IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN DIVISION

LETICIA ROBERTS and CALVIN SAYERS, on behalf of themselves and others similarly situated; Plaintiffs, v. SHERIFF TONY THOMPSON, in his official capacity; BLACK HAWK COUNTY; Defendants.	Case No. 6:24-cv-02024-CJW-MAR **Oral Argument: September 20, 2024**

REPLY BRIEF IN FURTHER SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Pursuant to Rule 7(g) of the Local Rules of the United States District Courts for the Northern and Southern Districts of Iowa, and the Court's Order Granting Motion for Extension of Time, ECF No. 14 (July 22, 2024), Plaintiffs Leticia Roberts and Calvin Sayers file this reply brief in further support of Plaintiffs' Motion for Preliminary Injunction, ECF No. 11 (July 12, 2024) (the "Motion") and in response to Defendants' Resistance to Plaintiffs' Motion for a Preliminary Injunction, ECF No. 16 (Aug. 2, 2024) ("Opp."). For the reasons set forth below and in the Brief in Support of Plaintiffs' Motion for Preliminary Injunction, ECF No. 11-12 ("Pls.' Br."), the Court should grant the Motion and issue a preliminary injunction, enjoining Defendants from: (1) using confessions of judgment to compel payment of booking fees and/or room and board ("jail fees"); (2) entering new confessions of judgment for jail fees; and (3) using confessions of judgment to initiate reimbursement claims against any individuals under Iowa Code § 356.7 (the "Jail Fees Statute"), regardless of when the confessions of judgment were signed.

TABLE OF CONTENTS

INTRODUCTION 1
ARGUMENT 2
I. Plaintiffs Are Likely to Succeed on the Merits. 2
A. Defendants Concede Their Confessions of Judgment Are Unconstitutional (Count 3). 2
B. Defendants Provide No Process Before or After a Property Deprivation (Count 1). 3
C. Defendants Are Unconstitutionally Biased (Count 2). 4
II. The Other Factors Favor Granting an Injunction. 5
CONCLUSION 5

TABLE OF AUTHORITIES

Cases

Bliek v. Palmer, 102 F.3d 1472 (8th Cir. 1997) 2

Bull v. Keenan, 69 N.W. 433 (Iowa 1896) 2

Cain v. White, 937 F.3d 446 (5th Cir. 2019) 4

Caliste v. Cantrell, 937 F.3d 525 (5th Cir. 2019) 4, 5

Community Thrift Club, Inc. v. Dearborn Acceptance Corp., 487 F. Supp. 877 (N.D. Ill. 1980) . 3

Cutler Corp. v. Latshaw, 97 A.2d 234 (Pa. 1953) 1

D.H. Overmyer Co. v. Frick Co., 405 U.S. 174 (1972) 1, 2

D.M. v. Minn. State High Sch. League, 917 F.3d 994 (8th Cir. 2019) 2, 5

Dullard v. Phelan, 50 N.W. 204 (Iowa 1891) 2

Elder v. Gillespie, 54 F.4th 1055 (8th Cir. 2022) 4

Flora v. Sw. Iowa Narcotics Enf. Task Force, 292 F. Supp. 3d 875 (S.D. Iowa 2018) 5

Glenwood Bridge, Inc. v. City of Minneapolis, 940 F.2d 367 (8th Cir. 1991) 5

Gonzalez v. Hidalgo County, 489 F.2d 1043 (5th Cir. 1973) 4

Iowa Supreme Ct. Bd. of Prof. Ethics & Conduct v. McKittrick, 683 N.W.2d 554 (Iowa 2004) ... 1

Marshall v. Jerrico, Inc., 446 U.S. 238 (1980) 5

Mathews v. Eldridge, 424 U.S. 319 (1976) 4

Mullen v. Russell, 46 Iowa 386 (1877) 2

Ohm v. Dickerman, 50 Iowa 671 (1879) 2

Rau v. Cavenaugh, 500 F. Supp. 204 (D.S.D. 1980) 4

Sourovelis v. City of Philadelphia, 103 F. Supp. 3d 694 (E.D. Pa. 2015) 4

Swarb v. Lennox, 405 U.S. 191 (1972) 1, 2

Tumey v. Ohio, 273 U.S. 510 (1927). 5

Ward v. Village of Monroeville, 409 U.S. 57 (1972) 5

Webb v. City of Maplewood, 340 F.R.D. 124 (E.D. Mo. 2021)..... 2

Young v. United States ex rel. Vuitton, 481 U.S. 787 (1987)..... 5

Statutes

Iowa Code chapter 676 2

Other Authorities

Robin J. Effron, *The Invisible Circumstances of Notice*, 99 N.C. L. Rev. 1521 (2021)..... 3

INTRODUCTION

Defendants attempt to cast their use of confessions of judgment as an "informal," "voluntary," and "flexible" process where the Sheriff goes above and beyond to "work with" formerly jailed individuals for their "benefit." Opp. at 2, 4, 5, 8, 16. But, even outside the jail context, a confession of judgment "is perhaps the most powerful and drastic document known to civil law . . . equivalent to a warrior of old entering a combat by discarding his shield and breaking his sword." *Cutler Corp. v. Latshaw*, 97 A.2d 234, 236 (Pa. 1953). In Iowa, too, their use is viewed with skepticism. *Iowa Supreme Ct. Bd. of Prof. Ethics & Conduct v. McKittrick*, 683 N.W.2d 554, 562–63 (Iowa 2004). Defendants use confessions of judgment to render individuals defenseless to the imposition of jail fees, without any of the protections the Fourteenth Amendment demands. *See D.H. Overmyer Co. v. Frick Co.*, 405 U.S. 174 (1972); *Swarb v. Lennox*, 405 U.S. 191 (1972). Defendants concede, as they must, that the unconstitutional circumstances the Supreme Court described in *Overmyer* and *Swarb* are present here: their confessions of judgment involve disparate bargaining power, are presented on an adhesion contract, lack consideration, and are obtained without counsel (**Count 3**). For this reason alone, Defendants' practices must be enjoined.

The constitutional violations do not end there. By failing to acknowledge they use confessions of judgment to extract immediate payment, Defendants ignore that they deprive Plaintiffs of property without due process of law. When the government effects such a taking, due process requires, at a minimum, notice and an opportunity to be heard. Here, there is neither (**Count 1**). The Sheriff compounds these unlawful practices by asserting control of jail fees to benefit the Department (**Count 2**). As a result, Plaintiffs are likely to succeed on Counts 1 and 2.

Because Defendants' arguments as to the other relevant factors are without merit and Defendants fail to identify any harm from an injunction that would vindicate constitutional rights and protect the public interest, the Court should grant the injunction.

ARGUMENT

I. Plaintiffs Are Likely to Succeed on the Merits.

A. Defendants Concede Their Confessions of Judgment Are Unconstitutional (Count 3).

Defendants make no argument that Plaintiffs have failed to establish a likelihood of success on Count 3 for declaratory relief that Defendants' use of confessions of judgment is unlawful. *See* Opp. That is for good reason: Defendants cannot contest their confessions of judgment run afoul of *Overmyer* and *Swarb*. Pls.' Br. at 14–17. Because Plaintiffs "need only establish a likelihood of succeeding on the merits of any one of [their] claims," *D.M. v. Minn. State High Sch. League*, 917 F.3d 994, 1003 (8th Cir. 2019), the Court should grant a preliminary injunction.

To get around the constitutional inadequacy of their confessions of judgment, Defendants posit that "post-judgment resolutions can rectify potential misuse of confessions of judgment." Opp. at 10 (citing *Overmyer*, 405 U.S. at 188). But *Overmyer* says no such thing. Rather, the Court merely noted the parties could raise challenges in a post-judgment hearing. As Justice Douglas pointed out, Ohio's law permitted judges to reopen confessed judgments. *Overmyer*, 405 U.S. at 189–90 (Douglas, J., concurring). Iowa's statute contains no such provision. *See* Iowa Code ch. 676.[1] Regardless, "[s]uch postjudgment remedies are not sufficient . . . if the debtor cannot

[1] Cases from over a century ago do not support Defendants' hypothesis that individuals can "later move the court to vacate or set aside the judgment" in reimbursement claims. Opp. at 3, *see also id.* at 10. None of those cases involved a direct challenge from a signatory. *Bull v. Keenan*, 69 N.W. 433 (Iowa 1896) (separate action in equity); *Ohm v. Dickerman*, 50 Iowa 671 (1879) (same); *Mullen v. Russell*, 46 Iowa 386 (1877) (same). *Dullard v. Phelan*, 50 N.W. 204 (Iowa 1891) (petition of third-party non-signatory). In addition, Defendants offer no support for their theory that low-income, recently jailed individuals—even if they knew their rights had been violated—could file a new lawsuit seeking to invalidate confessions of judgment. *See Webb v. City of Maplewood*, 340 F.R.D. 124, 140 (E.D. Mo. 2021) (recognizing that "indigent persons" were "unlikely" to "ever commence [individual] litigation on their own behalf to vindicate their rights"). Nor do Defendants provide any basis for assuming individuals such as Plaintiffs would be able to obtain individual representation. *See Bliek v. Palmer*, 102 F.3d 1472, 1476 (8th Cir. 1997) (holding that a state demand for reimbursement of food stamp overpayment violated procedural due process

challenge the [confession of judgment] prior to the deprivation of his property." *Community Thrift Club, Inc. v. Dearborn Acceptance Corp.*, 487 F. Supp. 877, 883 (N.D. Ill. 1980). Defendants seize property before filing a confession of judgment such that post-judgment remedies are insufficient.

B. Defendants Provide No Process Before or After a Property Deprivation (Count 1).

Defendants baldly assert that Plaintiffs fail to identify a property deprivation, Opp. at 8–9, but that is manifestly incorrect.[2] Defendants deprived Plaintiffs their property by seizing money from Mr. Sayers and demanding payment from both Plaintiffs. Pls.' Br. at 2–3. When the government effects such a taking, due process requires notice and an opportunity to be heard, which "must be granted at a meaningful time and in a meaningful manner." *Fuentes v. Shevin*, 407 U.S. 67, 80 (1972). "If the right to notice and a hearing is to serve its full purpose, . . . it must be granted at a time when the deprivation can still be prevented." *Id.* at 81. The notice Defendants claim is adequate occurs only ***after*** a deprivation—and there is no opportunity to be heard.

First, Defendants contend that individuals receive notice "before the Sheriff's Office files confessions of judgment against them." Opp at 10. But, of course, any such notice occurs (if it occurs at all) ***after*** Defendants demand payment. Any purported notice is insufficient because it

---

rights in part because low-income individuals "are not as a general matter in the financial position to hire legal counsel" to protect their rights). This is particularly true in the context of confessions of judgment. *See* ECF No. 11-25 at 7 (explaining that when wages or bank funds are garnished, the debtor's only recourse is to "file a motion to quash the garnishment in the case where the judgment lies"—and then wait for a decision while "[t]heir account remains frozen . . . , checks bounce, automatic payments are declined, fees are assessed, and critical bills remain unpaid."); Robin J. Effron, *The Invisible Circumstances of Notice*, 99 N.C. L. Rev. 1521, 1567 (2021) ("Successful challenges to a default judgment entered pursuant to a confession-of-judgment [] are rare, their pursuit is expensive, and most defendants only learn about the entry of the judgment when their assets have been frozen, or their property has been seized pursuant to an enforcement action.").

[2] Similarly, Defendants' claim that confessions of judgment are "ineffective" or "ineffectual" until filed in court, Opp. at 3, 8, 16, is belied by Defendants' own assertions, including that they send collection letters and formally serve individuals a "Final Notice" to demand payments, *id.* at 5.

follows the deprivation of property. *Fuentes*, 407 U.S. at 81. Defendants also assert that Plaintiffs were "informed of their jail fees at the time of their release," Opp. at 10, but this "notice" too says nothing of the "steps [one] should take" to mount a challenge. *See Elder v. Gillespie*, 54 F.4th 1055, 1064 (8th Cir. 2022). Accordingly, Defendants do not provide meaningful notice.

Second, Defendants eschew the traditional analysis under *Mathews v. Eldridge*, 424 U.S. 319 (1976), and merely assert that "[a]dditional process will not change Plaintiffs' outcomes." Opp. at 11.[3] Defendants are plainly wrong. Denial of a hearing can be fatal to the protection of property rights. *See Fuentes*, 407 U.S. at 81 (the "opportunity to speak up in [one's] own defense" is essential to prevent "substantively unfair and simply mistaken deprivations of property interests"). There are numerous factual and legal defenses Plaintiffs and Class Members could raise. Pls.' Br. at 13–14. The Sheriff acknowledges that when claims are subject to judicial review, they "are generally the fees that judges are willing to waive." ECF No. 11-7 at 1.

The Court should find that Plaintiffs have shown a likelihood of success on Count 1.

C. Defendants Are Unconstitutionally Biased (Count 2).

Defendants acknowledge an inherent conflict, Opp. at 15 ("[T]he Iowa legislature wrote the code specifically mandating the fees be used for institutional gain."), yet insist they resist the temptation to act in a biased manner. Defendants' admission is telling as, once a potential conflict is identified—even if it is embodied in a statute[4]—the question becomes whether the conflict is

[3] If it is Defendants' position that individuals "waive[] due process," *see* Opp. at 9 n.6, they bear a "heavy burden" to show the purported waiver is voluntary, intelligent, and knowing. *See, e.g.*, *Gonzalez v. Hidalgo County*, 489 F.2d 1043, 1046 (5th Cir. 1973); *Rau v. Cavenaugh*, 500 F. Supp. 204, 207 (D.S.D. 1980). Defendants' bare assertion that the standard form contains the phase "I understand," Opp. at 9 n.6, does not come close to satisfying that burden.

[4] A conflict of interest may still arise where state law authorizes the fees at issue. *See, e.g.*, *Cain v. White*, 937 F.3d 446, 449 (5th Cir. 2019). The statutory allocation of proceeds also does not eliminate the temptation to collect fees for financial gain. *See Caliste v. Cantrell*, 937 F.3d 525, 526 (5th Cir. 2019); *Sourovelis v. City of Philadelphia*, 103 F. Supp. 3d 694, 709 (E.D. Pa. 2015).

permissible. *Young v. United States ex rel. Vuitton*, 481 U.S. 787, 811 (1987). The law is silent on how forty percent of jail fees collected should be used; the Sheriff wields his power to ensure this percentage goes to the Department. Pls.' Br. at 6–7. This presents a "possible temptation" to act for financial gain, *Ward v. Village of Monroeville*, 409 U.S. 57, 60 (1972),[5] and is precisely the sort of "personal interest, financial or otherwise," forbidden under *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 249 (1980).[6] No matter the standard, Defendants violate the impartiality requirement.

II. The Other Factors Favor Granting an Injunction.

Defendants admit that Plaintiffs are currently "paying for their jail fees," Opp. at 16, and concede the merits of Count 3, *see supra* Part I.A. Defendants, therefore, acknowledge that there are indeed irreparable injuries. *See Glenwood Bridge, Inc. v. City of Minneapolis*, 940 F.2d 367, 371 (8th Cir. 1991) (holding money damages cannot "fully compensate" the loss of rights). On the other side of the scale, Defendants fail to identify any injury they will incur if an injunction is granted. Opp. at 16. Finally, "[t]he public is served by the preservation of constitutional rights." *D.M.*, 917 F.3d at 1004. As a result, the irreparable harms, balance of harms, and public interest support an injunction.

CONCLUSION

For the reasons provided above, the Court should enter a preliminary injunction.

---

[5] Defendants disavow the strict impartiality standard because they do not "serve as the final arbiter of [] criminal offenses." Opp. at 13. This self-serving view of Defendants' role in their own scheme misses the point. The Court has twice applied the strict neutrality requirement because mayors imposed *fees* from which they benefited. *Ward*, 409 U.S. 57; *Tumey v. Ohio*, 273 U.S. 510 (1927).

[6] Defendants assert that "[n]o official's salary is affected," Opp. at 14, but the Sheriff states that staff may be "let go due to the anticipated loss of" jail fees. ECF No. 11-7 at 1. Defendants also suggest that jail fees account for 1.5% of the Sheriff's budget, Opp. at 14, but that is misleading because jail fees *fully* fund several unbudgeted programs. ECF No. 11-7 at 2–3. Courts have held such expenses support intolerable conflicts. *Caliste*, 937 F.3d at 526 (collection of court fees paid staff salaries and for office supplies); *Flora v. Sw. Iowa Narcotics Enf. Task Force*, 292 F. Supp. 3d 875, 904 (S.D. Iowa 2018) (forfeiture enforcement paid for "office products and equipment").

RESPECTFULLY SUBMITTED AND DATED this 9th day of August, 2024.

By: *s/ Charles Moore*

Charles Moore
Public Justice
1620 L Street NW, Suite 630
Washington, DC 20036
T: (202) 861-5226
cmoore@publicjustice.net
(admitted *Pro Hac Vice*)

Rita Bettis Austen
Thomas Story
Shefali Aurora
ACLU of Iowa Foundation, Inc.
505 Fifth Ave., Suite 808
Des Moines, IA 50309-2317
T: (515) 207-0567
F: (515) 243-8506
rita.bettis@aclu-ia.org
thomas.story@aclu-ia.org
shefali.aurora@aclu-ia.org

Leslie A. Bailey
Public Justice
475 14th Street, Suite 610
Oakland, California 94612
T: (510) 622-8203
lbailey@publicjustice.net
(admitted *Pro Hac Vice*)

Thomas P. Frerichs
Frerichs Law Office, P.C.
106 E. 4th Street, P.O. Box 328
Waterloo, IA 50704-0328
T: (319) 236-7204
F: (319) 236-7206
tfrerichs@frerichslaw.com

Brandon R. Underwood
Kelcy Whitaker
Michael D. Currie
Sarah Golwitzer
Fredrikson & Byron P.A.
111 East Grand Ave., Suite 301
Des Moines, IA 50309-1884
T: (515) 242-8900
F: (515) 242-8950
bunderwood@fredlaw.com
kwhitaker@fredlaw.com
mcurrie@fredlaw.com
sgolwitzer@fredlaw.com

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

The undersigned certifies that on August 9, 2024, the foregoing document was electronically filed with the Clerk of the Court using the CM/ECF system, which together with the production and transmission of a Notice of Electronic Filing (NEF) by the CM/ECF system, constitutes filing of the document and service of the document on all persons who have appeared in the case and are CM/ECF system registrants.

Dated: August 9, 2024

s/ Charles Moore
Charles Moore