petitioners' criminal convictions. Nor will any remedy Petitioners achieve have any effect on the duration of their sentences—costs are just not part of a sentence but are merely incident to it. *See*, *e.g.*, *Nicely*, 638 A.2d at 217.

[12] *Heck* applies only to federal claims brought pursuant to 42 U.S.C. § 1983. Thus, even if it were applicable here (and it is not) it would apply only to Counts III and V of the Petition.

Respondent Schreiber cites no cases at all in support of her *Heck* argument. The sole case cited by the Judicial Respondents is cited as follows: "*Weaver v. Franklin Co.*, 918 A.2d 194, 202 (Pa. Cmwlth. 2007) (applying *Heck* to bar a Section 1983 challenge to a *conviction*), *allocator denied*, 918 A.2d 198 (Pa. 2007)." (emphasis added). Jud. Brief 19. Thus Respondents' own description in the parenthetical makes it clear that *Weaver* is a standard application of *Heck* where it applies, *i.e.*, when the validity of a conviction is challenged. Indeed, the *Weaver* court made precisely that finding. 918 A.2d at 202 ("Here, evidence on the present claims would require proof of a wrongful conviction."). Nothing in Petitioners' claims would require a finding about the validity of their conviction or the duration of their sentence. *Heck* does not apply. For these reasons Judicial Respondents' PO ¶ 13 and Respondent Schreiber's POs ¶¶ 13 should be overruled.

B. Petitioners Set Forth Cognizable and Sufficient Legal Claims Against Respondents

1. Petitioners have set forth an *ultra vires* claim.

Petitioners have pleaded that Respondents, through their policy and practices, impose duplicative costs that are forbidden by Pennsylvania statute, all without providing notice to convicted individuals through a bill of costs. The Respondents do not dispute the proposition that duplicated costs are illegal. Rather Judicial Respondents argue that Petitioners are improperly attacking judicial discretion. But that is contrary to the law, as there is no discretion to act unlawfully.

Respondents' policy and practice is *ultra vires* because costs cannot be imposed except pursuant to express statutory authorization. No statute authorizes imposing any individual cost, or all costs, more than once per case, and Pennsylvania's common law specifically prohibits such a practice. Costs imposed without statutory authority are illegal. *See*, *e.g.*, *Garzone*, 34 A.3d at 80 (finding assessment relating to prosecutors' salaries improper as it was not authorized by statute); *Com. v. Coder*, 415 A.2d 406, 410 (Pa. 1980) (explaining that "a defendant may be required to only pay costs authorized by statute" and invalidating costs relating to jurors' expenses). As the Supreme Court has explained, statutes imposing court costs—while not part of the sentence—are still "penal in nature and therefore subject to strict construction." *Garzone*, 34 A.3d at 75. Where a "statute does not expressly identify" certain costs, and the question of whether such costs are statutorily authorized is "equivocal (at best)," a narrower construction favoring the criminal defendants "must prevail." *Id.* at 78.

Respondents do not identify a single cost that they believe can be imposed more than once per case. There are over two-dozen individual costs, set forth by separate statutes, at issue here. *See* Pet., Ex. B. While the wording of each statute is different, a few examples highlight the point that no statute authorizes imposition more than once. The "Access to Justice" fee authorized by 42 Pa.C.S. § 3733.1(a)(3), 42 Pa.C.S. § 3733(a.1)(1)(ii) and 72 P.S. § 1795.1-E(b)(2), may be imposed "in any criminal proceeding." The "County and State Court Cost," authorized by 42 Pa.C.S. § 1725.1(b), applies in "every criminal

case." And the assessment for the "Judicial Computer Project" authorized by 42 Pa.C.S. § 3733(a.1), applies "for the initiation of any criminal proceeding." None of these authorizing statutes allow courts to impose these costs for "each charge" or "per charge" or for "every separate offense."

In addition, Pennsylvania's common law prohibits imposing costs more than once on a defendant in a single criminal proceeding, and Respondents do not dispute this in their preliminary objections or their briefs. This comes from the Act 17 of March 10, 1905, P.L. 35, 19 P.S. § 1294, which reads in relevant part:

> Section 2. It shall be unlawful, in all criminal prosecutions hereafter instituted, to tax costs in and on more than one return, information, complaint, indictment, warrant, subpoena or other writ, against the same defendant or defendants, where there has been a severance or duplication of two or more offenses which grew out of the same occurrence, or which might legally have been included in one complaint and in one indictment by the use of different counts.
>
> Section 3. It shall be the duty of all public officers charged with the duty of taxing, and issuing certificates and warrants for the payment of, costs in criminal cases, to see that no costs are taxed and paid in violation of the provisions of the first and second sections of this act.

This provision bars duplicating costs on multiple crimes or offenses that "arose out of the same occurrence or transaction." *Com. v. Dorsey*, 421 A.2d 777, 778 (Pa. Super.1980). In such instances, "only one set of costs should have been assessed," *id.*, because "it is very evident that [the Act's] purpose was to prevent

a duplication of costs," *Com. v. Smith*, 62 Pa. Super. 288, 290 (1916). Section 1294 remains in effect as part of the Commonwealth's common law.[13]

Respondents' objections to this claim are founded on their legal and factual mischaracterizations of the facts and of Petitioners' claims. First,

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[13] Section 1294 was repealed by Act 53 of 1978, the Judiciary Act Repealer Act ("JARA"), but it remains a part of Pennsylvania's common law. JARA repealed Section 1294, along with approximately 1,500 other statutes in part or full, but it also included a savings clause that if there are no Supreme Court rules in effect that govern the same topic as the repealed statute, "the practice and procedure provided in the repealed statute shall continue in full force and effect, as part of the common law of the Commonwealth, until such general rules are promulgated." 42 P.S. § 20003(b). Pennsylvania's appellate courts have repeatedly upheld the savings clause of JARA. *See, e.g.*, *Harnish v. Sch. Dist. of Philadelphia*, 732 A.2d 596, 598 n.1 (Pa. 1999); *Com. v. Larsen*, 682 A.2d 783, 795 (Pa. Super. 1996); *Weaver v. Weaver*, 605 A.2d 410, 412 n.3 (Pa. Super. 1992).

The Superior Court ruled shortly after the adoption of JARA that Section 1294 had been repealed, *see Com. v. Gifford*, 450 A.2d 700, 701 (Pa. Super. 1982), but that ruling contained no analysis of JARA and has been abrogated considering the numerous subsequent decisions that continue to apply laws like Section 1294 through the JARA savings clause.

To the extent that this Court's decision in *Donatucci v. Com., Pennsylvania Lab. Rels. Bd.*, 547 A.2d 857, 861 (Pa. Cmwlth. 1988) (en banc) draws a distinction between substantive and procedural provisions as being saved under JARA, Section 1294 is unquestionably procedural because the Supreme Court has already promulgated a Rule of Criminal Procedure that addresses the same issue as it relates to summary cases. *See* Pa.R.Crim.P. 453 ("When more than one summary offense is alleged to have been committed by one person arising from the same incident, the matter shall proceed as a single case and the issuing authority shall receive only one set of costs.").

For these reasons and because no Supreme Court rule governs this practice, Section 1294's limitation that only a single set of costs can be imposed upon a defendant for charges arising out of the same occurrence remains in effect through the common law. To do otherwise is to act *ultra vires*.

Respondents rely on their mischaracterization of costs as part of the sentence, which is thoroughly debunked above. Next, Respondents pretend that Petitioners are challenging express judicial orders that embody the exercise of judicial discretion. The initial problem with this defense is that, as Petitioners allege, as a matter of practice these costs are *not* expressly ordered by the presiding judge. *See* Pet. ¶¶ 39, 43, 47, 51, 55. Instead, the presiding judge issues a general order "for costs"; those costs are identified and assessed by the court administration after the fact. That is, the actual application of duplicative illegal costs happens outside the courtroom, as part of the practice of Respondents, with no specific determinations made by the presiding judge that the duplicated costs should apply. Pet. ¶¶ 62-69. *See Raynor v. D'Annunzio*, 243 A.3d 41, 52 (Pa. 2020) (The court must "accept as true all well-pleaded, material, and relevant facts alleged in the complaint and every inference that is fairly deducible from those facts."). Moreover, *if*, for the sake of argument, the imposition of costs was the product of judicial "discretion," that would be no defense, as judges do not have "discretion" to violate the law, and costs imposed in contravention of statute are void.

The Judicial Respondents make another attempt to ignore the pleadings and substitute their own version of the facts by claiming that individual sentencing judges use their discretion to determine that the charges in an individual case arise from multiple occurrences—and thus duplicated costs could be imposed. As is made clear, Petitioners are only challenging the imposition of duplicated costs where those costs are imposed in a *single* case *and*

the charges all arose from a *single* occurrence. If there are cases where multiple charges arise from different occurrences and are all addressed in one case, such cases fall outside the scope of this lawsuit.[14] And if the Respondents wish to take issue with the facts pled, they may do so in due course, but they are not free to assume their own set of facts in preliminary objections.[15]

By violating the terms of the statutes at issue, and Pennsylvania common law, Respondents' imposition of duplicative costs is *ultra vires*. Petitioners have adequately pled this claim. For these reasons Judicial Respondents' PO ¶¶ 11, 15 and Respondent Schreiber's POs ¶ 15 should be overruled.

2. Petitioners have set forth Due Process claims.[16]

Petitioners also state due process claims under the Pennsylvania Constitution, Count II, and the U.S. Constitution, Count IV, for Respondents'

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[14] Additionally, as discussed below at 29-32, there are no findings in the records of Named Petitioners where sentencing judges make any express determinations that the Petitioners' cases consisted of multiple occurrences.

[15] Judicial Respondents claim that "Petitioners acknowledge that the alleged duplicative court costs are assessed based solely on sentencing determinations" But that is untrue—as explained above, costs are not part of the sentence. The Petition's only references to judicial discretion are in ¶¶ 36 and 91(g). Read in light of the whole Petition, these references are neither admissions that judges have the discretionary authority to impose unauthorized costs nor acknowledgment that reasoned discretion has been exercised. *See William Penn Sch. Dist. v. Pennsylvania Dep't of Educ.*, 170 A.3d 414, 459 n.65 (Pa. 2017) ("To the extent that their Petition read as a whole creates any ambiguity on this point, we emphasize that it is our obligation to read the Petition in the light most favorable to Petitioners' claims.").

[16] The due process claim brought under state law, Count II of the Petition, are brought against all Respondents. That brought under federal law, Count III of the Petition, is only brought against Respondents Del Ricci, Kehs,

deprivation of Petitioners' property through the imposition of illegal costs without providing adequate notice and a meaningful opportunity to contest the deprivation.

Pennsylvania courts demand that defendants receive a bill of costs that outlines precisely which costs are being assessed against them, so that they have an opportunity to file objections. *See Coder*, 415 A.2d at 410 (explaining that a defendant is entitled to a bill of costs on which she can file objections); *Com. v. Allshouse*, 924 A.2d at 1229 (it is "well-settled" that a defendant must receive a bill of costs)[17]; *see also Com. v. Gill*, 432 A.2d 1001, 1004 (Pa. Super. 1981) (noting that defendants received bills of costs from which they filed objections).[18]

The requirement that the defendant in a criminal case receive a bill of costs has a constitutional due process underpinning. It reflects money that the defendant must pay, which is a protected property interest under the U.S. Constitution's Due Process Clause. *See Nelson v. Colorado*, 137 S.Ct. 1249, 1255

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and Schreiber, because the Judicial District, as a Commonwealth agency (as opposed to a Commonwealth officer) cannot be sued under 42 U.S.C. § 1983.

[17] The judgment in this case was vacated by *Allshouse v. Pennsylvania*, 562 U.S. 1267 (2011), because of the Supreme Court's decision in *Michigan v. Bryant*, 562 U.S. 355 (2011), concerning the Confrontation Clause. This subsequent history does not disturb the separate holding on costs.

[18] While cases sometimes use the phrase "bill of costs" in connection with a District Attorney's submission of the expenses and costs of prosecution, the clerk of courts must submit a bill of costs detailing all the costs assessed in the case. *See Com. v. Hower*, 406 A.2d 754, 755 (Pa. Super. 1979) (describing the bill of costs presented by the clerk of courts, from which the defendant successfully had several items stricken).

(2017); *Buck v. Beard*, 879 A.2d 157, 160 (Pa. 2005). When protected property interests are at stake, the state must provide notice and an opportunity to be heard, *before* depriving an individual of their property. *See Pennsylvania Bankers Ass'n v. Pennsylvania Dep't of Banking*, 956 A.2d 956, 965 (Pa. 2008); *see also Com. v. All That Certain Lot*, 104 A.3d 411, 459 n.17 (Pa. 2014). "Certainly, here, no notice is not 'reasonable' notice." *In re Change of Location & Lines of Highway Known as State Highway Route 222, in Stonycreek Twp., Cambria Cty.*, 161 A.2d 380, 384 (Pa. 1960).[19]

These due process requirements are fundamental and well-established. *Mathews v. Eldridge*, 424 U.S. 319, 348 (1976) ("The essence of due process is the requirement that 'a person in jeopardy of serious loss (be given) notice of the case against him and opportunity to meet it.'"). The other elements of due process flow from adequate notice. *See Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) ("This right to be heard has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest."); *see also Kowenhoven v. Cty. of Allegheny*, 901 A.2d 1003, 1012 (Pa. 2006); *Fiore v. Bd. of Fin. & Revenue*, 633 A.2d 1111, 1115 (Pa. 1993).

[19] As noted, the electronic docket sheet is, at some point later—weeks or months after sentencing—updated with information about costs but that does not cure Respondents' violation of Petitioners' rights. The Supreme Court and the Superior Court have rejected that an entry on an electronic docket sheet constitutes constitutionally adequate notice. *See Com. v. Hess*, 810 A.2d 1249, 1253–54 (Pa. 2002); *Com. v. Parks*, 768 A.2d 1168, 1171 (Pa. Super. 2001).

Moreover, costs imposed without constitutionally adequate due process of law are void. *See Giaccio v. Pennsylvania*, 382 U.S. 399, 402 (1966) (costs imposed on defendant without clear standards are void); *Com. v. Marek*, 156 A.2d 349, 351 (Pa. Super. 1959); *see also U.S. Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 270-71 (2010) (observing that a judgment "premised … on a violation of due process that deprives a party of notice or the opportunity to be heard" is a "legal nullity"); *Hepler v. Urban*, 544 A.2d 922, 923-24 (Pa. 1988) (absent proper notice "it would be an extraordinary miscarriage of justice to permit the order to stand even if it had become final").

It is at sentencing—when these costs are imposed—that the notice must be given to the defendant. For example, the reason why the Department of Corrections can constitutionally deduct costs from inmate accounts is because they already received "notice and an opportunity to be heard at [their] sentencing hearing[s]" on what they owe. *Buck*, 879 A.2d at 160. Underpinning the Court's decision in *Buck* is the notion that, at the *sentencing hearing*, a defendant has received "the opportunity to present evidence to persuade the court not to impose fines, costs, and restitution." *Id.* That does not work, of course, if the defendant has no notice and no knowledge of what those costs are. While "the practice of a judge ordering a defendant to pay costs, and leaving the assessment of the amount to the clerk" is acceptable, *Richardson v. Dep't of Corrections*, 991 A.2d 394, 397 (Pa. Cmwlth. 2010), the clerk must still provide timely notice of the itemization by sentencing to the defendant so that a defendant's ability to challenge those costs is not compromised.

Petitioners have therefore adequately pled due process claims for Respondents' failure to provide notice of court costs that is constitutionally adequate to ensure Petitioners had and will have an opportunity to object to the legality of their imposition. For these reasons Judicial Respondents' PO ¶ 12, 14 and Respondent Schreiber's POs ¶¶ 12, 15 should be overruled.

3. Petitioners have set forth Equal Protection claims.[20]

Petitioners set forth equal protection claims under state, Count III, and federal, Count IV, constitutions that allege that Respondents, arbitrarily and without justification, impose duplicated costs in *some* cases where defendants are convicted of multiple offenses in a single case, but not in others. These claims do not, as the Judicial Respondents argue, require that Petitioners allege that they have been treated differently because of their membership in a defined class: the constitutional equal protection guarantee prohibits the singling out of Petitioners for arbitrary government action. *See Downingtown Area Sch. Dist. v. Chester Cty. Bd. of Assessment Appeals*, 913 A.2d 194, 201 (Pa. 2006) ("[I]t is well settled that the federal equal protection concept proscribing purposeful and/or systemic discrimination—again, the floor for Pennsylvania uniformity jurisprudence—pertains even to a class of one."); *see also Village of*

[20] The equal protection claim brought under state law, Count IV of the Petition, is brought against all Respondents. That brought under federal law, Count V of the Petition, is only brought against Respondents Del Ricci, Kehs, and Schreiber, because the Judicial District, as a Commonwealth agency (as opposed to a Commonwealth officer) cannot be sued under 42 U.S.C. § 1983.

Willowbrook v. Olech, 528 U.S. 562, 564 (2000); *Uniontown Newspapers, Inc. v. Roberts*, 839 A.2d 185, 197-98 (Pa. 2003).

Petitioners' right to equal protection of the laws has been violated because they have been subject to illegal duplicative costs that others with the same types of criminal cases have not had imposed. Moreover, the irrational and arbitrary nature of Respondents' practice further demonstrates that Respondents are not even consistent in their decisions about which costs they duplicate. There are costs that they *never* duplicate such as the "Booking Center Fee," authorized by 42 Pa.C.S. § 1725.5, which allows a court to impose it when a defendant "is convicted of a crime," or the "COC Processing Fee Misd/Fel," authorized by 42 P.S. § 21061, in "all proceedings." These statutes are no different from others, such as "Access to Justice" (described above), that are routinely duplicated.

Judicial Respondents object that Petitioners' equal protection claims fail to identify a class of criminal defendants that was treated differently. Jud. Brief 23-25. Yet this argument rests on Judicial Respondents' misstatement of the Petition. *See Raynor*, 243 A.3d at 52 (The court must "accept as true all well-pleaded, material, and relevant facts alleged in the complaint and every inference that is fairly deducible from those facts."). The "class" that has had its rights to equal protection violated is that defined clearly in the Petition: individuals "against whom any duplicated costs have been or will be imposed in one criminal case when the charges arise out of the same occurrence."

The Judicial Respondents do not respond to these allegations, but instead argue against a fictional petition where the allegations are that the presiding judges made specific, determined findings that the criminal defendants were charged with multiple crimes related to multiple occurrences. *See* Jud. Brief 24. But that is not what the Petition here alleges, nor are any such findings evident in the record of Named Petitioners. Instead, Petitioners bring an action on behalf of a class of individuals "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 (emphasis added). The class of similarly situated individuals flows directly from this class definition: those individuals who were or will be assessed duplicated costs *when the charges arise out of the same occurrence*, where other individuals who also had charges that arose or will arise out of the same occurrence did not or will not have the duplicated charges imposed.

To survive an equal protection challenge, "a classification must rest upon some ground of difference which justifies the classification and has a fair and substantial relationship to the object of the legislation." *Curtis v. Kline*, 666 A.2d 265, 268 (Pa. 1995); *see also Mixon v. Com.*, 759 A.2d 442, 451 (Pa. Cmwlth. 2000) (voter registration status of individuals prior to incarceration could not be used to restrict post-incarceration franchise); *Haveman v. Bureau of Prof'l & Occupational Affairs*, 238 A.3d 567, 577 (Pa. Cmwlth. 2020) ("good moral character" requirement of cosmetology licensing violated equal protection rights of Pennsylvania Constitution where such requirement lacked for barber licenses).

Judicial Respondents fail to offer any justification of their arbitrary policy of imposing illegal costs on some criminal defendants who are convicted of multiple offenses in one case but not others. Petitioners have therefore adequately pled equal protection claims for Respondents' arbitrary and unjustified imposition of illegal, duplicate costs on some criminal defendants but not others. For these reasons Judicial Respondents' PO ¶ 12 and Respondent Schreiber's POs ¶¶ 12 should be overruled.

4. Petitioners' claims are sufficiently specific as to Respondent Schreiber.

Respondent Schreiber makes a summary objection that Petitioners' Petition lacks sufficient specificity to present a defense under Rule 1028(a)(3). As laid out in the Petition and discussed further above, Petitioners allege a policy and practice at the 38th Judicial District of assessing illegal, duplicative costs on criminal defendants. Petitioners allege that Respondent Schreiber supervises and directs the calculation and entry of illegal, duplicative costs into the computer systems and supervises the collection of these illegal costs. Petition ¶ 25. Petitioners allege that this conduct is *ultra vires* and beyond the statutory authority of all Respondents, that this practice is applied in an arbitrary and capricious manner in violation of the equal protection guarantees of the constitutions of the Commonwealth of Pennsylvania and the United States of America, and that all Respondents fail to provide adequate notice to contest the illegal assessment of these charges in violation of the due process guarantees of those same constitutions. As a matter of claims, this is a

straightforward case with sufficiently specific allegations as to Respondent Schreiber that is well above the lenient standard to overcome preliminary objections in the nature of demurrer. *See Ladd v. Real Estate Comm'n*, 230 A.3d 1096, 1103 (Pa. 2020) ("A preliminary objection in the nature of a demurrer should be sustained only in cases that clearly and without a doubt fail to state a claim for which relief may be granted."). For these reasons Respondent Schreiber's PO ¶ 14 should be overruled.

C. The Commonwealth Court Is the Proper Forum for Petitioners' Claims

The Judicial Respondents argue that only the Supreme Court has jurisdiction to hear claims implicating the conduct of Common Pleas judges or courts. *See* Jud. Brief 13-15. As an initial matter, although Judicial Respondents brief this issue, it is not listed among their preliminary objections and can and should be overruled as waived on that basis alone. Pa.R.Civ.P. 1028; *see Foster v. Peat Marwick Main & Co.,* 587 A.2d 382, 386 (Pa. Cmwlth. 1991), *aff'd sub nom. Foster v. Mut. Fire, Marine & Inland Ins. Co.,* 676 A.2d 652 (Pa. 1996).

Furthermore, Judicial Respondents' contention is not accurate. The Commonwealth Court has original jurisdiction over this action and all forms of relief requested pursuant to 42 Pa.C.S. § 761(a)(1).[21] Pet. ¶16. Indeed, a very

[21] Section 761(a)(1) provides that "the Commonwealth Court shall have original jurisdiction of all civil actions or proceedings … Against the Commonwealth government, including any officer thereof, acting in his official capacity" subject to listed exceptions, none of which Respondents identify here.

recent decision from the Pennsylvania Supreme Court, neither cited nor discussed by Respondents, confirms this. In *Gass v. 52nd Jud. Dist., Lebanon Cty.,* 223 A.3d 212 (Pa. 2019) (per curiam), the Supreme Court rejected the proposition that allegations of *ultra vires* conduct by courts must be presented to the Supreme Court exclusively. The *Gass* petitioners sought declaratory and injunctive relief against a "medical marijuana policy" adopted by the 52nd Judicial District and issued by its President Judge forbidding the use of medical marijuana by people on probation and threatening probation violation proceedings. Petitioners there alleged that the policy violated immunity provisions of Pennsylvania's Medical Marijuana Act. In short, the case turned, as this one does, on the allegation that the policy and practice of the Judicial District, as articulated by the President Judge, violated the law.

The case was originally brought in the Commonwealth Court, but this Court concluded, *sua sponte,* that it lacked jurisdiction over the case and transferred it to the Supreme Court. 223 A.3d at 212. This Court explained its decision to transfer with reference to the *Municipal Publications, Inc.* and *Leiber* decisions, among others, that Respondents rely on here and concluded that it lacked jurisdiction "to tell the Common Pleas Court that it had no jurisdiction to issue the type of Policy it did, or, in so doing, it exceeded its authority and violated the Law of this Commonwealth; and, direct the Common Pleas Court judges not to implement or enforce the Policy." *Gass v. 52nd Jud. Dist., Lebanon Cty*, 574 M.D. 2019 at 7 (Pa. Cmwlth. Oct. 23, 2019) (per curiam). This Court construed the *Gass* petition as a request for a writ of prohibition and held that

adjudicating it would impermissibly intrude on the Supreme Court's supervisory powers—exactly the approach urged by Judicial Respondents here. *Id.*

The Pennsylvania Supreme Court, however, rejected that reasoning, finding that it did not "explain how this action falls outside of [the Commonwealth Court's] original jurisdiction." 223 A.3d at 212 (citing 42 Pa.C.S. § 761). It explicitly rejected the proposition that the *Gass* petitioners sought a writ of prohibition: "Reframing those filings as a request for a writ of prohibition, where such relief is not evidently sought, is without foundation." *Id.* In the Supreme Court's view, the "transfer was improper" and the Commonwealth Court had jurisdiction to decide the case and issue an injunction. *Id.* at 213. Accordingly, under *Gass*, a case that involves a challenge to a policy and practice involving a court of common pleas falls within the original jurisdiction of this Court. *See Gass v. 52nd Jud. Dist., Lebanon Cty.,* 232 A.3d 706, 710 (Pa. 2020) ("Ultimately, *although the transfer by the Commonwealth Court was improvident*, this Court elected to exercise its extraordinary King's Bench jurisdiction to consider the petition.") (emphasis added).

Respondents urge this Court to repeat the mistake it made in *Gass*, contending that the Petition asks this Court to exercise administrative authority over the 38th District. But that, once again, misreads the Petition. Petitioners—like the petitioners in *Gass*—seek a declaration that a policy and practice of a Judicial District and its officials violates the law. That certainly falls within the powers of this Court. And Petitioners seek injunctive relief to restrain the

Respondents from continuing their illegal conduct, asking this Court to halt the Respondents' continuing efforts to claim and collect the illegal costs imposed on Petitioners and the class members. That certainly falls within the jurisdiction of this Court. Petitioners simply do not seek specific changes to the *internal operations* or the *administrative organization* of 38th Judicial District.[22]

Respondents' cases do not address the Supreme Court's reasoning in *Gass*. They instead reflect cases involving exercises of administrative discretion regarding the operation and administration of a judicial district or the authority of the President Judge of that District. *See Petition of Blake*, 593 A.2d 1267, 1269-70 (Pa. 1991) (Supreme Court's appointment of justices to oversee administrative reform of Philadelphia courts); *Leiber v. County of Allegheny*, 654 A.2d 11, 14 (Pa. Cmwlth. 1994) (judicial policy to only issue warrants to constables by the district justice); *Mun. Publications, Inc. v. Court of Common Pleas of Phila. Co.*, 489 A.2d 1286, 1288 (Pa. 1985) (demanding recusal of judge); *Guarrasi v. Scott*, 25 A.3d 394, 407 (Pa. Cmwlth. 2011) (demanding recusals of judges, removal of right to know officer, and regulating who signs court orders). These cases have nothing to do with a claim that a judicial district and its president judge have enacted a policy and practice of imposing illegal costs upon criminal defendants.

[22] Petitioners seek additional relief to prevent continuing harm to Petitioners by adjusting their court balances to eliminate the illegal costs and by sending corrections for any notices that the office sent to collections and credit agencies in reliance on the illegal court costs. These requests do not touch upon the personnel or operational details necessary to carry out the relief.

D. The Remedies Sought by Petitioners Are Proper and Available in This Action

1. Petitioners and putative Class Members have standing to seek both declaratory and injunctive relief.

The Petitioners and proposed class members have had illegal, duplicative and unconstitutional costs imposed on them; they are *currently obligated* to pay those costs; they *currently face* severe penalties if they do not repay them; and they have been denied constitutionally adequate notice that would have allowed them to object or appeal at the time of the imposition of such costs. This is direct, concrete and on-going, constitutionally adequate injury sufficient to confer standing to seek both the invalidation of the illegal costs and injunctive relief to prevent further harm from Respondents' practices.[23] Furthermore, because Respondents have a policy or practice of *ultra vires* conduct that will continue to cause economic harm to Petitioners and the class members, Petitioners have standing to request proposed injunctive relief to halt Respondents' *ultra vires* conduct.

a. <u>The standing of Petitioners and Class Members to challenge illegal and unconstitutional duplicative costs already imposed on them without notice is obvious.</u>

To establish standing a party must show that they have "a substantial, direct, and immediate interest in litigation." *Johnson v. Am. Standard*, 8 A.3d 318, 333 (Pa. 2010). That interest "is immediate if that causal connection is not

[23] Respondents do not once acknowledge that Petitioners and putative class members *currently owe* these illegal duplicative costs that Respondents continue to try to collect and face severe penalties if they do not pay them.

remote or speculative." *Fumo v. City of Philadelphia*, 972 A.2d 487, 496 (Pa. 2003). "The 'keystone to standing . . . is that the person must be negatively impacted in some real and direct fashion.'" *Markham v. Wolf*, 136 A.3d 134, 140 (Pa. 2016) (quoting *Pittsburgh Palisades Park, LLC v. Com.*, 888 A.2d 655, 660 (Pa. 2005)). Standing determinations in the Pennsylvania courts "have no constitutional predicate, do not involve a court's jurisdiction, and are regarded instead as prudential concerns implicating courts' self-imposed limitations." *Robinson Twp., Washington Cty. v. Com.*, 83 A.3d 901, 917 (Pa. 2013). "When determining whether [a party has] standing to challenge the legality of an action, it must be assumed that the action is in fact contrary to some rule of law." *William Penn Parking Garage, Inc. v. City of Pittsburgh,* 346 A.2d 269, 287 n. 32 (Pa. 1975).

Petitioners suffered a substantial injury when Respondents imposed illegal and *ultra vires* costs on them without adequate notice, thereby depriving them of a property interest protected by the constitutions of Pennsylvania and the United States. *See Nelson v. Colorado*, 137 S. Ct. 1249, 1255, (2017) (recognizing a property interest in costs imposed by state judicial process)[24]; *Buck*, 879 A.2d at 160 (same). The Petitioners' obligation to repay these costs under the threat of penalties constitutes clear, direct, and on-going harm suffice

[24] Generally speaking, the due process protections afforded under the Pennsylvania Constitution are consistent with those provided in the U.S. Constitution with the important exception that protections under the Pennsylvania Constitution may be *more* protective but never less. *Com. v. Davis,* 586 A.2d 914, 916 (Pa. 1991).

to ground standing. *See O'Connor v. City of Philadelphia Bd. of Ethics*, 13 A.3d 464, 471-472 (Pa. 2011) (finding standing where party faced the Hobson's choice of either capitulating to what it believes is an unlawful imposition or face penalties for failure to comply). Declaratory and injunctive relief would remedy these harms by declaring the duplicative costs are illegal, enjoining Respondents from continuing to collect them, enjoining Respondents from claiming those costs as part of Petitioners' balances, and requiring Respondent Schreiber to take other corrective action. Until such time as the illegal costs imposed on Petitioners are addressed, they continue to suffer injury and have standing.

b. Class Members who will be subjected to illegal and unconstitutional costs in the future because of respondents' policy also have standing.

Petitioners also request declaratory and injunctive relief to end Respondents' illegal practices and protect those who will be harmed in the future. Pet. ¶ 14. The proposed class is defined to include members against whom illegal, duplicative costs will be imposed in the future. Pet. ¶ 89. These class members also have standing to pursue prospective injunctive relief *because* Respondents' policy and practice to permit illegal duplicative costs makes it highly likely that Respondents will continue their illegal conduct in the future. *See e.g.,* Petition ¶¶ 1, 9, 23, 24, 25, 36, 59, 96, 97, 98, 99.

The Pennsylvania Supreme Court has long recognized the right of plaintiffs to bring injunctive actions to restrain prospective but likely harm. *See Edmunds v. Duff*, 124 A. 489, 492 (Pa. 1924) (where "reasonable grounds exist to

believe" that defendants conduct will result in harm, "the court will decree immediately to restrain such acts") (citing *Eckels v. Weibley*, 81 A. 645 (Pa. 1911)); *see also Kuren v. Luzerne County*, 146 A.3d 715, 718 (Pa. 2016) (finding that "a class of indigent criminal defendants [alleging] *prospective*, *systemic* violations" of constitutional rights had standing to bring an action seeking injunctive relief to enjoin a county to provide adequate public defender funding) (emphasis added); *cf. Fawber v. Cohen*, 532 A.2d 429, 431 (1987) (permitting claims by a class of those "who have been or hereafter are required to participate" in a welfare work program to seek injunctive and declaratory relief to restrain application of program).

Dillon v. City of Erie, 83 A.3d 467 (Pa. Cmwlth. 2014), the leading case relied on by Respondents, in fact *recognized standing* for a gunowner to challenge the *future enforcement* of provisions related to bringing a gun to a local park during a protest after the city solicitor made clear that attendees with firearms were "subject to a summary offense" and "the police are able to enforce the ordinance." *Id.* at 470.[25] Here Petitioners have alleged, with figures to back up

[25] Judicial Respondents' reliance on *Dillon* is further complicated by the fact that the Commonwealth Court has recently ruled directly opposite to *Dillon* as to the specific holding on which Respondents' base their entire legal argument. *See Firearm Owners Against Crime v. City of Harrisburg*, 218 A.3d 497, 509 (Pa. Cmwlth. 2019), *appeal granted in part sub nom. Firearm Owners Against Crime v. Papenfuse*, 230 A.3d 1012 (Pa. 2020) (holding that gunowners who had not yet lost a gun did in fact *have standing* to challenge lost/stolen firearm reporting ordinances). The Pennsylvania Supreme Court has granted an appeal to review this determination. *See Firearm Owners Against Crime v. Papenfuse*, 230 A.3d 1012 (Pa. 2020).

those allegations, *see* Pet. ¶¶ 8-11, that Respondents systemically violate the constitutional rights of criminal defendants and intend to continue doing so. Indeed, because Respondents have adopted an actual policy to permit the imposition of illegal costs, there is an extreme likelihood of future injury flowing from that policy that grounds the standing of future class members. For these reasons Judicial Respondents' PO ¶ 16 should be overruled.

2. Declaratory and injunctive relief are appropriate.

Both Judicial Respondents and Respondent Schreiber argue that Petitioners' claims for declaratory and injunctive relief are inappropriate because, in their view, Petitioners could have objected to the unlawful costs imposed on them either at sentencing or through PCRA procedures. Jud. Brief 20-23; Clerk Brief 13-14. These arguments fail because Petitioners cannot challenge costs, which are not part of their sentences, through PCRA procedures, *see supra* pp. 16-19, and because absent constitutionally adequate notice, the proposed remedies suggested by Respondents are entirely illusory.

As argued above, *see supra* pp. 25-29, an opportunity to object is useless if one is not given notice sufficient to disclose the basis for objection.[26] "This right to be heard has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest." *Mullane*, 339 U.S. at 314; *see also Rizzo v. City of Philadelphia*, 582 A.2d 1128, 1134 (Pa. Cmwlth. 1990) (Crumlish, Jr., J.,

[26] *See* Petition at ¶¶ 12, 29, 85, 87, 106, 113, 136.

concurring) ("Consequently, if Rizzo has shown that he was not given notice of a decision which he rightfully may seek to remedy by appeal, then his statutory remedy is inadequate.").

Because of the complete failure of adequate notice in violation of their due process rights, Petitioners have never been presented with an adequate remedy at law and there is no bar to this Court's exercise of its equitable powers.[27] For these reasons Judicial Respondents' PO ¶ 9 and Respondent Schreiber's PO ¶ 10 should be overruled.

E. Respondents Are Not Entitled to Dismissal on the Grounds of Sovereign Immunity

Petitioners' state law claims and requests for relief do not fall within the scope of sovereign immunity under Pennsylvania law because their requested

[27] Furthermore, Courts may nonetheless exercise their discretion to award declaratory and injunctive relief where the harms complained of are constitutional in dimension, wide-spread and pervasive, and where the issuance of declaratory or injunctive relief would forestall the need for a flood of individual actions. *See Peitzman v. Seidman*, 427 A.2d 196, 199 (Pa. Super. 1981) n.4. ("[A] court of equity has power to afford relief despite the existence of a legal remedy when, from the nature and complications of a given case, justice can best be reached by means of [equity's] flexible machinery."); *see also Harris-Walsh, Inc. v. Borough of Dickson City*, 216 A.2d 329, 331 (Pa. 1966) ("A remedy at law may be provided under the statute or the ordinance the validity of which is attacked, but, unless such statute or ordinance provides a remedy adequate 'to the task of resolving plaintiff's objections,' the mere existence of such remedy will not preclude the assumption of equitable jurisdiction."); *Pennsylvania State Chamber of Com. v. Torquato*, 125 A.2d 755, 766 (Pa. 1956) ("Equity likewise has jurisdiction to protect by injunction or appropriate remedy (a) property rights, and (b) personal rights 'where a multiplicity of suits may be prevented or where a fundamental question of legal right is involved', and where the interests of justice require equitable relief.").

declaratory and injunctive relief does not trigger Pennsylvania sovereign immunity doctrine. Furthermore, although Respondent Schreiber (not the Judicial Respondents) raises a sovereign immunity defense under the Eleventh Amendment, she is not shielded from declaratory or injunctive relief.

1. Petitioners' state law claims are not barred by sovereign immunity.

Respondents are immune from suits for damages, but long-standing Pennsylvania law is clear that actions for declaratory relief and suits that simply seek to restrain state officials from performing illegal acts are not within the rule of immunity. *See Fawber*, 532 A.2d at 433-34 (quoting *Philadelphia Life Ins. Co. v. Com.*, 190 A.2d 111, 114 (Pa. 1963)). Sovereign immunity constraints, now embodied in statute, have no application to Petitioners' claims against Respondents.

The Supreme Court and this Court have identified clear categories of relief that are available against state parties: (1) declaratory relief, *see Wilkinsburg Police Officers Ass'n By & Through Harder v. Com.*, 636 A.2d 134, 137 (Pa. 1993) ("[T]he Commonwealth Court correctly concluded that sovereign immunity poses no bar to … counts [that] only seek a declaration that certain provisions of Act 47 are unconstitutional"); *Legal Capital, LLC v. Med. Pro. Liab. Catastrophe Loss Fund*, 750 A.2d 299, 302-03 (Pa. 2000) ("[S]overeign immunity does not apply because it is not applicable to declaratory judgment actions."); (2) injunctive relief that "restrains" officials from performing illegal acts, *see Fawber*, 532 A.2d at 433-34; and (3) injunctive relief that requires the Commonwealth

to perform a duty already imposed by the law, *Paz v. Com., Dep't of Corr.*, 580 A.2d 452, 456 (Pa. Cmwlth. 1990) ("[W]here the relief sought against the Commonwealth is to compel it to perform a duty imposed by law, then the doctrine of sovereign immunity is not applicable.") (citing *McGriff v. Com., Pennsylvania Bd. of Prob. & Parole*, 561 A.2d 78 (Pa. Cmwlth. 1989)); *cf. Legal Capital,* 750 A.2d at 302-03 (equitable relief appropriate against a state entity to pay funds to specific recipients where state entity is already "affirmatively obligated to pay").

Petitioners' requested relief against the Respondents all falls into these categories. In the category of declaratory relief, Petitioners request a ruling that Respondents' imposition of duplicative costs is unlawful and that such costs imposed are null and void. *See* Pet. at 40, ¶ VII.1. Petitioners also request declaratory relief that Respondents' failure to provide effective and timely notice of costs imposed at sentencing violates due process. *See* Pet. at 40, ¶ VII.2.

In the category of restraining injunctive relief, Petitioners request that Respondents must cease imposing illegal duplicative costs, see Pet. at 40, ¶ VII.3(a), cease claiming that the costs are owed, and further must cease collecting any unauthorized costs imposed on criminal defendants, *see* Pet. at 40, ¶ VII.3(b).

Petitioners' requested relief against the Respondents, besides including the above claims for declaratory and restraining injunctive relief, also requests them to perform duties that are otherwise imposed by the law. First, Petitioners

request that Respondent Schreiber remove the illegally imposed costs from the balances of all criminal defendants with unpaid balances and provide notice that their balances have been adjusted. Pet. at 40, ¶ VII.3(c).[28] This would put the Respondent in compliance with state and federal statutory provisions that make it illegal for creditors to make false representations of the nature of debts. *See, e.g.,* 73 P.S. § 2270.4(b)(5)(ii); 15 U.S.C. § 1692e(2)(A). It would also put Respondent Schreiber in compliance with Section 1294, which places an affirmative duty on her to not continue to make efforts to collect those illegal costs. As is set forth above, that provision provides that it "shall be the duty of all public officers charged with the duty of taxing, and issuing certificates and warrants for the payment of, costs in criminal cases, to see that no costs are taxed and paid in violation of the provisions of the first and second sections of this act." Act 17 of March 10, 1905, P.L. 35, 19 P.S. § 1294.

Second, Petitioners request a timely and effective notice regime for the imposition of court costs, including the presentation of a bill of costs at the time costs are imposed at sentencing. Pet. at 40-41, ¶ VII.3(d). This request ensures that Respondents do not continue to violate the due process guarantees of the constitutions of Pennsylvania and the United States by failing to alert

[28] Respondent Schreiber wrongly conflates her status as a Commonwealth officer with being a member of the judiciary. The clerk of courts is, of course, not a judicial officer. *See Morgalo v. Gorniak*, 134 A.3d 1139, 1147 (Pa. Cmwlth. 2016) (distinguishing between "an officer of the unified judicial system and a judicial officer"). Certainly clerks of courts are subject to mandamus. *See*, *e.g.*, *Fordyce*, 869 A.2d at 1051, 1054.

defendants about which costs are imposed, in which amounts, and pursuant to which statutes. *See*, *e.g.*, *Coder*, 415 A.2d at 410; *Pennsylvania Bankers Ass'n*, 956 A.2d at 965.

Third, and finally, Petitioners request the retraction of any information that Respondent Schreiber's office may have provided to credit reporting agencies. Pet. at 41, ¶ VII.3(e). Respondent Schreiber, as a person that regularly furnishes information to credit reporting agencies, has a federal statutory duty under the Fair Credit Reporting Act to "promptly notify the consumer reporting agency" of any inaccuracies in information reported to the credit reporting agency. *See* 15 U.S.C. § 1681s-2.

As a result, all the requested relief for each Respondent is in the appropriate form of declaratory and injunctive relief. For these reasons Judicial Respondents' PO ¶ 15 and Respondent Schreiber's PO ¶ 16 should be overruled.

2. The Eleventh Amendment is entirely inapplicable.

Judicial Respondents specifically limit their sovereign immunity arguments to the state claims. Jud. POs ¶ 15 ("Sovereign immunity precludes the state claims…"). Their briefing similarly limits itself to state sovereign immunity doctrine. Jud. Brief 29-32. This is well advised since state law sovereign immunity doctrine cannot bar the federal claims. *Howlett By & Through Howlett v. Rose*, 496 U.S. 356, 377–78 (1990) ("To the extent that [a state's] law of sovereign immunity reflects a substantive disagreement with the extent to which governmental entities should be held liable for their

constitutional violations, that disagreement cannot override the dictates of federal law.").

Respondent Schreiber does not limit her objections to state claims. Clerk POs ¶ 16 ("Sovereign immunity precludes the stated claims…"). She perfunctorily states, but provides no actual argument, that Eleventh Amendment shields her from suit. *See* Clerk Brief at 9.[29] But Eleventh Amendment Sovereign immunity is plainly inapplicable here because Respondent Schreiber has been sued for injunctive relief in her official capacity pursuant to 42 U.S.C. § 1983. "Of course a state official in his or her official capacity, when sued for injunctive relief, would be a person under § 1983 because official-capacity actions for prospective relief are not treated as actions against the State." *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 71 n.10 (1989). For these reasons Respondent Schreiber's PO ¶ 16 should be overruled.

3. Petitioners' claims against Respondent Schreiber are not impaired by her ministerial role.

Respondent Schreiber also argues that the requested relief "is beyond the scope of the powers granted to the clerk of courts and therefore improper as the clerk of courts may not exercise any authority beyond that authority conferred by or derived from either statute or rule of court." Clerk Brief 8. Against Petitioners' pleadings, Respondent's argument makes little sense. Petitioners plead that Respondent Schreiber supervises and directs the

[29] Respondent Schreiber's only federal case citation on this point relates to a suit for money damages, which is irrelevant to Petitioners' claims for declaratory and injunctive relief.

calculation and entry of illegal, duplicative costs into the computer systems and also supervises the collection of these illegal costs. Pet. ¶ 25. Contrary to Respondent's brief, it does not matter if her role is discretionary or ministerial regarding the application of *legally authorized* costs. What matters is that she has absolutely no authority, ministerial or otherwise, to impose and collect *illegal* costs, and an injunction is the appropriate remedy to ensure that she stops doing so.[30] This Court has recognized the propriety of such relief. *See Pennsylvania Acad. of Chiropractic Physicians v. Com., Dep't of State, Bureau of Prof'l & Occupational Affairs,* 564 A.2d 551 (Pa. Cmwlth. 1989) (relief to restrain state officials from revoking licenses from certain medical practitioners); *see also Florida Dep't of State v. Treasure Salvors, Inc.*, 458 U.S. 670, 696-697 (1982) (injunction appropriate and not barred by Eleventh Amendment to restrain state officers acting outside statutory scope of authority). Indeed, Respondent's argument, taken to its logical conclusion stands for the opposite of what Respondent wants it to. If, as Petitioners allege, Respondent Schreiber is imposing illegal costs that are not statutorily authorized, then she is by her own admission exercising powers outside the scope of her ministerial authority and an injunction is the best remedy available.

[30] Respondent Schreiber's case citations in this section merely recapitulate, repeatedly, the ministerial office of the Clerk of Courts and the Clerk's lack of capacity to engage in statutory interpretation. *See* Clerk's Brief 4-8. However, she cites no law to suggest that her proclaimed ignorance of the law as a public official is a legal defense, appropriate in a preliminary objection, that makes her immune to injunctive relief to restrain her from illegal conduct.

Finally, and as discussed above, other decisions from this Court have permitted lawsuits specifically against the clerk of courts for collecting costs that were imposed illegally. In *Fordyce v. Clerk of Courts*, 869 A.2d 1049, 1053 (Pa. Cmwlth. 2005), this Court ruled that certain costs of transportation—although fairly included in the costs of prosecution imposed by the trial court—were nevertheless illegal and must be removed by the clerk of courts.[31] *See also Guarrasi v. County of Bucks*, 176 M.D. 2018, 2018 WL 4374280, at *3 (Pa. Cmwlth. Sept. 14, 2018) (unpublished). For these reasons Respondent Schreiber's PO ¶ 14 should be overruled.

VI. CONCLUSION

Wherefore, Petitioners respectfully request that all the Preliminary Objections of the Judicial Respondents and of Respondent Schreiber, respectively, be overruled.

Respectfully submitted,

Date: May 14, 2021

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[31] The procedural posture in *Fordyce* was different because there a *pro se* inmate *only* sued the clerk of courts to stop deductions for the costs of transportation, and the mandamus relief he sought was properly brought in the court of common pleas, which has mandamus jurisdiction over county officials including the clerk of courts. *Fordyce* is yet another case that shows that challenges to court costs do not implicate the PCRA and can properly be brought through other means.

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