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IN THE SUPREME COURT OF FLORIDA

**BOARD OF COUNTY COMMISSIONERS,
PINELLAS COUNTY, FLORIDA,**

Petitioner,

vs.

Case No. 79,839

TOM F. SAWYER,

Respondent.

**Second District Court of
Appeal Case No. 91-1332**

**BRIEF OF AMICUS CURIAE
BROWARD COUNTY**

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PRELIMINARY STATEMENT

Broward County is filing this brief as amicus curiae in support of Petitioner, Pinellas County. Broward County adopts the Statement of the Case and Facts presented in Pinellas County's initial brief.

ARGUMENT

IMPOSING THE BURDEN FOR REIMBURSEMENT OF INVESTIGATIVE COSTS OF ACQUITTED INDIGENT DEFENDANTS ON LOCAL GOVERNMENTS WILL OVERBURDEN LOCAL GOVERNMENTS AND THREATEN THE OPERATION OF THE STATE COURT SYSTEM.

Broward County is alarmed at the potential ramifications for local governments and the state court system of the decision of the Second District Court of Appeal. In holding that investigative costs are included within the definition of "taxable costs" and are, therefore, recoverable by acquitted indigent defendants, the Second District Court of Appeal will greatly reduce local government's ability to fund the court system.

In its decision, the Second District Court of Appeal recognizes that reimbursement of investigative costs will represent an additional governmental financial obligation. Sawyer v. Board of County Commissioners, Pinellas County, Florida, 596 So.2d 475 (Fla. 2d DCA 1992). The court states, however, that if reimbursement was not intended by the legislature, the legislature might provide otherwise in the future. Id. at 477.

The Second District Court of Appeal's reliance on the legislature to provide for adequate funding is entirely misplaced. Florida case law demonstrates that the legislature has consistently ignored issues affecting the funding of the court system.¹ Despite

¹ For example, in Rose v. Palm Beach County, 361 So.2d 135 (Fla. 1978), Makemson v. Martin County, 491 So.2d 1109 (Fla. 1986), and White v. Board of County Commissioners of Pinellas County, 537 So.2d 1376 (Fla. 1989), this Court was forced to intervene where the legislature's failure to provide funding threatened the defendants' constitutional rights to compulsory process against witnesses and adequate representation of counsel.

such recent legislative shortcomings, the Second District Court of Appeal fails to consider the effect its decision will have on local governments and the court system if the legislature fails to act.

As the Second District Court of Appeal acknowledges, counties will bear the responsibility for the reimbursement of investigative costs to acquitted indigent defendants. Id. at 477. Prior to the decision of the Second District Court of Appeal, counties were already experiencing difficulty in funding the increasing costs of the court system. The decision of the Second District Court of Appeal will impose additional court costs to an economically overburdened court system. Such a measure would accelerate the time in which counties will find themselves unable to adequately fund the court system.

Unlike the State, however, counties do not have unlimited authority to raise taxes in order to fund the court system. Article VII, Section 9, of the Florida Constitution limits local governments' taxing authority to ten mills. Several counties are currently very near the ten-mill cap and will be unable to continue to provide the funds necessary to reimburse investigative costs and adequately run the court system.

The lack of funding of the court system threatens many of the rights guaranteed by the United States and Florida constitutions. For example, defendants' right to counsel guaranteed under the sixth amendment, access to courts guaranteed under Article I, and the due process right of the fifth and fourteenth amendments may be

jeopardized in exchange for a more efficient and inexpensive court process. Such measures would affect people seeking redress or defending themselves in the State court system.

The Third District Court of Appeal, faced with the same issue in Benitez v. State, 350 So.2d 1100 (3d DCA 1977), considered the negative effect that reimbursement of investigative costs would have on local governments. The Third District refused to impose the burden for investigative costs on counties, holding that such a measure would place an incalculable burden on the State. Id. at 1102. The Third District Court of Appeal reasoned that prosecution of criminal defendants is for the benefit of society and requiring the reimbursement of investigative costs would reduce the funds available for prosecution, harming society's interest in seeing that criminal defendants be brought to justice. Balancing the rights of acquitted indigent defendants to be reimbursed against the livelihood of the court system, the Third District Court of Appeal stated:

The enforcement of criminal laws is for the benefit of all and the fact that some citizens are financially burdened by this enforcement is not a sufficient reason to handicap the processes of criminal law enforcement at this critical time in the struggle of the State to control the criminal element in society.

Id., at 1102.

The Second District Court of Appeal failed to consider the tremendous negative impact its decision will have on local governments, the court system, and the rights of parties within the court system. As correctly ruled in Benitez, the burden on

defendants in failure to be reimbursed for investigative costs is minor when compared to the constitutional rights which would be jeopardized by an economically overburdened court system. Accordingly, the decision of the Second District Court of Appeal must be reversed.

CONCLUSION

For all of the above and foregoing reasons, the opinion of the Second District Court of Appeal should be reversed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by United States mail to Sondra Goldenfarb, Esquire, 2454 McMullen Booth Road, Suite 501-A, Clearwater, FL 34619; Suzanne T. Smith, Assistant County Attorney, 315 Court Street, Clearwater, Florida 34616; and James T. Miller, Esquire, 407 Duval County Courthouse, Jacksonville, Florida 32202, this 6th day of November, 1992.



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11/2/92