IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Amy McFalls, Jason Crunetti, Vincent Esposito, Gregory Jackson, and Brenda Lacy, on behalf of themselves and all persons similarly situated, Petitioners	:	
v.	:	No. 4 M.D. 2021
	:	HEARD: July 14, 2021
38th Judicial District, Hon. Thomas DelRicci, President Judge (in his official capacity), Michael R. Kehs, Esq. Court Administrator (in his official capacity), and Lori Schreiber, Clerk of Courts (in her official capacity), Respondents	:	

BEFORE THE HONORABLE ELLEN CEISLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE CEISLER FILED: August 6, 2021

Petitioners Amy McFalls, Jason Crunetti, Vincent Esposito, Gregory Jackson, and Brenda Lacy, on behalf of themselves and all persons similarly situated (collectively Petitioners) have filed a class action petition for review (PFR) in our original jurisdiction, through which they seek declaratory and injunctive relief against Respondents 38th Judicial District, Hon. Thomas DelRicci, President Judge (in his official capacity), Michael R. Kehs, Esq. Court Administrator (in his official capacity), and Lori Schreiber, Clerk of Courts (in her official capacity) (collectively Respondents) regarding the manner in which Respondents assess statutory costs upon guilty defendants in criminal matters. Petitioners allege that Respondents impose such costs without proper notice in an arbitrary and, at times, duplicative

manner. In doing so, Petitioners allege that Respondents' both exceed their statutory authority and violate Petitioners' constitutional rights to due process and equal protection. In response, the 38th Judicial District, DelRicci, and Kehs (collectively Common Pleas Respondents) have jointly filed preliminary objections, as has Schreiber separately, through which they seek dismissal of the PFR.

I. Background

In their PFR, Petitioners assert that, in 2019, they were each convicted of or pled guilty to various crimes in the 38th Judicial District, which covers the entirety of Montgomery County, and were consequently assessed costs that they have yet to fully pay. PFR ¶¶1, 10, 18-22, 39-58.

Petitioners readily acknowledge that courts of common pleas are statutorily authorized to impose costs upon guilty individuals in criminal matters. *Id.* ¶2.[1] However, Petitioners argue that the manner in which Respondents have assessed those costs violates the law in several ways. *Id.* ¶¶1-5. First, these costs are supposed to be levied *per incident*, so if someone is found guilty of multiple crimes arising from one criminal *incident*, a court cannot impose the same costs more than once. *Id.* ¶¶32-33. Despite this, Petitioners assert that Respondents have unlawfully prescribed duplicative costs on a *per crime* basis in more than 13,000 criminal cases dating back to as early as 2008, including Petitioners'. *Id.* ¶¶10-11, 35, 37. Second, Respondents do not assess costs with any consistency. In some instances, a defendant is not saddled with duplicative costs, while, in other cases, some or all statutorily authorized costs are levied multiple times against a defendant for a single criminal incident. *Id.* ¶¶27, 59-61, 121-22, 130-31. There is no coherent pattern or

[1] As an exhibit to their PFR, Petitioners attached a list of ***26*** separate, legally permitted court cost funds and programs**.** *See* PFR, Ex. B.

method behind this, so the manner in which Respondents assess duplicative costs is essentially random. *Id.* Third, Respondents do not inform criminal defendants at the time of sentencing about which specific statutory costs will be imposed against them, nor do Respondents provide affected individuals with an itemized bill of such costs. *Id.* ¶¶62-88. Instead, the 38th Judicial District uses a pre-printed form, upon which courtroom clerks summarize the results of each criminal case, including the charges for which a criminal defendant has been found guilty, thereby converting the sentencing judge's orally presented decision into writing. *Id.* ¶¶63-68. Each completed form is then delivered to the Clerk of Courts' office, where staffers interpret the information contained therein to tabulate the costs assessed against each defendant. *Id.* ¶69. In *some* instances, the Clerk of Courts then mails a letter to the defendant days or weeks after sentencing, which apprises them of the aggregate amount of costs they owe, how they can settle their debt, and what the consequences will be if they do not pay in a timely fashion. This letter, however, does not provide an itemized listing of the assessed costs, nor does it include any references to the specific statutory provisions authorizing those costs. *Id.* ¶¶71, 73. However, even this is not a uniform practice, as the Clerk of Courts does not send these cost notification letters to all affected defendants, including those who are incarcerated. *Id.* ¶73. In line with this lack of consistency, each named petitioner in this matter claims that neither they, nor their lawyers, ever received documentation from Respondents that provided a breakdown of the costs imposed upon them as a result of their conviction or guilty plea. *Id.* ¶¶ 40, 44, 48, 52, 56. Petitioners acknowledge that information regarding itemized costs is eventually uploaded to publicly available docket sheets maintained by the Administrative Office of Pennsylvania Courts. *Id.* ¶75. However, the uploaded information does not expressly link each

imposed cost to a specific charge or explain how criminal defendants can object to or appeal those costs, nor do Respondents notify affected defendants or their attorneys that this information has been posted online. *Id.* ¶¶76-84.

Accordingly, Petitioners lodge the following five claims in their Petition for Review on behalf of themselves and all those similarly situated. In Count I, Petitioners assert that Respondents' imposition of *duplicative* costs in criminal matters is not statutorily authorized by Pennsylvania law and is therefore *ultra vires*. *Id.* ¶¶95-102. In Count II, Petitioner's claim that Respondents have violated Petitioners' and the classes' due process rights under Article I, Sections 1, 9, and 11 of the Pennsylvania Constitution by failing to provide adequate notice regarding the imposition of such costs, a proper opportunity to be heard, or any explanation of how the assessed costs could be challenged. *Id.* ¶¶103-09. In Count III, Petitioner's allege that pursuant to 42 U.S.C. § 1983 and the 14th Amendment of the United States Constitution, DelRicci, Kehs, and Schreiber have also violated Petitioners' and the classes' federal due process rights. *Id.* ¶¶110-16.[2] In Count IV, Petitioner's claim that the arbitrary manner in which Respondents levy costs in criminal matters violates Petitioners' and the classes' right to equal protection under Article I, Sections 1 and 26 of the

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[2] Federal law is enforceable in state courts not because Congress has determined that federal courts would otherwise be burdened or that state courts might provide a more convenient forum—although both might well be true—but because the [United States] Constitution and laws passed pursuant to it are as much laws in the States as laws passed by the state legislature. The Supremacy Clause makes those laws "the supreme Law of the Land," and charges state courts with a coordinate responsibility to enforce that law according to their regular modes of procedure.

Howlett By & Through Howlett v. Rose, 496 U.S. 356, 367 (1990). *See* U.S. CONST. art. VI, cl. 2. ("[The United States] Constitution, and the Laws of the United States . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.").

Pennsylvania Constitution. *Id.* ¶¶117-25. And finally, in Count V, Petitioners state that pursuant to 42 U.S.C. § 1983 and the 14th Amendment of the United States Constitution, DelRicci, Kehs, and Schreiber have also violated Petitioners' and the classes' federal equal protection rights. *Id.* ¶¶126-34.

As a result, Petitioners request the following declaratory and injunctive relief:

> 1. A declaration that the imposition of costs on multiple charges in a single criminal proceeding against a single defendant is unlawful and that all such costs imposed on [Petitioners] and the class are declared null and void.
>
> 2. A declaration that a court cannot lawfully impose costs on a criminal defendant unless it provides effective and timely notice of the imposition of those costs in the form of a bill of costs provided to a defendant and counsel at sentencing.
>
> 3. An injunction ordering the [Respondents]:
>
> > a. to cease immediately the imposition of any duplicative costs in a single criminal proceeding against a single defendant (hereinafter "Unauthorized Costs");
> >
> > b. to cease immediately any collection activity related to Unauthorized Costs;
> >
> > c. to adjust the balance of all cases with unpaid balances to remove all Unauthorized Costs, and to provide notice to the Class members that their balances have been adjusted;
> >
> > d. to develop within 30 days a program of effective and timely notice which is to include an itemized bill of all costs given to defendants and counsel at the time of sentencing that correlates the costs imposed to the charges in the case, and a rewritten form of sentencing order providing for the itemization of costs, the statutory authorization for all such costs, and the notice of the right to object to and challenge the imposition of costs and the procedural means for doing so. In so developing this plan, [Respondents] are directed to consult with counsel for [Petitioners] and the class, and upon

> completion of such plan, but within not less than 30 days, to submit said plan for judicial approval;
>
> e. to make as soon as practical arrangements to inform all credit reporting agencies of the adjustments to credit reports of [Petitioners] and members of the class of the relief specified herein.
>
> 4. An award of attorney's fees and costs to [Petitioners].
>
> 5. Such other relief as the Court may deem appropriate.

Id. § VII.[3]

Common Pleas Respondents now collectively challenge the PFR, as does Schreiber separately, through preliminary objections that are the subject of this opinion.[4]

II. Issues

Respondents set forth the following objections for our consideration, which are summarized and reordered for sake of analytical clarity. First, Common Pleas Respondents contend that this Court lacks subject matter jurisdiction, because only the Pennsylvania Supreme Court has general administrative and supervisory authority over courts of common pleas' operations in our Commonwealth. Common Pleas Respondents' Br. at 13-16.[5] Second, Common Pleas Respondents maintain that the Petition for Review constitutes an impermissible collateral attack upon Petitioners'

[3] Count VI of Petitioners' PFR, which Petitioners describe as, "For Declaratory Relief Pursuant to 42 Pa. C.S. § 7531 et seq., against all [Respondents,]" requests relief that is essentially identical to that sought through Section VII ("Relief Requested") of the PFR.

[4] In considering these preliminary objections, this Court deliberated upon the arguments put forth by the parties in their respective briefs and, in addition, heard oral argument regarding jurisdictional issues on July 14, 2021.

[5] Petitioners argue that, though Common Pleas Respondents present this argument in their brief, they have nonetheless waived it by failing to expressly raise it in their preliminary objections. Petitioners' Br. at 11-12, n.3. This argument is without merit, as "the issue of lack of subject matter jurisdiction may be raised at any time by the parties or *sua sponte* by [the] Court[.]" *Daly v. Sch. Dist. of Darby Twp.*, 252 A.2d 638, 640 (Pa. 1969).

criminal sentences. *Id.* at 16-20. According to Respondents, the proper manner to challenge costs is by seeking relief from the sentencing court and Section 1983 claims cannot be used to challenge the validity of such sentences. *Id.* Similarly, Schreiber alleges that Petitioners' action is barred by to their failure to exhaust their available and adequate legal remedies, *i.e.*, through directly challenge through their criminal cases the costs that were imposed upon them, as well as that Section 1983 relief is not available here, because Petitioners' underlying convictions still stand and, for all intents and purposes, are still considered valid. Schreiber's Br. at 11-14. Third, Common Pleas Respondents assert that Petitioners lack individual and class standing to maintain their action, because their underlying criminal cases have concluded, they do not have any outstanding criminal appeals, and they do not allege that they are reasonably likely to be convicted of, and sentenced to, crimes in Montgomery County in the future. Common Pleas Respondents' Br. at 10-12. Fourth, Common Pleas Respondents state that Petitioners' requests for relief are barred by sovereign immunity, to the extent these requests seek to compel them to act affirmatively. *Id.* at 29-32. In the same vein, Schreiber argues that sovereign immunity, under both state law and the United States Constitution's 11th Amendment,[6] bars Petitioners' claims against her. Schreiber's Br. at 8-11.[7] Fifth, Common Pleas Respondents maintain that declaratory judgments and/or injunctions

[6] "The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State." U.S. Const. amend. XI.

[7] Petitioners have also filed preliminary objections to Common Pleas Respondents' and Schreiber's separate assertions of sovereign immunity. *See* Petitioners' Br. at 42-47. Petitioners' Responses and Objections to the Preliminary Objections of Respondents the 38th Judicial District, The Hon. Thomas M. DelRicci, and Michael R. Kehs ("Judicial Respondents"), ¶19; Petitioners' Responses and Objections to the Preliminary Objections of Respondent Lori Schreiber, ¶19.

are not appropriate remedies in this situation, as Petitioners may seek and obtain appropriate relief through their criminal cases. Common Pleas Respondents' Br. at 20-23. Sixth, Common Pleas Respondents contend that Petitioners have failed to state viable equal protection, procedural due process, or *ultra vires* claims. *Id.* at 23-29. Seventh, Schreiber asserts that none of Petitioners' claims against Schreiber are legally actionable, as her role is purely administrative and ministerial, thereby rendering her without independent discretion to alter the terms of criminal sentences or set policy as to how costs in criminal matters are assessed. Schreiber's Br. at 4-8. Finally, Schreiber alleges that Petitioners' claims against her are insufficiently specific, as they do not articulate how exactly she violated Petitioners' constitutional rights and include a prayer for relief that does not address these putative violations, but only speaks to altering the way costs are assessed in the 38th Judicial District. *Id.* at 12-13.

III. Discussion[8]

A. Supreme Court's Administrative and Supervisory Jurisdiction

Common Pleas Respondents' argument that this matter falls within the scope of the Supreme Court's original jurisdiction is unpersuasive. As explained by our Supreme Court,

> [t]he [Pennsylvania] Constitution is explicit regarding the breadth of the [Supreme] Court's authority over the

[8] "In ruling on preliminary objections, this Court accepts as true all well-pled allegations of material fact, as well as all inferences reasonably deducible from those facts. *Key v. Pa. Dep't of Corr.*, 185 A.3d 421 (Pa. Cmwlth. 2018). However, this Court need not accept unwarranted inferences, conclusions of law, argumentative allegations, or expressions of opinion. *Id.*" *Dantzler v. Wetzel*, 218 A.3d 519, 522 n.3 (Pa. Cmwlth. 2019). "In order to sustain preliminary objections, it must appear with certainty that the law will not permit recovery, and, where any doubt exists as to whether the preliminary objections should be sustained, the doubt must be resolved in favor of overruling the preliminary objections." *Pa. State Lodge, Fraternal Ord. of Police v. Dep't of Conservation & Nat. Res.*, 909 A.2d 413, 416 (Pa. Cmwlth. 2006).

Unified Judicial System. In the Supreme Court "shall be reposed the supreme judicial power of the Commonwealth." PA. CONST. art. V, § 2(a). Moreover, in addition to its judicial power, the Supreme Court has "general supervisory and administrative authority over all the courts and [magisterial district judges]. . . ." PA. CONST. art. V, § 10(a). The Judicial Code helps to implement the primacy of the Supreme Court within the Unified Judicial System. *See* 42 Pa. C.S. § 501 (derived from PA. CONST. art. V, § 2). The General Assembly has also recognized that the Court has "[a]ll powers necessary or appropriate in aid of its original and appellate jurisdiction which are agreeable to the usages and principles of law" and any powers vested in it by statute, including the Judicial Code. 42 Pa. C.S. § 502. Section 1701 of the Judicial Code states that the Court has general supervisory and administrative authority over the judicial system and may exercise powers enumerated in subsequent provisions "in aid" of that authority. 42 Pa. C.S. § 1701 (derived from PA. CONST. art. V, § 10 (a)). The enumerated powers include authority over "all courts and magisterial district judges" and over "personnel of the system." 42 Pa. C.S. §§ 1723, 1724. Personnel of the system include "judicial officers[.]" . . . *See* 42 Pa. C.S. § 102 (definitions: personnel of the system, judicial officers, judges).

As part of its administrative responsibility, the Court oversees the daily operations of the entire Unified Judicial System, which provides a broad perspective on how the various parts of the system operate together to ensure access to justice, justice in fact, and the appearance that justice is being administered even-handedly. *See* PA. CONST. art. V, § 10 (judicial administration). . . .

Another important facet of judicial administration is the authority to devise rules of procedure governing adjudications before inferior tribunals . . . . *See* PA. CONST. art. V, § 10(c). . . . Additionally, the Court regulates the conduct of jurists via the Rules of Judicial Administration.

. . . .

In addition to its general powers of adjudication, supervision and administration, the Supreme Court also has "the power generally to minister justice to all persons and to exercise the powers of the court, as fully and amply, to all intents and purposes, as the justices of the Court of King's Bench, Common Pleas and Exchequer, at Westminster, or any of them, could or might do on May 22, 1722." 42 Pa. C.S. § 502 (derived from Judiciary Act of May 22, 1722, 1 Smith's Law 131). The Judicial Code recognizes that these additional powers are vested in the Supreme Court by the Constitution of Pennsylvania. *Id.* . . .

To aid in the exercise of these powers, the Court has such jurisdiction as "shall be provided by law." PA. CONST. art. V, § 2(c). [For example,] Section 721 of the Judicial Code enumerates the types of cases over which the Court has original jurisdiction: *habeas corpus*, mandamus or prohibition to courts of inferior jurisdiction, and *quo warranto* as to any officer of statewide jurisdiction. 42 Pa. C.S. § 721. . . . Section 726 addresses the Court's extraordinary jurisdiction to take cognizance, *sua sponte* or upon petition of a party, of any matter pending before an inferior tribunal "involving an issue of immediate public importance." 42 Pa. C.S. § 726. In addition, the schedule to Article V of the Constitution continues post-ratification the jurisdiction vested in the Supreme Court in 1968—such as the jurisdiction of the King's Bench. PA. CONST. SCHED. art. V, § 1; *see, e.g., City of Philadelphia v. Int'l Ass'n of Firefighters, Local 22*, . . . 999 A.2d 555 ([Pa.] 2010) (Supreme Court exercised King's Bench jurisdiction to review arbitration award upon writ of certiorari, where right of appeal was statutorily prohibited).

. . . .

[T]he [Supreme] Court's supervisory responsibilities only start at relatively mundane tasks [such as those] relating to temporary assignments of judges to fill vacancies on the bench, priority of commission, or judicial assignments to divisions within a trial court, and related adjudicatory obligations. *See, e.g.*, PA. CONST. art. V, §§ 10(a), (e). . . . But, the duties of the [Supreme] Court atop the Unified Judicial System transcend these ministerial tasks. The

> Supreme Court's principal obligations are to conscientiously guard the fairness and probity of the judicial process and the dignity, integrity, and authority of the judicial system, all for the protection of the citizens of this Commonwealth.
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> . . . .
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> [Thus, the essence of t]he Supreme Court's supervisory power over the Unified Judicial System . . . implicates a dual authority: (1) over personnel of the system, among them jurists; and (2) over inferior tribunals[.]

In re Bruno, 101 A.3d 635, 663-65, 75, 78 (Pa. 2014).

In practice, both our Court and the Supreme Court have interpreted this administrative and supervisory authority to encompass such cases as: an interim disciplinary action against a federally indicted traffic court judge. *Bruno*; an original jurisdiction action, through which the petitioner sought to compel all judges from a specific court of common pleas to recuse themselves from presiding over his case in the lower court. *Guarrasi v. Scott*, 25 A.3d 394 (Pa. Cmwlth. 2011); and an original jurisdiction mandamus action against a district justice, through which an elected constable sought payment for services rendered. *Leiber v. Cnty. of Allegheny*, 654 A.2d 11 (Pa. Cmwlth. 1994).

However, the Supreme Court's ability to exercise such powers does not extend to all matters that might seem, at first blush, to fall within the broad scope of this administrative and supervisory authority. For example, in *Gass v. 52nd Judicial District, Lebanon County*, three individuals filed a class action lawsuit in our original jurisdiction, through which they sought declaratory and injunctive relief to invalidate the 52nd Judicial District's policy barring individuals under the court's supervision from using medical marijuana, on the basis that this policy violated our

Commonwealth's Medical Marijuana Act.[9] (Pa. Cmwlth. No. 574 M.D. 2019, filed Oct. 23, 2019), slip op. at 1-2. This Court interpreted the relief sought by Gass and her fellow petitioners as constituting a writ of prohibition;[10] as such, this Court concluded that the Supreme Court, rather than our Court, had original jurisdiction to consider the matter and accordingly transferred the petition for review to the higher tribunal. *Id.* at 5-8. Shortly thereafter, the Supreme Court issued a *per curiam* order that evinced its disagreement with our reasoning, which stated in relevant part:

> [I]n consideration of the Commonwealth Court's October 23, 2019 opinion in support of its transfer of this matter to this Court, the opinion is ABROGATED, to the extent that it can be read for the proposition that another court can dictate an exercise of this Court's general superintendency powers. The determination to exercise King's Bench jurisdiction is made solely by this Court. *Cf. Com*[.] *v. Whitmore*, . . . 912 A.2d 827 (Pa. 2006) (finding that the Superior Court exceeded its authority when it *sua sponte* removed a trial court judge from presiding over a case; further noting that the constitutional authority to exercise superintendency over the courts is exclusive to the Supreme Court).

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[9] Act of April 17, 2017, P.L. 84, 35 P.S. §§ 10231.101-10231.2110.

[10] Prohibition is a common law writ . . . [the] principal purpose [of which] is to prevent an inferior judicial tribunal from assuming a jurisdiction with which it is not legally vested in cases where damage and injustice would otherwise be likely to follow from such action. It does not seek relief from any alleged wrong threatened by an adverse party; indeed it is not a proceeding between private litigants at all, but solely between two courts, a superior and an inferior, being the means by which the former exercises superintendence over the latter and keeps it within the limits of its rightful powers, and jurisdiction.

Carpentertown Coal & Coke Co. v. Laird, 61 A.2d 426, 428 (Pa. 1948). "Beyond the situation where the lower court wholly lacks jurisdiction in a matter, a writ of prohibition is proper where the inferior tribunal abuses its jurisdiction." *Glen Mills Sch. v. Ct. of Common Pleas of Philadelphia Cnty.*, 520 A.2d 1379, 1381 (Pa. 1987).

To the extent the [Commonwealth Court's] October 23, 2019 opinion can be read for the proposition that any case in which injunctive relief is sought against a judicial entity should be recharacterized as a petition for writ of prohibition and then transferred to this Court, the opinion is ABROGATED.

The Commonwealth Court's conclusion that [Gass et al.'s] filing is in the nature of a petition for writ of prohibition rests significantly on [their] ostensible assertion that the [52nd] Judicial District was "without jurisdiction," a phrase akin to a prohibition claim. Yet, that phrase does not appear in [Gass et al.'s] filings. Reframing those filings as a request for a writ of prohibition, where such relief is not evidently sought, is without foundation. ***See Borough of Akron v. Pub. Util. Comm'n*****, . . . 310 A.2d 271, 276 ([Pa.] 1973) (while acknowledging that some actions seeking injunctions "may in fact be imperfectly framed requests for writs of prohibition," further defining the narrow scope of the writ, specifying that "[p]rohibition is not appropriately used to forestall a merely erroneous exercise of jurisdiction. On the other hand, it exactly fills the bill if the tribunal can in no circumstances whatsoever act validly as to the subject matter involved in the hearings it proposes to conduct") (citation omitted).** ***See also Glen Mills Sch. v. Court of Common Pleas*****, . . . 520 A.2d 1379, 1381 ([Pa.] 1987) ("In addition to total absence of jurisdiction, our cases have extended the application of the writ of prohibition to encompass situations in which an inferior court, which has jurisdiction, exceeds its authority in adjudicating the case. This latter situation has been termed an 'abuse of jurisdiction.'")**

Moreover, the Commonwealth Court's order transferring this matter to this Court would have been proper only if the Commonwealth Court lacked jurisdiction. ***See*** **42 Pa. C.S. § 5103. The [Commonwealth Court's] October 23, 2019 opinion does not adequately explain how this action falls outside of that court's original jurisdiction.** *See* 42 Pa. C.S. § 761 (establishing the Commonwealth Court's original jurisdiction as extending to civil actions against

> the Commonwealth government); *see also* 42 Pa. C.S. § 102 (defining "Commonwealth government" as including the courts of the Unified Judicial System). **As such, this Court concludes that the transfer was improper.**

Gass v. 52nd Jud. Dist., Lebanon Cnty., (Pa. No. 118 MM 2019, filed Oct. 30, 2019), Order at 1-3 (emphasis added).[11]

The Supreme Court's treatment of *Gass* is instructive and lends itself to the conclusion that the Supreme Court does not have original jurisdiction over this case. The gravamen of Petitioners' argument here is that Respondents, all of whom are either government employees or governmental entities, administratively assess court costs upon criminal defendants in the 38th Judicial District in a manner that exceeds their statutorily vested authority, lacks any semblance of consistent application across cases, and is accomplished without proper notice. Accordingly, Petitioners seek relief directing Respondents to cease this allegedly unlawful, unconstitutional behavior and to formulate a new, legally sufficient process for imposing such costs. This does not implicate the Supreme Court's administrative and supervisory authority; instead, these claims fall within the original jurisdiction of our Commonwealth's lower courts. *See* 42 Pa. C.S. § 761(a) ("General rule.--The Commonwealth Court shall have original jurisdiction of all civil actions or proceedings: (1) Against the Commonwealth government, including any officer thereof, acting in his official capacity, except [in a number of situations not relevant to this matter]."); *id.*, § 761(c) (stating, in relevant part, "[t]o the extent prescribed by general rule the Commonwealth Court shall have ancillary jurisdiction over any claim or other matter which is related to a claim or other matter otherwise within its exclusive original jurisdiction"); *id.*, § 931(a)-(b) (granting the courts of common

[11] Despite this erroneous transfer, the Supreme Court elected to exercise King's Bench jurisdiction over *Gass* and, instead of returning the case to our Court, subsequently issued a decision on the merits. *See Gass v. 52nd Jud. Dist., Lebanon Cnty.*, 232 A.3d 706 (Pa. 2020).

pleas broad powers of original jurisdiction, limited only by statute or rule vesting such jurisdiction in certain matters to other courts in our Commonwealth). Admittedly, some of the relief requested by Petitioners approaches the ambit of the Supreme Court's administrative and supervisory authority. *See* PFR § VII(d)(3) (asking that Respondents be required to collaborate with Petitioners' counsel to create a new process for levying costs against criminal defendants, which must then be submitted to our Court for judicial approval). However, during the course of oral argument on July 13, 2021, Petitioners' counsel stated that Petitioners would limit the relief sought so as to avoid straying into the realm of the Supreme Court's original jurisdiction, which obviates any jurisdictional issues that may have arisen therefrom. As such, this Court respectfully determines that the Common Pleas Respondents' assertion that the Supreme Court has original jurisdiction in this matter is without merit.

B. Collateral Attack and Exhaustion of Available and Adequate Legal Remedies

Respondents' collateral attack and remedy exhaustion-based objections are similarly unavailing. In effect, Respondents posit through these arguments that the courts of common pleas, rather than the Commonwealth Court, have original jurisdiction to consider a suit of this nature, which Respondents view as a direct attack upon Petitioners' criminal sentences. Petitioners counter that costs are not a component of a criminal sentence and, as such, they are permitted to challenge Respondents' imposition of such costs upon them via this suit without running afoul of the bar against collateral attacks. Petitioners' Br. at 12-16.[12]

[12] As this Court has stated in the past, a litigant

> may not use a civil action for declaratory judgment in our original jurisdiction to collaterally attack the legality of his criminal proceedings [that took place] in [a court of] [c]ommon [p]leas.

(Footnote continued on next page…)

These arguments present somewhat of a conundrum, as the relevant case law offers ambiguous guidance. On one hand, our Supreme Court has concluded that "[t]he imposition of costs in a criminal case is not part of the sentence, but rather is incident to the judgment. . . . The liability for costs is not part of the statute which provides for the punishment of an offense." *Com. v. Nicely*, 638 A.2d 213, 217 (Pa. 1994) (internal citation omitted); *accord Com. v. Giaccio*, 202 A.2d 55, 58 (Pa. 1964)*, rev'd sub nom. on other grounds Giaccio v. State of Pa.*, 382 U.S. 399 (1966). On the other hand, both this Court and our Supreme Court have concluded that some or all of those costs are punitive. *See Com. v. Lehman*, 243 A.3d 7, 17 (Pa. 2020) (quoting *Com. v. Garzone*, 34 A.3d 67, 75 (Pa. 2012) (statute authorizing recovery from guilty individual of costs relating to their prosecution "is penal in nature"); *Fordyce v. Clerk of Cts.*, 869 A.2d 1049, 1053 (Pa. Cmwlth. 2005), *superseded by statute on other grounds as noted in Com. v. Morales-Rivera*, 67 A.3d 1290, 1292-93 (Pa. Cmwlth. 2013) ("It is clear that fines and costs imposed by a sentencing court constitute penal sanctions[.]").[13] In addition, there is an unresolved split in the

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> *Keller* [*v. Kinsley*, 609 A.2d 567 (Pa. Super. 1992)]. The [Post Conviction Relief Act] is the sole means "by which persons convicted of crimes they did not commit and persons serving illegal sentences" may obtain collateral relief. 42 Pa. C.S. § 9542. *Keller*.

Scott, 25 A.3d at 402.

[13] In the past, the Superior Court has explained the difference between a fine and a cost in the context of a criminal matter:

> Often following a criminal conviction, the trial court places a monetary imposition on the defendant. The imposition of costs and restitution are not considered punishment. Both costs and restitution are designed to have the defendant make the government and the victim whole. Restitution compensates the victim for his loss and rehabilitates the defendant by impressing upon him that his criminal conduct caused the victim's loss and he is responsible to repair that loss. See *Com*[.] *v. Runion*, . . . 662 A.2d 617, 618 ([Pa.] 1995).

(Footnote continued on next page…)

Superior Court's case law regarding whether costs implicate the legality of a criminal sentence or are merely related thereto. *See Com. v. Gary-Ravenell*, (Pa. Super. No. 2551 EDA 2018, filed Oct. 23, 2020), slip op. at 16-19, 2020 WL 6257159 at *8 (collecting cases).

Despite this ambiguity, it remains that Petitioners have chosen the correct court in which to mount the legal challenges embodied through their PFR. Generally, individuals who are found guilty in criminal matters are liable for statutorily authorized costs, ***regardless of whether those costs are formally imposed through court orders or simply by operation of law***. *See* 42 Pa. C.S. § 9721(c.1);[14] *id.* §

> Costs are a reimbursement to the government for the expenses associated with the criminal prosecution. *See, e.g.*, *United States v. Monsanto Co.*, 858 F.2d 160 (4th Cir. 1988). Costs and restitution are akin to collateral consequences. Conversely, fines are considered direct consequences and, therefore, punishment. *See Parry* [*v. Rosemeyer*, 64 F.3d 110, 114 (3d Cir.1995)] . . . (quoting [*United States v.*] *Salmon*, 944 F.2d [1106,] 1130 [(3d Cir.1991)]; *see also Com*[.] *v. Martin*, . . . 335 A.2d 424 ([Pa. Super.] 1975) (requiring an indigent to pay a $5,000.00 fine was per se manifestly excessive and constituted too severe punishment). The Legislature authorized fines for all offenses and intended to relate the amount of the fine to the gravity of the offense. *See* 18 Pa. C.S. § 1101.

Com. v. Wall, 2005 867 A.2d 578, 582 (Pa. Super. 2005). Of course, by deeming costs not to be a form of punishment, *Wall* also serves as an example of the confusing state of existing case law in this area.

[14] Section 9721(c.1) of the Sentencing Code states, in relevant part:

> Notwithstanding the provisions of Section 9728 (relating to collection of restitution, reparation, fees, costs, fines and penalties) or any provision of law to the contrary, the [sentencing] court shall order the defendant to pay costs. In the event the [sentencing] court fails to issue an order for costs pursuant to [S]ection 9728, costs shall be imposed upon the defendant under this section. **No court order shall be necessary for the defendant to incur liability for costs under this section.**

42 Pa. C.S. § 9721(c.1).

9728(a)-(b) (allowing recovery of costs by authorized county agent, county correctional facility, county probation department, or Department of Corrections); *id.* § 9728(b.2).[15]

Additionally, the Commonwealth Court has original jurisdiction to consider certain kinds of related disputes, where a petitioner does not challenge the *sentencing court's* decision to exact costs upon them, but rather contests subsequent *administrative* efforts to calculate, collect, or impose such costs. *See Guarrasi v. Cnty. of Bucks*, (Pa. Cmwlth. No. 176 M.D. 2018, filed Sept. 14, 2018), slip op. at 6-7, 2018 WL 4374280 at *3;[16] *Saxberg v. Dep't of Corr.*, 42 A.3d 1210, 1213 (Pa. Cmwlth. 2012); *Spotz v. Com.*, 972 A.2d 125, 134 (Pa. Cmwlth. 2009). Reading Petitioners' averments together, it is evident they do not attack the respective sentencing judges' initial decisions to impose costs, generally speaking, but rather the method through which those costs are subsequently calculated and notice is (or is not) given to affected criminal defendants. *See* PFR ¶¶62-88. This administrative process is thus the spring from which Petitioners' action flows, which thereby vests this Court with the ability to consider it as an original jurisdiction matter.

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[15] Section 9728(b.2) of the Sentencing Code states:

> Notwithstanding any provision of law to the contrary, in the event the [sentencing] court fails to issue an order under [Section 9728](a) imposing costs upon the defendant, the defendant shall nevertheless be liable for costs, as provided in [S]ection 9721(c.1), unless the [sentencing] court determines otherwise pursuant to Pa.R.Crim.P. No. 706(C) (relating to fines or costs). **The absence of a court order shall not affect the applicability of the provisions of this section**.

42 Pa. C.S. § 9728(b.2).

[16] Unreported Commonwealth Court opinions issued after January 15, 2008 may be cited for their persuasive value. Commonwealth Court Internal Operating Procedure 414(a), 210 Pa. Code § 69.414(a).

Nor do jurisdictional concerns impede Petitioners' Section 1983 claims. Respondents cite *Heck v. Humphrey*, 512 U.S. 477 (1994), and argue that its holding prevents Petitioners from pursuing their federal constitutional claims; however, in doing so, Respondents misapprehend *Heck*, as well as its relevance to this matter. "Under *Heck*, a [Section] 1983 action that impugns the validity of the plaintiff's underlying conviction cannot be maintained unless the conviction has been reversed on direct appeal or impaired by collateral proceedings." *Gilles v. Davis*, 427 F.3d 197, 208-09 (3d Cir. 2005). Here, Respondents challenge the manner in which costs were assessed and imposed, but do not dispute that they are guilty of the crimes for which they were sentenced. Thus, regardless of whether those costs are a component of a criminal sentence or are merely ancillary thereto, Petitioners' Section 1983 claims do not "impugn[] the validity of [their] underlying conviction[s.]" *Heck* is therefore inapplicable and does not stand as a bar to Petitioners' claims or this Court's authority to exercise original jurisdiction over this case.

C. Petitioners' Individual and Class Standing

Furthermore, Petitioners have averred facts sufficient to establish their standing to pursue their action, both on an individual basis and on behalf of the broader class of similarly situated people.

> "In seeking judicial resolution of a controversy, a party must establish as a threshold matter that he has standing to maintain the action." *Stilp v. Com.*, 940 A.2d 1227, 1233 (Pa. 2007). In Pennsylvania, the requirement of standing is prudential in nature. *City of Philadelphia v. Com.*, 838 A.2d 566, 577 (Pa. 2003). A challenge to the standing of a party to maintain the action raises a question of law. *In re Milton Hershey Sch.,* 911 A.2d 1258 (Pa. 2006). As this Court explained in *William Penn Parking Garage v. City of Pittsburgh*, 346 A.2d 269, 280-81 (Pa. 1975) (plurality), the core concept of standing is that a person who is not adversely affected in any way by the matter he seeks to

> challenge is not aggrieved thereby and has no standing to obtain a judicial resolution of his challenge.
>
> An individual can demonstrate that he has been aggrieved if he can establish that he has a substantial, direct and immediate interest in the outcome of the litigation. *In re Hickson*, 821 A.2d 1238, 1243 (Pa. 2003). A party has a substantial interest in the outcome of litigation if his interest surpasses that "of all citizens in procuring obedience to the law." *Id.* at 1243. "The interest is direct if there is a causal connection between the asserted violation and the harm complained of; it is immediate if that causal connection is not remote or speculative." *City of Philadelphia*, 838 A.2d at 577.

Fumo v. City of Philadelphia, 972 A.2d 487, 496 (Pa. 2009).

Here, Petitioners maintain that they have been assessed costs on account of their criminal convictions in a manner that violated both statutory law and essential constitutional precepts. Petitioners also state that have yet to fully settle their respective cost balances and, thus, remain at risk of suffering additional negative consequences if they fail to pay what they claim are illegal assessments**, "includ[ing] the threat of contempt or probation revocation proceedings, the issuance of warrants for arrest, and the referral of the matter to collection agencies with a consequent additional 25% assessment on the balance due."** PFR ¶58. These consequences, including arrests and the loss of liberty, have a substantial, direct, and immediate impact on the Petitioners interests in the outcome of this case and, therefore, have standing on an individual basis. Furthermore, there is no basis for concluding that Petitioners lack class standing, as Common Pleas Respondents' argument that Petitioners cannot represent the broader class of similarly affected people rests solely upon their erroneous belief that Petitioners lack individual standing. *See* Common Pleas Respondents' Br. at 13.

D. Sovereign Immunity[17]

Respondents' respective arguments that they are immunized from Petitioners' suit are partially meritorious. In general, under Pennsylvania law, sovereign immunity applies to claims for monetary damages, subject to a number of exceptions that are not relevant here. Sovereign immunity also applies to efforts to compel governmental entities or officials to take affirmative actions. *Fawber v. Cohen*, 532 A.2d 429, 433 (Pa. 1987); *see* 42 Pa. C.S. § 8522(b) (listing categories of actions for which the Commonwealth has waived sovereign immunity for monetary damages). However, "sovereign immunity [is] not available as a defense where the relief sought against state officials [is] nothing more than to compel them to perform a ministerial duty . . . [or] to compel [those officials] to perform a duty imposed by law[.]" *Paz v. Dep't of Corr.*, 580 A.2d 452, 455-56 (Pa. Cmwlth. 1990). *Additionally, sovereign*

[17] Petitioners have filed preliminary objections to Respondents' sovereign immunity-based preliminary objections. *See* Petitioners' Br. at 42-47; Petitioners' Responses and Objections to the Preliminary Objections of Respondents the 38th Judicial District, The Hon. Thomas M. DelRicci, and Michael R. Kehs ("Judicial Respondents"), ¶19; Petitioners' Responses and Objections to the Preliminary Objections of Respondent Lori Schreiber, ¶19.

It is true that sovereign immunity is an affirmative defense that should be raised via new matter, rather than through preliminary objections. Pa. R.C.P. No. 1030. However, "the affirmative defense of governmental immunity may be raised by preliminary objections in the nature of a demurrer where that defense is apparent on the face of the pleading; that is, that a cause of action is made against a governmental body and it is apparent on the face of the pleading that the cause of action does not fall within any of the exceptions to governmental immunity." *Wurth v. City of Philadelphia*, 584 A.2d 403, 407 (Pa. Cmwlth. 1990). Even if the plaintiff/petitioner preliminarily objects to a defendant/respondent's procedurally improper invocation of a facially valid immunity defense, they must provide a substantive basis for doing so, rather than a purely technical argument that, if accepted, would only serve to delay the case's disposition. *See Feldman v. Hoffman*, 107 A.3d 821, 831-36 (Pa. Cmwlth. 2014).

Here, Respondents all put forth facially viable arguments that they are immune from this suit, and Petitioners offer no explanation for why the merits of Respondents' immunity defenses should not be addressed at this stage, instead challenging them on their merits. *See* Petitioners' Br. at 42-47. Therefore, it is proper to consider and rule upon Respondents' sovereign immunity preliminary objections, rather than to require that they be raised at a later point.

immunity does not operate as an impediment to declaratory judgments, "because it is not applicable to [such] actions." Legal Cap., LLC. v. Med. Pro. Liab. Catastrophe Loss Fund, A.2d 299, 302 (Pa. 2000). Furthermore, state-level sovereign immunity does not protect governmental officials or entities from Section 1983 claims, which are made pursuant to federal law. *Howlett*, 496 U.S. at 375-83; *see id.* at 383 ("[A]s to persons that Congress [has[subjected to liability, individual States may not exempt such persons from federal liability by relying on their own common-law heritage."). Nor does the 11th Amendment immunize state officials acting in their official capacity from suits that seek injunctive relief. *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 71 n.10 (1989).

Here, much of the relief sought by Petitioners would either declare Respondents' actions unlawful, restrain Respondents' ability to take certain actions, or would direct Respondents to perform ministerial duties *See* PFR § VII(1)-(3)(c). The only types of relief sought that would require Respondents to take affirmative action would require Respondent's to design a new process for assessing costs in criminal matters with Petitioners' and this Court's assistance and input, as well as to notify credit reporting agencies that specific outstanding, unlawfully assessed are no longer considered to be debts owed by Petitioners or members of the class. *See id.* § VII(3)(d)-(e). These latter categories for relief, through which Respondents would be compelled to take affirmative actions, would appear to be barred by sovereign immunity under state law. However, this bar would not apply to the counts in the PFR that are based upon federal law and, thus, would not prevent this Court from granting that type of relief in the context of Petitioners' Section 1983 claims. In addition, since Petitioners only seek declaratory and injunctive relief, rather than

monetary damages, the 11th amendment does not immunize Schreiber, as an employee of the state judicial system, from Petitioners' suit.

E. Appropriateness of Declaratory and/or Injunctive Relief

Common Pleas Respondents' supposition that declaratory and/or injunctive relief are inappropriate here, because Petitioners could have raised their arguments through their respective criminal cases, is entirely unavailing. "An action seeking a declaratory judgment is not an optional substitute for established or available remedies and should not be granted where a more appropriate remedy is available." *Greenberg v. Blumberg*, 206 A.2d 16, 17 (Pa. 1965). Similarly, "[a] court may not grant injunctive relief where an adequate remedy exists at law." *Harding v. Stickman*, 823 A.2d 1110, 1111 (Pa. Cmwlth. 2003). These general rules are tempered by the "equally well established [principle] that *a Court of Equity has jurisdiction and in furtherance of justice will afford relief if the statutory or legal remedy is not adequate, or if equitable relief is necessary to prevent irreparable harm*." *Pennsylvania State Chamber of Com. v. Torquato*, 125 A.2d 755, 766 (Pa. 1956) (emphasis in original). To reiterate, **Petitioners challenge the administrative process through which costs were assessed against them, as well as the adequacy of the notice they received regarding those costs, *not* the respective sentencing judges' initial decisions to impose costs upon them**. Also, as discussed earlier, typically not even the sentencing judges mandate what costs will be imposed, or even if they will be imposed at all. This is accomplished after sentencing through administrative actions of the court clerk. Thus, asking Petitioners to seek relief through the sentencing judge would be a futile exercise since the sentencing judge did not have a role in assessing costs. Additionally, since Petitioners typically receive notice well after the sentencing appeal deadlines, their requests for relief

from the sentencing judges would most likely be denied as untimely. And finally, since costs imposed are not necessarily considered as part of the sentence, but are mandated by law, and Petitioners do not challenge the validity of their convictions or the quality of their legal representation, they are precluded from seeking relief through Post Conviction Relief Act.

Since Petitioners' criminal cases do not constitute an adequate or available legal avenue for resolving those claims, the nature of this challenge imbues this Court, rather than the 38th Judicial District, with original jurisdiction to consider the claims made by Petitioners in their PFR.

F. Legal Adequacy of Petitioners' Claims

Likewise, Common Pleas Respondents' arguments as to why Petitioners' claims are legally unviable are without merit.

1. Equal Protection

> "In analyzing [an] equal protection challenge to [a statute], we must first determine the appropriate level of judicial scrutiny to be applied." *Zauflik v. Pennsbury Sch. Dist.*, 72 A.3d 773, 790 (Pa. Cmwlth. 2013), aff'd, . . . 104 A.3d 1096 ([Pa.] 2014) (citing *Smith v. City of Philadelphia*, . . . 516 A.2d 306, 311 ([Pa.]1986)). "Strict scrutiny of a legislative classification applies only when the classification impermissibly interferes with the exercise of a fundamental right or operates to the peculiar disadvantage of a suspect class." *Zauflik*, 72 A.3d at 790 (quoting *Mass. Bd. of Retirement v. Murgia*, 427 U.S. 307, 312 . . . (1976)) (internal quotation marks omitted). To survive strict scrutiny, a classification "must be justified by a compelling government interest and . . . must be strictly construed." *Id.* at 790-91 (citing *Smith*, 516 A.2d at 311). "If the classification involves an important government interest," then intermediate judicial scrutiny is applied to determine whether the classification "serve[s] important governmental objectives" and is "substantially related to the achievement of those objectives." *Id.* (quoting *Craig v. Boren*, 429 U.S. 190, 197 . . . (1976))

> (brackets omitted). "Finally, if the classification does not involve either fundamental rights, suspect classes, or sensitive or important government interests, it will be upheld if there is any rational basis for the classification." *Id.* (quoting *Smith*, 516 A.2d at 311) (internal quotation marks omitted).

Fouse v. Saratoga Partners, L.P., 204 A.3d 1028, 1034-35 (Pa. Cmwlth. 2019). The standard for assessing equal protection claims under either the Pennsylvania Constitution or the United States Constitution is the same. *Id.*

Petitioners do not dispute that rational basis is the proper level of scrutiny in this instance. *See* Petitioners' Br. at 29-32; PFR ¶¶117-34. Rather, they argue that Respondents randomly assess duplicative costs across criminal cases in the 38th Judicial District, in an arbitrary way that is not governed by any articulable standards. *See* Petitioners' Br. at 29-32; PFR ¶¶117-34. Therefore, Petitioners have stated equal protection claims that, even when apply a rational basis standard, are sufficient to survive past the preliminary objections stage.

2. Procedural Due Process

> To maintain a due process challenge, a party must initially establish the deprivation of a protected liberty or property interest. . . . If, and only if, the party establishes the deprivation of a protected interest, will the Court consider what type of procedural mechanism is required to fulfill due process.

Shore v. Dep't of Corr., 168 A.3d 374, 383 (Pa. Cmwlth. 2017) (internal citations omitted).

> Due process is a flexible concept which "varies with the particular situation." *Zinermon v. Burch*, 494 U.S. 113, 127 . . . (1990). Ascertaining what process is due entails a balancing of three considerations: (1) the private interest affected by the governmental action; (2) the risk of an erroneous deprivation together with the value of additional or substitute safeguards; and (3) the state interest involved, including the administrative burden the additional or

> substitute procedural requirements would impose on the state. *See Mathews v. Eldridge*, 424 U.S. 319, 335 . . . (1976). The central demands of due process are notice and an "opportunity to be heard at a meaningful time and in a meaningful manner." *Com*[.] *v. Maldonado*, . . . 838 A.2d 710, 714 ([Pa.]2003) (quoting *Mathews*, 424 U.S. at 333 . . .); *see also Anderson Nat'l Bank v. Luckett*, 321 U.S. 233, 246 . . . (1944) ("The fundamental requirement of due process is an opportunity to be heard upon such notice and proceedings as are adequate to safeguard the right for which the constitutional protection is invoked.").

Bundy v. Wetzel, 184 A.3d 551, 557 (Pa. 2018). As with equal protection claims, the legal analysis is the same for procedural due process claims regardless of whether they are made under the Pennsylvania Constitution or the United States Constitution. *Friends of Danny DeVito v. Wolf*, 227 A.3d 872, 897 (Pa. 2020).

Here, Petitioners' procedural due process-related averments center upon two issues. First, Respondents' assessments of monetary costs against Petitioners and members of the class, necessarily deprive an individual of personal property. Second, Respondents effected these deprivations without proper notice, in that they do not provide affected criminal defendants with adequate information regarding the costs that have been imposed or a suitable opportunity to contest their imposition. Given this, Petitioners have articulated viable procedural due process claims.

3. *Ultra Vires* Cost Assessments

As noted above, costs imposed in the context of sentencing in criminal cases are penal[18] in nature. *Fordyce*, 869 A.2d at 1053; *Lehman*, 243 A.3d at 17.

> [T]he Statutory Construction Act requires penal provisions of statutes to be strictly construed, 1 Pa. C.S. § 1928(b)(1); thus, where an ambiguity is found in the language of a penal statute, "such language should be

[18] As stated earlier, the case law is clear that costs are punitive and penal in nature. The only unresolved question is whether costs are a component of a criminal sentence or just an ancillary/collateral consequence.

> interpreted in the light most favorable to the accused....."
> *Com*[.] *v. Huggins*, . . . 836 A.2d 862, 868 n. 5 ([Pa.] 2003)
> (quoting *Com*[.] *v. Booth*, 766 A.2d 843, 846 ([Pa.]2001)).

Garzone, 34 A.3d 67, 75 (Pa. 2012). As such, where there is any ambiguity within a statute that authorizes the imposition of costs upon a guilty defendant, that statute must be construed narrowly and in the defendant's favor. *See id.* at 77-78.

Here, Common Pleas Respondents do not argue that duplicative costs, of the type challenged by Petitioners, are expressly authorized by statute. Rather, they claim that sentencing judges have broad discretion to impose such costs, dictate how those judges exercise this discretion. Common Pleas Respondents' Br. at 27-29. There are two glaring problems with these assertions. First, they ignore Petitioners' description of how Respondents assesses costs, which, to reiterate, is done largely through an administrative process. Thus, Petitioners' *ultra vires* claim is not an attack upon sentencing judges' discretionary authority to assess costs, but rather upon subsequent actions taken by the 38th Judicial District's administrative personnel. Second, these assertions ignore the requirement that any ambiguity about whether costs are statutorily authorized through Pennsylvania law must be resolved in favor of the defendant. As a result, Common Pleas Respondents' argument regarding the viability of Petitioners' *ultra vires* claim is unpersuasive.

G. Schreiber's Remaining Arguments

Finally, neither of Schreiber's two remaining arguments justify dismissal of Petitioners' claims against her at this stage. First, Schreiber's argument that the ministerial nature of her role as Clerk of Courts precludes Petitioners from obtaining their desired relief against her is without merit. Contrary to Schreiber's assertions, the declaratory judgments that Petitioners seek would not, in and of themselves, place any legal duties upon her.

> A declaratory judgment declares the rights, status, and other legal relations "whether or not further relief is or could be claimed." 42 Pa. C.S. § 7532.[] It has been observed that "[d]eclaratory judgments are nothing more than judicial searchlights, switched on at the behest of a litigant to illuminate an existing legal right, status or other relation." *Doe v. Johns-Manville Corporation*, . . . 471 A.2d 1252, 1254 ([Pa. Super.] 1984). Stated otherwise, "[t]he purpose of awarding declaratory relief is to finally settle and make certain the rights or legal status of parties." *Geisinger Clinic v. Di Cuccio*, . . . 606 A.2d 509, 519 ([Pa. Super.] 1992), appeal denied, . . . 637 A.2d 285 ([Pa.] 1993), cert. denied, 513 U.S. 1112 . . . (1995). A declaratory judgment, unlike an injunction, does not order a party to act. This is so because "the distinctive characteristic of the declaratory judgment is that the declaration stands by itself; that is to say, no executory process follows as of course." *Petition of Kariher*, . . . 131 A. 265, 268 ([Pa.] 1925).

Eagleview Corp. Ctr. Ass'n v. Citadel Fed. Credit Union, 150 A.3d 1024, 1029-30 (Pa. Cmwlth. 2016) (internal footnote omitted). As for an injunction, it "is a court order that prohibits or commands virtually any type of action." *Woodward Twp. v. Zerbe*, 6 A.3d 651, 658 (Pa. Cmwlth. 2010). Thus, Schreiber can certainly be enjoined from acting in ways that are unlawful or compelled via injunction to take certain corrective actions. It is true that some of the relief sought by Petitioners, such as revamping the challenged policies and processes, may not necessarily be appropriate to impose upon Schreiber, due to the ministerial nature of her position. Even so, given the nature of Petitioners' allegations, it is nevertheless prudent to let their claims against Schreiber move forward because her office is primarily responsible for the imposition and administration of court costs.

Second, Schreiber's arguments that Petitioners' claims against her are insufficiently specific, as well as that the relief they seek does not address the putative legal violations they claim have occurred, are similarly baseless. Petitioners

state in their PFR that Schreiber, in her role as Clerk of Courts, helps impose and collect court costs in an *ultra vires* and constitutionally infirm manner. PFR ¶¶69-76, 85-86, 88, 98-102, 105-09, 112-16, 121-25, 130-34, 136-39. Furthermore, the relief Petitioners seek is directly tailored to correcting these alleged statutory and constitutional violations. *See id.*, Section VII ("Relief Requested"). Therefore, it is unclear how Schreiber could argue that she is unable to gain a proper understanding of the claims lodged against her, such that she is unsure how she should respond or defend herself.

IV. Conclusion

Therefore, in accordance with the foregoing analysis, Common Pleas Respondents' and Schreiber's respective sovereign immunity-based preliminary objections are sustained *in part*, such that Section VII(3)(d) and Section VII(3)(e) of the PFR, through which Petitioners seek to compel Respondents to revamp the cost assessment process and to contact credit reporting agencies, are stricken as to Petitioners' state law-based declaratory judgment, equal protection, procedural due process, but are otherwise overruled. In addition, the remainder of Common Pleas Respondents' and Schreiber's preliminary objections are overruled.

ELLEN CEISLER, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Amy McFalls, Jason Crunetti, Vincent Esposito, Gregory Jackson, and Brenda Lacy, on behalf of themselves and all persons similarly situated, Petitioners	:	
v.	:	No. 4 M.D. 2021
38th Judicial District, Hon. Thomas DelRicci, President Judge (in his official capacity), Michael R. Kehs, Esq. Court Administrator (in his official capacity), And Lori Schreiber, Clerk of Courts (in her official capacity), Respondents	:	

O R D E R

AND NOW, this 6th day of August, 2021, upon consideration of the preliminary objections collectively filed by Respondents 38th Judicial District, Hon. Thomas DelRicci, President Judge (in his official capacity), and Michael R. Kehs, Esq. Court Administrator (in his official capacity) (collectively Common Pleas Respondents) to the petition for review (PFR) filed by Petitioners Amy McFalls, Jason Crunetti, Vincent Esposito, Gregory Jackson, and Brenda Lacy, on behalf of themselves and all persons similarly situated, the preliminary objections filed to the PFR by Respondent Lori Schreiber, Clerk of Courts (in her official capacity) (Schreiber), and the responses thereto, it is hereby ORDERED:

1. Common Pleas Respondents' and Schreiber's respective sovereign immunity-based preliminary objections are SUSTAINED IN PART, such that Section VII(3)(d) and Section VII(3)(e) of the PFR is stricken as to Petitioners' state law-based claims in Counts I, II, IV, and VI, but are otherwise OVERRULED;
2. The remainder of Common Pleas Respondents' and Schreiber's preliminary objections are OVERRULED.

ELLEN CEISLER, Judge