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The Illinois Supreme Court has struck down state laws that slap fees on those bringing mortgage foreclosure actions, saying the $50 filing fee represents an attempt by the state to use the court system to raise money to administer a state social welfare program intended to combat neighborhood blight and reduce future home foreclosures.

On June 17, the state high court declared unconstitutional sections of two laws, a revision of the Illinois Code of Civil Procedure, which governs operations at Illinois' state courts, and sections of the Illinois Housing Development Act.

The portions of those laws together created a fee system that imposed $50 fees on people bringing foreclosure actions in Illinois circuit courts, and then would dedicate that revenue to support a range of government programs and agencies.

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Under the revised IHDA provisions, the money would be divided between housing counseling agencies to prevent foreclosures in Chicago and elsewhere, and would be paid to Cook County, the city of Chicago and county and municipal governments in other counties in Chicago's suburbs, ostensibly to cover the expenses of remedying and maintaining abandoned residential properties, to combat blight caused by home foreclosures.

That fee system and related laws were challenged by plaintiffs Reuben D. Walker and M. Steven Diamond in Will County court, who asserted the fees represented an unconstitutional infringement on their right of access to the court. The lawsuit named as defendants the Will County Circuit Clerk's office.

Because the lawsuit targeted a system established by state law, the Illinois Attorney General's office intervened in the dispute, stepping in to defend the challenged laws.

A Will County judge sided with the plaintiffs, and struck down the laws.

The state and Will County Circuit Clerk appealed the decision, ultimately seeing the matter land before the state Supreme Court.

At the Supreme Court, the Cook County Circuit Clerk's office also argued in support of the fees.

The state and the court clerks asserted the fees were legal because they were used to support the mission of the courts. Essentially, because the fees supported government programs and social service agencies dedicated to reducing foreclosures and keeping neighborhoods more desirable, the fees minimized foreclosure cases, reducing caseloads in Cook County and elsewhere in the state.

The Supreme Court's majority, however, did not buy that argument. The justices found the relationship between the fees and the courts was "too remote" to allow the system to stand.

The 5-1 majority opinion was authored by Justice Robert L. Carter. Chief Justice Anne M. Burke and justices Rita B. Garman, Michael J. Burke and David K. Overstreet concurred in the decision.

Justice Mary Jane Theis dissented.

Justice P. Scott Neville did not take part in the decision, according to the published opinion.

"The fees, instead, are a revenue-raising measure designed to fund a statewide social program administered by the Illinois Housing Development Authority," Justice Carter wrote in the majority opinion.

"The Illinois Housing Development Authority utilizes these funds to make monetary grants to approved counseling agencies for housing counseling and to community organizations for foreclosure prevention programs and to finance such things as cutting

grass, tree trimming, and rehabilitating abandoned residential property.

“The benefits for foreclosure prevention programs are indirect at best and have no direct relation to the administration of the court system. Any relation of the filing fee to maintenance and operation of the courts is too attenuated and represents the type of social welfare program tax … prohibited by the free access clause,” Carter wrote.

“As the circuit court recognized, ‘the statutory scheme is tantamount to a litigation-tax funded neighborhood beautification plan.’”

In her dissent, Justice Theis noted the “free access clause of the state constitution does not create a fundamental right to litigate without expense.”

She sided with the Attorney General and the court clerks, saying she believed they had established that the fee system was “rationally related to the operation and maintenance of the court system.” She said the record indicates state lawmakers intended for the fee system to address a “foreclosure crisis” that swamped the courts.

“As seen under the appropriate legal framework and in the proper context, it is evident that the charges at issue here are indeed rationally related to tackling a foreclosure ‘tsunami’ affecting the ability of the court system to function,” Theis wrote.

“Simply put, that is all that is required to sustain rational basis review.”

Plaintiffs in the action were represented by attorneys Daniel K. Cray and Melissa H. Dakich, of the firm of Cray Huber, of Chicago, and attorney Laird M. Ozmon, of Joliet.

The Cook County Circuit Clerk’s office was represented by the Cook County State’s Attorney’s office.

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