IN THE
SUPREME COURT OF INDIANA

NO. 18S-PL-00333

JEANA M. HORNER, et al., *Appellants (Plaintiffs below)*, v. TERRY R. CURRY, in his official capacity as Marion County Prosecuting Attorney, et al., *Appellees (Defendants below).*	)	Appeal from the Marion Superior Court Trial Court Case No. 49D06-1602-PL-004804 The Honorable Thomas J. Carroll, Judge.

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STATEMENT OF THE ISSUE

Article 8, Section 2 of the Indiana Constitution provides that "all forfeitures which may accrue" must be paid to the State's common school fund. Indiana's Civil Forfeiture Statute provides that revenue from forfeiture cases may instead be diverted to "reimburse[]" or "offset" law-enforcement expenses. *See* Ind. Code §§ 34-24-1-3(a), 4(d) (2017); Ind. Acts 2018, P.L. 47 (S.E.A. 99), § 3. The question presented is whether the Civil Forfeiture Statute violates Article 8, Section 2 by directing forfeiture revenue away from the common school fund.

STATEMENT OF THE CASE

This lawsuit—brought on behalf of three Indiana couples (Taxpayers) against law-enforcement officials in Marion County (government)—asserts that the Civil Forfeiture Statute violates the plain terms of Article 8, Section 2. That provision mandates that "all forfeitures which may accrue" go to the State's common school fund. Because "all forfeitures" means "all forfeitures," the Taxpayers contend, the Civil Forfeiture Statute cannot constitutionally direct forfeiture revenue away from the school fund.

On cross-motions for summary judgment, the trial court entered judgment against the Taxpayers, ruling that Article 8 does not apply to the Civil Forfeiture Statute. Appellants' App. Vol. II pp. 31-33. The court reasoned that "civil forfeitures . . . were unknown in 1851 when Article 8, Section 2, was added to the Indiana Constitution." *Id.*, Vol. II p. 32. Thus, the court concluded, Article 8's reference to "all forfeitures" places no constraint on how civil-forfeiture revenue may be used.

The Taxpayers timely noticed their appeal, *id.*, Vol. II pp. 164-78, and this Court granted immediate transfer under Rule 56(A), *id.*, Vol. II p. 179.

STATEMENT OF FACTS

A. Article 8 and the common school fund

When Indiana overhauled its Constitution in 1851, the convention's "leading achievement was an education article that mandated a 'general and uniform system of Common Schools, wherein tuition shall be without charge, and equally open to all.'" *Serrano v. State*, 946 N.E.2d 1139, 1142 (Ind. 2011) (quoting Ind. Const. art. 8, § 1). At the heart of the financing scheme for this objective was the common school fund, a "perpetual" depository for "the support of Common Schools, and . . . no other purpose whatever." Ind. Const. art. 8, § 3. Over the last 165 years, the school fund has changed with the State's public-education system. In the early 1900s, for example, the fund's interest financed teachers' wages. Fletcher Harper Swift, *A History of Public Permanent Common School Funds in the United States, 1795-1905*, 266 (1911), *available at* https://tinyurl.com/y8megdse. Today, it finances loans for educational-technology programs, school construction, charter-school operations, and school security. *See* I.C. § 20-49-3-8.

Article 8, Section 2 of the Constitution establishes the revenue sources that are committed to the school fund. Among these sources is "all forfeitures which may accrue."

B. The Civil Forfeiture Statute

Since 1984, however, Indiana's Civil Forfeiture Statute has provided that civil-forfeiture revenue should go, not to the school fund, but to law-enforcement agencies. Ind. Acts 1984, P.L. 173, §§ 4 & 8. Civil forfeiture, as this Court recently explained, "is a device, a legal fiction, authorizing legal action against inanimate objects for participation in alleged criminal activity, regardless of whether the property owner is proven guilty of a crime—or even charged with a crime." *Serrano*, 946 N.E.2d at 1140. Put differently, the Civil Forfeiture Statute lets the State

obtain legal title to property if it shows (by a preponderance of the evidence) a link between the property and a crime. I.C. §§ 34-24-1-1, -4(a).

If the State makes that showing, the property (or proceeds from the sale of the property) is used for "reimbursement of law enforcement costs." *Id.* § 34-24-1-3(a) (2017) (amended by Ind. Acts 2018, P.L. 47 (S.E.A. 99)). All the money is first "deposited in the general fund of the state, or the unit that employed the law enforcement officers that seized the property." *Id.* § 34-24-1-4(d)(2)(C)(i) (2017). And only the amount exceeding "law enforcement costs" is then "forfeited and transferred to the treasurer of state for deposit in the common school fund." *Id.* § 34-24-1-4(d)(2)(D) (2017). The remainder stays "in the general fund of the state, or the unit that employed the law enforcement officers that seized the property." *See id.* § 34-24-1-4(d)(2)(C)(i) (2017).[1]

Currently, the Civil Forfeiture Statute defines reimbursable "law enforcement costs" in case-specific terms. (As detailed at pages 14-15, below, this case-specific standard will be replaced effective July 1, 2018, with a percentage formula.) A prosecutor can be reimbursed only for "expenses of the prosecuting attorney associated with the costs of proceedings associated with the seizure and the offenses related to the seizure." *Id.* § 34-6-2-73(3). And a police department can be reimbursed for "expenses incurred by the law enforcement agency that makes a seizure . . . for the criminal investigation associated with the seizure." *Id.* § 34-6-2-73(1). Thus, in this Court's words, the statute allows for "limited diversion" of revenue from the school fund, to reimburse "actual expenses on a case-by-case basis." *Serrano*, 946 N.E.2d at 1142 n.3. The Court has further remarked that "[w]hether this limited diversion . . . is

[1] "Unit" means "county, municipality, or township," I.C. §§ 34-6-2-145, 36-1-2-23, but forfeiture revenue in Marion County and elsewhere goes not to municipal general funds, but to police- and prosecutor-specific accounts, *see, e.g.*, Appellants' App. Vol. II pp. 54-55.

consonant with the constitutional command that 'all forfeitures' be deposited in the Common School Fund is an unresolved question." *Id.*

C. Civil forfeiture in Marion County

Given an inch, police and prosecutors in Marion County have taken a mile. While many other counties in Indiana have reimbursed law-enforcement costs on case-by-case bases, the Marion County Prosecutor's Office (Prosecutor's Office) and the Indianapolis Metropolitan Police Department (IMPD) have demanded—in every case—that courts award 30 percent of forfeiture revenue to the Prosecutor's Office and the remaining 70 percent to the IMPD. Appellants' App. Vol. II pp. 55-56. The resulting awards have been substantial. Between 2003 and 2017, more than 9,500 forfeiture cases were filed in Marion County alone, with more than $17.5 million in revenue going to law enforcement. *See id.*, Vol. II p. 71. At the same time, not a penny of civil-forfeiture revenue has gone to the school fund within Marion County's institutional memory. *See, e.g.*, *id.*, Vol. II pp. 45, 47.

As the Prosecutor's Office has acknowledged, this Court "in *Serrano* indicated displeasure" with these practices. *Id.*, Vol. II p. 121. Even so, the Prosecutor's Office has urged government lawyers statewide to "stay the course and be prepared to lobby for or against any proposed legislation." *Id.*, Vol. II p. 122.

D. Procedural history and the 2018 amendment to the Civil Forfeiture Statute

In early 2016, the Taxpayers filed this lawsuit against police and prosecutors in Marion County, challenging the Civil Forfeiture Statute's revenue-distribution provisions as invalid under Article 8. Shortly before the hearing on the parties' summary-judgment motions, the General Assembly amended the statute in a way that magnifies the constitutional violation. Like the current version of the statute, the amended version—which goes into effect July 1, 2018—

explicitly authorizes the diversion of forfeiture revenue from the school fund. But unlike the current version, the amended statute no longer authorizes "limited diversion" of revenue. *Serrano*, 946 N.E.2d at 1142 n.3. Instead, it establishes a blanket formula under which 90 percent of forfeiture revenue will be diverted in every case statewide. Ind. Acts 2018, P.L. 47 (S.E.A. 99), § 3. (The percentage of money diverted from the school fund will be even higher for counties that outsource forfeiture prosecutions to private lawyers. *See id.* §§ 3 & 5.) Under the amendment, for example, the Marion County Prosecutor's Office will claim 33.33 percent of forfeiture revenue in every case. *Id.* § 3 (codified at I.C. § 34-24-1-4(d)(3)(B) (2018)) (providing that one-third of forfeiture revenue will go to prosecutor). The IMPD will claim 56.67 percent. *Id.* (codified at I.C. § 34-24-1-4(d)(3)(C)(ii) (2018)) (providing that 85 percent of the remaining two-thirds, or 56.67 percent, will go to local government). Only the remaining 10 percent will go to the common school fund. *Id.*

The Taxpayers alerted the trial court to this statutory amendment and noted that it "only compounds the constitutional violation" at issue in this case. Appellants' App. Vol. II p. 153. The Taxpayers also sought leave to supplement or amend their complaint to include allegations about the amended law. *Id.*, Vol. II pp. 159-63. The trial court denied that motion, *id.*, Vol. II pp. 35-37, but the reasoning of its final judgment applies equally to both versions of the Civil Forfeiture Statute. Because "civil forfeitures . . . were unknown in 1851 when Article 8, Section 2, was added to the Indiana Constitution," the court reasoned, Article 8 places no constraint whatever on how civil-forfeiture revenue may be used. *See id.*, Vol. II p. 32. Under the trial court's view of Article 8, the General Assembly can divert forfeiture revenue from the school fund on a case-by-case basis or on whatever other basis it might choose.

SUMMARY OF ARGUMENT

Article 8 could not be clearer that "all forfeitures which may accrue" must go to the State's common school fund. Yet since the year 2000, over $17 million has been civilly forfeited in Marion County alone and not a penny of that revenue has gone to the school fund. Since 1984, the Civil Forfeiture Statute has unconstitutionally diverted civil-forfeiture revenue from the school fund to "reimburse[]" case-specific law-enforcement costs. Beginning July 1, 2018, the Civil Forfeiture Statute will now go a step further: It will replace the existing, case-specific arrangement with a formula that will parcel out a *minimum* of 90 percent of forfeiture revenue to police, prosecutors, and private lawyers. Both versions of the Civil Forfeiture Statute violate the Indiana Constitution based on a straightforward application of Article 8: "[A]ll forfeitures"—not *some* forfeitures, not *10 percent* of forfeitures, and certainly not *no* forfeitures—belong to the common school fund.

In the proceedings below, the government (the IMPD and the Marion County Prosecutor's Office) attempted to justify the Civil Forfeiture Statute in two different ways. First, they suggested that Article 8 does not apply to the Civil Forfeiture Statute at all. The trial court accepted that argument, but it breaks not only with this Court's precedent, but also with basic interpretive principles and persuasive authority from over a half-dozen other States. "[A]ll forfeitures" means "all forfeitures," and—in 1851 no less than today—that language includes civil *in rem* forfeitures like those under the Civil Forfeiture Statute.

The government's second line of defense is equally without merit. Even if Article 8 applies to the Civil Forfeiture Statute, the government argued below, the General Assembly can sidestep Article 8 simply by avoiding the word "forfeiture." In line with that argument, the Civil Forfeiture Statute currently authorizes the diversion of forfeiture revenue under the label

"reimbursement of law enforcement costs." Ind. Code §§ 34-24-1-3, -4(d) (2017). And the amended version favors words like "money" or "proceeds," rather than "forfeitures." These are precisely the type of "legislative contrivance[s]" that Article 8 was meant to prevent. *See Howard Cty. v. State ex rel. Michener*, 120 Ind. 282, 22 N.E. 255, 256 (1889). Whatever labels the Civil Forfeiture Statute might use, property the government acquires because of its link with a crime is a "forfeiture" under Article 8. "[A]ll" such forfeitures belong to the school fund. For that reason, the Court should hold that the Civil Forfeiture Statute violates the plain text of Article 8 and should reverse the judgment below.

STANDARD OF REVIEW

In a constitutional challenge to a statute, this Court reviews the trial court's judgment de novo. *See Morgan v. State*, 22 N.E.3d 570, 573 (Ind. 2014).

ARGUMENT

The Civil Forfeiture Statute violates Article 8 of the Indiana Constitution by diverting forfeiture revenue from the common school fund.

This case begins and ends with a straightforward application of the Constitution's text. Under Article 8, Section 2, "all forfeitures which may accrue" must go to the State's common school fund. The Civil Forfeiture Statute directs forfeiture revenue away from the school fund (to "reimburse[]" or "offset" law-enforcement expenses). That violates the Constitution. Article 8 applies to the Civil Forfeiture Statute (Section A, below). And as a result, the Civil Forfeiture Statute cannot divert civil-forfeiture revenue from the school fund (Section B, below).

A. Article 8 applies to the Civil Forfeiture Statute.

As an initial matter, Article 8 applies to the Civil Forfeiture Statute, and the trial court was wrong to hold otherwise. In fact, the only time it has addressed the question, this Court remarked that "Indiana's system for civil forfeitures proceeds under at least two constitutional

provisions," one of which is Article 8. *Serrano v. State*, 946 N.E.2d 1139, 1141 (Ind. 2011). Article 8, the Court observed, is "[t]he leading constitutional provision governing forfeiture." *Id.*

Even so, the trial court reached the opposite conclusion, reasoning that "civil forfeitures . . . were unknown in 1851 when Article 8, Section 2, was added to the Indiana Constitution." Appellants' App. Vol. II p. 32. That is incorrect. In 1851—like today—the word "forfeiture" was commonly understood to encompass civil forfeitures. This Court's precedent bears out that plain-text understanding, as do historical sources and authority from over a half-dozen other States with similar constitutional provisions.

1. At the time of ratification, the word "forfeitures" was commonly understood to include civil in rem *forfeitures.*

"[T]he first line of inquiry in any constitutional case is the text of the constitution itself." *Sanchez v. State*, 749 N.E.2d 509, 514 (Ind. 2001). Here, the textual analysis is simple: Article 8 covers "all forfeitures," a phrase that was understood in 1851 to include forcible transfers of property like those under the Civil Forfeiture Statute. Far from a novelty, "[c]ivil forfeiture traces to ancient Roman and medieval English law." *Serrano*, 946 N.E.2d at 1141. And "[s]ince the earliest years of this Nation, Congress has authorized the Government to seek parallel *in rem* civil forfeiture actions and criminal prosecutions based upon the same underlying events." *C.R.M. v. State*, 799 N.E.2d 555, 558 (Ind. Ct. App. 2003) (quoting *United States v. Ursery*, 518 U.S. 267, 274 (1996)). Contrary to the trial court's view, therefore, Article 8's reference to "forfeitures" would have been understood in 1851 to cover the civil, *in rem* precursors to the Civil Forfeiture Statute.

In fact, contemporary sources show that civil forfeitures were well known in the mid-Nineteenth Century—and were described using the word "forfeitures." For example:

- In 1877, the U.S. Supreme Court affirmed forfeiture of a distillery, noting that "the remedy of forfeiture claimed is plainly one of a civil nature; as the conviction of the wrong-doer must be obtained, if at all, in another and wholly independent proceeding." *Dobbins's Distillery v. United States*, 96 U.S. 395, 399.
- In 1865, the federal district court in Indiana adjudicated a "proceeding in rem, for the forfeiture of 'all the boilers, stills, and other vessels used in the distillation of spirits,' and twelve barrels of distilled spirits." *United States v. One Distillery*, 27 F. Cas. 259, 259-60.
- In 1853, the Supreme Court of Iowa acknowledged that "[u]nder our federal, as well as under state constitutions, it is not uncommon to pass laws declaring articles to be forfeited, when they are used for illegal or criminal purposes." *Our House No. 2 v. State*, 4 Greene 172, 174.
- In 1827, Justice Story noted that "[m]any cases exist, where the forfeiture for acts done attaches solely *in rem*, and there is no accompanying penalty *in personam*." *The Palmyra*, 25 U.S. 1, 14.
- In 1818, Chief Justice Marshall upheld forfeiture of a vessel, remarking that "this is not a proceeding against the owner; it is a proceeding against the vessel, for an offence committed by the vessel, which is not less an offence, and does not the less subject her to forfeiture, because it was committed without the authority, and against the will of the owner." *The Little Charles*, 26 F. Cas. 979, 982 (C.C.D. Va.).
- Earlier still, in 1766, the Exchequer Division in England upheld a "forfeiture" of property, reasoning that the action was not "a proceeding in personam, but in rem,

for the condemnation of the ship as forfeited." *Mitchell v. Torup*, 145 Eng. Rep. 764, 767 (Ex.).

Contemporary treatises drive home the point. The same year the Indiana Constitution was ratified, for instance, John Bouvier (author of the first American law dictionary) wrote that "forfeitures often take place" and singled out civil revenue statutes as "furnish[ing] abundant examples." 2 John Bouvier, *Institutes of American Law* 147 (1851), *available at* https://tinyurl.com/y8qmjver; *see also* Noah Webster, *An American Dictionary of the English Language* 422 (Harper & Bros., 1852) (defining the verb "forfeit" to include "[t]o lose or render confiscable by some fault, offense, or crime . . . "), *available at* https://tinyurl.com/y8ed4pkv. Tellingly, even the Prosecutor's Office describes "forfeiture" as "an *in rem*, traditionally civil action." Appellants' App. Vol. II p. 135. In short, the trial court was wrong to conclude that the phrase "all forfeitures which may accrue" does not include civil forfeitures.

2. Applying Article 8 to the Civil Forfeiture Statute comports with this Court's precedent.

Reading "all forfeitures" to govern the Civil Forfeiture Statute is also consistent with this Court's precedent. *See Nagy ex rel. Nagy v. Evansville-Vanderburgh Sch. Corp.*, 844 N.E.2d 481, 484 (Ind. 2006) (noting that the courts "examine . . . case law interpreting the specific provisions"). In *Serrano*, of course, this Court assumed (correctly) that Article 8 applies to the Civil Forfeiture Statute. *See* 946 N.E.2d at 1141-42. That conclusion accords with older precedent as well. In 1882, for example, this Court made clear that "[a] forfeiture may be generally defined to be the loss of what belongs to a person in consequence of some fault, misconduct or transgression of law." *State ex rel. Baldwin v. Bd. of Comm'rs*, 85 Ind. 489, 493 (*Baldwin I*). And as "used in the Constitution," the word "forfeitures" likewise "means the loss

of a certain sum of money as the consequence of violating the provisions of some statute, or of the refusal to comply with some requirement of law." *Id.*

The Civil Forfeiture Statute fits perfectly with the reading of "forfeiture" set forth in *Baldwin I*. That is because the statute applies *only* "as the consequence of violating the provisions of some statute, or of the refusal to comply with some requirement of law." *See id.* On the statute's face, the State can acquire property only if it proves the property "was used to commit one of the enumerated offenses under the statute." *Serrano*, 946 N.E.2d at 1143; *see also* I.C. tit. 34, art. 24, ch. 1, title ("Forfeiture of Property Used in Violation of Certain Criminal Statutes"); I.C. § 34-24-1-1(a) (listing predicate crimes). And property owners can recover their belongings only if they prove their innocence of the underlying crime. I.C. § 34-24-1-5(a). Under the Civil Forfeiture Statute, therefore, forfeitures follow directly "in consequence of some fault, misconduct or transgression of law." *See Baldwin I*, 85 Ind. at 493. This falls squarely within the meaning of "forfeitures" as that word was understood in 1851 and as it is understood today.

The three cases cited in the trial court's decision do not counsel differently; in fact, not one of those decisions addressed anything resembling the Civil Forfeiture Statute. *See* Appellants' App. Vol. II p. 32. In *Judy v. Thompson*, for example, this Court determined that Article 8 does not apply to statutory penalties awarded from one private party to another. 156 Ind. 533, 60 N.E. 270, 271 (1901). But unlike the private remedy at issue in *Judy*, the Civil Forfeiture Statute imposes public sanctions that accrue to the government alone. As discussed, these "criminal-like penalties" (*see Hughley v. State*, 15 N.E.3d 1000, 1005 (Ind. 2014)) are quintessential forfeitures within the meaning of Article 8.

The other two decisions on which the trial court relied also do not support that court's interpretation of "all forfeitures." Appellants' App. Vol. II p. 32 (citing *Burgh v. State ex rel. McCormick*, 108 Ind. 132, 9 N.E. 75 (1886); *State v. Ind. & I.S.R. Co.*, 133 Ind. 69, 32 N.E. 817 (1892)). Rather, they gave meaning to an entirely different clause in Article 8. Among the other revenue sources Article 8 assigns to the school fund are "fines assessed for breaches of the penal laws of the State." Ind. Const. art. 8, § 2. Given that clause's reference to "breaches of the penal laws of the State," this Court in *Burgh v. State ex rel. McCormick* read the clause to cover "fines assessed in criminal prosecutions" but not monetary penalties for civil infractions. 9 N.E. at 76. *Burgh* did not suggest, however, that Article 8's forfeitures clause, at issue here, has the same meaning as the fines clause. Nor did the Court even mention the forfeitures clause.

Still, the government argued below that *Burgh*'s reading of the fines clause must needs apply to the forfeitures clause too. The government contended—and the trial court appeared to accept—that when Article 8 uses the term "all forfeitures," it means "forfeitures in criminal proceedings and not otherwise." Appellants' App. Vol. II p. 143. But *Burgh* does not support that atextual reading. (Nor does the final decision the trial court cited, *State v. Indiana & I.S.R. Co.*, which simply applied *Burgh* to a "very similar" civil infraction. 32 N.E. at 820.[2]) Even if *Burgh* offers a reasonable construction of the fines clause, it says nothing about the meaning of the forfeitures clause. Unlike the fines clause, the forfeitures clause is not confined to forfeitures "assessed for breaches of the penal laws of the State"; it applies to "all forfeitures." That

[2] In applying *Burgh*, the Court in *Indiana & I.S.R. Co.* quoted both the fines clause and the forfeitures clause. The Court did not suggest, however, that it intended to export *Burgh*'s construction of the fines clause to the forfeitures clause or that the two clauses were interchangeable. That makes sense, because treating the two clauses as one and the same would violate "[o]ne of the fundamental rules of constitutional construction," namely that "no word shall be assumed to be mere surplusage." *Hendricks v. State ex rel. Nw. Ind. Crime Comm'n, Inc.*, 245 Ind. 43, 196 N.E.2d 66, 70 (1964).

difference signals that the framers intended "all forfeitures" to mean exactly what it says, with no distinction between forfeitures in criminal court versus civil court.

In fact, that distinction would have mystified the framers. As the Nation's "foremost law writer of the age" commented in 1856, "sometimes the object of . . . these forfeitures, is the same as sustains our civil jurisprudence, and sometimes it is the same which enters into the foundation of our criminal law." 1 Joel Prentiss Bishop, *Commentaries on the Criminal Law* § 698, at 575 (1856), *available at* https://tinyurl.com/ycblmobe; *see also* Stephen A. Siegel, *Joel Bishop's Orthodoxy*, 13 L. & Hist. Rev. 215, 215 (1995). "But whether it is the one or the other," he wrote, "the forfeiture proceeds on a principle of its own, identical in both cases, and allied, particularly, neither to the criminal nor to the civil department." Bishop, at 575.

The Civil Forfeiture Statute illustrates the point. Unlike the pecuniary penalties at issue in *Burgh* and *Indiana & I.S.R. Co.*, the Civil Forfeiture Statute is predicated on criminal-law violations and has "significant criminal and punitive characteristics." *Hughley*, 15 N.E.3d at 1004; *cf. Reorganized Sch. Dist. No. 7 v. Douthit*, 799 S.W.2d 591, 594 (Mo. 1990) (construing Missouri Constitution and reasoning, "[i]t matters not that the forfeiture must be entered in a civil action, or that forfeiture may be decreed against a person who has not been convicted"). In this way, the Civil Forfeiture Statute resembles the Nineteenth Century forfeitures this Court described in *Baldwin I*, and those forfeitures would have been familiar to Article 8's drafters and ratifiers alike. Neither the trial court's order nor the precedent it cites casts any doubt on this natural reading of Article 8.

3. Authority from other States confirms that "forfeitures" includes civil in rem *forfeitures.*

The Taxpayers' reading of Article 8 finds additional support in the constitutional provisions of other States, which this Court "may look to . . . as persuasive authority." *Hoagland*

v. Franklin Twp. Cmty. Sch. Corp., 27 N.E.3d 737, 741 (Ind. 2015). Of 11 other States whose charters have assigned "forfeitures" to education, every court or agency to consider the issue has agreed that the word "forfeitures" includes civil forfeitures:

Missouri. Since 1865, Missouri's constitution has dedicated "forfeitures" to educational purposes. *See* Mo. Const. art. IX, § 7 ("[T]he clear proceeds of all . . . forfeitures . . . collected hereafter for any breach of the penal laws of the state . . . ."); Mo. 1865 Const. art. IX, § 5 ("[T]he net proceeds . . . from . . . forfeitures . . . ."). The Missouri Supreme Court has held that the provision applies to Missouri's civil-forfeiture law. *Reorganized Sch. Dist. No. 7*, 799 S.W.2d at 594.

Nebraska. Since 1875, Nebraska's constitution has assigned to the State's common school fund "[t]he net proceeds of lands and other property and effects that may come to this state, by . . . forfeiture." Neb. Const. art. VII, § 7; Neb. 1875 Const. art. VIII, § 3. The Nebraska Attorney General's Office concluded that this provision (and one relating to "fine[s]" and "penalt[ies]," Neb. Const. art. VII, § 5) applies to Nebraska's civil-forfeiture law. Neb. Att'y Gen. Op. No. 181, 1982 WL 156754, at *2 (1982). The Nebraska Constitution was subsequently amended to authorize law enforcement to retain "[f]ifty per cent of all money forfeited or seized pursuant to enforcement of the drug laws." Neb. Const. art. VII, § 5(2); *see generally* Neb. Att'y Gen. Op. No. 87098, 1987 WL 248493, at *1 (1987).

New Mexico. Since 1911, New Mexico's constitution has dedicated "forfeitures" to the State's school fund. N.M. Const. art. XII, § 4 ("All forfeitures, unless otherwise provided by law . . . ."); *see also* N.M. 1911 Const. art. XII, § 4 ("All fines and forfeitures collected under general laws . . . ."). The New Mexico Attorney General's Office concluded that this provision applied to the State's civil-forfeiture law. N.M. Att'y Gen. Op. No. 87-20, 1987 WL 270320, at

*1-2 (1987); *see generally* Dick M. Carpenter et al., *Policing for Profit: The Abuse of Civil Asset Forfeiture* 108 (2d ed. 2015) (noting that New Mexico abolished civil forfeiture in 2015).

North Carolina. Since 1868, North Carolina's constitution has dedicated "forfeitures" to the county school fund. N.C. Const. art. IX, § 7 ("[T]he clear proceeds of all . . . forfeitures . . . ."); *see also* N.C. 1868 Const. art. IX, § 4 ("[T]he net proceeds that may accrue to the State from . . . forfeitures . . . ."). The North Carolina Supreme Court has held that the provision applies to the State's civil-forfeiture law. *State ex rel. Thornburg v. 532 B St.*, 432 S.E.2d 684, 687 (N.C. 1993).

Oregon. Between 1857 and 1989, Oregon's constitution dedicated "forfeitures" to the State's school fund. Or. 1857 Const. art. VIII, § 2 ("[C]lear proceeds of all property which may accrue to the state by . . . forfeiture . . . ."); *see generally* Walter J. Van Eck, *The New Oregon Civil Forfeiture Law*, 26 Willamette L. Rev. 449, 460-61 (1990). The Oregon Attorney General's Office concluded that the provision applied to various civil-forfeiture laws. *See* 44 Or. Op. Att'y Gen. OP-5905, 1985 WL 200052, at *1-2 (1985).

Utah. Between 1896 and the late Twentieth Century, Utah's constitution dedicated to the state school fund "the proceeds of all property that may accrue to the State by . . . forfeiture." Utah 1896 Const. art. X, § 3. The Utah Attorney General's Office concluded that the provision applied to the State's civil-forfeiture law. Utah Att'y Gen. Op. No. 82-67, 1982 WL 176527, at *1, 4 (1982).

Virginia. Since 1870, Virginia's constitution has dedicated to the state literary fund "the proceeds . . . of all property accruing to the Commonwealth by forfeiture." Va. Const. art. VIII, § 8; *see also* Va. 1870 Const. art. VIII, § 7 ("The proceeds . . . of all property accruing to the State by forfeiture . . . ."). The Virginia Attorney General's Office has concluded that the

provision applies to the State's civil-forfeiture law. 1980-81 Va. Op. Att'y Gen. 151, 1981 WL 141055 (1981). As amended, moreover, Article VIII, Section 8 contemplates that the reference to "forfeiture" covers drug-related civil forfeitures. *See* Va. Const. art. VIII, § 8 ("The General Assembly may provide by general law an exemption from this section for the proceeds from the sale of all property seized and forfeited to the Commonwealth for a violation of the criminal laws of this Commonwealth proscribing the manufacture, sale or distribution of a controlled substance or marijuana.").

Wisconsin. Since 1848, Wisconsin's constitution has dedicated to the state school fund "all moneys and the clear proceeds of all property that may accrue to the state by forfeiture." Wis. Const. art. X, § 2; *see also* Wis. 1848 Const. art. X, § 2 ("[A]ll monies, and the clear proceeds of all property that may accrue to the state by forfeiture . . . ."). The Wisconsin Attorney General's Office has acknowledged that the provision applies to the State's civil-forfeiture law. *See* Wis. Att'y Gen. Op. OAG 48-87, 1987 WL 341131, at *1 (1987).[3]

Many of the provisions described above were enacted during the same period in which the framers in Indiana developed Article 8. They reflect the consensus view that "all forfeitures" was—and is—understood to encompass the loss of property to the government based on the property's link to a crime. There is no basis for reading Article 8 differently.

B. Under Article 8, the Civil Forfeiture Statute cannot constitutionally direct revenue away from the school fund to reimburse other government agencies.

Just as the plain text "all forfeitures" makes clear that Article 8 governs the Civil Forfeiture Statute, the natural meaning of those words also makes clear that the statute cannot

[3] Then-Chief Justice Ketchum, of the Supreme Court of Appeals of West Virginia, has written separately to advance a similar reading of the West Virginia Constitution. *See Dean v. State*, 736 S.E.2d 40, 52 (W. Va. 2012) (Ketchum, C.J., concurring). The Washington and Wyoming constitutions also reference "forfeitures" in the context of school financing, but the relevant clauses do not appear to have been construed by any court or agency in those States. *See* Wash. Const. art. IX, § 3; Wyo. Const. art. 7, § 2.

divert *any* forfeiture money from the common school fund. "[A]ll forfeitures which may accrue" belong to the school fund. Yet under the Civil Forfeiture Statute, police and prosecutors divert forfeiture revenue every day to "reimburse[]" their costs. *See* I.C. §§ 34-6-2-73, 34-24-1-4(d) (2017). And three days from now, on July 1, law enforcement statewide will begin doing so as a matter of course. That violates Article 8. The Constitution's text, structure, and history show that "all" forfeiture revenue must go to the school fund—without exception. The Civil Forfeiture Statute cannot override that constitutional command. Nor can it circumvent Article 8 by the "legislative contrivance" of labeling civil-forfeiture revenue *reimbursement* rather than *forfeitures*. *See Howard Cty. v. State ex rel. Michener*, 120 Ind. 282, 22 N.E. 255, 256 (1889).

1. The plain text of Article 8 does not permit government agencies to reimburse themselves with civil-forfeiture revenue.

No fewer than three separate constitutional provisions confirm that the General Assembly cannot divert forfeiture revenue from the common school fund. Under Article 8, "[t]he principal of the Common School fund shall remain a perpetual fund, which may be increased, but shall never be diminished." Ind. Const. art. 8, § 3. Its income "shall be inviolably appropriated to the support of Common Schools, and to no other purpose whatever." *Id.* The fund "shall remain inviolate, and be faithfully and exclusively applied to the purposes for which the trust was created." *Id.* art. 8, § 7. And the school fund's revenue sources include "all forfeitures which may accrue." *Id.* art. 8, § 2.

The framers' intent could not be clearer: "All" forfeitures—not "some" forfeitures or "ten percent of" forfeitures—belong to the school fund. That plain text controls the outcome of this case. "The language of each provision of the Constitution must be treated with particular deference, as though every word had been hammered into place." *Meredith v. Pence*, 984 N.E.2d 1213, 1218 (Ind. 2013) (citation omitted). Here, "[t]he meaning of the word 'all' is clear

and easily understood." *Citizens' Tr. & Sav. Bank of South Bend v. Fletcher Am. Co.*, 207 Ind. 328, 190 N.E. 868, 869 (1934). "The word 'all' must be construed as meaning all, without exception or reservation." *Id.* at 870. Property forfeited under the Civil Forfeiture Statute qualifies as "forfeitures," and "all" such forfeitures belong to the common school fund. And as this Court has "always" held, "the fund must be devoted to the support of the common schools, without the diversion from it of a penny for any other purpose whatever." *State ex rel. Michener*, 22 N.E. at 255; *see also id.* ("These provisions have little need of judicial interpretation, for they are very clear . . . .").

By authorizing forfeiture revenue to go elsewhere, the Civil Forfeiture Statute breaks with Article 8's mandate. In fact, the Court has been down this road before, in *Board of Commissioners v. State ex rel. Baldwin*, 116 Ind. 329, 19 N.E. 173 (1888) (*Baldwin II*). In that case, Bartholomew County sued to recover outstanding moneys owed to its portion of the congressional township fund, another revenue source listed in Article 8, Section 2. *See generally State v. Springfield Twp.*, 6 Ind. 83 (1854) (detailing history of congressional township fund). To bring its suit, the county hired attorneys, who pocketed $2,000 out of the recovered money as "a reasonable fee and compensation." *Baldwin II*, 19 N.E. at 176. The Attorney General, in turn, sued the county, claiming that the $2,000 paid in attorneys' fees "were income from a part of the principal of the common-school fund, which was a 'perpetual fund,' and were 'inviolably appropriated to the support of common schools, and to no other purpose whatever.'" *Id.* at 177.

This Court ruled unanimously for the Attorney General. Even though Bartholomew County was legally required to recover the fund proceeds, the Court reasoned, the county "had no power, directly or indirectly, to divert any part of such income from the use and support of such schools to the payment of the fees of its attorneys." *Id.* at 179. The congressional township

fund "was inviolably appropriated to the use of schools," and "it could not be diverted lawfully from such use to the payment of attorney's fees." *Id.* at 178. Going further, the Court underscored that even the Attorney General himself could not recover fees from the proceeds. "No part of such amount," the Court maintained, "can be applied lawfully to the payment of fees and commissions to the attorney general, or to his associate counsel, but the whole amount is inviolably appropriated, and must be applied, under our constitution and laws, to the use of schools for the inhabitants of said congressional township 8." *Id.* at 179; *see also State ex rel. Bd. of Comm'rs v. Stuart*, 46 Ind. App. 611, 91 N.E. 613, 615 (1910) (noting that counties "are required . . . to bear the expense of managing and recovering any school funds diverted from the proper channels").

This case is similar. Article 8 commits "all forfeitures which may accrue" to the common school fund, and, as in *Baldwin II*, that revenue is "inviolably appropriated to the use of schools." *See* 19 N.E. at 178. As in *Baldwin II*, that revenue is being diverted away from the school fund for the benefit of executive-branch actors, the police and prosecutors responsible for seizing and forfeiting property. As in *Baldwin II*, that diversion violates Article 8. Worse still, the statutory amendment going into effect July 1 will explicitly authorize payment of forfeiture revenue to private lawyers—precisely the type of arrangement the Court in *Baldwin II* disavowed. *See id.* at 178-79.

At base, the current version of the Civil Forfeiture Statute violates the plain text of Article 8, and the amended version only magnifies that constitutional flaw. Whether through executive action or through legislation, "no steps can rightfully be taken . . . which will directly or indirectly preclude the proper officers from securing all the money that belongs to the fund."

Michener, 22 N.E. at 255. By channeling forfeiture revenue away from the school fund, the Civil Forfeiture Statute produces just such an unconstitutional result.[4]

2. Article 8's structure confirms the plain-text interpretation.

The structure of Article 8, Section 2 reinforces the Civil Forfeiture Statute's unconstitutionality. "Constitutional provisions must be examined within the structure and purpose of the Constitution as a whole, and not in isolation." *State v. Monfort*, 723 N.E.2d 407, 411 (Ind. 2000). And here, Article 8, Section 2 shows that the framers knew how to authorize cost-recovery when they intended to do so. For example, Article 8, Section 2 elsewhere provides that "the proceeds of the sales of the Swamp Lands" also belong to the common school fund—but only "*after* deducting the expense of selecting and draining the same." (emphasis added). In that clause, the framers deliberately singled out for reimbursement those costs associated with swamp-land proceeds. Critically, however, there is no similar allowance for cost-reimbursement in the clause assigning to the school fund "all forfeitures which may accrue."

That structural difference between the two clauses indicates that the framers did not intend to allow law enforcement to deduct expenses associated with forfeitures. For "where the same term is present in certain portions of the same enactment, but not in other portions," that term presumptively applies only where included. *Brandmaier v. Metro. Dev. Comm'n of Marion*

[4] Constitutions with similar language have been construed similarly. The Michigan Supreme Court interpreted a provision dedicating "all fines" to the library fund as "plain[ly]" mandating that "[n]o deduction for expenses or otherwise can lawfully be made." *People ex rel. Detroit Bd. of Educ. v. Treasurer of Wayne Cty.*, 8 Mich. 392, 393 (1860). The Kansas Supreme Court interpreted a provision dedicating "the proceeds of fines" to the common schools to mean "*all* the proceeds, not merely the *clear* proceeds; not a portion thereof, but all." *Atchison, T. & S.F.R. Co. v. State ex rel. Sanders*, 22 Kan. 1, 14 (1879). The Nevada Supreme Court likewise construed "all fines" to preclude deducting a commission from money due to the schools. *Ex parte McMahon*, 66 P. 294, 294 (Nev. 1901) (per curiam); 2008 Nev. Op. Att'y Gen. No. 07, 2008 WL 6533026, at *2 n.2 (2008) ("100% of all such fines were pledged solely for educational purposes."). *But see S. Express Co. v. Commonwealth ex rel. Walker*, 22 S.E. 809, 810-11 (Va. 1895) (reasoning, in dicta, that theVirginia Constitution impliedly allowed for diversion of fines).

Cty., 714 N.E.2d 179, 180 (Ind. Ct. App. 1999), *trans. denied*; *accord Atchison, T. & S.F.R. Co. v. State ex rel. Sanders*, 22 Kan. 1, 14 (1879) ("While the constitution in one clause of said section 6 provides that only 'the *clear* proceeds of estrays' shall be devoted to schools, yet it, in the clause we are now considering, provides that 'the proceeds of fines' shall be so devoted."). That interpretive rule is especially compelling here, since Article 8 was the product of "much labor and painstaking, especially the clause which makes the fund to be derived from the sale of county seminaries and the fines assessed for breaches of the penal laws of the state, and all forfeitures that may accrue, a part of the principal of the common school fund." John I. Morrison, *A Fragment of the Inside History of the Constitutional Convention*, *in* 23 Ind. Sch. J. 435, 436 (Oct. 1878), *available at* https://tinyurl.com/y7q6px2h.

Simply put, if the framers had intended that the forfeitures clause authorize cost-reimbursement, they would have said so. For example, they could have replicated the swamp-lands clause, by providing that the school fund is entitled to "all forfeitures which may accrue, after deducting the expense of collecting the same." Or they could have assigned to the school fund only the "clear proceeds" or "net proceeds" of forfeitures. That approach would have been consistent with the drafting choices of constitutional conventions in no fewer than eight other States. Constitutional framers in Wisconsin (1848), Iowa and Oregon (1857), West Virginia (1863), Missouri (1865), North Carolina (1868), Nebraska (1875), and North Dakota (1889) all used either "clear" or "net" proceeds to signify that "some deductions from gross amounts collected shall be allowed." *Cauble v. City of Asheville*, 311 S.E.2d 889, 892 (N.C. Ct. App. 1984); *see also State ex rel. Comm'rs of Pub. Lands v. Anderson*, 203 N.W.2d 84 (Wis. 1973) ("Obviously, 'clear proceeds' should mean net proceeds and any deduction from the amount of

the fines should represent the actual or reasonably accurate estimate of the costs of the prosecution.").[5]

Indiana's framers took neither of these approaches. Instead, Article 8 could not be firmer that "all forfeitures which may accrue" belong to the common school fund. Just as the swamp-lands clause unambiguously allows for "deducting . . . expense[s]," the forfeitures clause unambiguously does not. The natural inference is that the framers intended that "all forfeitures"—without deductions—go to the school fund.

3. Article 8's history supports the plain-text interpretation.

The history of Article 8 confirms what is apparent from its text and structure: The Constitution's framers and ratifiers created a dedicated school fund to stop government actors from siphoning money from educational objectives. By authorizing law enforcement to "reimburse[]" themselves from forfeiture revenue, however, the Civil Forfeiture Statute enables precisely what Article 8 was meant to curtail. *See generally Paul Stieler Enters., Inc. v. City of Evansville*, 2 N.E.3d 1269, 1273 (Ind. 2014) ("We look to history 'to ascertain the old law, the mischief, and the remedy.'") (citation omitted).

Under Article 8, the common school fund is a "special" fund, "set apart to a specific purpose, and carefully guarded by constitutional limitations." *Michener*, 22 N.E. at 255. The lead-up to the 1851 Constitution gave ample reason for the constitutional delegates to draft Article 8 in such bright-line terms. Even then, state and local agencies had a history of funneling money away from educational objectives. Under Indiana's previous charter (the 1816

[5] *See also* Wis. 1848 Const. art. X, § 2 ("clear proceeds"); Iowa 1857 Const. art. IX-2d, § 4 ("clear proceeds"); Or. 1857 Const. art. VIII, § 2 ("clear proceeds"); W. Va. 1863 Const. art. X, § 2 ("net proceeds"); Mo. 1865 Const. art. IX, § 5 ("net proceeds"); N.C. 1868 Const. art. IX, § 4 ("net proceeds"); Neb. 1875 Const. art VIII, § 3 ("net proceeds"); N.D. 1889 Const. art. IX, § 154 ("net proceeds").

Constitution), moneys dedicated to schools "were loosely managed," "the law concerning fines was evaded or ignored," and "what might have been a source of wealth to the seminaries made, in fact, but insignificant contributions." Richard Gause Boone, *A History of Education in Indiana* 44, 47 (1892), *available at* https://tinyurl.com/y87tvhad. The 1851 convention served, in large part, to address these defects. By design, the new common school fund was to "remain inviolate, and be faithfully and exclusively applied to the purposes for which the trust was created." Ind. Const. art. 8, § 7.

Post-ratification history gave proof to the framers' wisdom. Almost since ratification, Indiana officials have balked at turning over court winnings. In 1872, the Superintendent of Public Instruction complained of "widespread belief and a deep-felt conviction among school officers and many others that the fines, forfeitures, and unclaimed witness fees . . . are not faithfully reported by justices of the peace and clerks of courts to the county commissioners." Boone, *supra*, at 208 (quoting *Report of Superintendent of Public Instruction* 33 (1872)). That same year, the Attorney General went so far as to circulate a letter to county commissioners, voicing exasperation that "seventeen years accumulation of fines, forfeitures, and unclaimed fees" should "have resulted in vast revenues for the use of the State and the Counties" but that the small sums paid into the school fund "will astound everybody." Letter from Attorney General Hanna to County Commissioners, March 30, 1872, *reprinted in* 18 Ind. Sch. J. 282, 283 (July 1872), *available at* https://tinyurl.com/y97ovvrz. "Such malfeasance, where so much is at stake," Attorney General Hanna cautioned, "should be promptly corrected to the fullest extent, in every county in the State." *Id.*

In large part because the Attorney General and county superintendents "kept their eyes on the county and township officers," annual revenue from fines and forfeitures nearly doubled

between 1868 and 1874. Ind. Dep't of Public Instruction, *Seventh Biennial Report of the State Superintendent of Public Instruction* 13 (1874), *available at* https://tinyurl.com/y7zpkbmc. Yet even the Attorney General's scrutiny was not a permanent fix. At the dawn of the Twentieth Century, school officials again found themselves echoing the complaints of their Nineteenth Century predecessors. "The losses and the leaks [from school-fund revenue] are startling in the aggregate," one local superintendent warned in 1907, with "[o]ne of the commonest losses result[ing] from a mishandling of fines and forfeitures." Lotus D. Coffman, *Neglected Means of Raising School Revenues for Public Schools*, 7 The Educator-Journal 317, 318 (Mar. 1907), *available at* https://tinyurl.com/y98qeu4o. In 1908, a report of the Superintendent of Public Instruction again stressed "[l]ax enforcement of law in regard to fines and forfeitures" as one of the main "reasons why the permanent fund is no larger." Ind. Dep't of Public Instruction, *Twenty-Fourth Biennial Report of the State Superintendent of Public Instruction* 722 (1908), *available at* https://tinyurl.com/yca7cn9a.

A century later, little has changed, except now the government is using a new tool to circumvent Article 8. The current Civil Forfeiture Statute, this Court has said, permits only "limited diversion, calculating actual expenses on a case-by-case basis." *Serrano*, 946 N.E.2d at 1142 n.3; I.C. § 34-6-2-73. Yet for years, law-enforcement agencies have used the statute as a blank check at the school fund's expense. When law enforcement first got a stake in civil forfeiture, in the 1980s, Marion County's prosecutors "were overwhelmed by the sheer volume of property seized by enthusiastic police officers." Appellants' App. Vol. II p. 39. In recent years, the IMPD has even set annual revenue goals for its forfeiture fund. Gedge Aff. Supp.

Mot. Summ. J., Ex. 10, at timestamp 37:06-37:15.[6] Police are instructed to seize property to gain "Money for your Department" and "Money for Your Unit/Equipment." Appellants' App. Vol. II p. 59. The end result in Marion County is that not a penny of civil-forfeiture revenue has gone to the school fund within the government's institutional memory. *See, e.g.*, *id.*, Vol. II p. 45, 47. And come July 1, the statutory amendment to the Civil Forfeiture Statute will ensure that no more than 10 percent of forfeiture revenue will go to the school fund from any county in the State. Ind. Acts 2018, P.L. 47, §§ 3 & 5. What one commentator describes as a "loophole" has thus evolved into a statewide rule. *See* Adam Crepelle, *Probable Cause to Plunder: Civil Asset Forfeiture and the Problems It Creates*, 7 Wake Forest J.L. & Pol'y 315, 333 (2017).

In this way, the Civil Forfeiture Statute undercuts the public rights enshrined in Article 8. At the same time, the statute distorts law-enforcement priorities by shifting focus to "bolster[ing] shrinking budgets." Appellants' App. Vol. II p. 52. With civil forfeiture serving as both punishment and revenue source, this "law enforcement Weapon[] of Mass Destruction" is deployed against increasingly "pedestrian targets." *See Sargent v. State*, 27 N.E.3d 729, 735 (Ind. 2015) (Massa, J., dissenting). In one case, the Prosecutor's Office sued to forfeit a teenager's car, which had been found with a "large quantity of Gatorade bottles and assorted snacks and candies" stolen from a playground concession stand. *See* Pls.' Mot. Summ. J., *State v. Jaynes*, No. 49D01-1111-MI-043642, 2012 WL 12974140 (Ind. Super. Ct., Marion Cty. filed May 23, 2012); *see also Sargent*, 27 N.E.3d at 731, 733 (dismissing forfeiture case based on failed attempt to shoplift iPhones). In other cases, the property owners are innocent of any wrongdoing whatever. *See, e.g.*, Appellants' App. Vol. II pp. 124-25 (affidavit of Jeana M. Horner); *see generally Leonard v. Texas*, 137 S. Ct. 847, 848 (2017) (Statement of Thomas, J.,

[6] This exhibit, an audiovisual recording of the July 18, 2012 hearing of the City-County Council's Public Safety and Criminal Justice Committee, is part of the trial-court clerk's record.

respecting the denial of certiorari) ("This system—where police can seize property with limited judicial oversight and retain it for their own use—has led to egregious and well-chronicled abuses."). Giving effect to the plain text of Article 8, Section 2 is thus necessary not only to vindicate the public's interest in the common school fund, but to curtail the government's incentive to use civil forfeiture as a revenue-raising tool.

4. The General Assembly cannot circumvent Article 8 simply by using words other than "forfeiture."

As against all this, the Prosecutor's Office and the IMPD argued below that the Civil Forfeiture Statute is valid because it diverts money under the label "reimbursement of law enforcement costs" rather than "forfeiture." *See* Appellants' App. Vol. II p. 147 ("Nothing was forfeited as the statute defines forfeited."). That argument is without merit. As discussed, the word "forfeitures" in Article 8 has a specific, ascertainable meaning. As commonly understood—in 1851 and today—the word covers losses of property to the government because of the property's connection with criminal acts. *See* pages 17-26, above. And whatever label the legislature might use, property awarded under the Civil Forfeiture Statute fits within that common understanding of "forfeiture." The text, structure, and history of Article 8 also confirm that "all" this property must go to the school fund. *See* pages 26-36, above.

That should be the end of the matter. Contrary to the government's view, the General Assembly cannot bypass the Constitution through artful drafting. "The money due the school fund cannot by any legislative contrivance be kept out of it, nor can any legislative scheme be framed that will conclude [i.e., prevent] the courts from ascertaining the facts." *State ex rel. Michener*, 22 N.E. at 255-56; *cf. United States v. La Franca*, 282 U.S. 568, 572 (1931) ("No mere exercise of the art of lexicography can alter the essential nature of an act or a thing."). Lawmakers may use whatever words they like in their statutes. But those drafting choices do not

insulate the laws from constitutional review. In *Burgh v. State ex rel. McCormick*, for example, this Court held that the statutory characterization of a sanction as a "fine" had no bearing on whether that sanction was a fine "in the sense in which that word is used in the . . . constitution." 9 N.E. at 76. Here too, the statutory label "reimbursement of law enforcement costs" does not control whether the property is a "forfeiture" as Article 8 uses that word. The same is true of the amended version of the Civil Forfeiture Statute, which diverts forfeiture revenue using words like "proceeds" or "money," to "offset expenses." Ind. Acts 2018, P.L. 47, §§ 3 & 5. *But see id.*, § 3 (directing money to prosecutor's "forfeiture fund"). The Constitution cannot be circumvented so easily. Article 8, Section 2 commits "all forfeitures which may accrue" to the common school fund, and the Civil Forfeiture Statute—both currently and as amended—violates that constitutional command.

CONCLUSION

The judgment of the trial court should be reversed and the case remanded for entry of judgment for the Taxpayers on their constitutional claim.

Dated: June 28, 2018.

Respectfully submitted,

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WORD COUNT CERTIFICATE

I verify that this brief contains no more than 14,000 words.

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