

7th Circuit splits on arrestee booking fees

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People forced to pay \$30 to the village of Woodridge following their arrest won't be getting their money back — at least, not any time soon.

Splintering four ways after a rare en banc hearing, the 7th U.S. Circuit Court of Appeals on Monday declined to revive a lawsuit challenging the constitutionality of an ordinance that imposed a non-refundable booking fee on anyone arrested in the village.

Five 7th Circuit judges voted to affirm U.S. District Judge [James F. Holderman](#)'s decision to dismiss the suit.

But the appellate judges split on the reasons for their vote.

Despite the village's "carelessness in titling," three of the judges argued, the since-repealed ordinance did not impose a fee simply for being arrested.

Instead, the three contended, the fee was payment for arranging for a bail bond that allowed the arrestee to stay out of jail.

Two other judges rejected that argument, contending that it was a fee merely for being arrested.

But being arrested based on probable cause comes with "substantial burdens" that pass muster under the U.S. Constitution, the two contended.

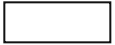
In addition to the possibility of being taken to a police station and held pending bail, they wrote, those burdens can include the imposition of a booking fee.

In a dissent, another judge argued that the 7th Circuit had no business deciding whether the ordinance was constitutional because the man who challenged it lacked standing to pursue the case.

And in a separate dissent, four judges contended that requiring someone to pay a non-refundable fee "based on nothing but the unreviewable say-so of one police officer" deprived arrestees of their property without due process of law.

In 2011, Jerry G. Markadonatos was arrested on a shoplifting charge and required to pay the \$30 booking fee. He admitted wrongdoing but received a "not guilty" adjudication after he served 12 months of supervised release.

Markadonatos sued Woodridge, alleging that the booking fee violated his rights to substantive and procedural due process.



In January, a three-judge panel split 2-1 in rejecting Markadonatos' procedural due-process claim.

The majority also held that Markadonatos lacked standing to pursue the substantive due-process claim.

U.S. District Judge J.P. Stadtmueller of the Eastern District of Wisconsin, who sat on the 7th Circuit by designation, wrote the majority opinion.

Judge [Diane S. Sykes](#) joined Stadtmueller's opinion. She also wrote a concurring opinion suggesting that arrestees who were not charged or who were later acquitted might prevail on a substantive due-process claim.

The third member of the panel, Judge [David F. Hamilton](#), said he would declare the ordinance unconstitutional on its face. The booking fee amounted to a criminal fine, Hamilton argued in a dissent, that was imposed regardless of the validity of the arrest or the outcome of any charges that might have been brought.

The 7th Circuit later voted to rehear the case en banc.

Shortly before the appeals court took that vote, Woodridge repealed the booking fee ordinance.

Markadonatos then dropped his request for an injunction, but continued to seek monetary damages.

In an opinion Monday joined by two colleagues, Judge [Richard A. Posner](#) contended that "countless" U.S. Supreme Court decisions called for the 7th Circuit to interpret the ordinance in a way that avoided raising serious constitutional issues.

And an interpretation that avoids such issues is that the so-called booking fee is really a fee for a bond, Posner wrote.

He conceded that Woodridge had not raised the doctrine of constitutional avoidance in fighting Markadonatos' suit.

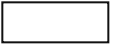
But the doctrine's purpose "is not to benefit a party, but to minimize the occasions on which a court declares a legislative enactment unconstitutional," Posner wrote.

Anyway, he continued, Markadonatos did not suffer any harm from the purported constitutional violation.

"He paid what in his county is the standard bond fee charged by local government and got the bond and spent no time in jail," Posner wrote. "What's *he* complaining about?"

Joining the opinion were Judges [Joel M. Flaum](#) and [Michael S. Kanne](#).

In a separate opinion joined by another jurist, Judge [Frank H. Easterbrook](#) contended that only state courts have the authority to limit the reach of a state statute or ordinance. But he



"No decision of the Supreme Court so much as hints that a small fee is a 'fundamental interest,'" he wrote.

Joining the opinion was Judge [John Daniel Tinder](#).

Sykes dissented, arguing that the case should be thrown out for lack of jurisdiction.

Markadonatos' guilty plea indicated that his arrest was based on probable cause and that, therefore, the imposition of the booking fee was constitutional, she wrote.

In a separate dissenting opinion, Hamilton contended that Posner "has chosen not to decide the case that has actually been presented to us."

"Judge Posner's opinion has transformed an unconstitutional fee for going *into* jail into something it never was in practice: an administrative fee for getting *out* of jail," Hamilton wrote.

He also contended that the ordinance as implemented violated the Constitution.

"Under the village's actual policy, the due process violation occurred at the moment the arrestee was brought to jail and paid the \$30 fee for no reason other than his arrest," Hamilton wrote. "That was an arbitrary deprivation of property without process of law."

Joining Hamilton's opinion were Chief Judge [Diane P. Wood](#) and Judges [Ilana Diamond Rovner](#) and [Ann Claire Williams](#).

The case is *Jerry G. Markadonatos v. Village of Woodridge*, No. 12-2619.

[James M. Burnham](#) of Jones, Day in Washington, D.C., argued the case before the 7th Circuit on behalf of Markadonatos.

Burnham said his client is "still assessing whether to seek further review."

"We are obviously disappointed with the result, but are pleased that a clear majority of the court recognized how absurd it is to charge someone a user fee for the 'privilege' of being arrested," he said in a written statement. "Hopefully, the 7th Circuit's ruling will deter other municipalities from enacting similarly silly provisions."

[Paul A. Rettberg](#) of Querrey & Harrow Ltd. argued the case on behalf of the village. He could not be reached for comment.