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Creditor Courts

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CREDITOR COURTS

Alexander Billy & Neel U. Sukhatme†*

Abstract

One of the largest institutional creditors in the United States is perhaps the most unexpected: the criminal court system. Each year, creditor courts collect more than \$15 billion in revenues from criminal defendants. These fees are the lifeblood of the modern criminal legal system.

In this Article, we shed new light on the legal and economic framework under which myriad stakeholders operate in these creditor courts. By analyzing new survey data from clerks of court and 102 contracts with debt collection agencies in Florida, we provide general insights how creditor courts distort incentives and teem with conflicts of interest. These inefficiencies regularly disrupt the financial stability of the judiciary as well as the lives of the largely indigent criminal defendants who remain indebted to this system.

As we show, legislators, clerks of court, and the judiciary writ large subject criminal defendants to unconstrained coercion through the use of so-called “user fees.” Leveraging campaign finance data and publicly available litigation material, we also find suggestive evidence of possible *quid pro quo* rewards between collection agencies assigned to collect debt on behalf of courts and the clerks of court tasked with administering them. We argue that state constitutional reforms that eliminate creditor courts and mandate courts be funded from general state revenues are the only meaningful ways to permanently redress the social costs generated by criminal monetary sanctions.

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INTRODUCTION

A growing corpus of research illustrates the broad reach of America's criminal legal system. Nearly 40% of children born between 1995-2005 had a parent or guardian who faced criminal charges; for Black children, this statistic is nearly two-thirds (62%).¹ Among other things, contact with criminal courts lowers wages,² increases recidivism via the loss of government benefits,³ and results in the loss of civil liberties.⁴

Entanglements with the criminal legal system also expose defendants to significant financial consequences. Nearly all criminal defendants will pay monetary sanctions tied to their convictions, collectively known as legal financial obligations (LFOs). LFOs include a wide range of devices including restitution, fines, and increasingly, "user fees," that courts charge defendants for access to the criminal court system.⁵ According to the Brookings Institution's Hamilton Project, state and local governments collect more than \$15 billion in such revenues annually.⁶

Creditor courts are a growing phenomenon. The type and quantity of user fees continue to increase; they manifest themselves in a variety of forms such as public

¹ Keith Finlay, Michael Mueller-Smith & Brittany Street, *Measuring Intergenerational Exposure to the US Justice System: Evidence from Longitudinal Links between Survey and Administrative Data* (2022), https://sites.lsa.umich.edu/mgms/wp-content/uploads/sites/283/2022/06/CJARS_KidExposure_20220609.pdf.

² See Amanda Agan & Sonja Star, *Ban the Box, Criminal Records, and Racial Discrimination: A Field Experiment*, 133 *Q.J. Econ.* 191 (2018).

³ Cody Tuttle, *Snapping Back: Food Stamp Bans and Criminal Recidivism*, 11 *Am. Econ. J.: Econ. Pol'y* 301 (2019).

⁴ Neel U. Sukhatme, Alexander Billy & Gaurav Bagwe, *Felony Financial Disenfranchisement*, 76 *Vand. L. Rev.* 143 (2023).

⁵ The National Task Force on Fines, Fees, and Bail Practices describes LFOs as "all discretionary and mandatory fines, costs, fees, state assessments, and/or restitution in civil and criminal cases." Nat'l Task Force on Fines, Fees and Bail Practices, *Principles on Fines, Fees and Bail Practices*, *Nat'l Center for State Cts.*, (Feb. 2021), https://www.ncsc.org/_data/assets/pdf_file/0021/61590/Principles-on-Fines-Fees-and-Bail-Practices-Rev.-Feb-2021.pdf.

⁶ Patrick Liu, Ryan Nunn, & Jay Shambaugh, *Nine Facts about Monetary Sanctions in the Criminal Justice System*, *Brookings Inst.* (Mar. 15, 2019), https://www.brookings.edu/wp-content/uploads/2019/03/BailFacts_20190314.pdf.

defender fees,⁷ driver's license reinstatement fees,⁸ and parole costs and electronic monitoring fees.⁹ Failure to pay these criminal debts could result in additional punishment beyond that directly related to sentencing. Delinquent LFOs lead to disenfranchisement, terminated driver's licenses, and even incarceration.¹⁰ In practice, LFOs extend defendants' exposure to criminal courts and heighten the costs of contact.¹¹

In this Article, we contribute to this discussion by drawing attention to the understudied stakeholders who collect and benefit from monetary sanctions in the creditor court system. This cadre includes legislators and clerks of court. These actors' interactions form a complex economic network that we sketch. By focusing on these relationships, we show that stakeholders compete over revenue sourced from largely indigent defendants. Legislators' growing appetite for such revenue directly deprives courts of already scarce funding. To their detriment, defendants lack tools to halt additional encroachments. This vulnerable position encourages legislators — with the approval of court officials — to adopt larger penalties both in scope and size. However, such expansions do not sufficiently cover the costs of providing court services. Thus, the process repeats itself *ad infinitum*.

⁷ According to the National Legal Aid & Defender Association, 42 states and the District of Columbia authorize the collection of fees related to court appointed attorneys. Marea Beeman et al., National Legal Aid & Defender Association, *At What Cost? Findings from an Examination into the Imposition of Public Defense Fees* (2022), https://www.nlada.org/sites/default/files/NLADA_At_What_Cost.pdf. See *Tex. Gov't Code Ann.* § 26.05; see also Shannon Najmabadi, *He Thought He Had a Free Court-Appointed Lawyer. Then He Got a Bill for \$10,000*, *Tex. Trib.* (Nov. 14, 2017, 12:00 PM), <https://www.texastribune.org/2017/11/14/texas-court-appointed-lawyers-arent-always-free/>.

⁸ Alicia Bannon, Mitali Nagrecha & Rebekah Diller, *Criminal Justice Debt: A Barrier to Reentry* (2010), https://www.brennancenter.org/sites/default/files/2019-08/Report_Criminal-Justice-Debt-%20A-Barrier-Reentry.pdf.

⁹ See *Fines, Fees, and Fairness: How Monetary Charges Drive Inequity in New York City's Criminal Justice System*, *N.Y.C. Comptroller*, <https://comptroller.nyc.gov/reports/fees-fines-and-fairness/> (“For instance, parolees are expected to pay a supervision fee of \$30 per month upon release, but the private company authorized to collect those fees charges “convenience fees” ranging for \$2 to \$3 for every electronic transfer.”); *Fines and Fees Justice Center Reform Alliance, 50 State Survey: Probation & Parole Fees A State-by-State Look at the Scope of Probation and Parole Fees and the Consequences for Failure-to-Pay* (2022), <https://finesandfeesjusticecenter.org/content/uploads/2022/05/Probation-and-Parole-Fees-Survey-Final-2022-.pdf>; *Fines and Fees Justice Center Reform Alliance, Electronic Monitoring Fees A 50-State Survey of the Costs Assessed to People on E-Supervision* (2022), <https://finesandfeesjusticecenter.org/content/uploads/2022/09/FFJC-Electronic-Monitoring-Fees-Survey-2022.pdf>. See generally Laura I. Appleman, *Nickel and Dimed Into Incarceration: Cash-Register Justice in the Criminal System*, 57 *B.C. L. Rev.* 1483 (2016).

¹⁰ See, e.g., *Ala. Code* § 15-22-36.1(a)(3) (disenfranchisement); *Ark. Code Ann.* § 16-13-708 (suspension of driver's license); *N.H. Rev. Stat.* § 263:56-a (suspension of driver's license); *Wis. Stat. Ann.* § 973.07 (incarceration).

¹¹ In a randomized control trial that cleared defendants' misdemeanor debts in Oklahoma, members of the control group were subjected to new warrants, additional LFOs, as well as garnishments within a year of the initial sentence. Despite these tactics, courts collected less than 5% of outstanding debt. The research indicates that “fines and fees criminalize poverty by prolonging criminal court involvement for those unable to pay.” See Devah Pager, Rebecca Goldstein & Bruce Western, *Criminalizing Poverty: The Consequences of Court Fees in a Randomized Experiment*, 87 *Am. Socio. Rev.* 1 (2022).

The economic framework is complicated by the introduction of third-party firms that bid for contracts to track outstanding debt. These agencies, employed to acquire hard-to-collect debt, earn a portion of or surcharge on LFOs. We show correlative evidence that debt collection firms make arguably inappropriate campaign donations to sponsor the election of clerks of court who contract with these agencies. This finding dovetails with contextual evidence of putative illegal conduct outlined in a series of criminal investigations across the country.

Our analysis illustrates that the creditor court system is inherently dominated by conflicts of interest among stakeholders. Such conflicts often stem from a fundamental problem: fees are not connected with the costs they are supposed to cover. Further, the misaligned incentives foment the potential for inappropriate campaign finance donations. Perhaps most concerning, fees encourage stakeholders to coerce marginalized defendants to fund their activities, thereby lengthening exposure to criminal courts and magnifying the associated deleterious consequences.¹² To make matters worse, the judiciary still regularly finds itself on the verge of insolvency despite its strong market power. Together, these findings explain why fee-based court systems fail to sufficiently finance themselves while also causing sizable unintended, negative consequences.

Past critics of fee-based systems have typically focused on singular actors; accordingly, their recommended legal reforms have been correspondingly narrow. For example, graduated fees based on ability-to-pay have become a popular policy prescription. Proponents argue income-based LFOs would restrain excessive penalties.¹³ Similarly, others have proffered debt-forgiveness programs.¹⁴ Though well-intentioned, these measures represent palliative treatments. They do not correct the underlying systemic design flaw: the distorted incentives and conflicts of

¹² See, e.g., Ryan E. Kessler, *Do Fines Cause Financial Distress? Evidence from Chicago*, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3592985; Carl Lieberman, Elizabeth Luh & Michael Mueller-Smith, *Criminal Court Fees, Earnings, and Expenditures: A Multi-State RD Analysis of Survey and Administrative Data* (Jan. 23, 2023) (unpublished manuscript) (available at https://sites.lsa.umich.edu/mgms/wp-content/uploads/sites/283/2023/01/CJARS_FinesFees_20230123.pdf).

Lieberman's, Luh's, and Muller-Smith's study did not find robust, systematically negative effects of fines or fees. Their regression discontinuity design (RDD) focuses on one-time changes to the fee system. Florida – one of the states they study – implemented a \$65 conviction fee on July 1, 2004. Using a secular RDD, they *do* find statistically significant decreases in the likelihood of W-2 submission as well as increases in felony and drug convictions in Florida. However, these effects are not identified in the four other states examined. It is noteworthy that Florida also implemented additional fines and fees on July 1, 2004 that affect some but not all cases; this potentially confounds the design. See SB 2962 (2004).

¹³ See, e.g., Beth Colgan, *Graduating Economic Sanctions According to Ability to Pay*, 103 *Iowa L. Rev.* 53 (2017); Meghan M. O'Neil & J.J. Prescott, *Targeting Poverty in the Courts: Improving the Measurement of Ability to Pay*, 82 *Law & Contemp. Probs.* 199 (2019); Dana A. Waterman, *A Defendant's Ability to Pay: The Key to Unlocking the Door of Restitution Debt*, 106 *Iowa L. Rev.* 405 (2020).

¹⁴ Matthew Menendez et al., *The Steep Costs of Criminal Justice Fees and Fines*, *Brennan Ctr. for Just.* (Nov. 21, 2019), <https://www.brennancenter.org/our-work/research-reports/steep-costs-criminal-justice-fees-and-fines>.

interest inherent to a fee-based judiciary. Only by untangling the benefits of fees from the courts will the administration of justice be financially sound and aligned with the interests of constituents. That effectively implies the need for broader state constitutional reforms to eliminate creditor courts and redress the ills of fee-based judiciaries.

Section I of this Article provides an overview of different categories of legal-financial obligations. Our approach focuses primarily on fees used to fund judicial systems. As such, we describe the rise of the creditor court system in Florida that parallels broader nationwide trends. Section II then details why fee-based judiciaries fail in practice. In particular, we spotlight problems of temporal mismatch (revenues received at different times than when expenses are accrued), fee proliferation, and fee diversion. Section II also applies arguments from theoretical political economics — particularly work on the importance of exit and voice in political systems — to explain why creditor court systems are prone to such inefficiencies and distortions.

Section III then confronts a separate but compounding problem: how attempts to collect debt create a web of new entanglements. Once again using data from Florida, we sketch a system rife with potential conflicts of interest. We begin by presenting empirical results from a novel survey of clerks of court, who describe a system that strains to collect sufficient revenue from indigent defendants to fund its operations. Though creditor courts have attempted to ease these issues by contracting with third-party debt collection agencies, the contractual relationships between the parties appear to do little to stave off financial concerns. Rather, these contracts appear to put these agencies' interests at odds with the courts they are supposed to serve. Likewise, they further alienate defendants from whom they attempt to collect. We illustrate both facts using detailed data on 102 contracts between the county and clerks and collection agencies.

Section III also offers an explanation to why this state of affairs persists: collection agencies and their representatives contribute significantly to clerks' personal and political interests. Evidence drawn from litigation as well as campaign finance data we collected show the distorted interests that arise from these contractual relationships.

Section IV then analyzes a series of proposed methods of addressing the problems plaguing fee-based judiciaries. It concludes that these methods might provide temporary relief but are unlikely to change the inefficiencies and conflicts of interest inherent in fee-based systems. Ultimately, we conclude that state

constitutional reform that eliminates creditor courts is likely the only meaningful way to surmount the challenges we outline in the prior sections.

I. THE RISE OF CRIMINAL COURT DEBT

We begin with an overview of fees and the broader category of monetary sanctions to which they belong, legal-financial obligations (LFOs). We then highlight the system in Florida, which serves as a case study for our analysis.

A. *Types of Legal-Financial Obligations (LFOs)*

Despite increased scholarly focus,¹⁵ monetary sanctions receive substantially less attention than other obligations imposed by the criminal legal system.¹⁶ Broadly speaking, such sanctions comprise three main devices: fines; restitution; and fees, court costs, and assessments.

Fines — One of the oldest sanctions,¹⁷ fines function primarily as a means of punishment. They can serve as a complement to and substitute for other penalties, most notably imprisonment.¹⁸ Fines typically reflect an individual's criminal history, the severity of the violation, or personalized details.¹⁹ Generally, they tend to fall within a prespecified statutory range.²⁰

Apart from their penological objectives, fines also generate revenue for local or state governments. Collections can be directed to either general or targeted sources.²¹ This pecuniary feature has been subject to criticism for centuries;

¹⁵ See, e.g., Devah Pager et al., *Criminalizing Poverty: The Consequences of Court Fees in a Randomized Experiment*, 87 [Am. Socio. Rev.](#) 529 (2022); Keith Finlay et al., *The Impact of Financial Sanctions in the U.S. Justice System: Regression Discontinuity Evidence from Michigan's Driver Responsibility Program* (Nov. 10, 2021) (unpublished manuscript) (available at https://sites.lsa.umich.edu/mgms/wp-content/uploads/sites/283/2021/11/CJARS_FinSanc_MI_DRF_20211110.pdf). . Joni Hirsch & Priya Sarathy Jones, *Driver's License Suspension for Unpaid Fines and Fees: The Movement for Reform*, 54 [U. Mich. J.L. Reform](#) 875 (2020).

¹⁶ Though an imperfect measure, a Google N-Gram analysis using hits from 2019 reveals that the term incarceration is 78x more prevalent than LFO, legal financial obligation, and criminal debt combined. *Google Books Ngram Viewer*, [Google.com](#), <https://books.google.com/ngrams/> (last visited Feb. 2, 2023).

¹⁷ Fines levied upon thieves and those guilty of domestic abuse can be found in the Code of Hammurabi and the Torah, respectively. See, e.g., [Code of Hammurabi](#) 4-5, 24; [Deut.](#) 22:19.

¹⁸ [Terance D. Miethe & Hong Lu, Punishment: A Comparative Historical Perspective](#) 88-90 (2005).

¹⁹ Elizabeth Heckmann, *A Modern Poll Tax: Using the Twenty-Fourth Amendment to Challenge Legal Financial Obligations as a Condition to Re-enfranchisement*, 100 [Cal. L. Rev.](#) 1417 (2022).

²⁰ See, e.g., [Ky. Rev. Stat. Ann.](#) § 534.030 (West 2023) (fines for felonies); [N.H. Rev. Stat. Ann.](#) § 651:2(IV) (2023) (general felonies and misdemeanors).

²¹ R. Barry Ruback & Valerie Clark, *Economic Sanctions in Pennsylvania: Complex and Inconsistent*, 49 [Duq. L. Rev.](#) 751 (2011).

beleaguered citizens have accused governments of extortion or using these devices for ulterior motives.²²

Restitution — Unlike fines, the goal of restitution is to compensate those harmed by crime. It enables victims to seek restoration along many dimensions, including repayment for property damage, medical expenses, or lost income.²³ By and large, restitution “seeks to make victims whole.”²⁴ Unlike its counterparts, restitution is much less polemic. That is not to say that assessing restitution is without its own challenges.

For instance, in some jurisdictions, restitution is paid directly to the state, which in turn forwards the money to victims. In other jurisdictions, however, former defendants pay restitution amounts directly to victims.²⁵ The lack of a central authority to keep track of restitution payments creates challenges both in collecting restitution payment and in keeping track of amounts that have been paid.²⁶ Accordingly, there is often a lack of good data on the effectiveness of restitution in achieving its stated objectives.

Fees — At least in theory, fees offset the administrative costs of the judiciary and connected actors. For instance, fees are often imposed to recoup costs associated with court-appointed attorneys, investigations and prosecutions, the administration of the courts, and incarceration.²⁷ Related to fees are other types of obligations including *court costs* and *assessments*. These, too, reimburse the state for administrative costs.

Terminology varies by jurisdiction. In some locales, court costs refer to non-targeted levies. Assessments may refer to surcharges in addition to other

²² Several English monarchs exploited fines to circumvent taxes or silence critics. *Timbs v. Indiana*, 586 U.S. ____ (2019) (Thomas, C., concurring). Restrictions on fines in the common law system can be found in the Magna Carta, as well as the English Bill of Rights of 1689. *Browning-Ferris Indus. v. Kelco Disposal, Inc.*, 492 U.S. 257, 271 as cited in *Timbs v. Indiana*, 586 U. S. ____ (2019) (Ginsburg, R.) (requiring that fines “be proportioned to the wrong” and “not be so large as to deprive [an offender] of his livelihood”); *Timbs v. Indiana*, 586 U. S. ____ (2019), (Thomas, C., concurring) (“A free man shall be amerced for a small fault only according to the measure thereof, and for a great crime according to its magnitude, saving his position; and in like manner, a merchant saving his trade, and a villein saving his tillage”).

²³ Karin D. Martin et al., *Monetary Sanctions: Legal Financial Obligations in U.S. Systems of Justice*, 1 *Ann. Rev. Criminology* 471 (2018).

²⁴ See Heckmann, *supra* note 19.

²⁵ See Martin, *supra* note 23.

²⁶ Jessica Gonzales-Bricker, *The Importance of Making Data-Driven Restitution Decisions*, *CSG Justice Center* (Apr. 28, 2022), <https://csgjusticecenter.org/2022/04/28/the-importance-of-making-data-driven-restitution-decisions/> [<https://perma.cc/3ACZ-YZZK>].

²⁷ Martin et al., *supra* note 23.

monetary sanctions.²⁸ In other locales, the two are synonymous.²⁹ However, the instrumental role of assessments is identical to that of fees and court costs. In fact, clerks often interchangeably refer to the three categories.³⁰

Our gaze is fixed on this third bucket of LFOs. For simplicity we refer to fees, court costs, and assessments collectively as fees. We turn to how fees are increasingly being used as funding mechanisms for the judiciary, becoming the lifeblood of the creditor court system.

B. Fees as Funding Mechanisms

Fees date back to at least the 19th century in the United States.³¹ Their legacy — much like that of many elements of the modern judicial system — has roots in systemic oppression. In the Reconstruction Era, several Southern states implemented a “convict leasing system.” Under the system, state and local penal authorities “leased” Black inmates to private companies. In turn, these entities took responsibility to supervise, house, and care for institutionalized individuals.³² In exchange, these companies received revenue directly tied to inmate labor. This system, therefore, offset the costs of administering criminal court services via products of inmate labor. Generally, these operations sought to minimize costs of supporting inmates while exploiting them in grueling conditions, a system entirely reminiscent of chattel slavery.³³ State and local officials welcomed the opportunity to ease anemic Postbellum budget deficits without raising taxes.³⁴ Their interest in

²⁸ *Id.*

²⁹ R. Barry Ruback & Valerie Clark, *Economic Sanctions in Pennsylvania: Complex and Inconsistent*, 49 *Duq. L. Rev.* 751 (2011).

³⁰ *Fines & Fees Just. Ctr., Assessments & Surcharges: A 50-State Survey of Supplemental Fees* 1 (2022), <https://finesandfeesjusticecenter.org/2022/12/13/new-report-uncovers-hidden-tax-on-justice-in-nearly-all-50-state-s/>.

³¹ Michigan granted authorities the ability to charge inmates for expenses of medical costs as early as 1848. *Fines and Fees Justice Center, End Fees, Discharge Debt, Fairly Fund Government* (2022), <https://finesandfeesjusticecenter.org/content/uploads/2022/01/FFJC-Policy-Guidance-Fee-Elimination-1.13.22.pdf> [<https://perma.cc/4JR8-86CU>].

³² Christopher Muller, *Freedom and Convict Leasing in the Postbellum South*, 124 *Am. J. Socio.* 367, 368 (2018); Courtney Howell, *Convict Leasing: Justifications, Critiques, and the Case for Reparations*, *Va. Tech Undergraduate Hist. Rev.* (May 26, 2017), <http://doi.org/10.21061/vtuhr.v5i1.41> (noting white prisoners were more likely to be housed in jails and prisons while Black inmates were more likely to be leased as laborers); Alexes Harris et. al., *Drawing Blood from Stones: Legal Debt and Social Inequality in the Contemporary United States*, 115 *Am. J. Socio.* 1753, 1758 (2010); Christopher R. Adamson, *Punishment After Slavery: Southern State Penal Systems, 1865-1890*, 30 *Soc. Probs.* 555 (1983).

³³ Timothy Black & Lacey Caporale, *The New Debt Peonage in the Era of Mass Incarceration*, *Cultural Encounters, Conflicts, & Resols.*, Oct. 28, 2020, art. 4, at 18, <https://engagedscholarship.csuohio.edu/cecr/vol4/iss1/4>; Muller, *supra* note 31; Howell, *supra* note 31.

³⁴ Howell, *supra* note 31.

preserving the leasing system was often personal; fees collected paid salaries of many authorities, including judges and sheriffs.³⁵

Modern manifestations of cost offsetting LFOs parallel their predecessors. Like the convict leasing system, modern fees were primarily borne out of fiscal concerns. During the 1970s, the federal government consolidated its “revenue sharing” programs that benefited criminal courts and law enforcement agencies into fewer broad grants.³⁶ This effectively increased competition for a smaller pool of money and required local governments to identify new funding sources.³⁷

This shift reflected the poor financial situation of the federal government at the time as much as a new zeitgeist.³⁸ Specifically, anti-tax sentiment, as reflected by the Taxpayers’ Revolt, grew in popularity.³⁹ To avoid provoking angry taxpayers, state and local governments looked for funding vehicles aside from taxes. Expansion of non-tax revenue portfolios, including fines, fees, and forfeiture, was a tantalizing prospect.⁴⁰ Unsurprisingly, courts and law enforcement, too, felt the pressure to finance their own operations. To alleviate their financial distress, officials turned to revenue-generating streams in lieu of taxes. They often did so wielding the “threat of imprisonment or other criminal sanctions.”⁴¹

Much like its earlier incarnation, the modern criminal fee system continues to disproportionately fall upon minorities, especially Black individuals. Some law enforcement — incentivized by the financial benefits of LFOs — discriminately target such groups.⁴² This produces disparate impacts, which most notably include a greater probability of future incarceration, even if policies are explicitly race neutral.⁴³ Thus, downstream consequences of the carcel state, such as

³⁵ Black & Caporale, *supra* note 32, at 2, <https://engagedscholarship.csuohio.edu/cecr/vol4/iss1/4>; Harris et. al., *supra* note 31.

³⁶ Evan A. Davis, *Restart Federal Revenue Sharing to Address COVID-19*, [The Hill](https://thehill.com/opinion/finance/497762-restart-federal-revenue-sharing-to-address-covid-19/), May 19, 2020, <https://thehill.com/opinion/finance/497762-restart-federal-revenue-sharing-to-address-covid-19/>.

³⁷ *Id.* at 2 (internal citations omitted).

³⁸ Davis, *supra* note 35.

³⁹ [Geoffrey Brennan & James Buchanan, The Power to Tax: Analytical Foundations of a Fiscal Constitution \(1980\)](#). Specifically, see Chapter 10. The Taxpayers Revolt appears to have begun via Proposition 13, a referendum in 1978 in California to limit taxes on real estate.

⁴⁰ Michael Makowsky, *A Proposal to End Regressive Taxation through Law Enforcement 5* (Hamilton Project, Pol’y Proposal No. 2019-06, 2019), https://www.hamiltonproject.org/assets/files/Makowsky_PP_20190314.pdf.

⁴¹ Joshua Page & Joe Soss, *The Predatory Dimensions of Criminal Justice*, 374 [Science](#) 291 (2021).

⁴² [U.S. Dep’t of Justice, Investigation of the Ferguson Police Department \(2015\)](https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf), https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf.

⁴³ Evan K. Rose, *Who Gets a Second Chance? Effectiveness and Equity in Supervision of Criminal Offenders*, 136 [Q.J. Econ.](#) 1199 (2021).

disenfranchisement,⁴⁴ tend to fall most heavily upon Black individuals and other marginalized groups.

Today, the criminal fee system has evolved into a constellation of revenue flows. Many of these automatically trigger upon arrest. For example, some jurisdictions charge a “docket fee” to have a criminal case presented before a judge.⁴⁵ Other jurisdictions charge indigent defendants a fee to appoint a lawyer and recoup the cost of that attorney’s time.⁴⁶ Courts often charge defendants costs of investigation and prosecuting the case against them.⁴⁷ Fees are tied to a host of things including diversion programs aimed at avoiding prosecution,⁴⁸ electronic monitoring,⁴⁹ phone calls made as well as room and board while incarcerated,⁵⁰ expungement of records,⁵¹ and even storage of prisoners’ personal money.⁵² Though many states enforce these fees upon adjudication of guilt, high levels of guilty pleas essentially make that all but a formality.⁵³ Failure to settle criminal debt may trigger additional penalties including driver’s license suspensions,⁵⁴ wage

⁴⁴ Meredith, M. and Morse, M., 2017. Discretionary disenfranchisement: The case of legal financial obligations. *The Journal of Legal Studies*, 46(2), pp.309-338.

⁴⁵ See, e.g., [Kan. Stat. Ann.](#) § 28-172a.

⁴⁶ [Fines & Fees Justice Center, At What Cost? Findings from an Examination into the Imposition of Public Defense System Fees](#) 5 (2022), <https://finesandfeesjusticecenter.org/articles/at-what-cost-findings-from-an-examination-into-the-imposition-of-public-defense-system-fees/> [<https://perma.cc/A5FD-XRM7>]. Eighteen states statutorily impose upfront application fees, while forty-two states and the District of Columbia impose recoupment fees. Seventeen states do both.

⁴⁷ Cortney E. Lollar, *What Is Criminal Restitution?* 100 [Iowa L. Rev.](#) 93, 142-143 (2014).

⁴⁸ See, e.g., [Ind. Code](#) § 33-37-4-1.

⁴⁹ [Fines & Fees Just. Ctr., Electronic Monitoring Fees A 50-State Survey of the Costs Assessed to People on E-Supervision](#) (2022), <https://finesandfeesjusticecenter.org/content/uploads/2022/09/FFJC-Electronic-Monitoring-Fees-Survey-2022.pdf>

⁵⁰ Brittany Friedman, *Unveiling the Necrocapitalist Dimensions of the Shadow Carceral State: On Pay-to-Stay to Recoup the Cost of Incarceration*, 37 [J. Contemp. Crim. Just.](#) 66 (2021); Megan Schumann, *States Unfairly Burdening Incarcerated People With “Pay-to-Stay” Fees*, [Rutgers](#) (Nov. 20, 2020), <https://www.rutgers.edu/news/states-unfairly-burdening-incarcerated-people-pay-stay-fees>; *New Report Unveils the Cost of Phone Calls in Over 2,000 Locally-Run Jails across the U.S.*, [Prison Pol’y Initiative](#) (Feb. 11, 2019), <https://www.prisonpolicy.org/blog/2019/02/11/phone-justice-report/>.

⁵¹ Cassie Chambers Armstrong, *The Price of Fundamental Rights: Criminal Convictions, Expungement Fees, and Constitutional Concerns*, 74 [Rutgers U.L. Rev.](#) 1167 (2022); Maura Ewing, *Want to Clear Your Record? It’ll Cost You \$450*, [The Marshall Project](#) (May 31, 2016), <https://www.themarshallproject.org/2016/05/31/want-to-clear-your-record-it-ll-cost-you-450>.

⁵² Stephen Raheer and Tiana Herring, *Show Me the Money: Tracking the Companies that Have a Lock on Sending Funds to Incarcerated People*, [Prison Pol’y Initiative](#) (Nov. 9, 2021), <https://www.prisonpolicy.org/blog/2021/11/09/moneytransfers/>; Stephen Raheer, *The Multi-Million Dollar Market of Sending Money to an Incarcerated Loved One*, [Prison Pol’y Initiative](#) (Jan. 18, 2017), <https://www.prisonpolicy.org/blog/2017/01/18/money-transfer/>.

⁵³ Makowsky, *supra* note 39, at 7 (citing other research: Bannon, Nagrecha, and Diller 2010; Diller 2010.)

⁵⁴ Brandon Garrett, Karima Modjadidi & William Crozier, *Undeliverable: Suspended Driver’s Licenses and the Problem of Notice*, 4 [UCLA Crim. Just. L. Rev.](#) 185 (2020).

garnishment (from both the defendant and their family members),⁵⁵ and incarceration.⁵⁶

C. Case Study: Fees in Florida

Because the use of criminal court fees has accelerated dramatically over the past fifty years,⁵⁷ this funding apparatus merits detailed attention. To do so, we home in on Florida, which serves as a useful case study of the wider trends associated with the adoption and implementation of a fee-based judiciary system and creditor courts.

Florida's fee-based criminal court system has its origins in the 1960s and 1970s, when voters approved a revised constitution and articles to replace its previous 1885 constitution.⁵⁸ Article V of the 1972 revision consolidated 16 different types of trial courts into a unified system composed of 20 circuits and 67 county-level courts. Each county-level court would now be managed by an elected clerk of court,⁵⁹ a position that is present in many jurisdictions across the United States.⁶⁰ These roles became much sought-after given the relatively high salaries.⁶¹ Crucially, Article V also restructured the financial model of the judiciary.

Namely, Florida's 1972 revision to its state constitution adjusted how judges were compensated.⁶² Under the previous constitutional framework, LFO revenue

⁵⁵ Katherine Beckett & Alexes Harris, *On Cash and Conviction: Monetary Sanctions as Misguided Policy*, 10 *Criminology & Pub. Pol'y* 505 (2011).

⁵⁶ Vicki Turetsky & Maureen R. Waller, *Piling on debt: The intersections between child support arrears and legal financial obligations*, *UCLA Crim. Just. L. Rev.* (2020).

⁵⁷ Karin D. Martin, Sandra Susan Smith & Wendy Still, *Shackled to Debt: Criminal Justice Financial Obligations and the Barriers to Re-Entry They Create* 2-3, 5 (2017), <https://www.ojp.gov/pdffiles1/nij/249976.pdf> (“On the state level, 4 percent of persons convicted of felonies who were sentenced to prison in 1986 were also fined; by 2004, that figure was seven times higher”).

⁵⁸ Mary E. Adkins, *The Same River Twice: A Brief History of How the 1968 Florida Constitution Came to Be and What it Has Become*, 18 *Fla. Coastal L. Rev.* 5 (2016).

⁵⁹ Office of the State Courts Administrator, *History of Court Processes, Programs, and Initiatives* (June 29, 2022), <https://www.flcourts.gov/Publications-Statistics/Publications/Short-History/Modernizing-Administration>; *Fla. Const.* art. V, s. 16. For a list of duties performed by the Clerk of Court, visit <https://www.flclerks.com/page/ClerksDuties>. See *infra* notes __ for more discussion on the duties and powers of Florida clerks of court.

⁶⁰ The role of clerk of court was specifically enumerated in the federal Judiciary Act of 1789. *Federal Judiciary Act (1789)*, *National Archives* (May 10, 2022), <https://www.archives.gov/milestone-documents/federal-judiciary-act>. Clerks are often assisted by court administrators, who handle the day-to-day operations of the court. See Steve Henley & Jo Haynes Suhr, *View from the Wheelhouse: The Role of Court Administration in the Management, Independence, and Accountability of the Courts*, *Fla. Bar J.*, Mar. 2004, at 26. While clerks in Florida are elected, they are appointed in some other jurisdictions. See, e.g. Alabama Rules of Judicial Administration Rule 27, and *Superior Court*, *Arizona Judicial Branch*, <https://www.azcourts.gov/AZ-Courts/Superior-Court> (last visited Feb. 9, 2023).

⁶¹ For example, Hillsborough County pays its elected clerk \$170,000. C.T. Bowen, *Tom Lee to run for Hillsborough Court Clerk*, *Tampa Bay Times*, June 5, 2020, <https://www.tampabay.com/news/hillsborough/2020/06/05/tom-lee-to-run-for-hillsborough-court-clerk/>.

⁶² Talbot D'Alemberte, *Judicial Reform — Now or Never*, *Fla. Bar J.*, Feb. 1972, at 68, 69.

could account for a portion of judges' and judicial staff's salaries. The newly revised Article V required that judicial salaries be paid by the state.⁶³ LFO revenue would continue to be collected via clerks of court. Fines and fees were to be paid into a trust fund or remitted to the local or state government as general revenue.⁶⁴ Judiciary funding, including that of clerks, came entirely from county revenue.⁶⁵ Altogether, these changes represented an attempt to reduce the perception that judges were dispensing "cash register justice."⁶⁶

This overhaul was not well-received by all stakeholders, however. The judiciary and clerks found themselves competing for revenue against other publicly funded programs within the county. Restrictions on use of revenue, mandated spending on other programs, and uncertain indigent defense costs undermined their solvency. Funding sources, too, tapered. The bulk of revenue came from property taxes, whose receipts represented two-thirds of county revenue; however, these taxes were lowered and capped in the 1990s.⁶⁷

Much of the consternation revolved around a desire to provide adequate, uniform services. Because courts relied upon county-level revenue, population levels directly influenced the amount of financial support received. Operationally, this produced geographic disparities in the services rendered by courts.⁶⁸ For example, many clerks struggled to fulfill their long list of non-judicial responsibilities essential to administration of court services. These include docket preparation, official correspondence composition, permit issuance, and record preservation.⁶⁹

⁶³ *Id.* at 68. ("Too often, municipal courts are as intent on producing revenue as dispensing justice. We felt we could no longer condone this cash register justice."); *id.* ("I strongly believe we must upgrade all our courts so that the entire judicial system is not dragged down by a judge who thinks it is as important to produce revenue as it is to dispense justice").

⁶⁴ S.J.R. 52-D, 1972 Fla. Laws 108, art. V, § 20(c)(8) ("All fines and forfeitures arising from offenses tried in the county court shall be collected, and accounted for by the clerk of the court, and deposited in a special trust account. All fines and forfeitures received from violations of ordinances or misdemeanors committed within a county or municipal ordinances committed within a municipality within the territorial jurisdiction of the county court shall be paid monthly to the county or municipality respectively. If any costs are assessed and collected in connection with offenses tried in county court, all court costs shall be paid into the general revenue fund of the state of Florida and such other funds as prescribed by general law").

⁶⁵ Alan Carlson, Kate Harrison & John K. Hudzik, Adequate, Stable, Equitable and Responsible Trial Court Funding: Reframing the State vs. Local Debate 58 (Sept. 2008) (unpublished manuscript) (available at <http://www.ncjrs.gov/pdffiles1/nij/grants/223973.pdf>).

⁶⁶ D'Alemberte, *supra* note 61.

⁶⁷ Carlson et al., *supra* note 64.

⁶⁸ *History of Court Processes, Programs, and Initiatives*, Office of the State Courts Administrator, (June 29, 2022), <https://www.flcourts.gov/Publications-Statistics/Publications/Short-History/Modernizing-Administration#strategic>.

⁶⁹ *Court, Municipal, and License Clerks*, O-Net Online (2022),

<https://www.onetonline.org/link/summary/43-4031.00?redir=43-4031.01> (Department of Labor description of clerk of courts).

Given the breadth of these activities, clerks' offices necessarily turn to a number of junior clerks.⁷⁰ However, clerks in less populous locales could not hire staff that would guarantee the same quality or scope of service as their peers in more urban areas.

These mounting problems facing Florida counties drew the attention of the state in the 1990s. These interests culminated in the second Constitutional Revision Commission (CRC), which convened in 1997.⁷¹ The primary goal of the second CRC was to divert funding of the judicial system away from counties and toward the state and criminal court litigants.⁷² Under the CRC's proposal, individual counties remained responsible for local requirements, building upkeep, communications, and security.⁷³ But now, the state would bear the burden of funding state attorneys' and

⁷⁰ These junior clerks vary in number by jurisdiction even today. For instance, clerks offices employ as few as five people in rural Lafayette County or as many as 700 individuals in urban Broward County.

⁷¹ In 1968, the State of Florida amended its Constitution to create a Constitution Review Commission, which comprises 37 members that meet once every twenty years to examine the Florida Constitution and propose potential changes. CRC members are appointed by the Governor (15 appointments), Senate President (9), House Speaker (9), Chief Justice (3) and Attorney General (1). Ten years after the amendment, the first CRC convened in 1977-78. The second CRC, which proposed the amendments discussed above, convened in 1997. *See, e.g., Constitution Review Commission, Florida Chamber of Commerce*, <https://www.flchamber.com/political/constitutional-amendments/constitution-revision-commission/> (last visited Jan. 29, 2023). In 2017, the third CRC convened. *Florida Constitution Revision Commission*, [Ballotpedia https://ballotpedia.org/Florida_Constitution_Revision_Commission](https://ballotpedia.org/Florida_Constitution_Revision_Commission) (last visited Feb. 5, 2023).

⁷² *Proposed Florida Constitution Revisions for the 1998 Ballot Revision 7, Revision Commission*, <http://library.law.fsu.edu/Digital-Collections/CRC/CRC-1998/ballot.html#rev7> (last visited Feb. 5, 2022) [hereinafter 1998 CRC Revision 7]:

Art. V, § 14, Funding.--

(a) All justices and judges shall be compensated only by state salaries fixed by general law. Funding for the state courts system, state attorneys' offices, public defenders' offices, and court-appointed counsel, except as otherwise provided in subsection (c), shall be provided from state revenues appropriated by general law.

(b) All funding for the offices of the clerks of the circuit and county courts performing court-related functions, except as otherwise provided in this subsection and subsection (c), shall be provided by adequate and appropriate filing fees for judicial proceedings and service charges and costs for performing court-related functions as required by general law. Selected salaries, costs, and expenses of the state courts system may be funded from appropriate filing fees for judicial proceedings and service charges and costs for performing court-related functions, as provided by general law. Where the requirements of either the United States Constitution or the Constitution of the State of Florida preclude the imposition of filing fees for judicial proceedings and service charges and costs for performing court-related functions sufficient to fund the court-related functions of the offices of the clerks of the circuit and county courts, the state shall provide, as determined by the legislature, adequate and appropriate supplemental funding from state revenues appropriated by general law.

(c) No county or municipality, except as provided in this subsection, shall be required to provide any funding for the state courts system, state attorneys' offices, public defenders' offices, court-appointed counsel, or the offices of the clerks of the circuit and county courts performing court-related functions. Counties shall be required to fund the cost of communications services, existing radio systems, existing multi-agency criminal justice information systems, and the construction or lease, maintenance, utilities, and security of facilities for the trial courts, public defenders' offices, state attorneys' offices, and the offices of the clerks of the circuit and county courts performing court-related functions. Counties shall also pay reasonable and necessary salaries, costs, and expenses of the state courts system to meet local requirements as determined by general law

⁷³ 1998 CRC Revision 7 art. V, § 14(c).

public defenders' offices.⁷⁴ Perhaps most importantly, clerks would become dependent upon filing fees, service charges, and court-imposed costs charged to individuals in the judiciary system.⁷⁵

Florida voters approved the CRC's recommendations in 1998,⁷⁶ which went into effect starting in 2004.⁷⁷ The purpose of this 6-year moratorium was to give the Florida legislature time to draft and pass "implementation bills" that increased civil and criminal fees, costs, and surcharges.⁷⁸

Initially, lawmakers seemed cognizant of the inherent inequality of requiring individuals to pay for access to the courts; they implemented a fee waiver for indigent individuals in 2000.⁷⁹ But awareness was fleeting; three years later,

⁷⁴ 1998 CRC Revision 7 art. V, § 14(a). See Geoffrey McGovern & Michael D. Greenberg, *Who Pays for Justice? Perspectives on State Court System Financing and Governance* (2014), https://www.rand.org/pubs/research_reports/RR486.html ("In Florida, the current framework for financing the state courts was established by a state constitutional amendment in 1998, which explicitly made the state broadly responsible for funding most aspects of the state court system, with enumerated exceptions to define county funding responsibilities, including with regard to facility (i.e., trial courthouse) costs, maintenance, and court security. Whereas budget and spending for the state-funded aspects of the Florida court system are closely monitored and managed by the state court administrator, county-level funding and court costs are reportedly not directly tracked by state authorities").

⁷⁵ 1998 CRC Revision 7 art. V, § 14(b). All funding for the offices of the clerks of the circuit and county courts performing court-related functions, except as otherwise provided in this subsection and subsection (c), shall be provided by adequate and appropriate filing fees for judicial proceedings and service charges and costs for performing court-related functions as required by general law. Selected salaries, costs, and expenses of the state courts system may be funded from appropriate filing fees for judicial proceedings and service charges and costs for performing court-related functions, as provided by general law. Where the requirements of either the United States Constitution or the Constitution of the State of Florida preclude the imposition of filing fees for judicial proceedings and service charges and costs for performing court-related functions sufficient to fund the court-related functions of the offices of the clerks of the circuit and county courts, the state shall provide, as determined by the legislature, adequate and appropriate supplemental funding from state revenues appropriated by general law.

⁷⁶ *Ballotpedia*, *supra* note 70.

⁷⁷ 1998 CRC Revision 7 art. XII, § 22. See also 2000 *Fla. Laws* 2299, 2301 (Comm. Substitute S.B. 1212); 2003 *Fla. Laws* 3647 (H.R. 113A); 2004 *Fla. Laws* 946, 1024 (Comm. Substitute S. 2962).

⁷⁸ See, e.g., 2004 *Fla. Laws* 1006 (increased maximum service charge for reinstatement of driver's license after a period of revocation from \$37.50 to \$47.50); 2004 *Fla. Laws* 1008 (local government may impose up to \$15 court funding surcharge on non-criminal for traffic violations); 2004 *Fla. Laws* 1019-1020 (additional \$101 court fee in cases involving certain crimes against minors); 2002 *Fla. Laws* 1929 (expanded application of \$135 court cost to apply to those charged with "boating under the influence").

⁷⁹ 2000 *Fla. Laws* 2299, 2301 (Comm. Substitute S. 1212); see also *West's Fla. Stat. Ann. Const.* art.V, § 14, Commentary, Statement of Intent:

Alan C. Sundberg and Jon L. Mills ("It is further the intent of the proposers that the legislature, when developing the schedule of reasonable and adequate filing fees, service charges and costs, review the court-related operations of the offices of the clerks of the circuit and county courts and make an independent determination as to what should be the reasonable cost to perform the court-related operations of the clerks' offices. The drafters of subsection (b) recognize that there currently exists significant disparities among what the various clerks' offices spend to perform the same functions.").

lawmakers eliminated the waiver and removed judicial discretion to impose costs.⁸⁰ Bills subsequently adopted substantially increased civil filing fees; tripled court costs for traffic violations; denied courts the ability to reduce an LFO based on ability to pay; and lowered the indigency income limit for appointment of a public defender from 250% to 200% of federal poverty guidelines.⁸¹ Another implementation bill adopted in 2004 created new fees and costs that affect individuals in both civil and criminal courts.⁸² To wit, the state legislature approved an assessment linked to income-driven payment plans. These payment plans, which loosely reflect one's ability to pay, include a sign up fee.⁸³

The financing model underwent additional changes in response to Great Recession induced shortfalls. Specifically, the Florida Legislature increased systemic reliance on fees when it created the State Courts Revenue Trust Fund (SCRTF) in 2009. The SCRTF was intended to help finance state court systems and county clerks' offices.⁸⁴ This fund drew heavily on filing fees for certain civil court filing fees, particularly fees for mortgage foreclosure filings. Money received in SCRTF would be sent back to the state. The state would then remit funds back to clerks based on the total budget set for clerks in annual general appropriations acts. As it supported state courts as well as clerks, the adoption of the SCRTF represented a departure from a general revenue model toward a trust fund system in terms of judiciary financing.

Paradoxically, the new system created more cash flow challenges for clerks of court. First, the legislature tended to provide insufficient revenue to fund clerks' appropriated budgets. Second, because the SCRTF depended heavily on mortgage foreclosure filing fee revenue, clerks collected significantly less revenue once

⁸⁰ 2003 Fla. Laws 3647 (H.R. 113A). See also Fla. House of Representatives Staff Analysis of H.R. 113A, at 7 (2003) https://www.flsenate.gov/Session/Bill/2003A/113A/Analyses/2003a0113HAP_h0113A.ap.pdf ("The bill generally requires fees, service charges, and costs to be imposed as a matter of law, rather than by court order, and eliminates waivers of these fees, service charges, and costs. Requires the clerk of court to enroll those seeking to defer payment of charges because of indigency into a payment program to recover unpaid costs in full").

⁸¹ 2003 Fla. Laws 3647 (H.R. 113A). (Indigency status triggers a fee for a public defender borne by the defendant.)

⁸² 2004 Fla. Laws 946 (Comm. Substitute S. 2962). See also Fla. Senate Staff Analysis of S. 2962, at 25, https://www.flsenate.gov/Session/Bill/2004/2962/Analyses/20042962SAP_2004s2962.ap.pdf ("Court system users will be negatively impacted by numerous provisions of this bill that raise clerk of the court service charges").

⁸³ Fla. Stat. § 28.24(27)(b) & © (2022). "Ability to pay" is currently defined in Florida law as: A monthly payment amount...is presumed to correspond to the person's ability to pay if the amount does not exceed 2 percent of the person's annual net income...divided by 12. Fla. Stat. § 28.246(4)(b) (2022). For an in depth review of Florida's payment plans, see Ashley Thomas, Fines & Fees Just. Ctr., [Payment Plans as a Compliance Tool: Best Practices for Florida Courts](https://www.finesandfeesjusticecenter.org/articles/payment-plans-as-a-compliance-tool-best-practices-for-florida-court-s/) (2019), <https://www.finesandfeesjusticecenter.org/articles/payment-plans-as-a-compliance-tool-best-practices-for-florida-court-s/>.

⁸⁴ 2009 Fla. Laws 147 (Comm. Substitute S. 12A).

mortgage foreclosures in Florida started to slow down in FY 2009-10 and later, after the worst of the financial crisis of 2008 had passed.⁸⁵

Increasingly reliant on fees, the state also expanded its means of collection and, in effect, the consequences of failing to pay those fees. For example, financial penalties can now be converted to liens. As such, the state can collect debt upon sale of the property associated with the lien;⁸⁶ liens directly reduce owners' equity in the property and lower sellers' credit scores. While perhaps convenient as a collection device, the effects of a lien on a debtor and their family can be meaningful; for instance, lien-induced credit reductions may erode job prospects.⁸⁷

In addition to liens, the courts reserve the right to suspend former defendants' driver's licenses if they fail to satisfy court imposed debts. The judiciary employs these penalties under the assumption that it will induce payments.⁸⁸ Given that approximately 80% of Floridians travel by vehicle to work, residents would appear to be sensitive to such threats.⁸⁹ Yet for the indigent — who are overrepresented as criminal defendants — financial penalties may be unaffordable.⁹⁰ This effectively punishes the needy, who may be forced to drive with a suspended license to remain employed and provide for their families.⁹¹ The overlap between indigent and minority communities raises racial equity questions as well.⁹² Many who lose the ability to legally drive continue to do so.⁹³ These individuals run the risk of additional LFOs and, eventually, incarceration.⁹⁴

⁸⁵ *Stabilizing Revenues for the State Courts System and Clerks of Court: Recommendations of the Revenue Stabilization Workgroup*, Office of the State Courts Administrator (Nov. 1, 2011), <https://www.flcourts.gov/content/download/218240/file/RevenueStabilizationReport.pdf>.

⁸⁶ *Court Fine and Fee Collections Can Increase*, Office of Program Policy Analysis and Government Accountability (Jan. 2004), <https://oppaga.fl.gov/Documents/Reports/04-07.pdf>.

⁸⁷ Dean Corbae & Andrew Glover, *Employer credit checks: Poverty Traps Versus Matching Efficiency* (Nat'l Bureau of Econ. Rsch., Working Paper No. 25005, 2018), https://www.nber.org/system/files/working_papers/w25005/w25005.pdf.

⁸⁸ *Court Fine and Fee Collections Can Increase*, Office of Program Policy Analysis and Government Accountability (Jan. 2004), <https://oppaga.fl.gov/Documents/Reports/04-07.pdf>.

⁸⁹ Carson Whitelemons, Ashley Thomas & Sarah Couture, Florida: Fines and Fees Justice Center, *Driving on Empty: Florida's Counterproductive and Costly Driver's License Suspension Practices* 15 (2019), <https://finesandfeesjusticecenter.org/articles/driving-on-empty-florida-drivers-license-suspension-fines-fees/>.

⁹⁰ Megan Stevenson, *Distortion of Justice: How the Inability to Pay Bail Affects Case Outcomes*, 34 *J.L. Econ. & Org.* 511 (2018).

⁹¹ Whitelemons et al., *supra* note 88.

⁹² *Id.*

⁹³ *Id.*; Lieberman et al., *supra* note 12. Lieberman et al. (2023) find that drivers who face LFOs do not adjust their means of travel to work, consistent with the notion that many may continue to drive even if their license is suspended.

⁹⁴ Alicia Bannon, Mitali Nagrecha, & Rebekah Diller, Brennan Ctr. for Just., *The Hidden Costs of Criminal Justice Debt* (2010), <https://www.brennancenter.org/sites/default/files/legacy/Fees%20and%20Fines%20FINAL.pdf>.

Ultimately, the legal arc of judiciary funding in Florida was circuitous. In an attempt to avoid one form of “cash register justice,” officials and voters constructed a new creditor court system that is still nefarious.

II. DISTORTIONS AND INEFFICIENCIES IN FEE-BASED CRIMINAL COURTS

At first glance, a fee-based system for criminal courts might seem sensible; as in other domains, it seems reasonable that those who use goods or services should pay for them.⁹⁵ Such a system also provides a convenient way for state legislatures to ease budget constraints; it ostensibly offloads court financing costs on to criminal defendants and away from recalcitrant taxpayers.⁹⁶

In reality, however, a series of practical and theoretical considerations undermine this logic. Fee-based systems are unreliable revenue streams, connected neither in time nor in value to the costs they are intended to offset. They are often imposed on the individuals least capable of paying them. And they are collected in ways that make them susceptible to diversion — siphoned off by legislatures to be used for other purposes — and proliferation — the creation of new fees that bear little relation to underlying court costs.

As we explain, this state of affairs is not surprising if one digs deeper into the relationships between the state legislature, courts, clerks of court, and criminal defendants. While one might view the state as a monopolist who can charge a “price” to defendants for use of its courts, this market analogy is wholly inapposite in the criminal legal context. This is because criminal defendants do not choose to use the criminal legal system; having already committed or been accused of a crime, they have no real opportunity to avoid these fees, nor do they have significant political power to change the system once they leave it. As such, the state faces little market discipline in terms of setting fees or ensuring they cover the expenses for which they were ostensibly charged. The result, predictably, is the chaos endemic in fee-based criminal court systems across the country.

⁹⁵ The Tax Foundation notes that “user fees are efficient because they act as a pricing mechanism.” *What Is a User Fee?* Tax Foundation, <https://taxfoundation.org/tax-basics/user-fee/> (last visited Feb. 5, 2023). In essence, user fees tie marginal benefits directly to marginal costs. However, this generally applies to privately provided goods, like in the Tax Foundation’s example, toll road fees. See, e.g., Hal R. Varian, *Intermediate Microeconomics: A Modern Approach* 718-720 (2014). (In general, optimal allocations occur when individuals internalize the full cost of the good. However, public goods tend to be underprovided when privately financed. This is because individuals can free ride on others’ outlays, which ultimately undermines provision of the public good.) See also D. Andrew Austin, *Economics of Federal User Fees* (Cong. Rsch. Serv., No. R45463, Jan. 22, 2019), <https://sgp.fas.org/crs/misc/R45463.pdf>.

⁹⁶ John J. Copelan, Jr. & Edward G. Labrador, *Broken Promises: The Failure to Adequately Fund a Uniform State Court System*, Fla. Bar J., Apr. 1997, at 30.

A. *Uncertain Revenue and Temporal Mismatch*

As others have noted, criminal defendants lack resources to sufficiently finance court operations.⁹⁷ Those with felony convictions disproportionately come from economically fragile communities.⁹⁸ Those initial conditions persist even if opportunities for betterment emerge. For example, young men from such locales tend to be unable to surmount unbecoming behaviors that correlate with risk of future incarceration.⁹⁹

The process from arrest to conviction itself may inhibit long-term financial stability among the less well-off. Consider pre-trial detention. All else equal, prohibitively expensive bail induces guilty pleas among individuals who otherwise would face no punishment.¹⁰⁰ In effect, this depresses income generation and drains families of economic resources. Upon release, those with convictions experience discrimination in labor markets.¹⁰¹ Even if returning citizens desire to make amends for wrongdoing, they may be unable to do so.¹⁰²

A recent report from the Bureau of Justice Statistics confirms the difficulties that recently released individuals face.¹⁰³ Analyzing the labor market prospects of 51,500 individuals released from federal prison in 2010, 33% found no employment in the 16 quarters (4 years) following their release from prison. Among those who found jobs, they were typically low paying: the quarterly median income started at \$3,500 in the first full quarter following their release (less than what a minimum wage worker would earn in that time) to \$6,000 by the 16th quarter. Collectively, these data give serious reason to doubt that fee-based funding — stemming from a marginalized population with inconsistent, low-paying labor market opportunities — could cover the costs of criminal proceedings.

⁹⁷ Menendez et al., *supra* note 14.

⁹⁸ Jens Ludwig, Greg J. Duncan & Paul Hirschfield, *Urban Poverty and Juvenile Crime: Evidence from a Randomized Housing-Mobility Experiment*, 116 *Q.J. Econ.* 655 (2001).

⁹⁹ Jeffrey R. Kling, Jens Ludwig & Lawrence F. Katz, *Neighborhood Effects on Crime for Female and Male Youth: Evidence from a Randomized Housing Voucher Experiment*, 120 *Q.J. Econ.* 87 (2005).

¹⁰⁰ Megan T. Stevenson, *Distortion of Justice: How the Inability to Pay Bail Affects Case Outcomes*, 34 *J.L. Econ. & Org.* 511 (2018).

¹⁰¹ Agan & Starr, *supra* note 2. (This realization has prompted many to consider the implementation of income-based fees specific to defendants. See, for example, Bryan L. Adamson, *Debt Bondage: How Private Collection Agencies Keep the Formerly Incarcerated Tethered to the Criminal Justice System*, 15 *Nw. J.L. & Soc. Pol'y* 305 (2019). Likewise *see*, Menendez et al., *supra* note 14. While popular as a policy recommendation, it is crucial to note other deficiencies have been pointed out. Ariel Jurow Kleiman, *Nonmarket Criminal Justice Fees*, 72 *Hastings L.J.* 517 (2020). Kleiman points out that discriminatory policing patterns and administrative inefficiencies detract from the potential upsides to ability-to-pay inquiries.)

¹⁰² Neel U. Sukhatme, Alexander Billy & Gaurav Bagwe, *Felony Financial Disenfranchisement*, 76 *Vand. L. Rev.* 143 (2023).

¹⁰³ E. Ann Carson et al., *Employment of Persons Released from Federal Prison in 2010* (Bureau of Just. Stat., No. NCJ 303147, Dec. 2021), <https://bjs.ojp.gov/content/pub/pdf/eprfp10.pdf>.

These observations imply assessing and collecting fees are distinct issues. The reality is that the vast majority of fees that are assessed are never collected. Moreover, with time, debts become increasingly less likely to be collected.

States across the country have recognized that stale debt may not be worth the expense of collection or the hardship it places on the people who owe it. For instance, the Oregon Judicial Department considers court debt older than 5 years “virtually uncollectable;”¹⁰⁴ Nevada considers debt from traffic infractions uncollectible “if after 8 years it remains impossible or impracticable to collect the delinquent amount;”¹⁰⁵ and in California, counties are authorized to initiate a “discharge of accountability” for court debt too small or too old to collect.¹⁰⁶ In an evaluation of court-ordered fines and fees, the Idaho State Legislature’s Office of Performance Evaluation acknowledged that it “is not reasonable to assume that [all] past due court-ordered obligations can be recovered or should be actively pursued for collection . . . there will always be a group that cannot or will not pay, regardless of what additional sanctions are applied.”¹⁰⁷

The general failure to acquire such revenue prompted the National Center for State Courts to encourage courts to establish a “reasonable level of uncollectible accounts suitable for write-off after appropriate time and effort has been expended.”¹⁰⁸ In Florida, according to performance measures¹⁰⁹ set by the Clerks of Court Operations Corporation (CCOC), clerks expect to collect only 9% of the circuit

¹⁰⁴ With regard to analogous fee debt, “[a]fter year 5, collection drops to less than 10%” and “debt...older than 5 years [is] virtually uncollectable.” Oregon Judicial Department, Court Ordered Financial Obligations: Imposition, Collection, and Distribution, 2018 (unpublished presentation slides), <https://berkeley.app.box.com/s/b5f21m57yr12gqbl9nxynfehdb4iegm4> (last visited May 31, 2021).

¹⁰⁵ Nev. Stat. § 176.0647 (2019).

¹⁰⁶ *Summaries of Government Codes Pertaining to the Rules of Discharge of Accountability*, California Judicial Branch, <https://www.courts.ca.gov/documents/fin-rev-dist-session3A-GC25257-to-25259.95.pdf> (last visited May 7, 2021).

¹⁰⁷ Office of Performance Evaluations, Idaho Legislature, Court-Ordered Fines and Fees 46 (2019), <https://legislature.idaho.gov/wp-content/uploads/OPE/Reports/r1903.pdf>.

¹⁰⁸ *Id.*

¹⁰⁹ Florida law also requires clerks to develop performance barometers to “facilitate an objective determination of the performance of each clerk in accordance with minimum standards for fiscal management, operational efficiency, and effective collection of fines, fees, service charges, and court costs.” Fla. Stat. § 28.35(2)(d) (2022). If a clerk does not meet the “performance measure,” they are required to explicate and develop a corrective action plan, which is then submitted to the legislature. *Id.* The performance metrics are designed to encourage pursuit of collections. However, their thresholds are telling in themselves. A clerk meets the approved standard if they collect at least 40% and 9% of the amounts assessed within five quarters in misdemeanor and felony cases, respectively. Florida Clerks of Court Operations Corporation, Performance Measures and Standards, available at: <https://flccoc.org/wp-content/uploads/2019/08/CCOC-Performance-Measures-and-Standards.pdf>. While these rates appear abysmally low, the clerks find them too onerous; they are currently seeking to lower the felony collection goal from 9% to 8%. Fla. Clerks of Court Operations Corporation, Performance Improvement and Efficiencies Committee - Collections and Timeliness Workgroup Meeting, April 05, 2022 <https://flccoc.org/wp-content/uploads/2022/04/CTWG-Meeting-Materials-040522.pdf>.

criminal court LFOs levied by the end of the 5th quarter after assessment.¹¹⁰ This means that for every dollar assessed, clerks need to collect just 9 cents to meet their internal collection goals. The CCOC considers debts “aged” if they are more than five years old.¹¹¹ For such debts, the CCOC recommends the clerks to consider settling for “no less than \$0.60 on the dollar.” Given their own internal performance metrics earmark \$0.09 on the dollar, it would be delusional to expect this amount.¹¹²

1. Fee Repayment Case Study

We can study these trends more carefully by examining court records on fee repayment. As a case study, we turn to records from cases filed in 2013 in Escambia County, a relatively small county in the Florida Panhandle that encompasses the City of Pensacola. We limit the data to cases that involve defendant debt responsibility. These cases do not represent the universe of criminal court filings but rather cases linked with individuals in sentencing data maintained by the Florida Department of Corrections. In total, our data comprise 510 cases; payment records are available until 2022.

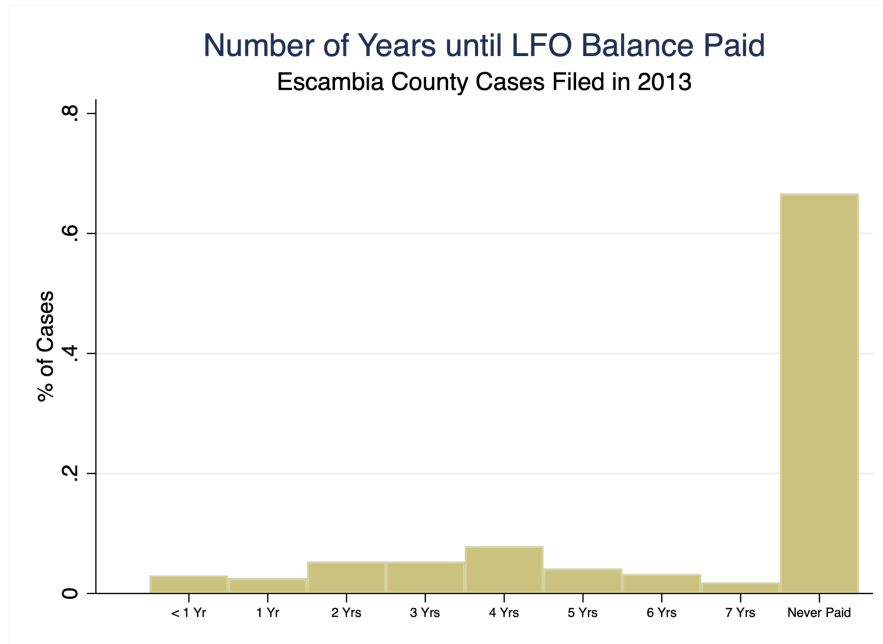
Figure 1 below captures the annual likelihood an individual clears the LFO balance associated with one case.

Figure 1: Years Until Defendants Clear LFO Balances in Escambia County

¹¹⁰ CCOC Performance Measures and Standards.
<https://flccoc.org/wp-content/uploads/2019/08/CCOC-Performance-Measures-and-Standards.pdf>

¹¹¹ Florida Clerks of Court Corporation, Clerk Collection Best Practices 9 (2015),
<https://flccoc.org/wp-content/uploads/2019/08/Best-Practices-Collections-12-10-15.pdf>.

¹¹² *Id.*



As is apparent from the graph, more than two-thirds of criminal cases involve “aged” debt in Escambia County. The likelihood that case debt is cleared is directly related to the assessed amount; the median balance of cases with all LFOs paid is \$768, whereas the median in unpaid cases is \$50. All else equal, this statistic plausibly suggests that clerks pursue the collection of sizable debt.¹¹³

2. Systemic Fragility

Collections, especially in criminal cases, may trickle in from indigent individuals. Likewise, officials may deem certain LFOs uncollectable. However, these observations do not imply that court debt is itself immaterial. For example, in fiscal year 2021-2022, fines and fees represented 17% (\$115 million) of Florida’s courts’ budget.¹¹⁴ That is a sizable amount, whose absence or attenuation could lead to systemic risk.

Concerns over structural collapse in Florida can largely be traced to the creation of the State Court Revenue Trust Fund. Since its advent in 2009, state and local courts (like clerks as of 2004) have financed their operations, at least in part, on fines and fees.¹¹⁵ Primarily composed of mortgage foreclosure fees and traffic

¹¹³ See Sukhatme, Billy & Bagwe, *supra* note __, at __ (discussing payment and collection practices in Lee County. The evidence on debt collection practices in Florida that we document is consistent with the findings presented there).

¹¹⁴ General Appropriations Act (SB 2500) less Governor’s Vetoes (The remaining 83% came from General Revenue.)

¹¹⁵ Legislative Budget Commission, *State of Florida Long-Range Financial Outlook Fiscal Year 2011-12 through 2013-14 (2010)*, <http://floridafiscalportal.state.fl.us/Document.aspx?ID=6195&DocType=PDF>.

finances, this pool of cash temporarily stabilized the courts and clerks from Great Recession induced shortfalls.¹¹⁶ However, secular declines in both mortgage fees¹¹⁷ and traffic fines¹¹⁸ have restricted funding. This effectively makes the entire court system more reliant on criminal court debt to cover financing once provided by civil fines and fees. Stated differently, creditor courts must draw upon a smaller set of civil remittances collected by budget constrained clerks.

Even if Florida financed the judiciary but not the clerks through general revenue, systematic risk would still exist. Clerks and their staff are paid via fines and fees, which increasingly consist of criminal debt. Failure to properly collect sufficient amounts of such revenue would halt or at least retard court operations.

Concern over the stability of criminal LFO revenue is multifold. For one, criminal debt, like civil court fines and fees, is not immune to the vicissitudes of social forces. Criminal debt correlates with underlying crime and arrest rates; both have markedly declined over the past three decades.¹¹⁹

Whereas the judiciary has immediate needs, its ability to satiate those is imperfect. Clerks' budgets are based on revenue projections. This implies that on occasion, clerks' offices (as well as other fee financed judiciary bodies) will be under-resourced if collections fall below expectations. If fine and fee revenue fails to meet benchmarks, clerks must cut their agency costs. Often, such measures mean a reduction in the number of individuals employed by the clerk; staffing cuts create bottlenecks in the administrative side of the judiciary and trigger systemic risk.¹²⁰

The temporal disconnect between needs and resources, furthermore, depends on the time of year.¹²¹ Clerks remit surplus collections at the start of the calendar year.¹²² The legislature later allocates the clerks their appropriation. This often occurs several weeks after the clerks remit remaining collections. In effect, clerks must operate with no resources at the start of each year.¹²³

¹¹⁶ *Stabilizing Revenues*, supra note 84.

¹¹⁷ See [United States Residential Foreclosure Crisis: Ten Years Later](#) (2017);. see also, e.g., *Stabilizing Revenues*, supra note 84.

¹¹⁸ [Florida Clerks of Court Operations Corporation, Annual Report](#) (2021), <https://fccoc.org/wp-content/uploads/2023/01/CCOC-Annual-Report-CFY-2020-21.pdf>.

¹¹⁹ See, e.g., [John Pfaff, Locked In: The True Causes of Mass Incarceration and How to Achieve Real Reform](#) (2017).

¹²⁰ See, e.g., Susan Taylor Martin, *A Conversation with Pinellas County Clerk of Court Ken Burke*, [Tampa Bay Times](#) (Sept. 24, 2020), <https://www.tampabay.com/news/business/2020/09/24/a-conversation-with-pinellas-county-clerk-of-court-ken-burke/>; see also, [McGovern & Greenberg](#), supra note 73.

¹²¹ This issue is not unique to Florida. See, e.g., [McGovern & Greenberg](#), supra note 72, at _.

¹²² [Fla. Stat. § 28.37\(3\)](#) (2022).

¹²³ *Stabilizing Revenues*, supra note 84.

These budget gaps, until recently, have not been smoothed by pools of reserves. Prior to 2021, the Florida legislature captured all revenue beyond clerks' specified budgets. As of 2021, however, clerks have acquired the ability to store surplus revenue in the event of an emergency. While clerks enjoy some capacity to draw upon reserves, their fund is limited to 16% of the total budget for the clerks of court in the current year.¹²⁴ Still, this pool exists only if surpluses materialize. Absent that, all aforementioned temporal difficulties still apply.

These collective concerns are not hypothetical speculations. Clerks *did* furlough employees and reduce operations in response to pandemic-related financial distress.¹²⁵ Case backlogs emerged that will persist for years.¹²⁶ That is not to say these issues are merely recent phenomena either. Budget deficits in the past decade forced the governor and the state legislature to extend emergency funding to the judiciary.¹²⁷ In 2010, the courts received \$44.2 million dollars in such monies; a similar budget deficit occurred in 2011¹²⁸ and 2022.¹²⁹ These budgetary gaps have often been addressed via loans from the legislature or executive office and have left the judiciary itself in debt; in 2011, the courts and clerks owed almost \$100 million to the state.¹³⁰

B. *Fee Diversion*

Even if one sets aside the foundational flaws inherent in fee-based systems due to its funding source, this financing model is subject to additional destabilizing forces. These pressures, arising from a complex network of misaligned incentives, involve the stakeholders in the funding apparatus. Namely, the state courts, the legislature, and clerks of court vie for LFO revenue.

A competitive process emerges naturally given the institutional framework surrounding remittances. LFO revenue collected by clerks eventually makes its way to a series of purpose-specific accounts. The objectives of these funds are preordained by statutory and constitutional provisions. Yet the links between the

¹²⁴ See 2021 Fla. Laws 1559.

¹²⁵ See, e.g., Stephen Hudak, *Orange Court Clerk Asks for Money Because of Pandemic*, [Orlando Sentinel](https://www.orlandosentinel.com/news/orange-county/os-ne-coronavirus-orange-clerk-asks-for-money-20200811-1bd4lfgo5vgctc4hhl6z4vv4e4-story.html) (Aug. 11, 2020, 3:31 PM), <https://www.orlandosentinel.com/news/orange-county/os-ne-coronavirus-orange-clerk-asks-for-money-20200811-1bd4lfgo5vgctc4hhl6z4vv4e4-story.html>.

¹²⁶ Renzo Downey, *Clerks of Court Seek Budget Fix with Gov. Desantis-Approved Bill*, [Fla. Pol.](https://floridapolitics.com/archives/436547-clerks-of-court-seek-budget-fix-with-gov-desantis-approved-bill/) (Jun. 18, 2021), <https://floridapolitics.com/archives/436547-clerks-of-court-seek-budget-fix-with-gov-desantis-approved-bill/>.

¹²⁷ *Stabilizing Revenues*, *supra* note 84.

¹²⁸ *Stabilizing Revenues*, *supra* note 84.

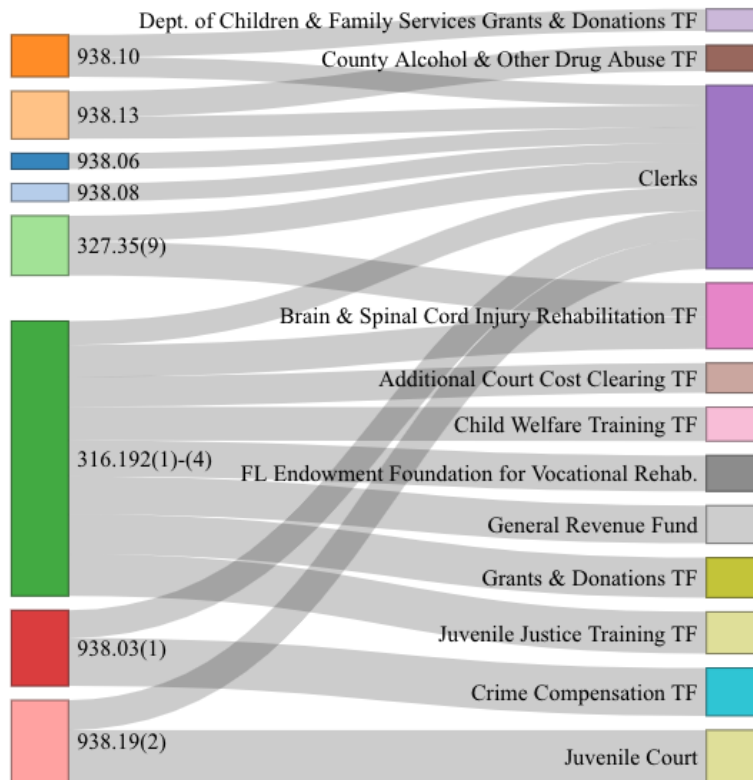
¹²⁹ Patrick R. Fargason, *Florida Clerks Prepare for a Potential Funding Shortfall*, [The Fla. Bar](https://www.floridabar.org/the-florida-bar-news/florida-clerks-prepare-for-a-potential-funding-shortfall/) (Sept. 9, 2022), <https://www.floridabar.org/the-florida-bar-news/florida-clerks-prepare-for-a-potential-funding-shortfall/>.

¹³⁰ *Stabilizing Revenues*, *supra* note 84.

accounts and sources of monies are not one-to-one connections. Rather, a defendant adjudicated guilty or a civil petitioner may ultimately pay a fee redirected to legislature by way of the General Revenue Fund and the clerks of court. The laws determining the distribution vary over time, subject to political and financial exigencies.

Consider Figure 2 below. This graphic decomposes two of the trust funds that benefit clerks of court in Florida and captures the statutory inflows.¹³¹ We have intentionally included only statutes that transfer revenue to clerks; the schematic would involve many more nodes if regulatory codes that fund all included trust funds but not clerks were incorporated.

Figure 2: Statutory Allocation of Fee Revenue in Florida



¹³¹ For readers' convenience, we have only detailed inflows to two of the three trust funds that finance clerks' operations. We have omitted the third account, the Fine and Forfeiture Trust Fund, due to the complexity and multitude of statutes involved.

Notes: Per our partners at the Fines and Fees Justice Center, this figure depicts the connections between statutory laws and trust funds as of December 2022. The allocation of fee revenue associated with violations of statutes, listed on the left, to trust funds and other beneficiaries. The visualization is limited to statutes that ultimately provide clerks with revenue but for the Fine and Fee Forfeiture Trust Fund, which is excluded for the readers' convenience. The Fine and Fee Forfeiture Trust Fund receives revenue from violations of more than 30 different statutes.

Figure 2 illustrates the entangled relationship between statutes' fees and objective-specific accounts. The left hand side lists statutory provisions designed to raise funds for clerks of court. The right hand side lists where the money raised by those provisions is actually sent. As is apparent, while a portion of each of the statutory provisions is sent to the "Clerks" category on the right, for many categories, a portion of the revenue stream is diverted to other non-clerk related accounts.

For example, Florida Statute § 316.192(1)-(4) — related to fines for reckless driving — allocates revenue to eight separate trust funds. The relationship is further complicated by a statutorily prescribed prioritization scheme. That is, trusts are categorized into tranches that receive money in sequential order until each stakeholder's share is covered.¹³² The 2022 hierarchy lists the General Revenue Fund at the top followed by clerks, trust funds (on a *pro rata* basis), and then local governments.¹³³ The degrees of prioritization are telling; effectively, they state that "fees" — which should be linked with cost centers — may actually finance completely unrelated activities.

This complex transfer of revenue has given way to a competitive process through which legislators and clerks drain clerks of revenue. Consider Florida Statute § 318.14(10)(b), which charges defendants in non-criminal traffic violations a \$25 fee to offset court costs. Under the 2010 Florida Code, the \$25 was allocated as follows: \$14 to the municipality, \$9 to the Fine and Forfeiture Trust Fund, \$1 to the Department of Revenue for Child Welfare Training Trust Fund, and \$1 to the Department of Juvenile Justice. Current law maintains the same structure but with one adjustment. It only provides the Fine and Forfeiture Trust Fund with \$8; the remaining \$1 is deposited into the General Revenue Fund.

In practice, clerks, who draw upon the Fine and Forfeiture Trust Fund now see less financing. Legislators, who determine the distribution of the General Revenue Fund, would appear to gain. Moreover, the assessment no longer directly ties to court costs; rather it funds a variety of projects. In theory, legislators may require

¹³² Fla. Stat. § 28.246 (2022).

¹³³ *Id.*

that the distribution to the General Revenue Fund sponsors activities related to court costs; that said, the fungibility of money casts serious doubt on the notion that every cent operates as intended. Therefore, this example highlights both the temporal diversion and fee mischaracterization issues aforementioned. Nor is this anecdote unique; changes to Florida Statutes § 327.73(11)(a) and § 938.05(3) similarly diverted money from clerks.¹³⁴

Clerks and the state courts have not responded amicably to the capture of their agency funding. Their litigious reaction underscores the combative interaction between the parties and signals the significance of these statutory diversions. At least two lawsuits allege the system has put the judiciary at risk of collapse. In one matter, the Supreme Court of Florida overturned a lower court's ruling that the distribution of fee revenue into the states' general funds was unconstitutional.¹³⁵ Separately, several clerks jointly argued that the current fee system undermined a constitutional provision to adequately fund the court; that filing was similarly unsuccessful.¹³⁶

Together, these observations describe a revenue model fraught with internal struggles over distributions. Even if monetary streams were stable (which they are not) the judiciary funding apparatus would still be plagued by structural concerns. To quote a workgroup composed of clerks, state administrators, and judges, "There are currently sufficient funds generated by the Courts and Clerks to fund the Core Court System. However, a significant amount of these revenues is being used to fund other (non-core court) state entities and programs."¹³⁷

Beyond the risks siphoning poses to the judiciary, it further pressures the clerks to turn to criminal court revenue since the state courts and the legislature access only civil court debts. According to the CCOC, clerks appear to have already realized this. Criminal debt — composed of LFOs from criminal traffic, county, and circuit courts — represented 18% of revenues collected by clerks for 2021¹³⁸ up from

¹³⁴ A separate but related issue involves the direction of fee revenue toward completely orthogonal government operations. See [Rebekah Diller, The Hidden Costs of Florida's Criminal Justice Fees](#) (2010) ("For example, the court imposes a \$135 fee on those who drive a boat under the influence, but not a single penny of this sum goes to the courts. Rather the legislature directs that the money be divided between an emergency medical services trust fund, the statewide crime lab system, and a brain and spinal cord injury rehabilitation trust fund. The mandatory \$500 penalty imposed on those who solicit prostitution is another example. The \$500 collected for this offense is used for the 'sole purpose of paying the administrative costs of treatment-based drug court programs.'")

¹³⁵ *Crist v. Ervin*, 56 So. 3d 745 (Fla. 2011).

¹³⁶ *Frank v. Fla. Dep't of Revenue*, 305 So. 3d 835 (Fla. Dist. Ct. App. 2020).

¹³⁷ [Stabilizing Revenues for the State Courts System and Clerk of Courts: Recommendations of the Revenue Stabilization Workgroup](#) (2011).

¹³⁸ Florida Clerks of Court Operations Corporation 2021 Annual Report.

17% in 2019.¹³⁹ This 6% increase masks a 49% increase in criminal circuit court debt over the same period; though crime *may* have risen from 2019 to 2021, it almost certainly did not increase by nearly 50%.¹⁴⁰ As noted above, this period witnessed a massive decline in civil court fines and fees; collectively, these arguments suggest an increasingly pivotal role for criminal court revenue in the funding model.

C. *Fee Proliferation*

The institutional design flaws of a fee-based court system visible in the Florida model encourage those operating within it to identify opportunities for new revenue streams. While this may materialize internally via fine and fee competition, the search often looks outward. Specifically, the stakeholders tend to focus their attention on parties to litigation. Unstable revenue inflows subject to fierce rivalries over distribution may, at least temporarily, be calmed by expanding the scope and size of fines and fees on litigants.

The legal framework set by the Florida Constitution appears to facilitate proliferation of the LFO network. To wit, the state constitution requires that fees be “adequate and appropriate” to cover costs of performing court-related activities.¹⁴¹ This framing offers legitimacy to the augmentation of court fines and fees. The judiciary itself appears to similarly justify such expansion. According to the Supreme Court of the State of Florida’s 5th Principle of Funding Stability:

Any additional fees should be assessed only if there is no chilling effect on Florida citizens’ right of access to the court system, and only in an amount necessary to properly fund court operations so that access is assured.¹⁴²

Such language, in part, gives substantial latitude to justify an ever-growing fee network.¹⁴³ It also provides legislators expedient grounds to legitimize reduced distributions to the judiciary and reasons to counteract those with increased fees.

¹³⁹ Florida Clerks of Court Operations Corporation 2019 Annual Report.

¹⁴⁰ The FBI transitioned from the Uniform Crime Report to the National Incident-Based Reporting System in 2021. Uptake of the new program has underwhelmed. Many major agencies including the New York Police Department and the largest police departments in Florida did not report any data. Most criminologists, including Jacob Kaplan, a chief architect behind open-source crime data, argue that the crime data for 2021 are so poor that drawing inferences from them would be inappropriate. *See* Weihua Li, *What Can FBI Data Say About Crime in 2021? It’s Too Unreliable to Tell*, The Marshall Project (Jun. 14, 2022, 5:00 AM), <https://www.themarshallproject.org/2022/06/14/what-did-fbi-data-say-about-crime-in-2021-it-s-too-unreliable-to-tell>.

¹⁴¹ Fla. Const. art. V, sec. 14(b).

¹⁴² Office of the State Courts Administrator, *Principle 5*, in *Seven Principles for Stabilizing Court Funding* 4-5 (2009), https://www.flcourts.gov/content/download/218239/file/02-20-2009_Seven_Principles.pdf.

¹⁴³ To argue increased fees do not chill participation is entirely misguided from theory and evidence. *See, e.g.*, Louis Kaplow, *Optimal Design of Private Litigation*, 155 *J. Pub. Econ.* 64 (2017).

Financial hardship certainly prompts stakeholders to restructure the levels of LFO costs.¹⁴⁴ For instance, upon implementation of Article V, the Florida Senate immediately sought to firm up clerk funding; it did so via increased fees and assessments.¹⁴⁵ Likewise, the Great Recession ushered in a series of expansions including the creation of the State Court Revenue Trust Fund and increased fees for public defenders.¹⁴⁶

However, these anecdotes do not preclude the possibility that elected officials leverage the relatively weak bargaining position of the courts to enhance their own financial capabilities. In other words, increased fines and fees do not need to relate to costs or factor in the likelihood of receipt.¹⁴⁷ Expansions may emerge as a politically convenient way to counteract budget cuts. For example, the list of criminal offenses subject to a \$100 fee that benefits the Florida Department of Law Enforcement expanded in 2012.¹⁴⁸ Counties likewise exploit the opportunity to accumulate fee revenue. For example, Citrus County expanded its traffic fees in 2004.¹⁴⁹ While Citrus County officials' actions appear to have been loosely tied to budgetary concerns, the expanded scope of the \$100 fee does not.

This is not to say that elected officials bear all responsibility; they simply wield power to realize these expansions. Clerks and members of the judiciary are complicit; they have explicitly considered increased fees previously to finance their operations.¹⁵⁰ Thus, legislators — possibly at the behest of clerks — have fashioned the current gargantuan fee apparatus.

The aforementioned process is entirely legal. Laid bare, however, it clearly illustrates inherent moral hazard present in a fee-based court system. The stakeholders respond to the incentives before them. Such pressures once again manifest themselves on court users and increasingly on criminal defendants.

¹⁴⁴ Carlson et al., *supra* note 64.

¹⁴⁵ Jan Pudlow, *Senate Finds a Way to Pay for Art. V*, *The Fla. Bar* (Apr. 30, 2003), <https://www.floridabar.org/the-florida-bar-news/senate-finds-a-way-to-pay-for-art-v/>; see also Gary Fineout, State may cover costs by raising fees, fines, Gainesville Sun (May 17, 2003), <https://www.gainesville.com/story/news/2003/05/17/state-may-cover-costs-by-raising-fees-fines/31636429007/>.

¹⁴⁶ Fla. Stat. 938.10(1) (2022).

¹⁴⁷ *Stabilizing Revenues for the State Courts System and Clerk of Courts: Recommendations of the Revenue Stabilization Workgroup* (2011). This workgroup explicitly discounted the possibility of raising filing fees and fines as it noted that Florida, at least at the time, had some of the highest fines and fees in the country; likewise, the group acknowledged the possibility that increased rates disincentivize use of courts.

¹⁴⁸ Prior to 2012, the \$100 fee could be collected in connection to violations of Fla. Stat. § 893.13 (2022). However, it was expanded to include any violation within §§ 775-896.

¹⁴⁹ Tom Scherberger, *County to increase fees to cover court costs*, *Tampa Bay Times* (Oct. 12, 2005), <https://www.tampabay.com/archive/1992/12/16/court-fees-may-increase/>.

¹⁵⁰ *Fargason*, *supra* note 128. (“We might consider [asking for] a 10% raise on filing fees or perhaps a cost-of-living increase.”)

D. No Exit, No Voice

In spite of its dysfunctional nature, the fee-based judiciary continues to operate; its survival, however, is precarious and heavily contingent upon external financing from the other two branches of state government. These interventions completely undermine the existence of a financially independent judiciary.

Though the 1998 amendment that ushered in Florida's fee-based system arose from a desire to provide access to courts “without sale, denial or delay,” it can be viewed as nothing short of abject policy failure.¹⁵¹ Financial malaise compromises the means of effectively resolving disputes and redressing injury.¹⁵² Budgetary concerns have created frequent delays.¹⁵³ As noted above, stakeholders have attempted to address these via a more expansive fee system. Hence, the principle of delivering judicial services “without sale . . . or delay” would appear chimeric under the current framework.

The inability to enforce contracts, secure property rights, seek justice in criminal matters, or mediate disputes on a timely basis undermines the common law tradition. It also bears substantial costs.¹⁵⁴ Though revenue shortfalls near the \$50 million level appear large, they represent less than 1% of annual tax collections in Florida; moreover, the entire clerk budget is approximately 1% of yearly tax collections.¹⁵⁵ While potentially politically distasteful, it would seem exceptionally feasible to finance clerks via general revenue; moreover, the costs of doing so seem sensible from both a principled and cost effective perspective. Therefore, it seems puzzling that the fee-system continues to function.

Economic theory offers an answer. The judiciary, along with the legislature in its oversight role, is best viewed as a leviathan. Like a monopolist, it provides court services — without competition in its jurisdiction — to a diverse set of litigants, including criminal defendants. Monopolists, however, are constrained by individuals' choices to forgo consumption of the good or service. Criminal defendants do not possess this luxury; they are coerced into their user role. An immediate

¹⁵¹ Fla. Const. art. I, § 21.

¹⁵² *Psychiatric Associates v. Siegel*, 610 So.2d 419, 424 (Fla. 1992).

¹⁵³ Gary Blankenship, *Clerks Say Expect Delays in Civil Cases*, Fla. Bar (May 1, 2012), <https://www.floridabar.org/the-florida-bar-news/clerks-say-expect-delays-in-civil-cases/>.

¹⁵⁴ *World Development Report 2005: A Better Investment Climate for Everyone (2004)*; Thomas J. Miceli, *Settlement Delay as a Sorting Device*, 19 Int'l R. L. & Econ. 265 (1999); Allen P. Rubine, Note, *Speedy Trial Schemes and Criminal Justice Delay*, 57 Cornell L. Rev. 794 (1972).

¹⁵⁵ U.S. Census Bureau, State Tax Collections: Total Taxes for Florida [QTAXTOTALQTAXCAT3FLNO], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/QTAXTOTALQTAXCAT3FLNO>, November 18, 2022. (Clerks collectively operate on a budget around \$500 million. Tax collections in 2011, for example, were \$32.9 billion. Hence, the entire clerk system would account for about 1% of tax collections.)

consequence is that the judiciary retains even greater ability to draw revenue from criminal defendants than consumers in standard monopolist models.¹⁵⁶

The inability to rein in such excesses — also known as the absence of the exit option — reduces the sensitivity of courts and the legislative branch to ability to pay.¹⁵⁷ In settings where consumers are not coerced into purchases, their decision to not patronize a monopolist affects profits; given different willingness to pay among consumers, monopolists set prices according to where the trade-off between a higher price and fewer customers (in conjunction with volume per customer) maximizes their revenue. However, no such equilibrating influence exists for the “demand” of criminal court services among defendants. Bureaucrats, therefore, have no incentive to be mindful of income constraints. Further, such fees will, according to the theory of public choice, tend to grow with time both in terms of size and scope as financing needs evolve.¹⁵⁸

While electoral activism has the potential to expose such exploitation and vote abusive officials out of office, individuals with felony convictions generally lack a vehicle for voice. Namely, returning citizens who have not settled their criminal court debt are often prohibited from voting, as is the case in Florida.¹⁵⁹ Therefore, voter disenfranchisement among those with a felony conviction in theory might further desensitize courts and legislators to ability to pay.

The aforementioned dynamics describe an environment where, regardless of individualized fees, former criminal defendants find themselves in vulnerable positions. This theory suggests the judiciary and its political affiliates will extract greater value over time from these users, who serve as a captive audience.¹⁶⁰ The lack of recourse further implies that fees and their scope will continue to expand.

¹⁵⁶ Ariel Jurow Kleiman has described this situation as a “non-market” as “consumer demand cannot exert downward pressure on fee levels.” See Kleiman, *supra* note 100.

¹⁵⁷ Thus, calls for fees to be determined by ability to pay are quixotic. That said, the impetus for fees based on the ability to pay—indigency—should not be ignored. Rather, it suggests the revenue inflows may not sufficiently fund courts. The failure to collect enough revenue risks the solvency of the system; this effectively pits the court’s sense of self-preservation against public interest.

¹⁵⁸ Brennan & Buchanan *supra* note 38, at 71, 130.

¹⁵⁹ See Sukhatme, Billy & Bagwe, *supra* note __, at __ While informal complaint channels to enfranchised peers or community leaders may be available, their utility - formally speaking - lacks the effectiveness of unfettered voice mechanisms. Any activism on behalf of those connected to individuals with felony convictions are pitted against the belief that offender-funded courts shield taxpayers from funding; this supposition is highly questionable as courts turn to general tax collections to address their needs as criminal fee revenue sponsors an expansive array of publicly facing projects. See Brennan & Buchanan, *supra* note 38, at 20.

¹⁶⁰ Brennan & Buchanan *supra* note 38, at 130.

III. CREDITOR COURTS AND COLLECTIONS: CONFLICTS OF INTEREST AND CAMPAIGN FINANCE

The previous section highlights the distortions and inefficiencies inherent in fee-based criminal court systems. Fee-based systems are poor revenue generators, with uncertain revenue streams untethered both temporally and in nature to underlying costs. And once state legislatures are empowered to charge fees to those confined within the criminal legal system, they have every incentive to increase the amount and scope of fees charged and divert collected fees away from actual court expenses.

But the problem is worse than that. As we document in this section, the process of collecting fees from criminal defendants is rife with potential conflicts of interest that further undermine the interests of the state, clerks of court, and criminal defendants.

Focusing once again on Florida, we present results from a survey of clerks of court, which digs into the collections process and its challenges. We also conduct a novel empirical analysis of 102 contracts between collection agencies, spanning 60 of the state's 67 counties. We show these contracts often contain terms that benefit agencies at the expense of the state or criminal defendants. Moreover, there is no evidence these agencies significantly improve on collections rates or increase repayment rates to the state by former defendants.

Why might such contracts exist? As we discuss, clerks of court are elected officials who accept campaign donations. Using comprehensive campaign finance data from Florida for the 2020 general election, we argue that many candidates for clerk of court often benefit from donations made by collections agencies or their employees. While it is unclear whether there is a causal link between contracts ratified by clerks and donations made by collections agencies to those clerks, the potential conflict of interest – and the resulting harm to the state and criminal defendants – is clear.

A. *Clerks of Court Survey*

To better understand how clerks approach debt collection, we collaborated with the Fines and Fees Justice Center (FFJC) to survey clerks of court across Florida on their methods, challenges, and concerns. Twenty-seven clerks completed the survey, a response rate of approximately 40%. We do not claim these answers represent all

clerks of court in Florida, let alone other jurisdictions. Nonetheless, they do offer some insights that illuminate our analysis and can guide further empirical study.

A few themes emerged from the clerks’ responses. To begin, clerks of court have tested a number of different approaches to try and increase collection rates. Table 1 below summarizes ones mentioned by the clerks in their survey responses:

Table 1: Clerk of Court Actions to Collect Criminal Court Fines & Fees

Clerk action to process/collect criminal court fines & fees	# Counties
Notify DMV of missed court payment (driver’s license suspension)	24
Send to private collection agency	24
Mail notice to individual of requirement to pay fines or fees or set up payment plan	21
Mail notice to individual of late payment	19
Set up payment plans	17
Convert fines or fees to community service	17
Assess additional fines and fees	16
Convert to civil judgment	14
Meet with individual immediately upon sentencing	10
Text/email notice to individual of late payment	5
Text/email notice to individual of requirement to pay fines or fees or set up payment plan	4
Hold in contempt of court	2
Bank account levied or lien placed on property	2
Garnish wages	1
Phone calls to defendants who are late on partial payments	1
Offer driver’s license reinstatement days	1

The clerks who responded apply a mix of strategies. Primarily, the respondents use driver’s license suspensions or third-party debt collection agencies to acquire

revenue. Clerks, however, also seem willing to work with debtors. Most acknowledged they convert LFOs to community service. Public service can enable returning citizens to develop skills, which reduces the likelihood of recidivism.¹⁶¹ Still, these conversions are not the most popular device in our survey or others.¹⁶² Moreover, clerks *can charge* individuals for community service work performed.¹⁶³

Similarly, clerks' willingness to set up payment plans, which can be tied to ability to pay, seems cooperative. Again, however, clerks typically reserve the right to charge debtors a one-time fee to establish this arrangement.¹⁶⁴ Therefore, even the outwardly altruistic devices employed by clerks have a revenue component attached to them.

The propensity to use extractionary tools is borne out of a recognition that the vast majority of felony court debt is uncollectible. Clerks widely recognized this in their survey. According to them, a principal barrier to repayment is the lack of resources to pay fees and costs.¹⁶⁵ Clerks proffered two primary explanations for this inability.

First, some clerks emphasized that individuals who owe criminal court debt are frequently incarcerated. Incarceration clearly interferes with the ability to earn income, which can stymie repayment of court debt. ("Most of the cases result in incarceration"; "Defendants incarcerated resulting in the inability to collect court costs and fines.").

Second, clerks emphasized that financial hardships, independent of incarceration, plague these individuals. The following comments capture this sentiment:

- "The local economy, incarcerated defendants, and the overall ability to pay greatly affect the collection rate."
- "Collections are below [expected] percentage due to economic hardships brought upon individuals."

¹⁶¹ Hilde Wermink, Arjan Blokland, Paul Nieuwebeerta, Daniel Nagin & Nikolaj Tollenaar, *Comparing the Effects of Community Service and Short-Term Imprisonment on Recidivism: A Matched Samples Approach*, 6 **J. Experimental Criminology**, 325 (2010).

¹⁶² Rebekah Diller, *The Hidden Costs of Florida's Criminal Justice Fees* (2010) (available at <https://www.brennancenter.org/our-work/research-reports/hidden-costs-floridas-criminal-justice-fees>).

¹⁶³ *Probation Highlights, Leon County*, <https://cms.leoncountyfl.gov/Home/Departments/Office-of-Intervention-and-Detention-Alternatives/Probation/Probation-Highlights> (last visited Feb. 6, 2023).

¹⁶⁴ Fla. Stat. § 28.24(26) (2022).

¹⁶⁵ Florida Clerks of Courts Operations Corporation, *Quarterly Performance Measures & Action Plans Report: 1st Quarter County Fiscal Year 2021-22* Tbl. D, <https://flccoc.org/wp-content/uploads/2022/02/Q1-CFY2122-PMAP-Report.pdf>.

- “Low-income levels; high unemployment rates. We cannot solve these problems. We are following best practices for collections, but do not have control over all of the relevant factors.”¹⁶⁶

Even if clerks recognize limitations to the debt they can collect, they generally expend substantial resources on the pursuit of criminal LFO debt. Clerks of court varied widely in this regard. Clerk estimates of the number of staff who assist with the collection of criminal fines and fees range from a low of 0.5 people (Madison County) to a high of 16 people (Volusia County).¹⁶⁷ Not surprisingly, the total number of hours estimated per week spent on criminal fines and fees collections varied widely as well, ranging from 5 hours per week (Hamilton County) to 187.5 hours per week (Santa Rosa County).

Though heterogenous, hours spent per week on LFO debt collection can help facilitate a crude cost-benefit analysis. The median time allocated to criminal debt collection according to the survey is approximately 34 hours per week. Clerks’ staff earn approximately \$35,000 a year.¹⁶⁸ That equates to about \$17 an hour. Thus, LFO collections for the median county will result in about \$28,000 in expenses on related administrative activities. Per the CCOC’s statistics, the median county receives about \$128,000 in criminal and civil LFO revenue annually. Of that, only \$8,900 (7%) consists of criminal debts. On net, this implies that criminal LFOs may actually drain resources for clerks.

This statistic is perhaps unsurprising. The weight of the evidence suggests clerks are desperate to address their funding issues. Many will threaten defendants with serious consequences, such as additional debt and driver’s license suspensions, in an attempt to collect existing revenue; likewise, they will bargain with legislators to expand the LFO system only to later sue them if revenue inflows do not adequately support them. This reality does not speak to the ethics of clerks; rather, it says the institutional framework under which they operate is broken and prompts acts of self-preservation.

¹⁶⁶ Interestingly, some clerks used the language “customers” to refer to people who owed fees. See, e.g., Survey results (“Customers not paying due to financial hardships or incarceration.”). This terminology belies the reality that these individuals are not voluntary actors in the criminal legal system, engaging in voluntary transactions.

¹⁶⁷ Madison County’s estimate is hard to gauge as it also disclosed it intended to ramp up internal collections efforts. Its clerk provided no estimate of hours spent per week on LFO collections. Separately, one county (Broward County) estimated that 250 people work on collections of criminal court fines and fees, with an estimated 5,000 hours spent per week on collections. While Broward County is one of Florida’s largest counties, those estimates are so different from those from other counties that they seem likely to reflect either a misunderstanding of the survey question or reflect some other data anomaly.

¹⁶⁸ See Glassdoor, Florida Court Clerk Salary, at https://www.glassdoor.com/Salaries/florida-court-clerk-salary-SRCH_IL.0.7_IS3318_KO8.19.htm.

B. Contracting with Collection Agencies

As we have shown, despite the ubiquity of criminal court fees, courts across the country face serious challenges in collections. One might believe this failure simply reflects a shortcoming of government actors. Instead, one might wonder if private actors or collection agencies with a clearer profit motive might fare better in collecting criminal court debt.

Prima facie, collection agencies might afford the courts and taxpayers several benefits. For one, they shift costs of servicing debt from taxpayers to private agencies.¹⁶⁹ Cost reductions may further be enhanced by efficiencies the firms possess in acquiring hard-to-obtain debt. For example, two of the largest collection agencies in the country — Linebarger, Goggan, Blair & Sampson, LLP (Linebarger); and Perdue, Brandon, Fielder, Collins, and Mott, LLP (Perdue) — are law firms that specialize in debt collection.¹⁷⁰ Though their labor force is focused primarily on the logistics of debt collection,¹⁷¹ Linebarger and Perdue’s comparative advantage in legal expertise should not be overlooked; these features likely make them a one-stop-shop for clients in the event of litigation.¹⁷²

Still, even if more robust debt collection were socially *optimal* in this context — something we doubt given the large societal costs and distortions resulting from criminal court debt that we have described above¹⁷³ — introducing collections agencies into the process creates a host of new problems and potential conflicts of interest. Once again, we demonstrate these issues using evidence from Florida.

¹⁶⁹ See, e.g., Complaint for Damages and Injunctive Relief, *Champaign v. Linebarger, Goggan, Blair & Sampson, LLP*, No. 4:20-cv-00275 (S.D. Iowa Sept. 1, 2020), ECF 1. (“The State benefits from the actions of its delegee in that Linebarger’s business practices allow the State to save costs it would otherwise incur in collecting its own court debt”).

¹⁷⁰ See *About Us*, [Perdue, Brandon, Fielder, Collins & Mott, LLP](https://www.pbfc.com/aboutus.html), <https://www.pbfc.com/aboutus.html> (last visited Feb. 6, 2023) (“Perdue Brandon Fielder Collins and Mott, LLP is a law firm focused on government collection matters”); *About*, [Linebarger, Goggan, Blair & Sampson, LLP](https://www.lgbs.com/about-us/), <https://www.lgbs.com/about-us/> (last visited Feb. 6, 2023) (“Linebarger Goggan Blair & Sampson, LLP is a national law firm with a practice dedicated to the collection of delinquent government receivables”).

¹⁷¹ See generally Amy E. Lemen, *Technology Propels Law Firm*, [Austin Bus. J.](https://www.bizjournals.com/austin/stories/2004/03/22/smallb1.html) (Mar. 21, 2004, 2:47 PM), <https://www.bizjournals.com/austin/stories/2004/03/22/smallb1.html>.

The staff of these companies primarily consists of business analysts and tech employees. The former CIO of Linebarger described its software-driven, efficient business model in a 2004 interview with the Austin Business Journal. This sentiment is echoed by the U.S. Treasury Department, which recognized Linebarger as an industry leader in 2003. *Id.*

¹⁷² See, e.g., *Request for Information DOR-01282020 for Collections on Delinquent Tax Accounts*, [Neb. Dep’t of Admin. Servs.](https://das.nebraska.gov/materiel/purchasing/RFI%20Revenue/RFI%20Revenue.html) (Jan. 28, 2020), <https://das.nebraska.gov/materiel/purchasing/RFI%20Revenue/RFI%20Revenue.html> (“By handling all core collection functions and activity in-house, Linebarger allows for a very simple and efficient oversight process for NDOR [Nebraska Department of Revenue]”).

¹⁷³ See *supra* section __.

In an attempt to improve on low collections rates, Florida's legislature in 2003 gave clerks the opportunity to enter into contracts with private collection agencies and law firms to assist the clerks in acquisition of delinquent court debt.¹⁷⁴ The new law read:

(a) clerk of court *may* pursue the collection of any fees, fines, court costs, or other costs imposed by the court which remained unpaid for 90 days or more or refer such collection to a private attorney who is a member in good standing of The Florida Bar or collection agent who is registered and in good standing . . .¹⁷⁵

The legislature amended the statute the following year, adding a requirement that clerks first attempt to collect the unpaid amount through a collection court, collections docket, or other collections process established by the court before using private collection agencies.¹⁷⁶ The legislature also allowed the collection agencies to charge a fee of up to 40% of the amount owed at the time the account was sent to collections, which could but was not required to be, added to the balance owed.¹⁷⁷

In 2009, Florida lawmakers revisited the collection provision to seemingly make the use of an attorney or collection agencies mandatory rather than discretionary.¹⁷⁸ The new language states that a “clerk of court shall pursue the collection of any fees, service charges, fines, court costs, and liens for the payment of attorney fees and costs . . . which remain unpaid after 90 days by referring the account to a private attorney . . . or collection agent.”¹⁷⁹

As we show below, the clerks' contracts with third-party firms are dominated by a few powerful players. These entities have negotiated favorable terms with the clerks. The contracts include provisions that generally leverage advantages the law provides to third-party debt collectors, while ignoring protections afforded to defendants. The contractual relationships, therefore, do little to redress the structural problems facing the fee-based judiciary model.

¹⁷⁴ 2003 Fla. Laws 3683.

¹⁷⁵ *Id.*

¹⁷⁶ 2004 Fla. Laws 975 (codified as amended at Fla. Stat. § 28.246(6) (2022)).

¹⁷⁷ *Id.*

¹⁷⁸ 2009 Fla. Laws 2025-2026 (codified at Fla. Stat. § 28.246(6) (2022)).

¹⁷⁹ *Id.* The new language reads a “clerk of court shall pursue the collection of any fees, service charges, fines, court costs, and liens for the payment of attorney fees and costs...which remain unpaid after 90 days by referring the account to a private attorney...or collection agent.” *Id.*

1. Contracts

To better understand the role debt collection agencies play, we turn to data collected by FFJC in conjunction with a 2020 public records requests to each of Florida's 67 clerks of court. Specifically, FFJC asked to obtain copies of any collection contracts in place in County Fiscal Year 2018-2019 and 2019-2020. This process revealed that formal agreements between clerks and collection agencies are common. 65 of 67 counties acknowledged they have written contracts with private collection firms.¹⁸⁰ Out of these 65 counties, 60 provided a total of 102 contracts, which we subsequently analyzed.¹⁸¹

The collection contracts detail a number of provisions of interest. These include terms relating to the fees charged by the collection agencies; how payments received were distributed between clerks and collection agencies; the ability of collection agencies to compromise debts on behalf of the clerk; and the circumstances in which a clerk could recall cases sent to collections.

Note that these cases are typically matters in which an individual does not voluntarily engage with the justice system. Instead, these individuals have responded to an allegation against them.¹⁸² Such cases include criminal prosecutions (both felony and misdemeanor) as well as criminal and civil traffic cases.

At the time of FFJC's records request, nine different collection agencies contracted with Florida's clerks of court; most clerks engaged more than one collection agency at the same time.¹⁸³ Clerks of court are encouraged to use multiple collection agencies,¹⁸⁴ and to move cases from one agency to another if no payments are collected by the first collection agency.¹⁸⁵ The multiplicity of collection agency contracts in individual counties is illustrated in Table 2 below.

¹⁸⁰ This statistic is computed from contracts provided to the Fines and Fees Justice Center that reflect fiscal year 2018-2019. Levy and Sumter counties are the only two jurisdictions that stated they did not contract any firm to collect LFO revenue on their behalf.

¹⁸¹ The Florida Clerks of Court Operations Corporation reports active contracts each year. *See, e.g., Id.* FFJC did not receive all contracts from Dixie, Madison, Clay, Bradford, Miami-Dade, or Gulf Counties. Neither Sumter nor Levy County had active contracts at the time of our request. Copies of the contracts received and reviewed are on file with the Fines and Fees Justice Center.

¹⁸² Contrast these with most civil adversarial proceedings, which typically involve private disputes, or ex parte proceedings, such as seeking a name change.

¹⁸³ *Collection Agent Annual Report: County Fiscal Year 2018-2019*, Florida Clerks of Courts Operations Corporation, <https://flccoc.org/wp-content/uploads/2020/03/CFY1819-Collection-Agent-Report-Ver2.pdf> (last visited Feb. 6, 2023).

¹⁸⁴ Florida Clerks of Court Corporation, *supra* note 110, at 8

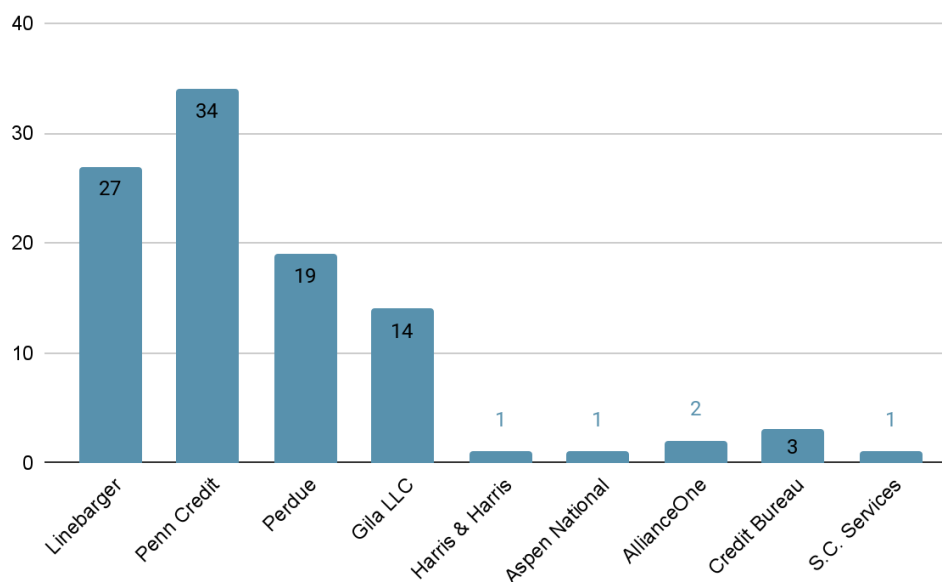
¹⁸⁵ *Id.*

Table 2: Collection Agencies Used by Florida Counties, 2018-19¹⁸⁶

One Collection Agency	Two Collection Agencies	Three Collection Agencies	Four Collection Agencies
28	30	6	1

While counties tend to contract with multiple collection agencies simultaneously, the market is nonetheless dominated by just three major players. These three have contracts with 58 counties in total: Linebarger, Goggan, Blair & Sampson, LLP (Linebarger); Penn Credit Corporation (Penn Credit); and Perdue, Brandon, Fielder, Collins, and Mott, LLP (Perdue).¹⁸⁷ Linebarger and Penn Credit are by far the two largest players, holding the majority of the contracts we analyzed.¹⁸⁸

Figure 3: Number of Contracts with Florida Counties by Firm, 2018-19¹⁸⁹



¹⁸⁶ Florida Clerks of Court Operations Corporation, Collection Agent Annual Report County Fiscal Year 2018 - 2019 (2020), <https://flccoc.org/wp-content/uploads/2020/03/CFY1819-Collection-Agent-Report-Ver2.pdf>.

¹⁸⁷ *Id.*

¹⁸⁸ The contracts analyzed included those from Linebarger, Goggan, Blair & Sampson, LLP; Penn Credit Corporation; Perdue, Brandon, Fielder, Collins, and Mott, LLP; Gila LLC dba Municipal Services Bureau; Harris & Harris; Aspen National Collections; AllianceOne Inc.; Credit Bureau of Marianna, Inc.; and S.C. Services & Associates Inc.

¹⁸⁹ Florida Clerks of Court Operations Corporation, Collection Agent Annual Report County Fiscal Year 2018 - 2019 (2020), <https://flccoc.org/wp-content/uploads/2020/03/CFY1819-Collection-Agent-Report-Ver2.pdf>.

2. Agency Fees

Florida law requires court debt to be sent to private collection agencies after 90 days of nonpayment.¹⁹⁰ An additional collection fee — up to 40% of the debt owed — is allowed, though not required, by statute to be tacked on to the amount already owed. So, for example, if a criminal defendant owed \$1,000 in court fees, a county could increase the total amount owed up to \$1,400 once the debt is sent to a collection agency.

County clerks have total discretion on the contracted collection fee as long as it does not exceed 40%. Taken in conjunction with the clerk's statutory authority to settle court debt, a collection fee could also be absorbed by the clerk of court as a reasonable cost of outsourcing a key constitutional and statutory responsibility.¹⁹¹ Instead, many clerks have created an additional and costly burden on individuals by entering into contracts that include collection fees up to the 40% cap.

In the contracts we analyzed, the minimum collection fee we found was still 20%. Table 3 below summarizes these results by collection agency and fee amount.

Table 3: Number of contracts by Florida counties with collection agencies by collection fee percentage, 2018-19

Agency	20%	25%	30%	35%	40%
Penn	17	8	2	7	0
Linebarger	7	2	4	14	0
Perdue	3	0	14	2	0
Gila	4	1	5	3	1
Other	4	0	2	2	0
Total	35	11	27	28	1

3. Pro rata distribution

The bulk of the contracts reviewed permit collection agencies to take a *pro rata* payment distribution from each dollar received from a debtor. Under such a scheme, individuals are, in effect, paying two separate creditors — the court and the collection agency — each time they submit a payment. This setup can logically extend the time it takes to pay down debt.

¹⁹⁰ Fla. Stat. § 28.246(6).

¹⁹¹ See Fla. Stat. § 938.30(9).

To illustrate, suppose again an individual owes \$1,000 in fees. If the debt is turned over to a collection agency, the amount owed will increase up to a potential maximum of \$1,400. Now suppose the defendant repays \$1,000. Before the collections process was initiated, this payment would have been sufficient to clear their debt. Under a *pro rata* regime, however, they still owe *both* the state \$285.71¹⁹² *and* the collection agency \$114.29¹⁹³ for a total of \$400.

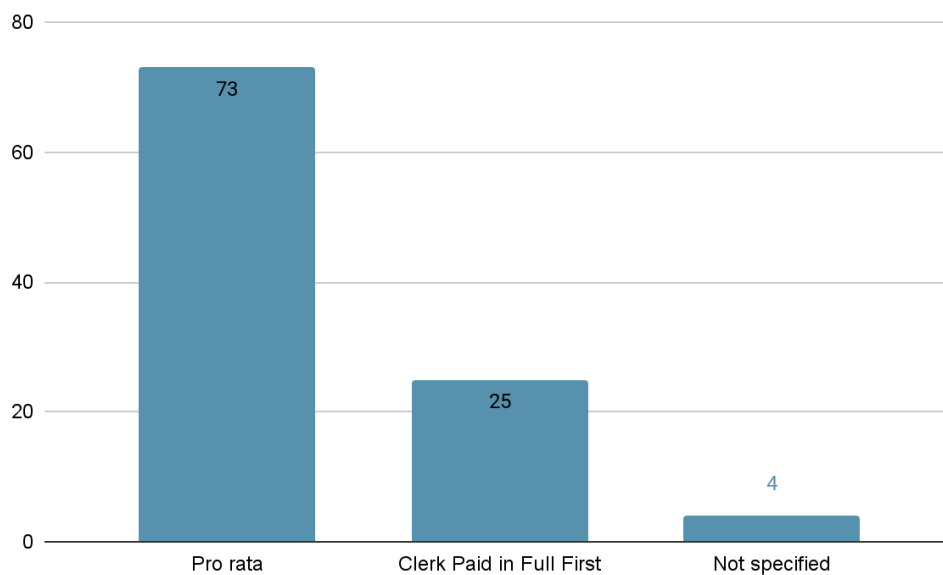
Apart from lengthening individuals' indebtedness, *pro rata* systems also decrease collection agencies' incentives to collect debt as payments are made. Under *pro rata* systems, a portion of every dollar collected goes directly to the collection agency. If collections require costly actions (*e.g.*, time spent on phone calls, letter drafting, or personal visits to debtors), then collection agencies are less likely to take those actions as the benefit from those actions decreases (*i.e.*, the dollar amount of outstanding debt diminishes). This decreased incentive to collect not only affects the agency but also the court who is not made whole until all outstanding debt has been collected.

A minority of collection contracts avoid these dilemmas by ensuring that any money received goes first to the court; in other words, the court must be repaid in full before the collection agencies can collect any fee. In this scenario, individuals pay off their court debt but remain indebted to the collection agency beyond the life of that court debt. Still, the added collection fees compound the debt a person owes and can contribute to longer debt payoff time-frame.

Figure 4: Payment Distribution Type by Collection Agency Contract, 2018-19

¹⁹² $\$1,000 * (\$1,000 / \$1,400) = \285.71

¹⁹³ $\$400 * (\$1,000 / \$1,400) = \114.29



4. Debt Recall

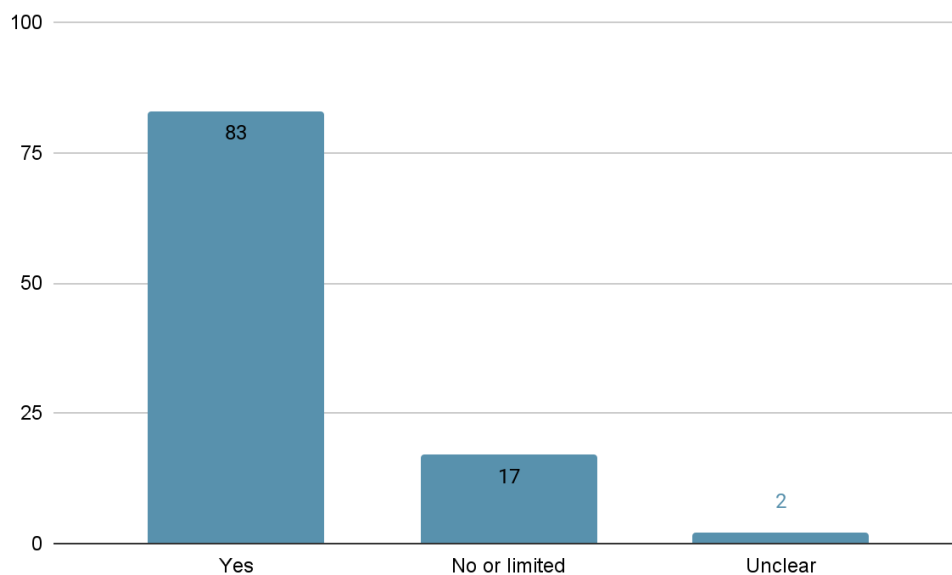
As clerks of court themselves recognize, there are myriad reasons why an individual may be unable to make a payment on their court debt within 90 days of its issuance. Indigent individuals convicted of crimes, by definition, lack the resources to pay. Additionally, under Florida law, once an individual is 30 days behind on payments toward their court debt, a clerk of court can initiate proceedings to suspend their driver's license. This complicates individuals' ability to commute to work and earn money to pay their fees.¹⁹⁴ Even more problematic, some individuals may be sentenced to prison and have no way to pay court fees and costs.

The additional collection agency fee turns already difficult debt into nearly impossible debt for many individuals. In these circumstances, an individual may seek to have the clerk of court pull any delinquent accounts from collections to avoid the additional collection fee.

While some clerks of court may be reluctant to recall cases after they have been sent to the collections agencies, there is nothing in Florida law that prevents them from recalling the case to save an individual the collection fee. Yet in almost 20% of counties, clerks surrender or restrict their right to recall debt from collection agencies in their contracts with those agencies, as shown by the below figure.

Figure 5: Recall Provisions by Collections Agency Contract, 2018-19

¹⁹⁴ See Fla. Stat. § 322.245; see also Whitelemons et al., *supra* note 88.



By rescinding their power to recall debt, clerks ensure that individuals will be saddled with collection agency fees that might account for up to 40% of the amount owed. In some circumstances, agencies may themselves have the power to compromise debt and reduce amounts owed. However, many collection agency contracts are silent on this practice, as we discuss in the next section.

Even in counties where recall is technically possible, clerks often face substantial legal hurdles in recalling debt in practice. For example, in Palm Beach County, the clerk’s contracts with both Penn Credit and Linebarger include a requirement that an individual obtain a court order before the clerk will recall a case from collections.¹⁹⁵ Such requirements can severely hinder clerks’ ability to reduce amounts owed by individual defendants.

5. Settlement Authority

Florida law provides broad authority to the clerks of court to compromise, settle, or release individuals from their court financial obligations for less than the full amount.¹⁹⁶ According to Clerks of Court Operations Corporation (CCOC) Best Practices, clerks could provide contracted collection firms with clear guidelines for when they may settle court debt.¹⁹⁷

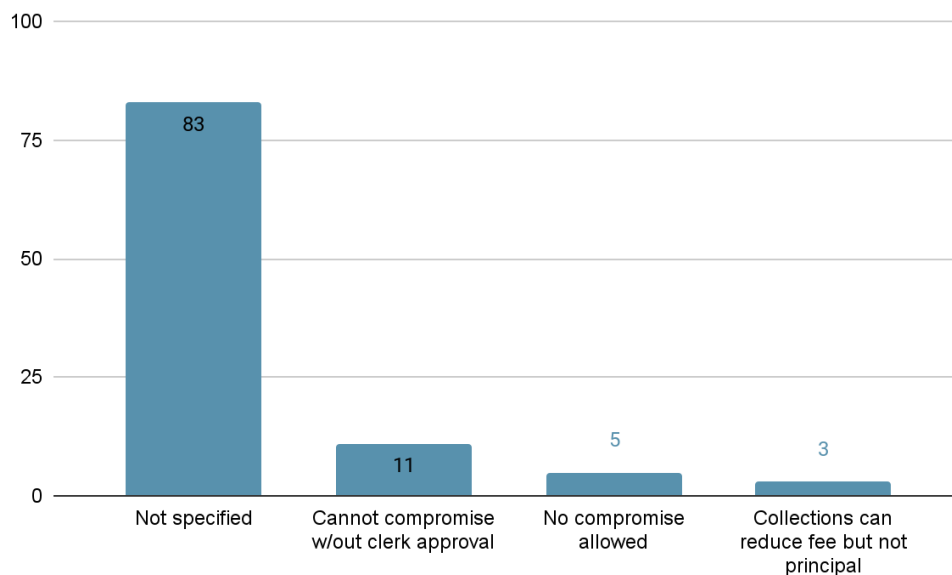
¹⁹⁵ Contract on file with authors.

¹⁹⁶ Fla. Stat. § 930.30(9) (2022) (noting that “[t]he clerk of the court shall enforce, satisfy, compromise, settle, subordinate, release, or otherwise dispose of” specific court debts or liens).

¹⁹⁷ Florida Clerks of Court Corporation, *supra* note 110.

Yet our review of collection agency contracts reveals the vast majority of contracts are silent as to the agencies' ability to settle delinquent debt. Moreover, those that do address the ability to compromise do not provide clear guidance as to how and when settlement can occur. Figure 6 below illustrates this result.

Figure 6: Collection Agency Ability to Compromise Debts by Collection Agency Contract, 2018-19



Fees and court costs are designed to fund the clerks of court in their court-related duties. One of these duties is collecting those very fees and court costs. When the Clerks of Court outsource these duties, individuals bear the burden of the funding mechanism twice — first when charged fees to fund the clerks, then again to fund the clerk's outsourced collections costs.

C. Conflicts of Interest

As the contractual details reveal, third-party debt collectors have generally negotiated terms favorable to their interests. They benefit from sizable surcharges and manage debt that, once received, clerks often cannot recover authority over. And while third-party debt firms have existed alongside the fee-based system since its launch, they do not appear to have ushered in a sea change for criminal LFO collection.

That is not to say the agencies are wholly ineffective. After all, clerks have long worked with these enterprises. On the margin, third-party debt collection agencies

may be more effective than clerks at tapping into flows clerks cannot access. Yet, the mechanisms that give them a competitive advantage could prove alarming. For one, these enterprises have been accused of relying upon predatory practices to acquire outstanding fines and fees; such behavior includes threatening communication via mail or phone, the latter of which occurred outside standard business hours.¹⁹⁸ Linebarger previously faced a federal lawsuit in Iowa that alleged, *inter alia*, it attempted to collect debts not requiring payment and intentionally mischaracterized LFOs. Perhaps most troubling, Linebarger was accused of threatening to pursue driver's license revocations or incarceration if payments were not received in instances where such punishments were not permissible.¹⁹⁹

Clerks may turn a blind eye to these practices that prove to be lucrative in their deals. A complementary if not alternative explanation to the long-standing ties between clerks and third-party debt collectors centers on conflicts of interest between the parties. These conflicts ultimately prevent firms from pursuing collections policies that are in the best interests of the government actors they purport to represent.

In the following two sections, we show how these conflicts are rooted in a web of lobbying, campaign finance, and electoral politics. Indeed, interested parties affiliated with debt collection agencies appear to be bending if not outright defying campaign finance laws.²⁰⁰

1. Contextual Evidence

Given that contractual terms and revenue under management directly influence third-party firms' bottom lines, these agencies have a vested interest in enhancing relations with the clerks. After all, clerks retain the power to negotiate with these enterprises; they also determine which agencies receive delinquent cases. As such, these firms have an incentive to engage in a litany of *quid pro quo* oriented activities to make their appreciation for the clerks known. From the perspective of clerks, these incentives have the potential to blur the boundaries between business and public interests.

¹⁹⁸ See, e.g., Walker Bragman, "Nothing Is More Important Than You Paying Them" in the Lever, **The Lever** (Jun. 23, 2021), <https://www.levernews.com/nothing-is-more-important-than-you-paying-them/>.

¹⁹⁹ *Champagne v. Linebarger Goggan Blair & Sampson, LLC*, 4:20-cv-00275, Complaint ¶ 11, ECF 1; see also Clark Kauffman, *Lawsuit: Iowa court debt collected illegally, with millions routed to private firm*, Iowa Cap. Dispatch (Sept. 16, 2020, 3:23 PM), <https://iowacapitaldispatch.com/2020/09/16/lawsuit-iowa-court-debt-collected-illegally-with-millions-routed-to-private-firm/>.

²⁰⁰ Illegality may hinge on the definition of an individual per. See **Fla Stat.** § 106.08(1) (2022).

Unsurprisingly, these firms have regularly acted on this impulse. To illustrate, consider the campaign financing activity of Ronald Book²⁰¹ on behalf of Penn Credit. In 2020, Mr. Book and his relatives donated \$6,000 in clerk elections in Charlotte and Flagler counties. For example, in Charlotte County, he donated on his own behalf; separately, he donated \$1,000 through his firm, Ronald Book, PA, and another \$1,000 through a company he owns called Gift Scenario, Inc. He applied a similar strategy in Flagler County, where his wife donated \$1,000.²⁰²

The legality of such actions seems questionable. Florida law prohibits individuals from contributing more than \$1,000 in a clerkship election.²⁰³ But even if permissible, such behavior illustrates campaign finance laws may be circumvented to further the interests of debt collectors. Moreover, these donors, by and large, are not constituents; in fact, many reside outside of Florida. Penn Credit is based out of the Harrisburg, Pennsylvania area; Linebarger has locations throughout the United States but a mass of operations in Texas; and Perdue operates from Texas.

These independent findings are not isolated. They are corroborated by a series of accusations of corruption and bribery involving debt collection agencies. The most notable example involves Penn Credit and a network of Florida officials. A 2019 federal grand jury indictment alleged Penn Credit, its founder and former CEO Donald Donagher, and several employees engaged in a criminal conspiracy to offer in-kind and cash benefits to several Florida clerks “for the purpose of seeking favorable treatment for Penn Credit in the award, allocation, and retention of debt collection work.”²⁰⁴ Prosecutors argued that Donagher attempted to bribe the clerks by making contributions to their pet charities.²⁰⁵ The prosecution claimed the

²⁰¹ Ronald Book is the father of current Florida Senate minority leader Lauren Book. Buddy Nevins, *Senate Candidate: Lobbyist Dad A Big Liability*, [Broward Beat](https://www.browardbeat.com/senate-candidate-lobbyist-dad-a-big-liability/) (Aug. 31, 2015), <https://www.browardbeat.com/senate-candidate-lobbyist-dad-a-big-liability/>;

Senator Lauren Book, The Florida Senate, <https://www.flsenate.gov/Senators/S35> (last visited Feb. 8, 2023). Mr. Book, one of the most influential lobbyists in the state, is not unaccustomed to advancing the interests of law firms that collect LFOs. He has previously been engaged to defend legislation that fines unlicensed interior decorators and puts offenders in jail for up to a year. See, e.g., Arian Campo-Flores, *In Florida, Interior Decorators Have Designs on Deregulation*, [Wall St. J.](https://www.wsj.com/articles/SB10001424052748703551304576260742209315376) (Apr. 15, 2011, 12:01 AM), <https://www.wsj.com/articles/SB10001424052748703551304576260742209315376>. The State of Florida hired the law firm Smith, Thompson, Shaw, Minacci & Colon to initiate proceedings that resulted in fines for individuals who used the title interior decorator without a license. [William Mellor & Dick M. Carpenter II, Bottlenecks: Gaming the Government for Power and Private Profit \(2016\)](#).

²⁰² *Financial Report Transactions Search Page*, [Charlotte County Supervisor of Elections](https://www.soecharlottecountyfl.gov/Financial-Reports/Search-Financial-Reports), <https://www.soecharlottecountyfl.gov/Financial-Reports/Search-Financial-Reports> (last visited Sept. 22, 2021) [<https://web.archive.org/web/20210922150253/https://www.soecharlottecountyfl.gov/Financial-Reports/Search-Financial-Reports>].

²⁰³ [Fla Stat.](#) § 106.6(1a)3 (2022).

²⁰⁴ Indictment at 3, *United States v. Donagher*, 520 F.Supp. 3d 1034 (N.D. Ill. 2021) (No. 1:19-cr-00240).

²⁰⁵ *Id.* at 5, 13-14.

payments represented an effort to persuade the clerks to contract with Penn Credit to collect unpaid court fees for their offices.²⁰⁶

Specifically, the indictment alleges Donagher approached a clerk of court during a meeting in which the clerk intended to open its bid process for a new debt collection contract. Donagher apparently offered to provide the official with campaign contributions, fund company outings, and provide sponsorship at charitable events.²⁰⁷ Separately, Donagher purportedly provided the county fire chief and sheriff with \$15,500 to be used for charitable purposes; Donagher reportedly requested that these officials contact the clerk in order to secure Penn Credit's contract with the county.²⁰⁸

Donagher is alleged to have engaged in similar activities elsewhere. For instance, he allegedly contributed \$2,500 to a charity selected by the Orange County clerk of court. Email excerpts suggest that this payment was tied to a desire to solicit business from the newly elected clerk.²⁰⁹ One email reads, "It seems the deal is that when people want deals to happen in orange county [sic] large contributions are made and the deal happens the next day We will move very quickly. We are talk [sic] huge amounts of profit here."²¹⁰

Ultimately, Donagher pleaded guilty to a lesser charge of providing illegal gratuity to the former Cook County (Illinois) clerk of court.²¹¹ Federal prosecutors dismissed all remaining counts related to the Florida clerks.²¹² In a separate arrangement, Penn Credit agreed to pay a \$225,000 fine and take "remedial measures to enhance its ethics and compliance programs." In exchange, prosecutors deferred pursuit of conspiracy charges against the company in the matter.²¹³

²⁰⁶ See, e.g., Andrew Marra, *Collections Agency Founder Pleads Guilty to Lesser Charge in Federal Corruption Case*, *Palm Beach Post* (Oct. 21, 2021, 7:00 AM), <https://www.palmbeachpost.com/story/news/2021/10/21/palm-beach-gardens-collections-agency-head-takes-plea-deal-federal-corruption-case/8521538002/>.

²⁰⁷ Indictment, *supra* note 191, at 9.

²⁰⁸ *Id.* at 13-14.

²⁰⁹ *Id.* at 14-15.

²¹⁰ *Id.* at 13.

²¹¹ Plea Agreement as to Donald Donagher, Jr., *Donagher*, 520 F.Supp. 3d 1034 (No. 1:19-cr-00240).

²¹² Earlier, a federal judge had also dismissed charges related to bribery based on the alleged campaign contributions in the Florida counties, saying the indictment lacked statutorily required elements of an agreement by the clerks to meet the standards necessary for the charges. The court, however, allowed charges in the Florida counties related to other alleged gifts to stand. *Donagher*, 520 F.Supp. 3d at 1046.

²¹³ Press Release, U.S. Attorney's Office Northern District of Illinois, Owner of Debt Collection Company Pleads Guilty to Corruptly Providing Benefits to Public Official (Oct. 12, 2021), <https://www.justice.gov/usao-ndil/pr/owner-debt-collection-company-pleads-guilty-corruptly-providing-benefits-public>.

Concerns extend beyond the federal indictment. Per investigative reporting from the *Palm Beach Post*, a former Palm Beach clerk of court allegedly received dinners, special event invitations, and offers for private helicopter rides in addition to campaign donations from Donagher and Penn Credit employees.²¹⁴ Indulging in such activities appears to violate Florida law, which prohibits public officials from accepting gifts in excess of \$100.²¹⁵ Ultimately, the clerk seems to have rewarded Penn Credit with hundreds of thousands of dollars in business during her tenure; likewise, she raised the max assessment levied by the debt collector from 25% to 40%.²¹⁶ Donagher and his entourage subsequently increased their contributions to the clerk’s re-election fund from \$4,500 to \$10,000.²¹⁷

2. Collection Agencies as Campaign Donors

Apart from these anecdotes, the clerks’ financial relationships with collection agencies merits additional statistical inquiry. To get a glimpse of the magnitude of their contributions, alongside FFJC, we have pulled data from each county supervisor’s website that detail payments made in clerkship elections.²¹⁸ Table 4 summarizes these records.

Table 4: Clerkship Elections Donations & Debt Collection Agencies’ Share

County	Contributions	Agencies' Share	County	Contributions	Agencies' Share
Alachua	\$10,000	0%	Lee	\$35,035	9%
Baker	\$14,076	0%	Leon	\$34,210	1%
Bay	\$705	0%	Levy	\$200	0%
Bradford	\$22,015	0%	Liberty	\$10,661	0%
Brevard	\$25,791	0%	Madison	\$2,850	0%
Broward	\$25,111	23%	Manatee	\$23,320	0%

²¹⁴ See Andrew Marra, *Post Investigation: Ex-PBC clerk took favors from a vendor, boosted his business*, [Palm Beach Post](https://www.palmbeachpost.com/story/news/2021/02/19/ex-pbc-clerk-took-favors-vendor-boosted-his-business/6791892002/) (Feb. 19, 2021, 8:05 AM), <https://www.palmbeachpost.com/story/news/2021/02/19/ex-pbc-clerk-took-favors-vendor-boosted-his-business/6791892002/>

²¹⁵ See Fla. Stat. §§ 112.313(2), (4), 112.3148, 112.31485, 112.3215 (2022) (proving an overview of laws relating to “Things of Value”, Gifts, and Expenditures)).

²¹⁶ See Marra, *supra* note 201.

²¹⁷ See *id.*

²¹⁸ Data on campaign contributions were manually downloaded from all Florida County Supervisor of Election websites listed at *Find Your County's Supervisor of Elections*, [Florida Supervisor of Elections](https://www.myfloridaelections.com/Contact-your-SOE), <https://www.myfloridaelections.com/Contact-your-SOE> (last visited Feb. 9, 2023) and compiled into a spreadsheet with variables for the collection firm name; court clerk’s name and county; and contribution amount. The spreadsheet is on file with the authors pending archiving at [Georgetown Law Dataverse](https://dataverse.harvard.edu/dataverse/georgetownlaw), <https://dataverse.harvard.edu/dataverse/georgetownlaw> (last visited Feb. 9, 2023).

Calhoun	\$120	0%	Marion	\$132,631	0%
Charlotte	\$109,483	9%	Martin	\$407	0%
Citrus	\$1,000	0%	Miami Dade	\$180,522	8%
Clay	\$34,105	9%	Monroe	\$57	0%
Collier	\$39,242	8%	Nassau	\$934	0%
Columbia	\$7,250	0%	Okaloosa	\$10,544	0%
Dixie	\$15,430	0%	Okeechobee	\$14,206	0%
Duval	\$325,942	1%	Osceola	\$65,100	0%
Escambia	\$220	0%	Pasco	\$33,373	9%
Flagler	\$33,180	21%	Pinellas	\$33,608	9%
Franklin	\$19,696	0%	Polk	\$20,350	0%
Gadsden	\$11,655	0%	Santa Rosa	\$2,000	0%
Glades	\$9,116	0%	Sarasota	\$19,784	3%
Hendry	\$100	0%	St. Johns	\$69,935	4%
Hernando	\$1,597	0%	St. Lucie	\$43,817	0%
Highlands	\$32,273	2%	Sumter	\$300	0%
Holmes	\$16,362	0%	Suwannee	\$500	0%
Indian River	\$1,906	0%	Volusia	\$13,290	23%
Jackson	\$17,862	0%	Wakulla	\$4,782	0%
Lake	\$2,600	96%	Walton	\$6,875	0%
			Washington	\$3,894	0%

Table 4 illustrates the amounts involved are not trivial. On average, debt collectors' donations represent 5% of clerks' campaign budgets. In jurisdictions with competitive elections such as Broward, Miami-Dade, and Pinellas Counties, the contributions exceed the mean share. In tight elections with low-turnout, these donations could prove instrumental.²¹⁹ That may extend the horizon of favorable contract terms with clerks of court or further pad income flows courts are not equipped to tap into.

²¹⁹ Back of the envelope calculations suggest something like 23% of the Broward county electorate turned out to re-elect incumbent Brenda Forman into office. See Amanda Batchelor & Jeff Weinsier, *Brenda Forman Re-elected Broward Clerk of Courts Despite Recent Bizarre Behavior*, Local10.com (August 19, 2020 at 12:28 AM), <https://www.local10.com/vote-2020/2020/08/18/august-2020-primary-broward-clerk-of-courts/> and *Voter Registration - By County and Party*, Florida Division of Elections (Dec. 31, 2022), <https://dos.myflorida.com/elections/data-statistics/voter-registration-statistics/voter-registration-reports/voter-registration-by-county-and-party/>.

Consistent with this argument, simple cross-sectional correlational analyses lend some weak empirical support for the existence of the *quid pro quo* relationships. Debt collection agencies' share of contributions is positively correlated with the revenue it receives from clerks.²²⁰ However, none of the contractual features appear to be tied to the share of donations made on behalf of third-party firms.²²¹

We stress that these positive but weak correlations are simple and should not be interpreted causally. Though larger amounts of debt managed by firms correlate with higher campaign contributions, this relationship is not robust; its statistical significance depends on specification. Moreover, the underlying data are cross-sectional; they only capture a snapshot of the universe of contracts and campaign contributions. Therefore, we do not claim insight into the dynamics between clerks and debt collectors over time, especially given our small sample sizes and limited time frame.²²² Nonetheless, our results suggest this relationship might be worthy of more sustained empirical study.

IV. IMPLICATIONS: THE FUTURE OF COURT FUNDING

The previous sections show how an economic perspective can explain the dysfunction that prevails across fee-based judiciaries and creditor courts. As we show in this section, that same lens can allow us to make positive policy prescriptions that benefit all stakeholders, taxpayers, and defendants. We bifurcate our suggestions between short-term policy tweaks that temporarily alleviate symptoms of the fee-based system and corrective measures that address the deep fissures in the funding mechanism.

²²⁰ Lake County is a clear outlier. In that jurisdiction, 96% of the clerks' election contributions came from debt collectors. Exclusion of this observation attenuates the arguments made; hence, the inclusion of Lake County would only serve to further facilitate our claims but at the risk of clear problems of internal validity.

²²¹ That perhaps should be expected given statutory limits over contractual terms and the cross-sectional nature of our data.

²²² Taken at face value, our estimates imply that a \$28 increase in donations (the mean contribution of firms to clerks is approximately \$2,840; \$28 is approximately a 1% increase) results in approximately a \$500,000 increase in the amounts debt collection agencies can pursue. Given they – on average – retain 32% of the LFOs, this represents a potential boon of \$160,000. Even if 25% of this amount is collected, that implies a \$28 increase in donations results in \$40,000 of additional revenue for debt collection agencies. While seemingly large, we should not entirely discount these results because of their seeming implausibility. Such massive gains from lobbying are well-documented in the political economy literature in other settings. See, e.g., Luigi Zingales's discussion of the Tullock Paradox in *A Capitalism for the People: Recapturing the Lost Genius of American Prosperity*. Tullock, Gordon (1980). "Efficient rent-seeking". In Buchanan, J.; Tollison, R.; Tullock, G. (eds.). *Toward a Theory of the Rent-Seeking Society*. College Station: Texas A&M Press. pp. 97–112.

A. *Temporary Relief*

1. Delinquency Extension

Clerks, like other debt servicers, adjudicate when LFOs enter delinquency. Under current law, court debts reach such status after 90 days.²²³ This affords defendants one month less than federal law provides homeowners.²²⁴ Given the relative paucity of resources most defendants possess, additional time could prevent disastrous consequences. Empirical evidence from real estate markets supports this hypothesis. Specifically, enhanced communication between the debt servicer and property owner in conjunction with extension of the time until foreclosure *significantly improves* loan performance; further, it lowers the probability of foreclosure.²²⁵

Prolonging the period between assessment and delinquency would stem the flow of revenue managed by debt collection agencies. For at least some defendants, this will effectively reduce the magnitude of the financial burden they face; that is, they will not be required to pay the surcharge levied by collection agencies. Given that most debt remains aged, this will likely have an inconsequential effect on revenues collected by third-party firms. Nonetheless, the benefits to defendants — ones on the margin — will be meaningful. Similar to a recommendation by Adamson (2022),²²⁶ one reform might be for LFO collection practices to mirror industry standards; namely, penalties should not be triggered until at least 120 days after the last payment. If the results from real estate markets are externally valid, then extending the horizon until delinquency will provide relief to both the judiciary, clerks, and defendants.

2. Technological Investments

As our survey results and prior research has illustrated, clerks' offices spend substantial time and resources tracking outstanding debt.²²⁷ This costly process, in part, originates from poor data management policies. Florida — like most states — lacks a centralized data system that includes criminal histories and LFO balances. The absence of digitalized, uniform records not only requires clerks to devote public resources to records collection and review, it also creates problems for former

²²³ Fla. Stat. § 28.246(6) (2022).

²²⁴ 12 C.F.R. § 1024.41 (2023).

²²⁵ Manisha Padi, Helen Willis Banga, & Chen Meng, *Mortgage Servicing and Household Financial Distress*, Working Paper (2022).

²²⁶ Adamson, *supra* note 100.

²²⁷ See Sukhatme, Billy & Bagwe, *supra* note __, at __.

defendants. A number of individuals have become aware of stale court debt long believed to have been paid once paperwork turns up; this could result in driver's license suspensions or concerns, sometimes unwarranted, about voter eligibility.²²⁸

To avoid these issues and reduce clerks' overhead, states should embrace technological infrastructure to track debts and contact those who hold LFO balances.²²⁹ Critics have contended this investment would cost millions of dollars. However, as we have demonstrated elsewhere, a functional model is much less expensive.²³⁰ Therefore, upfront investments in technology could eventually pay for themselves by reducing outlays on clerks' offices. The expenditures will also be offset by induced demand; the lack of readily available information on LFO balances has likely prevented many from paying their current debts.²³¹

Technological investments to track debts would move the financing model on to more stable grounds by cutting costs long-term and improving inflows. Beyond that, the infrastructure would provide a meaningful restraint on expansions of the fee system. In locations such as Florida where settling LFO debt is a requirement for re-enfranchisement, technological investments could elevate the voices of returning citizens. In theory, this strengthens the currently debilitated equilibrating market forces. In other words, citizens would gain additional checks at the ballot box on encroachments by clerks, the judiciary, and legislators.

3. Federal Debt Protection

Currently, a legal channel provides civil debtors some degree of protection from unscrupulous third-party collection agencies. That medium — the Fair Debt Collection Practices Act (FDCPA) — prohibits third-party agencies from employing threats of criminal sanctions or harassing individuals; the FDCPA also provides means for debtors to lodge complaints.²³²

As other commentators have noted, criminal debtors receive much less protection under the FDCPA. For one, it only applies to third-party debt collectors.²³³ This implies that government agencies that issue the debt are not subject to the FDCPA. In theory, this still shields former defendants who owe LFOs

²²⁸ See *id.* at __.

²²⁹ See *id.* at __.

²³⁰ *Id.* at __.

²³¹ *Id.* at __.

²³² See 15 U.S.C. § 1692 *et seq.*

²³³ See Alex Kornya, Danica Rodarmel, Brian Highsmith, Mel Gonzalez & Ted Mermin, *Crimsumerism: Combating Consumer Abuses in the Criminal Legal System*, 54 *Harv. C.R.-C.L. L. Rev.* 107 (2019); see also Bryan L. Adamson, *Debt Bondage: How Private Collection Agencies Keep the Formerly Incarcerated Tethered to the Criminal Justice System*, 15 *Nw. J.L. & Soc. Pol'y* 305 (2019).

from third-party debt collectors. However, this holds only if monetary sanctions legally constitute a debt.²³⁴ Under certain statutory laws, LFOs may not be recognized as such.²³⁵

By broadening the scope of the FDCPA to include LFOs, individuals can better voice concerns as well as combat abuse.²³⁶ A more inclusive FDCPA could also raise awareness within federal agencies of *quid pro quo* campaign financing schemes.

4. Federal Fee Regulation

Per the Congressional Research Service, fees are voluntary payments linked to activities that benefit users. They are typically deposited into special funds for future appropriations by the agencies or organizations that supply the services associated with the fees.²³⁷ Courts have generally adopted this interpretation as well.²³⁸ That is, legally speaking, fees must (1) benefit the user; (2) be tied to the service provided; and (3) be voluntary.²³⁹ Yet criminal legal fees share little in common with traditional user fees.

First, bureaucratic inventiveness has led to liberal use of fee revenue. As we have demonstrated, officials in Florida finance activities completely orthogonal to the services associated with fees. Florida is not alone. In other locales, tenuous links between fees and activities supported by those revenues have been deemed acceptable.²⁴⁰

Second, the economic model of fee-based judiciaries relies entirely on coercion. Defendants do not outright consent to LFOs. Even if participants in crime — in some abstract sense — tacitly agree to face potential repercussions with some probability, the capriciousness and vague monetary sanctions they face is unexpected.

²³⁴ See Abby Shafroth, David Seligman, Alex Kornya, Rhona Taylor & Nick Allen, *Confronting Criminal Justice Debt: A Guide for Litigation* (2016), <https://www.nclc.org/wp-content/uploads/2022/09/confronting-criminal-justice-debt-2.pdf>.

²³⁵ *Id.*, at 75.

²³⁶ See Neil L. Sobol, *Charging the Poor: Criminal Justice Debt & Modern-Day Debtors' Prisons* Sobol, 75 Md. L. Rev. (2016); Neil L. Sobol, *Fighting Fines & Fees: Borrowing from Consumer Law to Combat Criminal Justice Debt Abuses*, 88 U. Colo. L. Rev. 841 (2017).

²³⁷ See Austin, *supra* note 94.

²³⁸ Hugh D. Spitzer, *Taxes vs. Fees: A Curious Confusion*, 38 Gonz. L. Rev. 335, 344–45 (2002).

²³⁹ See, e.g., *Thompson v. Wyandanch Club*, 70 Misc. 299 (N.Y. Sup. Ct. 1911); *Emerson Coll. v. City of Boston*, 462 N.E.2d 1098, 1105 (Mass. 1984); *City of Gainesville v. Florida*, 863 So.2d 138 (Fla. 2003).

²⁴⁰ See, e.g., *Allen v. Texas*, 570 S.W.3d 795 (Tex. Ct. App. 2018) (“summoning witness/mileage” fee of \$200 was permissible even though fee proceeds were directed to general revenue fund); *Broyles v. State*, 688 S.W.2d 290 (Ark. 1985) (\$250 fee levied against a DUI defendant was constitutional even though part was applied to fund a highway safety program and another part went to alcohol and drug abuse programs instead of going toward actual court costs).

Together, these features of criminal “fees” may prompt federal authorities to adopt standards on what constitutes a fee. While that could rein in certain excesses, beneficiaries of LFOs will eventually replace those with fines or other monetary sanctions that fit federal guidelines.

B. Reform Measures

The introduction of the aforementioned policies will ultimately yield little-to-no lasting change. The uncertain receipt of LFO debt, subject to phenomena outside the control of the state, will never cease; likewise, self-interested legislators will continue to target funding to achieve political and social goals. Hence, the proclivity to divert and expand fees will continue to exist as long as fees support stakeholders. Thus, cost saving measures or checks on expansions of the fee system will only provide temporary relief.

Ultimately, the fee-system is inherently incompatible with a stable, reserved court system. This does not imply that massive investment in a new funding model is required. For example, Floridians already finance a substantial portion of the judiciary’s activities through injections of emergency loans and grants. Annually, a court system funded by general revenue in Florida would only increase tax collections by approximately 1%;²⁴¹ this seems like a remarkably small cost for sizable downstream benefits.

To move beyond a fee-based system, initiatives will need to take place at the state constitutional level. For one, the whims of legislators would likely quell any altruistic sentiment to eliminate fees.²⁴² The temptation to dip into fee revenue is far too great to ever seriously envision a legislative body willingly surrendering a financing source. Even if one set of legislators did so, that would still not provide sufficient restraints on subsequent bodies of officials from exploiting future criminal defendants. Likewise, it is difficult to imagine a decision from the courts that would adequately eliminate fees without opening the door to other means of exploitation.

Whether reform vehicles materialize via constitutional committees or ballot initiatives, these entities must be sensitive to the needs of stakeholders. Without the buy-in of legislators, judiciary officials, and clerks of court, constitutional reforms will likely fail. But many of those stakeholders — including court authorities and clerks — are primed for the elimination of fee-based judiciaries. To

²⁴¹ See U.S. Census Bureau, *supra* note 156.

²⁴² Brennan & Buchanan, *supra* note 38.

wit, when surveyed, the responsive clerks largely agreed (17 out of 22) with the assertion that their offices should be financed by general revenue in lieu of LFOs.²⁴³

Practically, the largest hurdle reformers will face is convincing legislators who fund pet projects that benefit their constituents with fee revenue. They will likely raise concerns — echoing the Taxpayer Revolt proponents — that ordinary citizens will foot the bill for services they did not enjoy. To avoid such a bootlegger-and-baptist argument, it would be prudent to couple constitutional reforms with some revenue neutral tax policy.²⁴⁴

CONCLUSION

Though a fee-based court system would appear to be a fiscally responsible mechanism to finance court operations, their benefits are dominated by substantial costs. Economic theory and contextual evidence illustrate such costs originate from structural defects inherent to a fee-based system: competing interests among stakeholders; legislative appropriation of funds intended to benefit the judiciary; and revenue sourced from typically indigent criminal defendants.

These design flaws encourage a creeping tyranny whose existence relies on coercion, extortion, and disenfranchisement of criminal defendants. Even with substantial leverage, the fissures of creditor courts prevent the judiciary and its affiliates from ever achieving financial independence. This financial languor has given way to relationships with third-party debt collectors. These entities appear — per simple, correlative analyses and qualitative evidence from criminal court proceedings and independent investigations — to sometimes engage in unethical, perhaps illegal, conduct.

Viewed under this lens, the weight of the evidence implies that constitutional reform at the state level is essential to overcome these concerns. States should transition from creditor court systems to judiciaries funded by general revenue. Absent that, stopgap measures will only halt the growth of a bureaucratic syndicate whose interests do not align with citizens.

²⁴³ One clerk responded, “Return to county funding. We were financially supported back then. It's awful now.”

²⁴⁴ Bruce Yandle, *Bootleggers and Baptists in Retrospect*, 22 *Regulation* 5 (1999).