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Dark Clouds Looming: The Uncertain Safety of Welfare Benefits for Probationers and Parolees

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NOTE

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Graves v. Missouri Department of Corrections, Division of Probation and Parole, 630 S.W.3d 769 (Mo. 2021) (en banc).

Anthony M. Whalen[*]

I. INTRODUCTION

How much is thirty dollars per month worth to the average American? For many, it is not much—it can be the cost of a streaming subscription or a ticket to a baseball game. For others, however, thirty dollars is the cost of freedom from incarceration. In January 2019, Randall Graves failed to meet the conditions of his probation, which required that he pay a monthly intervention fee of thirty dollars to the Department of Corrections instead of serving his six-year prison sentence.[1] To some, thirty dollars may not be worth much, but to Graves, it was a metric of freedom.

Graves is a person with disabilities, and his only asset at the time was his Supplemental Security Income ("SSI") from the federal government, totaling $771 per month.[2] This amount placed Graves far below the 2022 poverty rate and made the thirty-dollar fee a harsh burden to bear.[3] Graves

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[1] Graves v. Mo. Dep't of Corr., Div. of Prob. and Parole, 630 S.W.3d 769, 771 (Mo. 2021) (en banc); Scott Lauck, *Fight Over Probation Fees Not Ready for Ruling*, MO. LAW. MEDIA (Oct. 11, 2021), https://molawyersmedia.com/2021/10/11/fight-over-probation-fees-not-ready-for-ruling/ [https://perma.cc/3JAH-AKM5].

[2] *Graves*, 630 S.W.3d at 771.

[3] MO. CMTY. ACTION NETWORK, MO. POVERTY REP. 2022 3 (2022).

is not alone, as he is one of more than 100,000 Missouri citizens who rely on SSI from the federal government.[4] Although federal statutes generally protect SSI funds from attaching to legal matters,[5] the Supreme Court of Missouri's opinion in *Graves v. Missouri Department of Corrections, Division of Probation and Parole* addressed whether the Missouri Department of Corrections violated 42 U.S.C. § 407(a) when it mailed a notice for potential action relating to Graves's overdue payments.[6] The court did not hold in favor of Graves, reasoning that the notice for a potential action that would result in a deprivation of legal rights did not rise to a justiciable claim.[7] The court's decision might leave penniless probationers and parolees with two options: part with needs-based SSI or continue nonpayment and risk various sanctions and hardship.

Part II of this Note examines the circumstances surrounding *Graves* and the procedural posture that led to the Supreme Court of Missouri's ruling on the ripeness of Graves's claim of SSI attachment violation. Part III steps back to offer a review of SSI and 42 U.S.C. § 407(a), the use of intervention fees in probation and parole requirements, and standing governance in Missouri. Part IV sets out the majority and dissent's

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[4] *Id.*; According to the Social Security Administration's Office of Retirement and Disability Policy, 134,636 Missourians received SSI in 2020. *SSI Recipients by State and County*, SOC. SEC. ADMIN. (2020), https://www.ssa.gov/policy/docs/statcomps/ssi_sc/2020/index.html [https://perma.cc/SAM9-JY8F].

[5] The terms attachment, garnishment, and levy appear throughout this article as they all appear in 42 U.S.C § 407(a), and in the context of SSI and legal processes their definitions are largely similar. *See Attachment*, CORNELL L. SCH. LEGAL INFO. INST., https://www.law.cornell.edu/wex/attachment [https://perma.cc/84LK-C3YW] (last visited June 11, 2023) ("An attachment is a court order seizing specific property. Attachment is used both as a pre-trial provisional remedy and to enforce a final judgment."); *See Garnishment*, U.S. DEP'T OF LAB., https://www.dol.gov/general/topic/wages/garnishments [https://perma.cc/7W3T-PMZE] (last visited June 13, 2023) ("Wage garnishment is a legal procedure in which a person's earnings are required by court order to be withheld by an employer for the payment of a debt such as child support."); *What is a Levy*, I.R.S., https://www.irs.gov/businesses/small-businesses-self-employed/what-is-a-levy [https://perma.cc/R7A4-SZTV] (last visited June 11, 2023) ("A levy is a legal seizure of your property to satisfy a tax debt. Levies are different from liens. A lien is a legal claim against property to secure payment of the tax debt, while a levy actually takes the property to satisfy the tax debt.").

[6] *Graves*, 630 S.W.3d at 771–72; Section 407(a) concerns the protection of SSI payments from assignment and other legal process, stating "the right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law." 42 U.S.C § 407(a).

[7] Graves v. Mo. Dep't of Corr., Div. of Prob. and Parole, 630 S.W.3d 769, 777 (Mo. 2021) (en banc).

reasoning on whether Graves's claim was ripe for adjudication. Part V addresses how the majority produces an unnecessary result given the standards for reviewing summary judgment appeals and an understanding of the "legal process" under Section 407(a). It also discusses the negative effect the ruling in *Graves* places on Missourians who must balance their limited income with the threat of further punishment and the resulting roadblocks to successful reintegration.

II. FACTS AND HOLDING

In 2018, Randall Graves pled guilty to one count of receiving stolen property and was sentenced to six years in prison.[8] The Circuit Court of Platte County suspended Graves's sentence and placed him on five years of probation, which was to be supervised by the Missouri Department of Corrections' Division of Probate and Parole ("the Division").[9] Among other conditions, Graves was required to pay a monthly intervention fee of thirty dollars to the Division.[10] Graves's only form of income at the time was $771 from his SSI.[11]

Two months after being placed on probation, Graves received a letter from the Division informing him that he was late on payments and had a sixty-dollar balance overdue.[12] The letter stated that failure to pay these fees "may place [Graves] in violation status."[13] Graves subsequently filed for declaratory judgment in the circuit court of Cole County, alleging the Division violated 42 U.S.C § 407(a), a Social Security statute protecting SSI from legal action.[14] The Division subsequently filed a motion to dismiss, and the circuit court granted the Division's motion with prejudice.[15] Graves appealed to the Western District of the Missouri Court of Appeals.[16]

The Western District found that Graves's issue was not yet ripe, and the Division's notice of nonpayment did not violate Graves's rights under Section 407(a) or cause any actual harm.[17] The court of appeals affirmed

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[8] Graves v. Mo, Dep't of Corr., Div. of Prob. and Parole, No. WD 83027, 2020 WL 1522627, at *1 (Mo. Ct. App. Mar. 31, 2020).

[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] *Id.*

[15] *Id.*

[16] *Id.*

[17] *Id.* at *3. The Western District addressed Graves' claim on the narrow issue of standing in relation to the Division's notice. *Id.* at *2. The appeals court analyzed the language of the relevant regulation, MO. CODE REGS. tit. 14, § 80-5.020, and found

the dismissal of the case but noted that the controversy could arise at a future date.[18] Accordingly, the court modified the circuit court's finding to a dismissal without prejudice.[19] Graves appealed, and the Supreme Court of Missouri ordered a transfer to its court in 2020.[20]

III. LEGAL BACKGROUND

This Part first gives background to SSI and Section 407(a)'s application and interpretation. Next, this part discusses the probation and parole system in Missouri. Finally, this part gives an analysis of the standards of ripeness in Missouri.

A. Supplemental Security Income

SSI is a federal welfare program provided by the U.S. Social Security Administration ("SSA").[21] SSI is intended to provide monthly benefits to citizens who experience little or no income and who are disabled, blind, or at least sixty-five years old, allowing them to meet their basic needs.[22] While similar to its welfare counterpart of Social Security, SSI does not require prior work history and payment of Social Security taxes.[23] Instead, SSI is distributed monthly, and some states, including Missouri, provide additional benefits to qualifying SSI recipients.[24] These benefits may

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that violations which receive further disciplinary action must be "willful," and that a violation report must go through the prescribed violation report process to determine appropriate recourse if necessary. *Id.* at *2–*3. The appeals court finds that Graves can only show that he speculated an attachment of SSI as a result of his violation, depending on multiple decisions going against Graves and Graves' failure to acquire any additional assets in the meantime. *Id.*

[18] *Id.* at *3.

[19] *Id.*

[20] *Id.*

[21] *Supplemental Security Income (SSI) Overview*, SOC. SEC. ADMIN., https://www.ssa.gov/ssi/ [https://perma.cc/B2G6-L7QA] (last visited June 12, 2023).

[22] *Id.* To acquire SSI, an applicant can have no more than $2,000 in cash, bank accounts, stocks, and bonds. *You May Be Able to Get Supplemental Security Income (SSI)*, SOC. SEC. ADMIN., https://www.ssa.gov/pubs/EN-05-11069.pdf [https://perma.cc/CR87-GXJU] (last visited June 11, 2023).

[23] *Supplemental Security Income (SSI) Overview*, *supra* note 21.

[24] *Id.*; *Policy Basics: Supplemental Security Income*, CTR. ON BUDGET AND POL'Y PRIORITIES, https://www.cbpp.org/research/social-security/supplemental-security-income [https://perma.cc/V34F-JWQK] (last visited June 11, 2023); *Supplemental Security Income (SSI): The Basics*, WORLD INST. ON DISABILITY, https://mo.db101.org/mo/programs/income_support/ssi2/program.htm [https://perma.cc/YGF5-J6WC] (last visited June 11, 2023) [hereinafter *SSI Basics*] (providing basic information on SSI in Missouri).

encompass Medicaid and the Supplemental Nutrition Assistance Program.[25]

The Social Security Act was passed in the 1930s to implement a robust general welfare system for retired Americans,[26] and SSI was developed much later.[27] It was not until former President Nixon, who saw the need to "bring reason, order, and purpose into a tangle of overlapping programs,"[28] sought to amend the Social Security Act in 1972 to formalize benefits for aged, blind, and disabled individuals under the new SSI legislation.[29] Today, SSI has been established as an essential part of many individuals' lives.[30] To protect Americans from "the insecurities of modern life,"[31] including protection of Social Security and SSI recipients from creditors,[32] Congress inserted safeguards that prevent the funds from being attached to legal matters.[33] The cornerstone of these protections is Title II § 208 of the Social Security Act of 1935, now encoded as 42 U.S.C §407(a).[34] It reads:

> The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal

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[25] *SSI Basics*, *supra* note 24.

[26] United States v. Silk, 331 U.S. 704, 711 (1947) ("The Social Security Act of 1935 was the result of long consideration by the President and Congress of the evil of the burdens that rest upon large numbers of our people because of the insecurities of modern life, particularly old age and unemployment. Congress passed the act in an effort to coordinate the forces of government and industry for solving the problems.").

[27] *Historical Background and Development of Social Security*, SOC. SEC. ADMIN., https://www.ssa.gov/history/briefhistory3.html [https://perma.cc/ND93-GB2Z] (last visited June 11, 2023).

[28] *Id.*

[29] *Id.*

[30] *SSI Monthly Statistics, Sept. 2022*, SOC. SEC. ADMIN., https://www.ssa.gov/policy/docs/statcomps/ssi_monthly/2022-09/table01.html [https://perma.cc/QLB7-DY3J] (last visited June 11, 2023). In September 2022, SSI provided seven million Americans with nearly 4.8 million dollars in payments. *Id.*

[31] *Silk*, 331 U.S. at 711.

[32] *See* Brown v. Brown, 288 N.E.2d 852–53 (Ohio Ct. App. 1972) ("In discussing the issue the court concluded that the purpose of the exemption was to enable a disabled insured to support himself, his family and those legally dependent upon him and to protect the family unit from the claim of general creditors."); *see also* French v. Dep't of Soc. Servs., 285 N.W.2d 427, 431 n.4 (Mich. Ct. App. 1979); Neavear v. Schweiker, 674 F.2d 1201, 1205–06 (7th Cir. 1982); Ellender v. Schweiker, 575 F. Supp. 590 (S.D.N.Y. 1983).

[33] 42 U.S.C. § 407(a) (2018).

[34] *Id.*

> process, or to the operation of any bankruptcy or insolvency law.[35]

This otherwise protective code comes with qualifications, such as exceptions for child support and alimony from Social Security funds.[36] However, courts have historically not subjected SSI to these exemption standards.[37]

Cases involving the attachment of Social Security funds to repay debts are not uncommon.[38] Several matters have reached the United States Supreme Court, and the Court has shed light on what funds qualify for the anti-attachment protection of Section 407(a).[39] The Supreme Court's first analysis of the anti-attachment provision can be demonstrated by *Philpott v. Essex County Welfare Board*, which focused on a New Jersey welfare board's attempt to seek federal welfare payments from a recipient as a form of reimbursement for its own program.[40] Lower New Jersey courts initially granted the petitioners' protection from the welfare board until the Supreme Court of New Jersey reversed, reasoning that Congress did not intend Section 407(a) to prevent state fund recoupment within a federal-state benefit scheme.[41] The United States Supreme Court disagreed and ultimately held that Section 407(a) "imposes a broad bar" against attachment actions that reach Social Security benefits, including reimbursement actions by the state.[42]

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[35] *Id.*

[36] *Id.* § 659(a) (2018) ("Notwithstanding any other provision of law (including section 407 . . .), effective January 1, 1975, moneys (the entitlement to which is based upon remuneration for employment) due from, or payable by, the United States . . . (including any agency, subdivision, or instrumentality thereof) to any individual . . . shall be subject, in like manner and to the same extent as if the United States . . . were a private person, . . . to any legal process brought, . . . to enforce the legal obligation of the individual to provide child support or alimony"); *see* United States v. Swenson, 971 F.3d 977 (9th Cir. 2020) (finding that the Mandatory Victims Restitution Act allows overrides section 407(a) for collection of assets).

[37] *See, e.g.*, J.W.J. v. Ala. Dep't of Hum. Res. *ex rel.* B.C., 218 So.3d 355 (Ala. Civ. App. 2016) (holding that court order to pay child support violated § 407(a)); *see* Sykes v. Bank of Am., 723 F.3d 399 (2d Cir. 2013) (holding that SSI is not attachable to satisfy child support obligations).

[38] *See, e.g.*, Philpott v. Essex Cnty. Welfare Bd., 409 U.S. 413 (1973); Bennett v. Arkansas, 485 U.S. 395 (1988); Wash. State Dep't of Soc. and Health Servs. v. Guardianship Estate of Keffeler, 537 U.S. 371 (2003).

[39] *See Philpott*, 409 U.S. at 417; *Bennett*, 485 U.S. at 397; *Keffeler*, 537 U.S. at 375.

[40] 409 U.S. at 415–16.

[41] *Id.* at 416.

[42] *Id.* at 417.

The Supreme Court again confronted Section 407(a) in *Bennet v. Arkansas*.[43] *Bennett* addressed whether the state of Arkansas could attach Social Security and veterans disability pension benefits of incarcerated recipients to help satisfy prison maintenance costs.[44] While the Supreme Court of Arkansas claimed there was an implied exception for the care and maintenance of a beneficiary, the United States Supreme Court extended its reasoning in *Philpott* to the facts at hand, highlighting that even when a state provides for the entirety of a recipient's needs, the intent of Section 407(a) precludes the government from encroaching on federal benefits.[45]

The most recent Supreme Court discussion of 42 U.S.C. § 407(a) arrives from *Washington State Department of Social and Health Services v. Guardianship Estate of Keffeler*, where the Washington State Department of Social and Health Services ("State") sought to reimburse itself for expenditures toward foster children through their SSI and Old–Age, Survivors and Disability Insurance.[46] The Supreme Court of Washington held that Section 407(a) was violated where the State's actions as representative payee to the foster children did not fall under "legal process."[47] The United States Supreme Court reversed.[48] The Court distinguished this case from *Philpott* and *Bennett*, noting that using funds as a representative payee is not like any of the terms within the plain language of Section 407(a).[49] In doing so, the Court provided a more in-depth analysis of the phrase "other legal process," explaining that Section 407(a) applies when a court or other judicial entity orders one party to transfer property to another in order to satisfy a debt or judgment.[50]

Following the guidance of *Philpott*, *Bennett*, and *Keffeler*, many jurisdictions have interpreted Section 407(a)'s anti-attachment provision as protecting the seizure of benefits from government encroachment.[51]

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[43] *Bennett*, 485 U.S. at 397.

[44] *Id.* at 396.

[45] *Id.* at 397–98.

[46] 537 U.S. 371, 375 (2003).

[47] *Id*. at 380.

[48] *Id.* at 381.

[49] *Id.* at 388–89.

[50] *Id.* at 385 ("Thus, 'other legal process' should be understood to be process much like the processes of execution, levy, attachment, and garnishment, and at a minimum, would seem to require utilization of some judicial or quasi-judicial mechanism, though not necessarily an elaborate one, by which control over property passes from one person to another in order to discharge or secure discharge of an allegedly existing or anticipated liability.").

[51] *See In re* Carpenter, 614 F.3d 930 (8th Cir. 2010) (Social Security cannot be included in a bankruptcy estate); Dionne v. Bouley, 757 F.2d 1344, 1355 (1st Cir. 1985) (section 407(a) was designed to protect social security benefits from creditors); Bilyeu v. Morgan Stanley Long Term Disability Plan, 683 F.3d 1083 (9th Cir. 2012)

Further, additional case law has clarified that while an assignment of future benefits is illegal, recipients can voluntarily agree to provide benefits in exchange for care.[52] However, more minute details regarding the transfer of welfare benefits continue to tie up courts across the country. Issues like restitution and marital property often reach appellate courts, and they show the complexity of determining the rights and protections afforded to the various benefits despite Section 407(a) and accompanying judicial guidance.[53]

Another issue revolving around welfare benefits is the application of "other legal process," where imprecise standards have led lower courts to reach inconsistent conclusions.[54] The conflicting meaning of "other legal process" exists within *King v. Schafer* and *Reed v. Taylor*—two federal cases divided temporally by the Court's interpretation in *Keffeler*.[55] In *King*, the seven petitioners, who were SSI recipients, were involuntarily committed by Missouri after being found not guilty of criminal offenses due to mental defects.[56] While Schafer, the Director of Mental Health acting for the state, was the representative payee of five petitioners, two were represented by family members, and all were billed by the state for services and care.[57] The two represented by relatives received

(equitable liens cannot be enforced on social security benefits); Tidwell v. Schweiker, 677 F.2d 560 (7th Cir. 1982) (trust funds established by the state department mental health constitute a transfer and violated § 407(a)); Albright v. Allied Int'l Credit Corp., No. CV034828CAS(RZX), 2003 WL 22350928 (C.D. Cal., Aug. 25, 2003) (credit corporations garnishing social security violated § 407(a)); *In re* Interest of Battiato, 613 N.W.2d 12, 17–18 (Ne. 2000) (SSI benefits cannot be attached as attorney's fees); City of Richland v. Wakefield, 380 P.3d 459 (Wash. 2016) (attaching social security payments purulent to outstanding legal financial obligations violates anti-attachment provision); *but see* State v. Ingram, 478 P.3d 799, 803 (Mont. 2020) (finding that the court's imposition of a fine does not violate the anti-attachment provision of §407(a)).

[52] *See* Fetterusso v. State of N.Y., 898 F.2d 322, 328 (2d Cir. 1990) (absent a showing that the transfer of social security benefits was involuntary, the state billing for cost and care did not violate § 407(a)); Johnson v. Wing, 178 F.3d 611, 615 (2d Cir. 1999) (finding that a voluntary agreement to pay for emergency housing with social security benefits did not constitute attachment); *but see* Ellender v. Schweiker, 575 F. Supp. 590 (S.D.N.Y. 1983) (finding that cross-program recovery of SSI funds is not allowed, even if the transfer is voluntary).

[53] *See* United States v. Swenson, 971 F.3d 977, 983 (9th Cir. 2020) (finding that the Mandatory Victims Restitution Act allows overrides section 407(a) for collection of assets); *see, e.g.*, Smith v. Smith, 358 P.3d 171 (Mont. 2015) (reversing the District Court's ruling that social security benefits are marital property); Biondo v. Biondo, 809 N.W.2d 397 (Mich. Ct. App. 2011) (holding that the circuit court erred when it included social security benefits in a divided marital estate).

[54] King v. Schafer, 940 F.2d 1182 (8th Cir. 1991); Reed v. Taylor, 923 F.3d 411, 417 (5th Cir. 2019).

[55] *King*, 940 F.2d at 1185; *Reed*, 923 F.3d at 418.

[56] *King*, 940 F.2d at 1183–84.

[57] *Id.* at 1184.

accompanying notice that nonpayment would lead to legal action.[58] The Eighth Circuit ruled that the mere threat of legal process amounted to "other legal process" and held that the state violated Section 407(a) concerning the recipients represented by relatives.[59]

Reed v. Taylor, decided twenty-eight years after the *King* decision, involved a dispute regarding the payment of GPS monitoring by a sex offender.[60] The petitioner, who relied solely on SSI for income, alleged that the threat of felony prosecution as a result of nonpayment violated Section 407(a).[61] The Fifth Circuit used the interpretive guidance from *Keffeler* to determine that the threat of prosecution did not amount to "other legal process," since it was different from the other processes listed in Section 407(a) and thus outside its protections.[62] The court tempered the analysis from *King* and other pre-*Keffeler* cases, arguing that the Supreme Court "implicitly disapproved *King*'s threats holding."[63]

Missouri courts have seldom discussed the anti-attachment protections of Section 407(a).[64] Before *Graves*, Missouri courts directly addressed Section 407(a) only one other time.[65] Other case law provides a mere cursory analysis of Section 407(a). Only *Hatfield v. Cristopher* and *Collins, Webster, and Rouse v. Coleman* address *Philpott*'s "broad bar" on attachment,[66] and only *State ex. rel Nixon v. McClure* addresses the application of *Bennett* on inmate reimbursement.[67] None of these cases came after *Keffeler*, and the only reported case decided after *Keffeler*

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[58] *Id.* at 1185.

[59] *Id.* Regarding the recipients represented by the state, the court provided an analysis like that in the later *Keffeler*, holding that the representative payee making payments to itself in the recipient's best interest did not constitute a legal process. *Id.*

[60] 923 F.3d 411, 413–14 (5th Cir. 2019).

[61] *Id.*

[62] *Id.* at 417–18.

[63] *Id.* at 418. The court in *Reed* also rejected an argument from petitioners regarding dicta within *In Re Mayer*, 193 F.3d 516 (5th Cir. 1999), which stated that section 407(a) may potentially include the threat of a lawsuit within the phrase "other legal process." *Id.* at 417.

[64] Smith v. Snodgrass, 747 S.W.2d 743 (Mo. Ct. App. 1988); Collins, Webster, and Rouse v. Coleman, 776 S.W.2d 930, 931 (Mo. Ct. App. 1989); Hatfield v. Cristopher, 841 S.W.2d 761, 767 (Mo. Ct. App. 1992); State *ex rel.* Nixon v. McClure, 969 S.W.2d 801, 805 (Mo. Ct. App. 1998); Litz v. Litz, 288 S.W.3d 753, 756 (Mo. Ct. App. 2009).

[65] *See e.g.*, *Litz*, 288 S.W.3d at 756.

[66] *Collins, Webster, and Rouse*, 776 S.W.2d at 931 (garnishment of social security because of an adverse judgment violates § 407(a)); *Hatfield*, 841 S.W.2d at 767 (social security funds are exempt from legal process, even when comingled with other funds).

[67] *State* ex rel. *Nixon*, 969 S.W.2d at 808 (The government cannot apportion federal retirement benefits to reimburse costs for incarceration under the Missouri Incarceration Reimbursement Act).

did not analyze "other legal process."[68] As a result, Missouri appellate courts did not have an opportunity to address an argument concerning "other legal process" within Section 407(a) until *Graves*.

B. Probation, Parole and Intervention Fees in Missouri

"Probation" and "parole" in Missouri follow a general understanding of the terms:[69] privileges given to those found guilty at law to enter back into society, subject to supervision and guidelines prescribed by the state.[70] The Division supervises probation and parole in the state, where it holds the power to investigate offenders for possible release, provides conditions for a probationer or parolee, and recommends changes or revocation to a probation or parole agreement.[71] Central to Missouri's probation and parole system are eleven conditions of probation, parole, or conditional release: laws, travel, residency, employment, association, drugs, weapons,

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[68] *Litz*, 288 S.W.3d at 758 (Courts may use federal retirement benefits to calculate distribution of marital property subject to dissolution of marriage).

[69] *Parole*, CORNELL L. SCH. LEGAL INFO. INST., https://www.law.cornell.edu/wex/parole#:~:text=Parole%20is%20the%20conditional%20release,may%20be%20returned%20to%20prison [https://perma.cc/CZK7-U94R] (last visited June 11, 2023) ("Parole is the conditional release of prisoners before they complete their sentence. Paroled prisoners are supervised by a public official, usually called a parole officer. If paroled prisoners violate the conditions of their release, they may be returned to prison. For example, paroled prisoners often must get and keep a job, avoid drugs and alcohol, avoid their victims, not commit any crimes, and report regularly to their parole officer."); *Probation*, CORNELL L. SCH. LEGAL INFO. INST., https://www.law.cornell.edu/wex/probation#:~:text=A%20court%2Dimposed%20criminal%20sentence,See%20probate [https://perma.cc/US28-V22R] (last visited June 11, 2023) (A court-imposed criminal sentence that, subject to stated conditions and restrictions, releases a convicted criminal defendant into the community instead of confining him or her to jail or prison.).

[70] MO. REV. STAT. § 217.650 (2021) ("'Parole', the release of an offender to the community by the court or the state parole board prior to the expiration of his term, subject to conditions imposed by the court or the parole board and to its supervision by the division of probation and parole . . . 'Probation', a procedure under which a defendant found guilty of a crime upon verdict or plea is released by the court without imprisonment, subject to conditions imposed by the court and subject to the supervision of the division of probation and parole.").

[71] *Probation and Parole*, MO. DEP'T. OF CORR., https://doc.mo.gov/divisions/probation-parole [https://perma.cc/4235-JZCL] (last visited June 11, 2023); MO. REV. STAT. §§ 217.705, 217.690 (2018); MO. DEP'T. OF CORR., RULE AND REGS. GOVERNING THE CONDITIONS OF PROBATION, PAROLE, AND CONDITIONAL RELEASE (2019), https://doc.mo.gov/sites/doc/files/media/pdf/2020/12/Rules%20and%20Regulations%20Governing%20the%20Conditions%20of%20Probation%20Parole%20and%20Conditional%20Release%209-29-2020.pdf [https://perma.cc/3MZH-79PD] (last visited June 11, 2023).

reporting/directives, supervision strategy, intervention fees, and special conditions.[72]

Under section 217.690 of the Missouri Revised Statutes,[73] the Division has authority to require payment of fees up to sixty dollars a month from each defendant, sanction those who willfully do not pay the fee, and enter into agreements with collections services to acquire the fees.[74] Missouri's regulatory code elaborates on the intervention fee policy by providing additional information on proper notice, forms of collection, and certain exemptions to payment.[75] Missouri allows those with insufficient income the opportunity to apply for a ninety-day waiver, which is then considered by the Division.[76] In the event of an individual's nonpayment, the regulation lists various sanctions which may be applied, ranging from a written reprimand to shock detention. [77]

There is little litigation surrounding Missouri's probation and parole intervention fees.[78] The primary basis for the Missouri court's rulings on intervention fees comes from *Jackson v. Members of Missouri Board of Probation and Parole*.[79] The *Jackson* court affirmed a judgment stating that section 217.690 applied to parolees who had been conditionally released after its imposition.[80] Applying the *Jackson* rationale, Missouri courts have held that intervention fees do not change the effect of the baseline conviction and do not violate any due process rights.[81] Up until *Graves*, Missouri's probation and parole intervention fee policy had not been considered in the context of attachment of fees.[82]

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[72] *Id.* at 2–9.

[73] H.B. No. 700, 93rd Gen. Assemb., 1st Reg. Sess. (Mo. 2005).

[74] MO. REV. STAT. § 217.690 (2021).

[75] MO. CODE REGS. tit. 14, § 80-5.020 (2022).

[76] *Id.* § 80-5.020(H).

[77] *Id.* § 80-5.020(I); *see* SARAH MORROW, MO. LEG. ACADEMY, NEW APPROACHES TO INCARCERATION IN MO. 3 (2004); *see also* Adam Yefet, *Shock Incarceration and Parole: A Process Without Process*, 81 BROOK. L. REV. 1319, 1322, 1326–28 (2016) (describing the structure of Shock Programs in New York prison systems). Shock detention places the parolee in short-term incarceration pending adjudication. *Id.* at 1324.

[78] *See* Harden v. Mo. Bd. of Prob. and Parole, No. 4:20-CV-771 JAR, 2020 WL 6158157 (Mo. Ct. App. Oct. 21, 2020); Sours v. Precythe, No. 419-cv-441-JCH, 2019 WL 3343464 (Mo. Ct. App. July 25, 2019); Thornton v. Mo. Bd. of Prob. and Parole, 518 S.W.3d 265, 268 (Mo. Ct. App. 2017); Little v. McSwain, 400 S.W.3d 461 (mem) (Mo. Ct. App. 2013); Jackson v. Members of Mo. Bd. of Prob. & Parole, 301 S.W.3d 71 (mem) (Mo. 2010) (en banc).

[79] 301 S.W.3d 71 (mem) (Mo. 2010) (en banc).

[80] *Id.*

[81] *See Thornton*, 518 S.W.3d at 268; *Jackson*, 301 S.W.3d at 71.

[82] Graves v. Mo. Dep't of Corr., Div. of Prob. and Parole, 630 S.W.3d 769, 771 (Mo. 2021) (en banc).

Critics have scrutinized the use of supervised release programs for their revocation policies nationwide.[83] In Missouri, critics have described the probation and parole revocation system as arbitrary and harmful to recidivism.[84] Furthermore, conduct by the Division has been ruled to violate due process rights.[85] Independent analysis has found that probation is often revoked due to a failure to pay fees, and collection methods such as garnishment or tax refund interception are prevalent in the collection of payments in Missouri as well as other states.[86] Critics argue that these fees are especially harmful to the poor and disabled, who are least likely to be able to pay such fees and often rely on outside benefits.[87]

C. Ripeness for Review

For any court to be able to hear and rule on a case or controversy, a party must meet the standards for justiciability.[88] For declaratory judgments specifically, a case must have standing and ripeness.[89] Courts use these doctrines to sustain the long-held tradition of solely ruling on

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[83] *See, e.g.*, BANNON ET. AL., BRENNAN CENTER FOR JUSTICE, CRIMINAL JUSTICE DEBT: A BARRIER TO REENTRY (2010) (focusing on the various harms arising from fees associated with incarceration and supervised release); Kayla Drake, *Missouri's Parole System has Sent Thousands Back to Prison for Minor Violations. Terrell Robinson is one*, SAINT LOUIS PUBLIC RADIO (Apr. 8, 2022), https://news.stlpublicradio.org/show/st-louis-on-the-air/2022-04-08/missouris-parole-system-has-sent-thousands-back-to-prison-for-minor-violations-terrell-robinson-is-one [https://perma.cc/U45M-XYWJ]; Jessica M. Eaglin, *Improving Economic Sanctions in the States*, 90 MINN. L. REV. 1837 (2015) (outlining issues and potential solutions to criminal justice debt).

[84] BANNON, *supra* note 83.

[85] *See* State *ex rel*. Fleming v. Mo. Bd. of Prob. & Parole, 515 S.W.3d 224, 226, 228 (Mo. 2017) (en banc); Gasca, et. al. v. Precythe, 500 F. Supp. 3d 830 (Mo. Ct. App. 2020) (class action dispute regarding Due Process Clause violations); Brown v. Precythe, 46 F.4th 879 (8th Cir. 2021) (division of probation and parole review board policies toward youth offenders sentenced to life without parole violated constitutional right of due process, right to be free from cruel and unusual punishment).

[86] BANNON, *supra* note 83, at 21, 27 (outlining collection methods in Missouri for late fees, and the use of nonpayment as a basis for revocation of parole status).

[87] *"Set Up to Fail" The Impact of Offender-Funded Private Probation on the Poor*, HUM. RTS WATCH (Feb. 20, 2018), https://www.hrw.org/report/2018/02/21/set-fail/impact-offender-funded-private-probation-poor [https://perma.cc/V2GA-JNJ6].

[88] Mo. Health Care Ass'n v. Att'y Gen. of Mo., 953 S.W.2d 617, 620 (Mo. 1997) (en banc) (describing standing as "a threshold issue"); Schweich v. Nixon, 408 S.W.3d 769, 774 (Mo. 2013) (en banc) ("Standing is a necessary component of a justiciable case that must be shown to be present prior to adjudication on the merits." (quoting Farmer v. Kinder, 89 S.W.3d 447, 451 (Mo. 2002) (en banc))).

[89] *Mo. Health Care Ass'n*, 953 S.W.2d at 620 (establishing that in declaratory judgments, standing includes the need for a justiciable controversy, which must be ripe for judicial determination).

actual harms or violations, rather than providing advisory rulings.[90] In Missouri, courts have long relied on a three-factor test to determine whether a case presents a justiciable controversy that they can resolve: (1) the party has a legally protectable interest at stake; (2) a real and substantial case or controversy is presented to the court; and (3) the action is ready for a judicial decision and is not merely advisory or hypothetical.[91]

The first two factors fall under the label of "standing", while the third factor is described as "ripeness".[92] Determining ripeness is a test of its own, in which a court must determine if the issue "is developed sufficiently to allow the court to make an accurate determination of the facts, to resolve a conflict that is presently existing, and to grant specific relief of a conclusive character."[93] Once both standing and ripeness are established, the court can then hear the case on its merits and render a decision.[94]

As a practical matter, ripeness often hinges on whether the alleged harm is actual or speculative.[95] A claim crosses the threshold from speculative to actual when a statute is enforced or implemented in a way that makes parties alter conduct to avoid a violation,[96] or when a party can show a reasonable basis that harmful action will occur.[97] A court can demonstrate a reasonable basis by showing that an action has been consistently made in the past, but this usually requires that the action in

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[90] *Compare* Cope v. Parson, 570 S.W.3d 579, 586 (Mo. 2019) (en banc) (quoting State *ex rel.* Williams v. Marsh, 626 S.W.2d 223, 227 (Mo. 1982) (en banc)) ("This Court is not authorized to issue advisory opinions"), *with* Liverpool, N.Y. & P.S.S. Co. v. Emigration Comm'rs, 113 U.S. 33, 39 (1885) ("[The Court] is bound by two rules, to which it has rigidly adhered: one, never to anticipate a question of constitutional law in advance of the necessity of deciding it; the other, never to formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied.").

[91] State *ex rel*. Chilcutt v. Thatch, 221 S.W.2d 172, 176 (Mo. 1949) (en banc); *Schweich*, 408 S.W.3d at 773–74.

[92] *Schweich*, 408 S.W.3d at 773–74 (associating the "legal interest" and "case and controversy" standard with standing).

[93] *Mo. Health Care Ass'n*, 953 S.W.2d at 621; Missouri courts, including the Supreme Court of Missouri in *Graves*, have given credence to an additional standard that derives from *Abbott Laboratories v. Gardner*, where ripeness is determined on whether "whether the issues are fit for judicial resolution and if denying relief creates hardship for either party." 387 U.S. 136, 148–49 (1967).

[94] Farmer v. Kinder, 89 S.W.3d 447, 451 (Mo. 2002) (en banc).

[95] Mo. Soybean Ass'n v. Mo. Clean Water Comm'n, 102 S.W.3d 10, 25 (Mo. 2003) (en banc).

[96] Borden Co. v. Thomason, 353 S.W.2d 735, 741 (Mo. 1962) (en banc); Mo. Health Care Ass'n v. Att'y Gen. of Mo., 953 S.W.2d 617, 621 (Mo. 1997) (en banc).

[97] Foster v. State, 352 S.W.3d 357, 361 (Mo. 2011) (en banc) (finding that there was no reasonable basis for believing that MIRA proceedings would occur, and thus the claim was not ripe).

question is final and not subject to review.[98] Additional considerations to the ripeness of a claim include that of "sufficient immediacy and reality" to which issuing a declaratory judgment is necessary.[99] However, these phrases are not attached to any specific rules to determine when a case has reached justiciability, leaving that determination to the court.[100]

IV. INSTANT DECISION

In *Graves*, the court examined whether the Division's imposition of intervention fees and subsequent notices of nonpayment created a claim that was ripe for judicial review.[101] Using the principles for standing and ripeness in Missouri, the majority held that Graves did not have a ripe claim, and his claim would need to be dismissed until later developments occurred.[102] It reasoned that the language of the notice letter and the statutes relating to the collection of fees did not require the Division to collect the intervention fees from Graves, and therefore, no harm was done nor legal rights altered.[103] The dissent was unpersuaded by this reasoning and argued that Graves's claim of a Section 407(a) violation was ripe for adjudication, because the imposition of intervention fees altered Graves's legal rights regardless of collection attempts.[104]

A. Majority Opinion

The court in *Graves* was asked to determine solely whether the petitioner's case was ripe for judicial review.[105] To determine ripeness, the court adopted the test from *Abbott Laboratories* and based its analysis on two determinations: whether the issue was fit for resolution in the absence of further factual development and if denying relief would create hardship.[106] The court was unpersuaded by Graves's argument that the Division would be required to collect his nonpayment.[107] The court looked to both Mo. Rev. Stat. section 217.690.3 and the letter sent to Graves, and

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[98] Ramirez v. Mo. Dep't of Soc. Servs., Child.'s Div., 501 S.W.3d 473, 482–83 (Mo. Ct. App. 2016); Mo. Ass'n of Nurse Anesthetists, Inc. v. State Bd. of Reg. for the Healing Arts, 343 S.W.3d 348, 351–52 (Mo. 2011) (en banc).

[99] *Mo. Health Care Ass'n*, 953 S.W.2d at 621.

[100] *See id.*; Ports Petroleum Co., Inc. of Ohio v. Nixon, 37 S.W.3d 237, 241 (Mo. 2001) (en banc); Buechner v. Bond, 650 S.W.2d 611, 614 (Mo. 1983) (en banc).

[101] Graves v. Mo. Dep't of Corr., Div. of Prob. and Parole, 630 S.W.3d 769, 772 (Mo. 2021) (en banc).

[102] *Id.* at 773.

[103] *Id.* at 773–76.

[104] *Id.* at 777–83 (Breckenridge, J. dissenting).

[105] *Id.* at 773 (majority opinion).

[106] *Id.* (quoting Abbott Lab'ys, Inc. v. Gardner, 387 U.S. 136, 148–49 (1967)).

[107] *Id.* at 771.

it concluded that there was not a reasonable basis to assume further action from the Division would be forthcoming.[108] The court reasoned that since the letter was not a binding decision on whether action towards nonpayment would be made, Graves was not in violation status and did not face imminent harm.[109] The court declined to address whether the letter itself constituted "other legal process" in the context of Section 407(a).[110]

The court supplemented its finding that the Division's next step was unclear by analyzing the regulatory code concerning nonpayment.[111] The court pointed out that various stipulations are placed on the Division regarding nonpayment, such as using programs to address nonpayment or applying for a ninety-day waiver.[112] The court used these provisions to contend that Graves's harm was more speculative than imminent.[113] Without ripeness, the court noted that its opinion would then become an advisory opinion, and thus impermissible.[114]

The court addressed that Graves's petition challenged a preliminary action and, therefore, requires a reasonably probable showing that the harm will occur for the claim to be ripe.[115] The court contrasted Graves's case with *Missouri Association of Nurse Anesthetists*, where a declaratory action was brought against an agency's position.[116] The court distinguished the two cases on grounds that *Missouri Association of Nurse Anesthetists* was brought after a final decision, whereas the Division was not yet pursuing Graves's SSI payments.[117] The court, instead, compared Graves's action with *Missouri Soybean*. In *Missouri Soybean*, the plaintiff filed suit against the Missouri Clean Water Commission for its decision to include a body of water on a list for failing water quality standards which subjected it to additional regulations.[118] The court ruled that the action was not yet ripe for review, since the regulations had not yet been

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[108] *Id.* at 773–74.

[109] *Id.*

[110] *Id.* at 774 n.4.

[111] These determinations included the supervising probation officer's obligation to suggest supporting programs for the nonpaying probationer or parolee, the requirement that nonpayment is "willful" for there to be a violation, and Graves' right to file a temporary waiver. *Id.* at 774.

[112] *Id.*; MO. CODE REGS. tit. 14, § 80-5.020(1)(H)(2), (I)(3) (2022).

[113] Graves v. Mo. Dep't of Corr., Div. of Prob. and Parole, 630 S.W.3d 769, 774 (Mo. 2021) (en banc).

[114] *Id.*

[115] *Id.* at 775.

[116] *Id.* at 775–76; Mo. Ass'n of Nurse Anesthetists v. State Bd. of Registration for the Healing Arts, 343 S.W.3d 348, 351–55 (Mo. 2011) (en banc).

[117] *Graves*, 630 S.W.3d at 775–76; *Nurse Anesthetists*, 343 S.W.3d at 351–55.

[118] *Graves*, 630 S.W.3d at 776–77; Mo. Soybean Ass'n v. Mo. Clean Water Comm'n, 102 S.W.3d 10, 14–20 (Mo. 2003) (en banc).

implemented, leading to a lack of established harm and no legal interest affected.[119]

At the end of its decision, the court cast doubt on whether Graves had the appropriate standing to bring this case, given that the Division's letter did not show the immediate danger of an actual or threatened injury.[120] Instead, the court expressed faith that the parties could act in a way that made fee collection unnecessary.[121] The court ultimately concluded that Graves's claim had not provided facts to show ripeness and affirmed the circuit court's dismissal.[122]

B. Dissent

In her dissent, Missouri Supreme Court Judge Breckenridge argued that the circuit court's dismissal was in error because Graves's pleading did reflect facts ripe for a declaratory judgment.[123] The dissent first took issue with the majority's use of the *Abbot Laboratories* test for ripeness.[124] The dissent argued that the two-factor test in *Abbott Laboratories* only applied when administrative decisions have not yet been formalized whereas, in this case, the imposition of an intervention fee was a final decision without any avenue for review outside the court.[125] The dissent believed that since the decision had been formalized, there was only a need for an ordinary analysis of ripeness.[126]

The dissent then drew its focus toward interpreting Graves's petition.[127] While the majority interpreted the petition to be about the Division's letter, the dissent noted that no explicit reference to the letter was made, as the letter was only attached as an exhibit.[128] In broadly

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[119] Graves v. Mo. Dep't of Corr., Div. of Prob. and Parole, 630 S.W.3d 769, 776–77 (Mo. 2021) (en banc); *Mo. Soybean Ass'n*, 102 S.W.3d at 23–24, 29.

[120] *Graves*, 630 S.W.3d at 777 n.8.

[121] *Id.*

[122] Because, however, further developments in the case could have created an issue ripe for judication, the court reversed the circuit court's dismissal with prejudice for a dismissal without prejudice. *Id.* at 777.

[123] *Id.* at 778 (Breckenridge, J., dissenting).

[124] *Id.* at 779 n.2; Abbott Lab'ys, Inc. v. Gardner, 387 U.S. 136, 148–49 (1967).

[125] Graves v. Mo. Dep't of Corr., Div. of Prob. and Parole, 630 S.W.3d 769, 779 n.2 (Mo. 2021) (en banc) (Breckenridge, J., dissenting); *Abbott Lab'ys, Inc.*, 387 U.S. at 148–49.

[126] *Graves*, 630 S.W.3d at 779 n.2. The dissent argues that the proper analysis for ripeness derives from *Mo. Health Care Ass'n v. Att'y Gen. of Mo.*, 953 S.W.2d 617, 621 (Mo. 1997), which states that a claim is ripe when it "is developed sufficiently to allow the court to make an accurate determination of the facts, to resolve a conflict that is presently existing, and to grant specific relief of a conclusive character." *Id.* at 779.

[127] *Id.* at 779–80.

[128] *Id.*

interpreting the petition and making reasonable inferences in Graves's favor, the dissent understood the claim to focus on the Division's requirement that parolees and probationers pay intervention fees, and how that requirement is alleged to violate 42 U.S.C. § 407(a).[129] The dissent saw the letter as simply evidence of the Division's imposition of fees.[130] The dissent analyzed Section 407(a) and relevant case law, leading to contrasting results as to whether the imposition of fees, without an attempt to collect, should be considered a legal process.[131] In light of the statute and available facts, the dissent saw Graves's claim as worthy of adjudication.[132] Similar to the majority, the dissent did not comment on whether the Division's imposition of fees is "other legal process" found within the language of Section 407(a).[133]

The dissent's conclusion conflicted with the majority's focus of Graves's petition, centering on when the "harm" may have occurred.[134] While the majority concluded that harm would only occur if the Division acted upon its letter of notice, the dissent focused on the imposition of intervention fees, which occurs the moment probation or parole begins.[135] The dissent argued that while the letter was merely preliminary in light of potential sanctions, the imposition of the intervention fee had produced a legally enforceable debt, independent of any future actions that would temporarily relieve Graves of his duty to pay.[136] Furthermore, the dissent believed that the majority's suggested safeguards to prevent collection did not overcome Graves's alleged right to not be subject to the debt.[137] Responding to the majority's distinctions, the dissent harmonized Graves's claim with both *Missouri Association of Nurse Anesthetists* and *Missouri Soybean*, under the argument that the Division had already made a final decision about the imposition of fees.[138] The dissent concluded that

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[129] *Id.* at 780.

[130] *Id.* at 779.

[131] *Id.* at 780.

[132] *Id.* at 780–81.

[133] *Id.* at 780 n.4.

[134] *Id.* at 781.

[135] *Id.*

[136] *Id.*

[137] *Id.* at 782. The dissent also notes that the safeguards in place for nonpayment for insufficient income does not preclude Graves from the payment, and merely notes that he can temporarily acquire waiver. *Id.* at 781 n.5. The dissent points out that there is no process for review in this decision, or a probation officer's decision that nonpayment was willful, in which the statute then requires him to sanction the violating probationer or parolee. *Id.* at 782 n.6. The dissent notes that these actions are of a judicial or quasi-judicial nature, and absent an administrative forum for review need one within the judicial branch. *Id.* at 781 n.6.

[138] *Id.* at 782.

Graves had a justiciable claim regarding the imposition of fees, and the claim should not have been dismissed by the circuit court.[139]

V. COMMENT

While the majority opinion in *Graves* errs on the side of caution to preserve the standard of ripeness in Missouri courts, the narrow construction of Graves's pleading and strict focus on the Division's ominous notice letter produces an unnecessary and troubling result with lasting consequences. In analyzing the standards necessary for reviewing an appeal of summary judgment, it becomes apparent that the majority uses too narrow of a lens to analyze Graves's claim. Despite the majority's holding to allow future adjudication for Graves, its current ruling has strong ramifications toward criminal justice debt in Missouri, especially for those in a position like Graves, whose freedom is on the line.

A. "Reasonable inferences," "other legal process," and too narrow of a scope

The actual meaning of Graves's complaint was at the crux of the dispute between the majority and the dissent.[140] The majority opinion grappled with how to interpret Graves's petition, describing parts of it as "vague" and "unclear," resulting in materially different analyses of ripeness between the majority and the dissent. [141] The majority defended its interpretation by looking to Graves's petition to establish the scope of what can constitute "any legal process."[142] The relevant section of the petition is as follows:

> 2. As part of this Court-ordered supervision, Petitioner was ordered to comply with "standard condition #10, INTERVENTION FEES." (Ex. 2)
>
> 3. The supervision of Petitioner by the Department of these probation conditions is under the authority of the Circuit Court of Platte County.
>
> 4. Petitioner, as a consequence, is being required "to pay a monthly intervention fee of $30.00 throughout the

[139] *Id.* at 783.
[140] *Id.* at 772 n.1 (majority opinion), 779–80 (Breckenridge, J., dissenting).
[141] *Id.* at 772 n.1 (majority opinion), 778 (Breckenridge, J., dissenting).
[142] *Id.* at 772 n.1 (majority opinion).

> duration of [his] supervision." It further reads, "Failure to do so may place you in violation status."[143]

The majority opinion used these pleadings to establish a "reasonable and unavoidable" conclusion that the claim of legal process was confined to the notice letter sent by the Division and was not yet ripe.[144] In doing so, the majority paid special attention to the reference of the notice letter itself and its subsequent use of the word "It" in paragraph 4.[145] While this interpretation is reasonable in that the petition's allegations, in a vacuum, do not present much other source for "legal process," a court is arguably required to consider the appellant's complaint with more zeal when presented with an appeal from a grant of summary judgment.[146] The majority noted that its reasonable assumptions provide a tilt toward the petitioner, an act necessary to properly separate the determination of standing from a close determination of facts therein.[147] The majority claimed it *may* liberally draw all reasonable inferences in favor of the petitioner, quoting case law that seemed to establish a more definitive standard.[148] Under the more stringent standard of favorable inferences, however, a court can reasonably conclude that Graves referred to the imposition of fees as the legal process in question and not simply the letter.[149]

On top of the dubious claims of reasonableness by the court, it is also brash to claim that the case's focus on the Division's letter is

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[143] *Id.*

[144] *Id.* The majority argues that the Division has discretionary authority to collect intervention fees, and not required to do so. *Id.* at 773. However, various facts within the case undermine this contention; first, the Division has already conditioned Graves to pay intervention fees as part of his probation. *Id.* at 771. In addition, the majority omits that fee waivers are only for ninety-days and must be reapplied continuously. MO. CODE REGS. tit. 14, § 80-5.020(H)(3) (2022). At the time of Graves' suit, the Division already acted within its discretion to require payment, altering Graves' rights in conflict with section 407(a) with no express way to acquire absolute relief from the debt. Graves v. Mo. Dep't of Corr., Div. of Prob. and Parole, 630 S.W.3d 769, 771–72 (Mo. 2021) (en banc).

[145] *Graves*, 630 S.W.3d at 772 n.1.

[146] *See, e.g.*, Sullivan v. Carlisle, 851 S.W.2d 510, 512 (Mo. 1993) (en banc) ("We treat the facts averred as true and construe the averments liberally and favorably to the plaintiff."); Gibson v. Brewer, 952 S.W.2d 239, 245 (Mo. 1997) (en banc); ("Review of dismissal of a petition allows pleadings their broadest intendment, treats all facts alleged as true, construes all allegations favorably to plaintiff, and determines whether averments invoke principles of substantive law.").

[147] *Graves*, 630 S.W.3d at 772.

[148] *Id.*; Bosch v. St. Louis Healthcare Network, 41 S.W.3d 462, 464 (Mo. 2001) (en banc).

[149] *Graves*, 630 S.W.3d at 773.

"unavoidable."[150] The court's narrow focus on the letter misses the mark regarding Graves's harm. The statutory imposition of fees at the start of Graves's probation is at issue, not the letter reminding him of this legal obligation.[151] The letter provides mere evidence of the Division's decision that binds Graves and fits the mold of a legal process under Section 407(a). To use an analogy for the term "garnishment," which *Keffeler* compares to "other legal process," it is not the court, but an employer, who "garnishes" wages of the employee who finds themself on the wrong side of a decision.[152] Rather, the court uses its judicial power to enforce the garnishment on the employer and employee.[153] Likewise, it is not collecting fees or sending letters that would subject someone to "other legal process" but, instead, the court order itself that was made the moment Graves agreed to his conditional release.[154]

While both the majority and dissent do not label any actions by the Division as "other legal process," it is clear from prior case law that courts would be inclined to rule in favor of Graves, further establishing the ramifications of the majority's decision.[155] The court would be able to use the definition of "other legal process" from *Keffeler*, or in the alternative, the holding that threats constitute "other legal process" from *King*, to conclude that both the Division's initial imposition of intervention fees and their notice of nonpayment constitute a legal process in violation of Section 407(a).[156] Even though *King* has faced disapproval from the post-*Keffeler* case *Reed*, this disapproval would be inapposite in the current case.[157] The Division's initial imposition clearly constitutes a quasi-judicial mechanism to collect property, in this case SSI benefits.[158] This conclusion would not only give Graves relief, but it would also purify the

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[150] *Id.* at 772 n.1.

[151] *Id*.; MO. DEP'T OF CORR., RULES AND REGULATIONS GOVERNING THE CONDITIONS OF PROBATION, PAROLE, AND CONDITIONAL RELEASE 8 (2019); MO. REV. STAT. § 217.690 (2021).

[152] Wash. State Dep't of Social and Health Servs. v. Guardianship Estate of Keffeler, 537 U.S. 371, 385 (2003).

[153] *See, e.g.*, Hatfield v. Cristopher, 841 S.W.2d 761, 763 (garnishment case where the garnishee is not the court, but Home Federal Savings, under direction of a court order); *See Garnishment*, *supra* note 5 ("Wage garnishment is a legal procedure in which a person's earnings are required by court order *to be withheld by an employer* for the payment of a debt such as child support.") (emphasis added).

[154] Graves v. Mo. Dep't of Corr., Div. of Prob. and Parole, 630 S.W.3d 769, 772 n.1 (Mo. 2021) (en banc).

[155] *Id.* at 774 n.4, 780 n.4 (Breckenridge, J., dissenting); *See Keffeler*, 537 U.S. at 385, 388–89; King v. Schafer, 940 F.2d 1182, 1185 (8th Cir. 1991).

[156] *See Keffeler*, 537 U.S. at 385, 388–89; *Schafer*, 940 F.2d at 1185.

[157] Reed v. Taylor, 923 F.3d 411 (5th Cir. 2019).

[158] *Graves*, 630 S.W.3d at 780 (Breckenridge, J., dissenting); *Reed*, 923 F.3d at 415.

Division's collection process and further secure the SSI of probationers and parolees.

By arguing that Graves's petition attaches legal process to the letter rather than the intervention fee condition, the court commits itself to the absolute clarity of pleadings instead of reasonable inferences to the petitioner. The dissent's view, which more cogently connects the legal process to the imposition of fees, is a more reasonable approach that gives proper favor to the petitioner with respect to inferences.[159] The court would then be predisposed to rule in Graves's favor and purify the Division's collection scheme in the process.

B. Inequitable Results and the 'Dark Cloud' of Criminal Justice Debt

While the majority makes clear that it had no reason to believe the Division would collect on Graves's nonpayment or sanction him for the violation, this perspective is overly optimistic.[160] Dismissing the claim for lack of ripeness allows the court to sidestep investigating the Division's persistent and troubling practice, which affects the most vulnerable of our population and may violate federal law. Although greater sociological impacts might be outside the required considerations of the court, studies and reports on the harsh results of criminal justice debt provide policy concerns.[161] Additionally, relevant topics of public discussion range from the imposition of fees in probation and parole by Missouri courts, to rights violations from the Division's various procedures, to the Justice Department's investigation of fee assignment in Ferguson, Missouri.[162] Considering the fervor that surrounds the state's probation and parole systems, it seems difficult not to be wary of assumptions against the enforcement of fees.

A notable consideration from *Graves* is the decision's effect on those whose sole income is SSI and are unable to both pay for living expenses

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[159] *Graves*, 779–80 (Breckenridge, J., dissenting).

[160] *Id.* at 774 (majority opinion). The majority notes that Graves has not received a violation for failure to pay intervention fees since his probation in January of 2019, as evidence to bolster its claim that the Division may not pursue collection. *Id.* at 774 n.5. I believe this argument misses the mark. Given the context of this standing analysis and an understanding of what "other legal process" entails, it is clear as to why the Division would not be keen to collect from Graves' mid-lawsuit, opening an analysis into the Division's conduct and likely removing their ability to collect from SSI recipients. By sitting in wait, the Division can use fear in lieu of legitimate procedure in order to collect fees, right under the noses of the majority. *See id.*

[161] *See, e.g.*, BANNON, *supra* note 83; Drake, *supra* note 83.

[162] *See, e.g.*, BANNON, *supra* note 83; Drake, *supra* note 83; Neil L. Sobol, *Lessons Learned from Ferguson: Ending Abusive Collection of Criminal Justice Debt*, 15 U. OF MD. L. J. RACE, RELIG., GENDER & CLASS 293 (2015) (analysis of Department of Justice report on the Ferguson Police Department's use of revenue driven policing, and effects of criminal justice debt).

and criminal justice debt. The court's lack of acknowledgement of this issue means that this group will live in fear of harsh collection of fees or worse, considering the Division's wide discretion for nonpayment sanctions.[163] The enumerated options, ranging from warnings to increased supervision to shock incarceration, are worrisome enough.[164] However, looking at other sanctions used across Missouri and the U.S. for criminal justice debt shows that the options for punishment can be endless.[165] Missouri's extension of the probation or parole term is one option used for other nonpayment scenarios.[166] This option would lead to more fees being placed on the probationer or parolee over time and, consequently, a harsh cycle of debt. Other states suspend driver's licenses as another option.[167] Missouri uses creditors as a tool to recover outstanding intervention fee debts which in turn ruin the offender's credit.[168] Further, the failure to pay intervention fees can preclude expunging a criminal record.[169] These actions create a host of problems for the prospect of re-entering society, whether it be gaining employment, acquiring a loan, or acquiring housing.[170] These outcomes can leave Missourians jobless, homeless, penniless, and stripped of dignity.

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[163] *See What Sanctions are Used for Failure to pay the Intervention Fee?*, MO. DEP'T OF CORR., https://doc.mo.gov/node/3041 [https://perma.cc/TPY6-K3J7] (last visited June 12, 2023) (explaining the various sanctions options for non-compliance, including shock incarceration); *see also* MO. CODE REGS. tit. 14, § 80-5.020(1)(I)(5) (2021) (options for punishment "are not limited to" enumerated sanctions).

[164] MO. CODE REGS. tit. 14, 80-5.020(1)(I)(5) (2021).

[165] *See*, *e.g.*, BANNON, *supra* note 83 (study of fifteen states regarding the various forms of punishment in exchange for nonpayment of legal fees).

[166] *See* MO. REV. STAT § 559.105(2) (2021) (nonpayment of restitution by a probationer shall lead to an extension of the probation term until payment is complete or the maximum probation sentence is reached); *id.* § 599.105(3) (2021) (applying similar provisions to parole).

[167] BANNON, *supra* note 83, at 24.

[168] *Id.* at 17 n.94 (indicating that criminal debt in Missouri can be sent to private debt collectors); Breanne Pleggenkuhle, *The Final Cost of a Criminal Conviction; Context and Consequences*, 45 CRIM JUST. & BEHAV., 121, 133–34 (2018) (study of legal financial obligations (LFO), finding that the existence of LFO reduced credit score).

[169] *See* MO. REV. STAT. 610.140.5(3) (2021) (requirement to pay any previous dispositions is included in factors for expungement of criminal records).

[170] *See generally* David Thacher, *The Rise of Criminal Background Screening in Rental Housing*, 33 L. SOC. INQUIRY 5, 12 (2008) (roughly four of every five landlords in the private market use background checks to screen prospective tenants); Stacy A. Hickox & Mark V. Roehling, *Negative Credentials: Fair and Effective Consideration of Criminal Records*, 50 AM. BUS. L.J. 201 (2013); Taja-Nia Y. Henderson, *New Frontiers in Fair Lending: Confronting Lending Discrimination Against Ex-Offenders*, 80 N.Y.U. L. REV. 1237, 1243–44 (2005) ("[M]any lenders require that applicants disclose information regarding such exposure, and use that information in determining applicant creditworthiness.").

The decision in *Graves* and its potential to leave SSI recipients under probation or parole deprived of basic needs goes against the fundamental purpose of SSI.[171] Rather than be cognizant of "the insecurities of modern life," this decision exacerbates those insecurities for the poorest of the poor.[172] An individual who is not only a probationer or parolee, but also lives off SSI, is more aware than anyone of these insecurities. This was clear to Congress when they enacted Section 407(a).[173] Keeping in step with the legislative intent behind SSI to assist those who need it most, we should provide a helping hand to those suffering from these austerities, rather than give them the cold shoulder.

The court's apprehension toward creating a justiciable case is understandable at first glance but falls flat when considering the bounds of deference given to summary judgment appellants, as elucidated by both the dissent and prior caselaw. Regardless of the majority and dissent's squabble over Graves's standing, the court ignores the severe risks that come from nonpayment for probationers and parolees surviving solely on SSI. The intervention fees present a host of legal and practical issues that affect daily life and reintegration into society. As a result, the court has, in effect, left all probationers and parolees on SSI to wait another day for relief. Until then, they sit under an ominous cloud of sanction and uncertainty.

VI. CONCLUSION

While the Court in *Graves* took a narrow and restrictive interpretation of ripeness, this decision was not necessary. As the dissent established and the prior caselaw illuminates, a substantial number of protections are customary for Section 407(a), which create ripeness long before an actual collection attempt occurs. The majority's decision to wait on whether Graves will suffer harm hinged on "speculative" claims, but its impact will have a very real consequence for those who follow. Like Graves now must do, future probationers and parolees in Missouri who live off SSI must take a major gamble and wait until the Division comes to collect to have a ripe claim. Considering the inherent risk of litigation, costs of living, and the muted ability to acquire more assets and freedoms to create a stable livelihood, required intervention fees by the Division will remain a constant burden on indigent parolees attempting to reintegrate into society. The dark cloud of criminal justice debt continues to loom over SSI probationers and parolees, with little to rely on as a silver lining.

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[171] *See* United States v. Silk, 331 U.S. 704, 711 (1947); Brown v. Brown, 288 N.E.2d 852–53 (Ohio Ct. App. 1972).

[172] *See Silk*, 331 U.S. at 711.

[173] *See Brown*, 288 N.E.2d at 852–53.