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STATE OF WASHINGTON  
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No. 95794-1

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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State of Washington,

Respondent,

v.

Jason Michael Catling,

Petitioner.

---

ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR SPOKANE COUNTY

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PETITIONER'S SUPPLEMENTAL BRIEF

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TABLE OF CONTENTS

A. INTRODUCTION ..... 1

B. ISSUE FOR WHICH THIS COURT GRANTED REVIEW ..... 2

C. ARGUMENT ..... 2

This Court should reverse the order imposing LFOs because under this Court’s decision in *Wakefield* and the United States Supreme Court’s decision in *Keffeler*, a court may not impose LFOs on a person whose sole source of income derives from social security..... 2

1. Social security provides a modest means of living for individuals with disabilities, like Mr. Catling, who cannot work. .... 2
2. The anti-attachment provision of the Social Security Act prohibits the State from using a “legal process” to reach an individual’s modest social security income. .... 3
3. In *Keffeler*, the United States Supreme Court definitively defined the term “other legal process,” and the court’s order requiring Mr. Catling to pay mandatory legal financial obligations falls squarely within the Court’s definition of the term..... 4
4. Congruent with the United States Supreme Court’s decision in *Keffeler* and relying on caselaw from other states, this Court ruled that courts cannot order individuals to pay LFOs if the individual’s only receives income from social security..... 7
5. Other Washington statutes coerce Mr. Catling into invading his social security funds to pay off his LFOs and these statutes, as applied to Mr. Catling, are contrary to the anti-attachment provision of the Social Security Act and are therefore in conflict with the Supremacy Clause..... 10

6. As applied to Mr. Catling, the Washington statutes that require courts to impose mandatory LFOs on social security recipients conflict with 42 U.S.C. § 407(a) and violate the Supremacy Clause.....	14
7. The Court of Appeals’ reliance on a Michigan case was misplaced.....	17
D. CONCLUSION.....	20

TABLE OF AUTHORITIES

**Washington Cases**

*City of Richland v. Wakefield*, 186 Wn.2d 596, 380 P.3d 459 (2016)... 1, 7,  
.....17  
*State v. Blazina*, 182 Wn.2d 827, 344 P.3d 680 (2015).....14  
*State v. Catling*, 2 Wn. App. 819, 413 P.3d 27 (2018) ..... passim  
*State v. Cunningham*, 116 Wn. App. 946, 69 P.3d 358 (2003)..... 13  
*State v. Gossage*, 165 Wn.2d 1, 195 P.3d 525 (2008) ..... 11  
*State v. Jorgenson*, 179 Wn.2d 145, 312 P.3d 960 (2013). ..... 15  
*State v. Malone*, 193 Wn. App. 762, 376 P.3d 443 (2016)..... 16  
*State v. Mathers*, 193 Wn. App. 913, 376 P.3d 1163 (2016)..... 16

**Constitutional Provisions**

U.S. CONST. amend. II..... 12  
U.S. CONST. amend. IX. .... 12  
U.S. CONST. art. VI, pt. II.....14

**United States Supreme Court Cases**

*Bennett v. Arkansas*, 485 U.S. 395, 108 S. Ct. 1204, 99 L. Ed. 2d 455  
(1988).....15  
*Circuit City Stores Inc., v. Adams*, 532 U.S. 105, 121 S. Ct. 1302, 149 L.  
Ed. 2d 234 (2001) ..... 5  
*Cleveland v. Policy Management Systems Corp.*, 565 U.S. 795, 119 S. Ct.  
1597, 143 L. Ed. 2d 966 (1999) ..... 2  
*Philpott v. Essex County Welfare Bd.*, 409 U.S. 413, 93 S. Ct. 590, 34 L.  
Ed. 2d 608 (1973) ..... 4  
*Rose v. Arkansas State Police*, 479 U.S. 1, 107 S. Ct. 334, 93 L. Ed. 2d  
183 (1986)..... 14  
*Washington State Dep’t of Social and Health Services v. Guardianship  
Estate of Keffeler*. 537 U.S. 371, 123 S. Ct. 1017, 154 L. Ed. 2d 972  
(2003)..... 4, 8, 11

**Federal Authorities**

42 U.S.C. § 1382..... 2  
42 U.S.C. § 407(a).....passim  
42 U.S.C. § 423(d)(2)(a)..... 2

**Statutes**

RCW 2.36.070 ..... 12  
RCW 29A.08.520..... 12  
RCW 9.41.040(4)(a) ..... 12  
RCW 9.94A.637(5)..... 12  
RCW 9.94A.640..... 11  
RCW 9.95.240(1)..... 12

**Treatises**

*Attempt*, Merriam Webster ..... 16  
Black’s Law Dictionary, (10th Ed. 2013) ..... 17  
Dash DeJarnatt, *Changing the Way Adult Convictions are Vacated in Washington State*, 12 Seattle J. for Soc. Just. 1045, 1054 (2014) ..... 12

**Federal Cases**

*Dvorak v. Celebrezze*, 345 F.2d 897 (10th Cir. 1965) ..... 3  
*U.S. v. Devall*, 704 F.2d 1513 (11th Cir. 1983) ..... 3  
*United States v. Smith*, 47 F.3d 681 (4th Cir. 1995) ..... 19

**Other Jurisdictions**

*In re Lampart*, 856 N.W.2d 194 (Mich. App. 2014).....17, 18, 19  
*In re Michael S.*, 206 W. Va. 291, 524 S.E.2d 443 (1999) ..... 9

**Other Sources**

Brief of Amicus Curiae Disability Rights Washington, *State v. Catling*, 422 P.3d 915 (2018) (No. 95794-1)..... 14  
Brief of Amicus Curiae Northwest Justice Project, *State v. Catling*, 422 P.3d 915 (2018) (No. 95794-1) ..... 12  
*Jury Duty*, Wash. Courts..... 12  
Soc. Sec. Admin., *Selected Data from Social Security’s Disability Program* ..... 3  
U.S. Dep’t of Health & Human Serv., *Poverty Guidelines* ..... 3

## A. INTRODUCTION

Jason Michael Catling was born with his bladder turned inside out. Numerous surgeries to correct this condition have resulted in Mr. Catling living in constant pain; consequently, he is unable to work. To meet his basic needs, he receives \$753 in social security disability benefits (SSDI). This is his only source of income.

In *City of Richland v. Wakefield*,<sup>1</sup> this Court held that when a person's sole source of income is social security, a court cannot order a defendant to pay Legal Financial Obligations (LFOs). Contrary to this Court's holding, the sentencing court ordered Mr. Catling to pay \$800 in mandatory LFOs. In a divided opinion, the Court of Appeals held that as long as the sentencing court amended the order to specify the government could not use Mr. Catling's social security to satisfy the debt, the order could remain against Mr. Catling indefinitely.

As Judge Fearing explained in his dissent and for the reasons expressed in this brief, the majority's holding is unlawful, impractical, and unconscionable. Mr. Catling asks this court to vacate the order requiring him to pay legal financial obligations.

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<sup>1</sup> 186 Wn.2d 596, 380 P.3d 459 (2016).

## **B. ISSUE FOR WHICH THIS COURT GRANTED REVIEW**

This Court has held that the anti-attachment provision of the Social Security Act prohibits courts from ordering defendants to pay LFOs if the person's only source of income is social security disability. Mr. Catling's only source of income is social security disability. Must the order imposing \$800 in LFOs be stricken from Mr. Catling's judgment and sentence?

## **C. ARGUMENT**

**This Court should reverse the order imposing LFOs because under this Court's decision in *Wakefield* and the United States Supreme Court's decision in *Keffeler*, a court may not impose LFOs on a person whose sole source of income derives from social security.**

1. Social security provides a modest means of living for individuals with disabilities, like Mr. Catling, who cannot work.

The Social Security Act "provides benefits to a person with a disability so severe that he is 'unable to do [his] previous work' and 'cannot...engage in any other kind of substantial gainful work which exists in the national economy.'" *Cleveland v. Policy Management Systems Corp.*, 565 U.S. 795, 797, 119 S. Ct. 1597, 143 L. Ed. 2d 966 (1999) (referencing 42 U.S.C. § 423(d)(2)(a)). These benefits provide a means of living for people with disabilities so serious they may result in, or persist until, death. 42 U.S.C. § 1382. Through its provision of funds,

the Social Security Act remedies some of the rigors of life that individuals with disabilities experience. *Dvorak v. Celebrezze*, 345 F.2d 897, 897 (10th Cir. 1965).

As of July of 2018, the average social security recipient receives \$1,198 per month. Soc. Sec. Admin., *Selected Data from Social Security's Disability Program*.<sup>2</sup> Mr. Catling receives \$753 a month in social security disability income. 2RP 3, 8; CP 38. This income places Mr. Catling below the federal poverty line. U.S. Dep't of Health & Human Serv., *Poverty Guidelines*.<sup>3</sup>

2. The anti-attachment provision of the Social Security Act prohibits the State from using a "legal process" to reach an individual's modest social security income.

To ensure that a social security recipient maintains the resources necessary to meet his most basic needs, Congress enacted a provision of the Social Security Act to protect these funds. *U.S. v. Devall*, 704 F.2d 1513, 1516 (11th Cir. 1983). The anti-attachment provision of the Social Security Act prohibits individuals and other entities from using a legal process to reach a social security recipient's social security funds. Under 42 U.S.C. § 407(a) of the Social Security Act,

The right of any person to any future payment under this subchapter *shall not* be transferable or assignable, at law or in

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<sup>2</sup> <https://www.ssa.gov/oact/STATS/dib-g3.html> (last visited Sept. 2, 2018).

<sup>3</sup> <https://aspe.hhs.gov/poverty-guidelines> (last visited Sept. 2, 2018).

equity, and *none* of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or *other legal process*, or to the operation of any bankruptcy or insolvency law.

(emphasis added).

This provision of the Social Security Act also applies to states seeking to recoup money from an individual's social security funds. *See Philpott v. Essex County Welfare Bd.*, 409 U.S. 413, 93 S. Ct. 590, 34 L. Ed. 2d 608 (1973).

3. In *Keffeler*, the United States Supreme Court definitively defined the term "other legal process," and the court's order requiring Mr. Catling to pay mandatory legal financial obligations falls squarely within the Court's definition of the term.

The United States Supreme Court defined the term "other legal process" as it appears in the anti-attachment provision of the social security act in *Washington State Dep't of Social & Health Services v. Guardianship Estate of Keffeler*. 537 U.S. 371, 385, 123 S. Ct. 1017, 154 L. Ed. 2d 972 (2003). In *Keffeler*, foster children brought suit against the Washington Department of Social and Health Services (the Department), claiming it unlawfully used "other legal process" to reach their social security benefits. *Id.* at 379. Acting as the children's representative payee, the Department regularly reimbursed itself for expenditures paid on the foster children's behalf with the children's social security benefits. *Id.* at

376-78. The children claimed the Department's practice was unlawful because it was contrary to the anti-attachment provision of the social security act. *Id.* at 379.

To discern whether this practice was contrary to the anti-attachment provision of the social security act, the court interpreted the term "other legal process." The court turned to the words surrounding the term to discern the term's meaning. *Id.* at 383-84. Specifically, the court used the established canon of *edjusem generis* to construe the term's meaning ("where general words follow specific words in a statutory enumeration, the general words are construed to embrace only objects similar in nature to those objects enumerated by the preceding words"). *Id.* at 384 (citing *Circuit City Stores Inc., v. Adams*, 532 U.S. 105, 114-15, 121 S. Ct. 1302, 149 L. Ed. 2d 234 (2001)).

In doing so, the court observed that the Black's Law Dictionary definition of the terms surrounding "other legal process"—"execution," "levy," "attachment," and "garnishment"—"refer to formal procedures by which one person gains a degree of control over property otherwise subject to the control of another, and generally involves some form of judicial authorization." *Id.* at 383. Thus, the court defined "other legal process" as

[a] process much like the processes of execution, levy, attachment, and garnishment, and at minimum, would seem to require utilization of some judicial or quasi-judicial mechanism, though not necessarily an elaborate one, by which control over property passes from one person to another in order to discharge or secure discharge of an allegedly existing or anticipated liability.

*Id.* at 385.

The Social Security Administration's Program Operations Manual System (POMS), a publicly available manual for processing social security claims, fortified the court's interpretation of the term "other legal process." POMS defined "legal process" as "the means by which a court compels compliance with its demand; generally, it is a court order." *Id.* at 385.

Applying its definition of "other legal process," the court rejected the foster children's claim that the Department's practice of reimbursing itself with social security income amounted to "other legal process." *Id.* at 386. Because the Department was acting as a representative payee and possessed no enforceable claim against its foster children, the Department was not "securing discharge" of any enforceable obligation through its reimbursement practices. *Id.* Moreover, the State did not use any judicial actions to attach the foster's children's social security funds. *Id.* at 388.

Material differences exist between the court's imposition of mandatory LFOs and the circumstances present in *Keffeler*. Here, unlike in

*Keffeler*, the State actually possesses an enforceable claim against Mr. Catling that can only be satisfied with his social security income. CP 25. Moreover, the State used a judicial action to obtain this claim through a sentencing hearing. The (1) mechanism used to obtain this claim; and (2) fact that the claim can only be satisfied with Mr. Catling's social security income renders the court's order commanding Mr. Catling to pay mandatory LFOs an "other legal process" 2RP 3-11. This is antithetical to the anti-attachment provision of the Social Security Act.

4. Congruent with the United States Supreme Court's decision in *Keffeler* and relying on caselaw from other states, this Court ruled that courts cannot order individuals to pay LFOs if the individual's only receives income from social security.

In line with the reasoning and ruling in *Keffeler* and relying on caselaw from other states, this Court already definitively ruled that courts cannot order individuals to pay LFOs if the individual's sole source of income is derived from social security.

In *Wakefield*, a court ordered the petitioner to pay \$15 per month toward her outstanding discretionary LFOs. 186 Wn.2d at 599. The petitioner challenged this order because social security was her only source of income. *Id.* at 599-600. She argued the court's order violated 42 U.S.C. § 407(a) because it, essentially, required her to pay off her LFOs

with her social security money as she had no other source of income. *Id.* at 607-08.

This Court vacated the order requiring the petitioner to pay LFOs for a number of reasons; importantly, this Court concluded the court's order met the United State Supreme Court's definition of "other legal process." *Id.* at 609. Noting that the United States Supreme Court "has already rejected prior state attempts to recoup money from social security recipients," this Court also turned to Montana and Michigan caselaw to determine whether the State possessed the authority to reach social security funds to pay off legal financial obligations. *Id.* at 608-09. It concluded the State lacked such authority.

In drawing this conclusion, this Court observed that both the Montana and Michigan courts rejected the view that 42 U.S.C. § 407(a) prohibited only *direct* attachment and garnishment and have both instead held that "a court *ordering* LFO payments from a person who receives social security disability payments is an 'other legal process' by which to reach those protected funds." *Id.* at 609 (emphasis added). In agreement with this reasoning, this Court noted Montana and Michigan's understanding of the anti-attachment statute comported with *Keffeler's* definition of "other legal process." *Id.* at 609.

This Court held, “federal law prohibits courts from *ordering* defendants to pay LFOs if the person’s only source of income is social security disability.” *Id.* (emphasis added). *See also In re Michael S.*, 206 W. Va. 291, 524 S.E.2d 443 (1999) (invalidating a court order requiring a juvenile defendant’s father to pay restitution because the father’s sole source of income derived from social security).

The only material difference between Mr. Catling’s case and Ms. Wakefield’s case is that in *Wakefield*, the petitioner only challenged her discretionary LFOs while Mr. Catling instead challenges his mandatory LFOs. This Court’s holding and reasoning, however, remains the same. Like the petitioner in *Wakefield*, Mr. Catling’s only source of income is from social security. 2RP 3. And like the petitioner in *Wakefield*, the only way Mr. Catling can satisfy the court’s order is through his social security income. Thus, the court order requiring Mr. Catling to pay \$800 in mandatory LFOs is “other legal process,” which is contrary to the anti-attachment provision of the Social Security Act.

This is why the majority’s opinion *Catling* is in error. Instead of holding that courts cannot order individuals to pay mandatory LFOs, the majority instead resorted to simply instructing the sentencing court to amend the judgment and sentence to specify payments cannot be satisfied from Mr. Catling’s social security income. *State v. Catling*, 2 Wn. App.

819, 826, n.2., 413 P.3d 27 (2018). But this was not the remedy this Court employed in *Wakefield*. Instead, this Court struck the order in its entirety.

5. Other Washington statutes coerce Mr. Catling into invading his social security funds to pay off his LFOs and these statutes, as applied to Mr. Catling, are contrary to the anti-attachment provision of the Social Security Act and are therefore in conflict with the Supremacy Clause.

In *Wakefield*, this Court soundly decided to not simply instruct the lower court to amend the court order to specify that the petitioner's social security income could not be used to satisfy her LFO debt. As Judge Fearing noted in his dissent in *Catling*, "the collateral consequences of a judgment for mandatory legal financial obligations demands that an offender, whose sole income derives from Social Security benefits, continuously submit to legal process because of his inability to retire the judgment." 2 Wn. App. at 828 (J. Fearing, dissenting). It also coerces Mr. Catling into paying his LFOs from his paltry social security money in order to (1) stop being continuously summoned to the clerk's office; and (2) receive the ability to vacate his record and restore his rights. *Id.*

First, once a court imposes mandatory LFOs, the clerk may repeatedly summon the debtor to his or her office to review his finances, thereby continuously subjecting the defendant to "other legal process." RCW 9.94A.760(7)(b) grants a clerk with the ability to (1) require the

LFO debtor to appear before him or her; (2) command the LFO debtor to respond to questions “under oath;” and (3) demand that the LFO debtor bring documentation of his financial assets. Nothing in this statute limits the number of times the clerk can summon the debtor to the clerk’s office. This statute employs a “quasi-judicial mechanism” used to “secure discharge of an allegedly existing or anticipated liability” under *Keffeller*, 537 U.S. at 385. As the dissent in *Catling* notes, “the State still arrays the legal process in an attempt to gain payment despite knowing federal law protects the offender’s only income fund. Because of the offender’s inability to pay, he remains stuck in an ongoing, burdensome court process.” 2 Wn. App. 2d at 845 (J. Fearing, dissenting).

Second, and most importantly, a debtor can never vacate his record if he has a lifelong disability and no other lifetime source of income besides social security. Prior to July 2000, the State only possessed a ten year time frame to collect LFOs; however, our Legislature “extend[ed] the court’s jurisdiction for the lifetime of the offender or until all LFOs are satisfied” for crimes committed after July of 2000. *State v. Gossage*, 165 Wn.2d 1, 8, 195 P.3d 525 (2008); RCW 9.94A.760(4). Now, an ex-offender can only receive a certificate of discharge and vacate his criminal conviction after all of his legal financial obligations are paid off. RCW 9.94A.637(1)(a); RCW 9.94A.640.

This order restores many of the debtor’s civil rights and ability to participate in civic functions and precludes the individual from continuing to experience the collateral consequences of his conviction. Vacation of a criminal record ensures a person’s constitutional right to vote is permanently restored. RCW 29A.08.520; U.S. CONST. amend. IX. It also allows the debtor to once again be able to exercise his constitutional right to bear arms. U.S. CONST. amend. II; RCW 9.41.040(4)(a); RCW 9.95.240(1). Additionally, the vacation of a criminal record allows the debtor to participate in jury service. RCW 2.36.070; *see also Jury Duty*, Wash. Courts.<sup>4</sup> Thus, an order requiring a social security recipient to pay LFOs effectively constitutes a lien on Mr. Catling’s civil rights “until he pays off his [LFOs] from this sheltered source.” *Catling*, 2 Wn. App. at 845 (J. Fearing, dissenting).

Other damning consequences flow from a debtor’s inability to vacate his criminal record. It impacts the debtor’s ability to obtain housing because landlords generally do not wish to rent to individuals with criminal records. *See* RCW 9.94A.637(5); *See* Brief of Amicus Curiae Northwest Justice Project at 5-6, *State v. Catling*, 422 P.3d 915 (2018)

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<sup>4</sup> <https://www.courts.wa.gov/newsinfo/resources/> (last visited Sept. 5, 2018).

(No. 95794-1); *see also*; *Catling*, 2 Wn. App. at 835 (J. Fearing, dissenting).

Due to systemic disparities that permeate the criminal justice system, people of color are more likely to experience the collateral consequences associated with being unable to pay off mandatory LFOs. *See* Brief of Amicus Curiae Northwest Justice Project at 7-9.

No other means exist to rid oneself from the mandatory LFO debt besides paying it off with one's social security income. The debt cannot be discharged in bankruptcy. *See State v. Cunningham*, 116 Wn. App. 946, 69 P.3d 358 (2003) (holding that LFOs are not dischargeable in bankruptcy); *Kelly v. Robinson*, 479 U.S. 36, 107 S. Ct. 353, 93 L. Ed. 2d 216 (1986) (ruling that restitution obligations, as a criminal sanction, are not subject to discharge in a bankruptcy proceeding). The unpaid debt negatively impacts an individual's credit ratings, making it even more difficult for someone in Mr. Catling's position to secure housing. *State v. Blazina*, 182 Wn.2d 827, 837, 344 P.3d 680 (2015).

In sum, a court order requiring Mr. Catling to pay mandatory LFOs leaves him with a Hobson's choice: either pay his mandatory LFOs from his social security income and sacrifice his own basic needs *or* do not pay his LFOs and endure the collateral consequences that follow from not being able to vacate his record. This is not a true choice; it is a

governmental exercise of coercion on a debtor so that he may pay his LFOs.

Washington's current mandatory LFO statutory scheme constitutes "other legal process" for individuals like Mr. Catling who cannot satisfy their LFO debt with anything but their social security income due to their lifelong disabilities. *See* Brief of Amicus Curiae Disability Rights Washington at 7, *State v. Catling*, 422 P.3d 915 (2018) (No. 95794-1). It leaves people with lifelong disabilities and no future source of income other than social security income without the ability to vacate their criminal conviction(s). Such individuals are repeatedly forced to go to the clerk's office, reaffirm they are not receiving money from another source, and leave the clerk's office without ever having the ability to vacate their record. This cycle can only end if the individual uses his social security funds to pay off his LFOs, which is contrary to the anti-attachment provision of the Social Security Act.

6. As applied to Mr. Catling, the Washington statutes that require courts to impose mandatory LFOs on social security recipients conflict with 42 U.S.C. § 407(a) and violate the Supremacy Clause.

"There can be no dispute that the Supremacy Clause invalidates all state laws that conflict or interfere with an act of congress." *Rose v. Arkansas State Police*, 479 U.S. 1, 3, 107 S. Ct. 334, 93 L. Ed. 2d 183

(1986); U.S. CONST. art. VI, pt. II. When a court finds that a statute is unconstitutional as applied, the statute no longer remains valid under similar circumstances. *State v. Jorgenson*, 179 Wn.2d 145, 151, 312 P.3d 960 (2013). This court reviews constitutional issues *de novo*. *Id.* at 150.

As applied to Mr. Catling, RCW 7.68.035, former RCW 36.18.020(2)(h), and RCW 43.43.7541 conflict with 42 U.S.C. § 407(a) and violate the Supremacy Clause. U.S. CONST. art. VI, pt. II. *Bennett v. Arkansas* is instructive. There, the petitioners challenged a statute that authorized the State to seize an incarcerated person's social security benefits. *Bennett v. Arkansas*, 485 U.S. 395, 396, 108 S. Ct. 1204, 99 L. Ed. 2d 455 (1988). The petitioners argued the statute violated the Supremacy Clause of the federal constitution because it explicitly allowed the State to expropriate funds the United States legislature specifically exempted from legal process per 42 U.S.C. § 407 (a). *Id.* The Supreme Court agreed and found the Arkansas statute conflicted with the Supremacy Clause because "Section 407(a) unambiguously rules out *any attempt* to attach Social Security Benefits." *Id.* at 397 (emphasis added).

While the statutes at issue here do not explicitly require courts to impose LFOs on social security recipients, they leave courts with no choice but to *attempt* to attach a social security recipient's social security funds, and this is contrary to 42 U.S.C. § 407 (a). The word "attempt"

means, “to make an effort to do, accomplish, solve, or effect.” *Attempt*, Merriam Webster.<sup>5</sup> *See, e.g.*, RCW 7.68.035(1)(a) (1)(a) (“when any person is found guilty in any superior court of having committed a crime... there *shall be imposed by the court* upon such convicted person a penalty assessment”); RCW 43.43.7541 (“every sentence imposed for a crime specified in RCW 43.43.754 *must* include a fee of one hundred dollars unless the state has previously collected the offender’s DNA...”). (emphases added).

These statutes contain no provisions that grant sentencing courts the discretion to forego “attempt[ing]” to attach social security benefits. Therefore, these statutes conflict with the anti-attachment provision of the social security act.

Moreover, as discussed below, the anti-attachment provision of the social security act prohibits the practice of *imposing* fines on social security recipients to discharge a debt; however, Washington’s LFO statutes require courts to impose such fines on social security recipients. *See State v. Mathers*, 193 Wn. App. 913, 376 P.3d 1163 (2016).

In *Keffeler*, the United States Supreme Court relied on Black’s Law Dictionary to discern the meaning of “other legal process” and the

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<sup>5</sup> <https://www.merriam-webster.com/dictionary/attempt> (last visited Sept. 4, 2018).

other terms in the anti-attachment provision of the social security act. 537 U.S. at 381. Black’s Law Dictionary defines “levy” as follows: “to impose or assess (a fine or tax) by legal authority.” Black’s Law Dictionary, (10th Ed. 2013). RCW 7.68.035(1)(a)(1)(a) explicitly requires courts to “impose” a victim penalty assessment, and former RCW 36.18.020(2)(h) and RCW 43.43.7541 use similar language that requires courts to impose legal financial obligations, regardless of the source of the defendant’s income. Accordingly, Washington’s mandatory legal financial obligation statutes are contrary to 42 U.S.C. § 407(a).

Also, once a sentencing court imposes mandatory LFOs (which it is required to do by statute), a chain of events follows. As discussed in Part 5 of the Argument section of this brief, this chain of events continuously submit a social security recipient to “other legal process” for an unlimited period of time.

7. The Court of Appeals’ reliance on a Michigan case was misplaced

The Court of Appeals’ reliance on *Lampart*, a Michigan case, was misplaced for two reasons. First, this Court only relied on *Lampart* in *Wakefield* to the extent *Lampart* embraces the view that courts cannot issue a court order requiring social security recipients to pay LFOs when the recipient’s only source of income is social security. 186 Wn.2d at 608-

09. In *Lampart*, a court ordered a mother to pay restitution on behalf of her son, who committed arson. 856 N.W.2d 194 (Mich. App. 2014).

Sometime after the court entered the original order, the mother became unable to work due to a disability, and she began receiving social security income in the amount of \$730; this became her only source of income. *Id.* Although the mother explained her newfound financial circumstances to the court and argued her social security funds were exempt from a court-imposed obligation, the court issued a court order requiring the mother to pay restitution under penalty of contempt. *Id.* at 194-95.

The mother appealed, and the Michigan Court of Appeals found that if the court were to enforce the restitution court order through its contempt powers, this would constitute “other legal process.” *Id.* at 199. This is because the court found that “the court’s use of its civil contempt powers to enforce a restitution order would act much like the processes of execution, levy, attachment, and garnishment because in that context, the process would involve a formal procedure by which the restitution victim, through the trial court, would gain control over [the mother’s] SSDI benefits.” *Id.* at 199. The court noted the POMS’ definition of the “other legal process” as the United States Supreme Court did in *Keffeler*, which is “the means by which a court...compels compliance with its demand; generally, it is a court order.” *Id.* (quoting *Keffeler*, 537 U.S. at 385).

Because the court's demand consisted of the court-ordered restitution and the court stated it would compel compliance with the court order through its contempt powers, the Michigan Court of Appeals concluded this fell squarely within the definition of "other legal process." *Id.* The court reasoned this would coerce an individual who only receives social security into using their social security income to pay off their debt, and "the government should not be allowed to do indirectly what it cannot do directly." *Id.* at 200-01 (quoting *United States v. Smith*, 47 F.3d 681, 684 (4th Cir. 1995)). While the court declined to cancel the mother's court-ordered restitution and maintained it was appropriate for the mother to periodically attend court hearings so that the court could monitor her income, it still concluded that *coercing* a social security recipient into invading her social security funds to pay off a debt constitutes "other legal process." *Id.* at 241.

Moreover, as Judge Fearing explained in his dissent, compelling a social security recipient to attend a court hearing still constitutes employment of a "legal process" to obtain social security funds. *Catling*, 2 Wn. App. at 845. "The State still arrays the legal process in an attempt to gain payment despite knowing federal law protects the offender's only income fund. Because of the offender's inability to pay, he remains stuck in an ongoing, burdensome court process." *Id.*

Second, *Lampart* contains no analysis of whether a statutory scheme, like Washington's, that (1) precludes individuals with disabilities who are social security recipients from ever vacating their records due to ongoing LFO debt; and (2) endows clerks with indefinite power to summon social security recipients to the clerk's office for updates on the recipient's income under oath constitutes a coercive "legal process" that courts employ to obtain social security funds. In fact, for the reasons expressed in Part 5 of the argument section of this brief, it appears *Lampart's* reasoning extends to Washington's mandatory LFO practices, as our practices coerce social security recipients into paying their LFOs.

#### **D. CONCLUSION**

The \$800 judgment "only serves to harass" Mr. Catling, "who receives a small monthly sum as a result of [his] disability." *Catling*, 2 Wn. App. 2d at 846 (J. Fearing, dissenting). Mr. Catling respectfully requests that this Court vacate the court order requiring him to pay \$800 in mandatory LFOs.

DATED this 12th day of September, 2018.

Respectfully submitted,

/s Sara S. Taboada  
Sara S. Taboada – WSBA #51225  
Washington Appellate Project  
Attorney for Petitioner

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, )  
 )  
 RESPONDENT, )  
 )  
 v. ) NO. 95794-1  
 )  
 JASON CATLING, )  
 )  
 PETITIONER. )

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