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KENTUCKY SUPREME COURT
SUPREME COURT ACTION NO. 2014-SC-000383-OT
COURT OF APPEALS ACTION NO. 2014-CA-001076

GREATER CINCINNATI/NORTHERN KENTUCKY APARTMENT ASSOCIATION, INC. ET AL. — APPELLANTS

v.

ON APPEAL FROM
CAMPBELL CIRCUIT COURT, DIV. II
ACTION NO. 13-CI-00956

CAMPBELL COUNTY FISCAL COURT ET AL. — APPELLEES

BRIEF FOR THE KENTUCKY LEAGUE OF CITIES AS *AMICUS CURIAE*

I hereby certify that I have served the within Brief of the Kentucky League of Cities, as *Amicus Curiae*, on the following named individuals by U.S. Postal Service First Class Mail on February 10, 2015: Timothy J. Eifler and Stephen A. Sherman, Stoll Keenon Ogden PLLC, 2000 PNC Plaza, 500 West Jefferson Street, Louisville, KY 40202; Erica L. Horn and Madonna E. Schueler, Stoll Keenon Ogden PLLC, 300 West Vine Street, Suite 2100, Lexington, KY 40507; Jeffrey J. Greenberger and Richard L. Norton, Katz, Greenberger & Norton LLP, 105 East Fourth Street, Fourth Floor, Cincinnati, OH 45202; Steven J. Franzen and Thomas Edge, Campbell County Attorney, 319 York Street, Newport, KY 41071; Robert E. List, Campbell County Attorney, 526 Greenup Street, Covington, KY 41011; Jack Conway, Attorney General, 700 Capitol Avenue, Suite 118, Frankfort, KY 40601; Samuel P. Givens, Jr., Clerk, Court of Appeals, 360 Democrat Drive, Frankfort, KY 40601; Honorable Fred A. Stive, V, Judge, Campbell Circuit Court Division II, 330 York Street, Newport, KY 41071; and Taunya Nolan Jack, Clerk, Campbell Circuit Court, Campbell County Courthouse, 330 York Street, Newport, KY 41071.

Respectfully submitted,

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STATEMENT OF PURPOSE

Amicus Curiae Kentucky League of Cities ("KLC") is a membership organization representing 373 city governments throughout the Commonwealth of Kentucky. Each of KLC's member cities is similarly situated to Appellee, Campbell County Fiscal Court ("County"), having a vested interest in protecting a meaningful user fee structure and effective 911 emergency services funding options. While the issue involves a county fee, the governing statutory authority and legal principles are the same for cities. KLC believes it is uniquely positioned to represent the collective interest of these cities with respect to the common questions of law and fact related to the proper scope of local government user fee authority in Kentucky. The issue in this case is whether the County, in enacting a per-unit flat annual fee to help fund 911 services, has exceeded its powers under KRS 91A.510 et seq. governing user fees and created an unconstitutional tax. This appeal raises important issues regarding the extent of local government authority to provide funding for not just 911, but all services at the heart of the function of local government.

KLC's purpose in filing this brief is to urge the Court to adopt a ruling that does not contradict the Legislature's intent to provide broad local authority to assess local fees, and to provide options for 911 funding other than ad valorem taxation. A ruling that avoids unnecessary restriction of local funding powers preserves the ability of cities to effectively provide essential services and fund them in a manner that best serves the public interest.

ARGUMENT

This is a case of first impression. Specifically, this Court is being asked to interpret the statutory definition of "user fee" and how it applies to the funding of 911 emergency services. It is a continuation of the age-old debate: Is it a tax, or is it a fee? This distinction is "one that is not always observed with nicety in judicial decisions,"[1] and that precision is lacking in the present action. The issue deals with one of the most high-profile funding crises of our time and is at the cornerstone of the duty to protect the health, safety and welfare of citizens. Appellants' restrictive arguments would impermissibly constrain local authority related to 911 services and to user fees generally. This Court should be mindful that in enacting both statutory schemes, the General Assembly intended to instill great flexibility and discretion at the local level.

I. AUTHORITY FOR LOCAL GOVERNMENT USER FEES IN KENTUCKY IS BROAD AND FLEXIBLE BY LEGISLATIVE DESIGN.

The statutory scheme authorizing local government user fees, KRS 91A.510 to 91A.530, consists of three statutes containing four sentences. Here, the Legislature says revenues must not exceed the reasonable costs of service provision, special accounts must be established for each fee, and general accounting principles govern collection and disbursement. The only other information is in KRS 91A.510, the nucleus of this case:

> As used in KRS 91A.520 and 91A.530, unless the context requires otherwise: "User fee" means the fee or charge imposed by a local government on the user of a public service for the use of any particular service not also available from a nongovernmental provider.

These statutes are the only guidance regarding local user fees the Legislature has provided. It is significant that in the 30 years since KRS 91A.510 et seq. was enacted, no

[1] Dickson v. Jefferson Cnty. Bd. of Ed., 311 Ky. 781, 786, 225 S.W.2d 672, 675 (1949).

Kentucky court has delved into the exact meaning of "user fee" as defined by KRS 91A.510.[2] See Footnote 5 of the Circuit Court's opinion, conceding it "did not find any Kentucky case law specifically addressing this statute."

Some other courts have considered the validity of user fees, but established only broad rules governing the tax/fee distinction generally, and often limit analysis to the particular fee at issue (see the key cases discussed in Part III). This makes sense in light of the widely varying statutory requirements that apply to individual user fees.

Most examples of statutory user fees in Kentucky are found at the state level, and fluctuate in terms of how assessments are made, the purpose they must serve, and even how they are labeled.[3] There is no rigid, "one size fits all" user fee structure. Government services run the gamut of what is needed for effective regulation of public health, safety and welfare, and implementation methods do as well.

Local user fees exist by virtue of specific statutory authority or in accordance with the general statutory authority of KRS 91A.510 et seq. and home rule powers. For cities, statutes governing a specific user fee are scarce.[4] Ultimately, KRS 65.760 is a primary example of a state statute authorizing city user fees for a particular service. Even this statute only provides instruction for the landline fee, and leaves the details of other user fees up to the city itself, as long as they otherwise comply with Kentucky law. Most city user fees are purely local creations left to the discretion of local officials to meet local

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[2] This brief does not consider City of Lancaster v. Garrard Cnty., 2013-CA-000716-MR, 2014 WL 2978474 (Ky. Ct. App. July 3, 2014), reh'g denied (Dec. 2, 2014), (Dec. 2, 2014), which as of this brief's filing date is not final and not to be cited as authority in any Kentucky court.

[3] See for example KRS 224.20-050 (air quality charges); KRS 151.720 (Kentucky River use fees, discussed extensively later in this brief).

[4] See the imprecise examples of KRS 212.371 authorizing fees for any person using the services of a city-county health board; or KRS 281A.320 authorizing law enforcement agencies to charge a service fee for the actual cost of a criminal background check for commercial driver's license applicants.

needs. This discretion is constrained only by home rule and the four sentences in KRS 91A.510 et seq. The timeline for enactment of both laws is significant.

Home rule authority allows a city to "exercise any power and perform any function within its boundaries... that is in furtherance of a public purpose of the city and not in conflict with a constitutional provision or statute." KRS 82.082(1). Conflict with a statute occurs through express prohibition or a comprehensive scheme of legislation on the same general subject. KRS 82.082(2). The home rule statute was enacted in 1980. Post-home rule, cities properly assessed service fees without additional express statutory authority if there was no conflict with the law, such as restrictions on city taxing powers.[5]

KRS 91A.510 et seq. was enacted soon after, in 1986. Its sparse, permissive provisions dovetail neatly with the fundamental principle of home rule: that cities have broad powers to do what is necessary to promote the health, safety and welfare of their residents. Barber v. Comm'r of Revenue, 674 S.W.2d 18, 20 (Ky. Ct. App. 1984), is often cited for this principle and crucial to the present issue. It is also instructive that the Legislature has not chosen to narrow the user fee statutes by creating numerous statutes governing particular city user fees.[6] Clearly, the virtually unlimited nature of the user fee statutes was by legislative design. Appellants' assertion that the concept of "user fee" should be narrowed to actual use, and that to be a true user fee, the 911 fee should be imposed for each use of the service, is incongruous. (Appellant Brief, p. 7).

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[5] The Kentucky Constitution gives the General Assembly the power to authorize cities to impose and collect four types of taxes and fees: (1) License fees on stock used for breeding purposes; (2) License fees on franchises, trades, occupations and professions; (3) Taxes on tangible and intangible personal property based on income, licenses or franchises, in lieu of ad valorem taxes; and (4) ad valorem taxes. Ky. Const. §181. The general municipal taxation statute – KRS 92.281 – authorizes all constitutional taxes.

[6] Kentucky follows the rule of statutory construction that the more specific statute controls over the more general statute. Light v. City of Louisville, 248 S.W.3d 559, 563 (Ky. 2008).

II. BROAD 911 FUNDING OPTIONS COMPLEMENT CONSTITUTIONAL TAX LIMITS AND THE FLEXIBLE USER FEE STATUTORY SCHEME.

This case revolves around the first portion of subsection (3) of KRS 65.760:

> The funds required by a city, county, or urban-county government to establish and operate 911 emergency telephone service, or to participate in joint service with other local governments, may be obtained through the levy of any special tax, license, or fee not in conflict with the Constitution and statutes of this state. The special tax, license, or fee may include a subscriber charge for 911 emergency telephone service that shall be levied on an individual exchange-line basis, limited to a maximum of twenty-five (25) exchange lines per account per government entity.

Note that this statute was first enacted in 1984 (just four years after KRS 82.082), and last amended in 1998 (after KRS 91A.510 et seq. had been in place for twelve years).

In KRS 65.760, the Legislature authorized the full array of possible funding options, without limits other than the constitutional and statutory conformity requirements. The statute specifically permits a surcharge on landlines, but does not require it. The statute simply states that any funding method "may include" this flat fee for services, which is not based on the active employment or actual use of the service – i.e., the one specifically authorized fee did not relate to a "per emergency" dialing of 911.

Appellants' arguments necessitate that this Court evaluate the nature of the landline fee. In asserting that the Campbell County 911 fee is an invalid tax rather than a valid fee, Appellants maintain that "absent a specific and particular nexus between the imposition of a fee and the payor's actual usage of the service funded... Kentucky cases consistently hold the charge to be a tax." (Appellant Brief, p. 21). Case law places this claim in serious doubt, as explained in Part III. However, if this Court chooses to agree, it must consider the implication for the landline surcharge. The surcharge is implemented as a flat fee on

individual exchange lines, completely unrelated to the type of *actual* use Appellants claim is required. Under Appellants' theory, this surcharge is a *tax*.

If it is a tax, it must fit within one of the four taxing categories authorized by Section 181 of the Kentucky Constitution (see Amicus Footnote 4). A municipality's power to tax is only that which the Legislature has granted, and the Legislature in granting the power must conform to constitutional limitations.[7] Yet the landline surcharge fits within none of the categories authorized by the Constitution. Thus if the arguments advanced in appellants' brief are upheld by this Court, the Legislature in authorizing the landline surcharge has authorized an *unconstitutional tax*. However, as this Court recently stated:

> We presume that the General Assembly intended for the statute to be construed as a whole, for all of its parts to have meaning, and for it to harmonize with related statutes. We also presume that the General Assembly did not intend an absurd statute or an unconstitutional one. Shawnee Telecom Res., Inc. v. Brown, 354 S.W.3d 542, 551 (Ky. 2011) (citations omitted).

Appellants next claim that "'taxation' is politically undesirable and a 'user fee' may be more palatable to elected officials. The Circuit Court has created a method by which a county may fund its services without resorting to raising taxes, thereby avoiding public scrutiny and accountability." (Appellant Brief, p. 22).

However, the Legislature, not the Circuit Court, specifically authorized alternatives to taxes as methods for funding not just 911 services, but also other services, by enacting KRS 65.760 and KRS 91A.510 et seq. Thus in addition to presuming the Legislature did not intend an unconstitutional statute, it must be presumed that the Legislature intended the parts of KRS 65.760 authorizing fees in addition to taxes for 911 funding to have meaning, and to harmonize with related statutes governing fees, such as the broad user fee statutes.

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[7] City of Louisville v. Sebree, 308 Ky. 420, 214 S.W.2d 248 (1948).

Finally, note that it also must be presumed the Legislature did not intend an absurd statute. If user fees are a valid method of funding 911 services but can only be imposed for each use of the 911 service, then a person will be charged each time she dials 911. A neighbor observing a crime next door, or a restaurant owner noticing a choking customer, must pay for their choice to help their fellow citizen. This could deter Good Samaritans from assisting those who are encountering an emergency. This is an absurd result.

III. STATE AND FEDERAL CASE LAW SUPPORT A BROAD CONCEPT OF VALID USER FEES THAT DOES NOT MANDATE ACTUAL USE.

Appellants claim the "Circuit Court erred because Barber[8] and Bromley[9] directly address the scope of user fees and are controlling authority." (Appellant Brief, p. 9). Yet a general rule that all fees enacted under KRS 91A.510 et seq. must be based on actual use with no consideration of benefits received cannot be extracted from these cases.

Regarding Barber, Appellants argue the Court of Appeals found the fire protection service charge "was not a valid user fee because it was not reasonably calculated based upon *use* of fire protection services. The court specifically distinguished the service charge at issue from user fees and found an indirect benefit was not enough to sustain the charge at issue as a user fee." (Appellant Brief, p. 10).

This interpretation overreaches. The ordinance at issue deemed the fee a "service charge," as the court did throughout the opinion. The court listed permissible methods by which cities may obtain funds from citizens, and then addressed the legality of the charge at issue by process of elimination, leaving only service charges. Barber at 20, 21.

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[8] Barber v. Comm'r of Revenue, 674 S.W.2d 18 (Ky. Ct. App. 1984).
[9] City of Bromley v. Smith, 149 S.W.3d 403 (Ky. 2004).

The charge was incomparable to measurable charges assessed for sewer service and solid waste disposal, because "all residents receive an indirect benefit but only a few residents will receive a direct service" from fire protection. The court concluded the constitution and statutes intend for such charges to be shared equitably, the "proper way" to charge for government services such as fire protection is to "charge all real and personal property to be benefited by the fire protection with a rate times the assessed value of the property," and the charge was invalid. Id. at 21.

The court referenced KRS 75.040, which specifically authorizes such a tax, and contains no catch-all phrase authorizing other methods of funding. There was no holding, as Appellants state, that the service charge "was not a valid user fee because it was not reasonably calculated based upon *use*." (Appellant Brief, p. 10). The term "user fee" never appears in the opinion, which makes sense, considering that the opinion was issued two years before KRS 91A.510 et seq. was enacted. It was impossible for the court to evaluate the charge at issue in the same manner that the 911 fee is to be evaluated, because the applicable law did not exist.

Barber did not hold that any service indirectly benefiting all, but only directly used by a few, *must* be funded by a property tax. Such an argument flies in the face of KRS 65.760, which *specifically permits* other types of funding, including a *specifically approved* flat fee unrelated to property value. It must be presumed that the Legislature intended all parts of KRS 65.760 to have meaning, and not violate the Constitution. Shawnee at 551.

Bromley was decided years after KRS 91A.510 et seq. was enacted. That Court stated that the flat-rate life squad tax at issue was not based on value, nor was it a "license fee, special assessment or user fee." Id. at 405. However, the issue was whether the

ordinance imposing the tax was constitutional, and it was held that "...user charges for the provision of measurable services, such as waste collection and storm water drainage, are not technically considered taxes and are not part of this decision." Id. at 404. The Court then referred to special assessments and user charges based on measurable services as exceptions to the rule that property taxes must be based on assessed value. Id. at 405. Yet user fees are not exceptions to taxes; they are not taxes at all.

This concise opinion cannot be interpreted to hold that user fees can *never* be based on something besides measurable services simply because the examples used were measurable. The Court did not refer to KRS 91A.510 et seq. It cannot be sustained that the court "necessarily evaluated that charge" under these statutes, and Bromley cannot be read to provide a broad rule regarding the definition of user fees. (Appellant Brief, p. 11).

Appellants dismiss Long Run Baptist[10] and Kentucky River Authority[11] as unsupportive of the Circuit Court's "broad construction of the user fee statute," and emphasize that neither decision construed KRS 91A.510 et seq. (Appellant Brief, p. 12). Indeed, just like Barber and Bromley, neither case references the user fee statutes.

Unlike Barber and Bromley, it is clear that the flat service charge at issue in Long Run Baptist was a user fee. KRS 76.090 specifically authorizes the sewer district to establish a largely discretionary "schedule of rates, rentals, and charges." KRS 76.090(1). The MSD development committee determined that revenues for operation of the storm water drainage program be "derived from user fees." Long Run Baptist at 521. The Court of Appeals labeled the service charge as a user fee, noting that despite "broad powers to

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[10] Long Run Baptist Ass'n, Inc. v. Louisville & Jefferson Cnty. Metro. Sewer Dist., 775 S.W.2d 520 (Ky. Ct. App. 1989).

[11] Kentucky River Auth. v. City of Danville, 932 S.W.2d 374 (Ky. Ct. App. 1996).

charge for services rendered," until 1987 MSD "did not separate storm water *user fees* from wastewater user fees." Id. at 524. (Emphasis added). This is noteworthy considering the similarities between the MSD fee and the 911 fee at issue presently. Both enabling statutes provide broad authority to establish service charges with no requirements of actual use.

Appellants claim the Long Run Baptist court found the charge constitutional "based on principles supporting special assessments, not user fees," which are "premised on benefits received, not services used." (Appellant Brief, p. 13). However, the court's discussion of benefits was in direct response to the property owners' arguments that the charge was invalid due to deficiency in benefits. Though the court did cite precedent recognizing a broad concept of "benefit," it did not identify the benefits of the charge as the foundation of its holding. Long Run Baptist at 522. Instead, the court held the charge was not a tax due to express statutory authority to fund the drainage system through a service charge and prior holdings that Chapter 76 is wholly constitutional. Id. at 523.

Thus the court held valid a flat user fee on residential property and on square footage of commercial and industrial property. At no point did the court declare measurable services or direct charge per individual use a prerequisite for a valid user fee.

In Kentucky River Authority, the court seemingly *did* announce a rule for determining the validity of user fees, stating:

> The validity of special assessments and users fees depends on an analysis of the charge and the benefit received. Assessments and fees charged without a relationship to a benefit received by the payor are arbitrary and capricious and violate due process and the constitutional prohibition against the taking of private property without just compensation. Id. at 376.

The court then provided several scenarios: Sewers, lighting and street improvements are, if used by adjoining property owners, benefits which directly accrue to

the property. A water and sewer surcharge assessed when no water or sewer service is received provides no benefit and is invalid. Use and contamination of air by entities emitting pollutants justify a fee funding the state air quality program, despite no direct or immediate benefit. And finally, "[t]he fee in this case is based upon the actual use by the city of the Kentucky River water basin." Kentucky River Authority at 377. The Court does not decree that "actual use" is required for a benefit to exist, or for a user fee to be valid. What *is* required, said the Court, is *benefit*, which can accrue without actual use.

The court quoted Curtis v. Louisville and Jefferson Cnty. Metro. Sewer Dist.[12], which evaluated validity of a special assessment. However, the Kentucky River Authority court declared the test for special assessments and user fees to be the same: whether there is a relationship to the benefit received by the payor. Kentucky River Authority at 376. Curtis addressed what the Court deemed the key factor in determining validity of a user fee (benefit), and directly spoke to the benefits associated with the Kentucky River Basin. Those benefits applied to all property owners within the basin through the "general improvement of conditions" and "general enhancement of values in the area." Kentucky River Authority at 377, quoting Curtis at 382.

The Court held that "[p]reservation of the Kentucky River basin is a benefit which obviously accrues to all within its boundaries," and thus a benefit did exist. Kentucky River Authority at 377.

In light of the holdings of Long Run Baptist and Kentucky River Authority, Appellants' argument that the Circuit Court improperly relied on these cases in its decision is confounding. Appellants note that enabling statutes in both cases authorized collection

[12] 311 S.W.2d 378 (Ky. 1958).

of charges on "facilities" or "real property." (Appellant Brief, p. 16). This is true, as it is for 911 fees, which are authorized by a specific enabling statute (KRS 65.760) that explicitly sanctions collection of charges on property (landline fees). Additionally, all three enabling statutes broadly authorize other funding mechanisms as well. Appellants note that KRS 91A.510 et seq was not addressed in either case. This is true, as it is for *all* cases discussed. Appellants claim "[n]either case holds that 'use' for purposes of a user fee means anything other than actual use." (Appellant Brief, p.16). This is true. Neither case addresses the definition of use in *any* manner, whether as meaning anything other than actual use, or as meaning only actual use. Finally, Appellants claim the Circuit Court misapplied the discussion of special assessment law. This is not true. Particularly, Kentucky River Authority directly applied the special assessment validity test to user fees.

Appellants' confusing interpretation of federal case law also threatens the structure of 911 funding and local user fees. Appellants claim that the "Circuit Court's rejection of the definition of a user fee as set forth in Massachusetts[13] is clearly erroneous," and that the court "misapplied the precedent established in Sperry[14]." (Appellant Brief, p. 20). Appellants insist that Sperry, which the Circuit Court deemed supportive, is not binding because it did not interpret KRS 91A.510, yet then Appellants find rejection of Massachusetts, which the Circuit Court deemed unsupportive, to be improper, although it too does not interpret Kentucky law. Appellants also chastise the Circuit Court for determining the Long Run decision "addressing special assessments" had more value than "U.S. Supreme Court precedent addressing user fees." (Appellant Brief, p. 18, 20).

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[13] Massachusetts v. U. S., 435 U.S. 444, 98 S. Ct. 1153, 55 L. Ed. 2d 403 (1978).

[14] United States v. Sperry Corp., 493 U.S. 52, 110 S. Ct. 387, 107 L. Ed. 2d 290 (1989).

Massachusetts and Sperry, even if not binding, do give valuable insight into what the nation's highest Court considers valid user fees. Both involved flat charges disproportionate to actual use. The Court proclaimed both to be valid user fees and in both decisions emphasized that availability of use provides a benefit that can sustain user fees.

Massachusetts held that a flat registration fee on all civil aircraft that fly in the national navigable airspace did not violate the implied immunity of a state government from federal taxation because taxes that operate as user fees have no effect on immunity. To reach this holding, the Court found the charge at issue was not a tax, but a user fee.

The Court noted that Congress saw the registration "tax" as an integral part of aviation user charges, even though it was "only indirectly related to system use." Failure to perfectly align with actual use did not make it invalid, because the user charge scheme was a "fair approximation of the cost of the benefits each aircraft receives." Massachusetts at 468. The federal assistance and services are available to every aircraft flying in the airspace, and even those that never use the services benefit due to availability and the safer airways the services promote for all users. Id.

The "users" who are subject to the fee are the users of the airspace, not necessarily the navigational services funded by the fee. Yet they are benefited because the services are available if needed. This principle could easily be applied to a flat 911 fee that approximates as fairly as possible the cost of the benefit of 911 services the payor receives – the availability of an emergency lifeline that might not daily cross the payor's mind, but that becomes crucial when 911 must be dialed. A fair approximation of use, even if actual use is not measurable at the time of assessment, is enough to justify the charge.

Turning next to Sperry, Appellants argue that it "stands for the clear proposition that a user fee is valid where there is actual use of the service by the payor," and the language relied upon by the Circuit Court was dicta. (Appellant Brief, p. 18).

Holding that Sperry was subject to user fees supporting the Iran-U.S. Claims Tribunal even though it settled its case without actually using the Tribunal, the Court found that Sperry did benefit directly from the Tribunal's existence and functions:

> This Court has never held that the amount of a user fee must be precisely calibrated to the use that a party makes of Government services. ...All that we have required is that the user fee be a 'fair approximation of the cost of benefits supplied.' ...The Court recognized that when the Federal Government applies user charges to a large number of parties, it probably will charge a user more or less than it would under a perfect user-fee system, but we declined to impose a requirement that the Government 'give weight to every factor affecting appropriate compensation for airport and airway use...' Sperry at 394, quoting Massachusetts at 463, 468.

The Court identified the benefit as the assurance that an action could be pursued to an effective judgment. "Sperry may be required to pay a charge for the availability of the Tribunal even if it never actually used" it. Id. at 395, 396. The services were available for Sperry's use if its negotiations with Iran had failed, and these were "sufficient benefits to justify the imposition of a reasonable user fee." Id. at 396.

The Sperry decision makes it extremely clear that the Court has never, and did not here, adopted the principle of a "perfect user fee system" in which amount is precisely calibrated to use, as long as there is a fair approximation of the cost of the benefits supplied. The Court noted that Sperry benefited directly and that a formal award was entered, but spent considerable time reiterating that availability can equal a benefit sufficient to justify a reasonable user fee, even if there is no actual use.

Compare this to 911 funding. An individual required to pay a flat user fee up front, rather than in the hopefully rare instance the person makes the call, is of course not paying

for actual use. The benefit derives from the assurance that if an emergency occurs, the payor will immediately have access to the call center at the touch of a button.

CONCLUSION

This case explores an uncharted tributary of muddied legal waters. This brief is intended to help the Court stay on course with a reminder of what we *do know*. The Legislature enacted a permissive local user fee scheme in the wake of enactment of city home rule authority. In 30 years, that simple scheme has not faced judicial interpretation or legislative amendment. No Kentucky case law requires every user fee to be based on actual use, and numerous opinions recognize validity of user fees based on benefits received. The statute authorizing 911 emergency services allows for any method of legally permissible funding, and explicitly offers up a flat fee unrelated to actual use or direct benefit. Appellants have presented no arguments that mandate funding limitations or require a fee-per-dial structure that would deter use of this vital local service. *Amicus Curiae*, KLC, respectfully urges this Court to adopt a ruling that preserves the broad, flexible scope of user fees generally and 911 fees in particular that the Legislature intended.

Respectfully Submitted,

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