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Taxing Justice is a Bad Idea

Legislation pending in Springfield, Illinois would place a 5 percent surcharge on court filing and appearance fees, with the resulting revenues used to fund legal aid organizations. This new tax has the backing of the Chicago Bar Association, while organized opposition has been difficult to find. Nevertheless, there are good reasons to oppose this proposal.

Even without the addition of this tax, the costs of litigation have been making it increasingly difficult for ordinary people to obtain access to the courts. Remember, a litigant is already burdened with the costs of his or her own litigation—very frequently because he or she is in financial trouble. By choosing litigants as a target for the tax, we increase their chances of becoming indigent. Taxing someone because he or she is in trouble, to assist someone in deeper trouble, is a cruel paradox.

Second, the proposed tax violates the principle of equal treatment under the law. The state's judicial system exists to benefit all citizens. If more money is necessary or appropriate to finance that system, then funds should be taken from the community as a whole, rather than from an arbitrarily defined group. It is simply unfair to tax some citizens and not others for a responsibility which everyone bears.

Backers of the new tax believe that they cannot convince taxpayers to shoulder the costs of providing legal services to the indigent. (Doesn't that speak louder than words of the weakness of their case?) But they believe they can persuade the General Assembly to impose a special tax on those who need to use the legal system, precisely because this group is unorganized, inarticulate, and without "clout" in Springfield. The proposed levy is a calculated attack on a defenseless segment of the public.

The proposal is further flawed because it violates the State Constitution. In *Crocker v. Finley* (1984), the Illinois Supreme Court declared a similar proposal unconstitutional because it conflicted with the state constitutional right to obtain justice by law freely. The furthest the courts have gone in approving a surcharge on litigants was in *Wenger v. Finley* (1989), where the not-for-

profit dispute resolution act was upheld as "sufficiently related to maintenance and operation of the court system."

Advocates of the tax argue that providing indigents with legal representation will lessen the strain on the courts, and thereby meets the test of benefiting the administration of justice. But this same rationalization could be extended to many other services that indirectly "lessen the strain" on the courts. For example, in some sense, it is true that reducing child abuse and illegal drug use, or providing marriage counselling (the issue in *Crocker*) would reduce strains on the judicial system. Should all these services be financed by a tax on litigants? Of course not. The court in *Wenger* did not mean to overturn the understanding of *Crocker*. Opening the door to legal aid would surely encourage other charitable organizations to try the same route.

So what of the needy who, without aid, cannot afford representation in the courts? Providing legal services to the poor is a noble enterprise that most lawyers feel to be their special responsibility. Lawyers donate hundreds of thousands of hours of service to low-income clients every year, and routinely discount their fees to accommodate their clients' means. Such genuine acts of charity are a viable alternative to the services that would be funded by the proposed tax.

Proponents of the tax believe it would produce an immediate, visible benefit: More low-income people would receive legal services. But they fail to see the long-term loss to society. Important principles—access to justice unencumbered by special taxes and fees, and equal treatment under the law—would be sacrificed for only a small and transient benefit for a few.

The damage caused by this tax may be slower to emerge and less perceptible than its apparent benefits, but in magnitude it is many times greater. For justice, as well as for the greatest good for the greatest number, the proposed levy ought to be rejected.



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