

A CRITICAL ANALYSIS OF
THE MASSACHUSETTS SUPREME JUDICIAL COURT'S
7/14/11 DECISION IN THE PARKING TICKET CASE

(Vincent Gillespie and Ed Hamel vs. the City of Northampton, 460 Mass. 148 [2011])

by Plaintiff Vincent Gillespie

Revised: September 6, 2015

CONTENTS

1) Introduction	<u>1</u>
2) Background	<u>1</u>
3) Discussion	<u>2</u>
3.1) The Plaintiffs’ basic position on appeal	<u>2</u>
3.2) The SJC’s analysis of substantive due process rights	<u>2</u>
3.2.1) The SJC’s treatment of Article 11	<u>2</u>
3.2.1.1) About Article 11	<u>2</u>
3.2.1.2) The SJC held that the right to judicial review of an administrative agency decision is not a fundamental right under Article 11	<u>3</u>
3.2.1.3) The <u>Longval</u> case	<u>5</u>
3.2.1.4) The <u>Nicholas</u> case	<u>8</u>
3.2.1.5) Conclusion regarding the SJC’s treatment of Article 11	<u>8</u>
3.2.2) The SJC’s treatment of the rational basis test	<u>8</u>
3.2.3) Concluding points regarding the SJC’s treatment of substantive due process rights	<u>10</u>
3.3) The SJC’s analysis of procedural due process rights	<u>10</u>
3.4) The SJC’s reliance on the premise that parking ticket appeals tend to be frivolous	<u>12</u>
3.5) No other state in the country prevents access to the courts or a judge to appeal parking tickets	<u>15</u>
3.6) The SJC’s decision in the instant case creates a legal precedent with wide ranging and dangerous implications	<u>16</u>
3.7) What must be done	<u>17</u>
4) Conclusion	<u>17</u>

1) INTRODUCTION

This article will analyze the Massachusetts Supreme Judicial Court's ("SJC") [7/14/11 decision](#) (the "7/14/11 decision") in the case of [Vincent Gillespie and Ed Hammel vs. City of Northampton](#), 460 Mass. 148 (2011) (the "[Parking Ticket Case](#)"). We will analyze several areas of the 7/14/11 decision and show that each of them is seriously flawed. Near the end of this article we discuss the fact that Massachusetts is the only state in the country which does not allow parking ticket appeals to be heard in the courts (or otherwise before a judge) and how the SJC handled this problematic fact in its decision. We conclude by arguing and showing that the Massachusetts State Legislature should act to remedy the situation by passing [H1576](#), a bill pending in the Mass. State House, and by urging the public to help by contacting legislators to urge them to pass the bill.

2) BACKGROUND

The [Parking Ticket Case](#) was filed by Vincent Gillespie in Hampshire Superior Court against the City of Northampton, Mass. on 8/22/2005. Ed Hamel subsequently joined as a second Plaintiff. That lawsuit challenged the constitutionality of [M.G.L. c. 90, section 20A½](#) (and [section 20A](#)), a Massachusetts law which requires: (1) that parking ticket appeals are to be adjudicated through an informal process presided over by the parking clerk (or his agent) of the town or city which issued the ticket, and (2) that to appeal further to an actual court one must file *in Superior Court* (as opposed to Small Claims Court or District Court) and pay the corresponding *non-refundable filing fee of \$275* (plus other non-refundable costs, bringing the total to over \$300). Thus, since all parking tickets are for less than that amount, Massachusetts law prevents meaningful appeals of parking tickets from being heard in the courts. No other state in the country does this.¹

The Plaintiffs were represented by ACLU attorney [Bill Newman](#).

The Superior Court ruled against the Plaintiffs on 7/14/08 regarding the most important issue, holding that [M.G.L. c. 90, section 20A½](#) did not violate the [Massachusetts Constitution](#), nor the [US Constitution](#). However, that court also ruled that the Defendant [City of Northampton](#) had been violating that statute because the city had not been offering parking ticket appellants

¹ New York uses an administrative law judicial system for parking ticket appeals.

live, in person hearings before the parking clerk (it had only been allowing written appeals). (The city of Northampton has since changed its policy to comport with the court's decision.)

The Plaintiffs appealed to the Mass. Court of Appeals on 5/15/2009. Subsequently, on 9/10/2010 (before the Mass. Court of Appeals had gotten to the case) the SJC transferred the case to itself sua sponte.² The SJC issued [its decision in this case on 7/14/11](#) which ruled against the Plaintiffs' appeal, holding that M.G.L. c. 90, section 20A ½ did not violate the [Massachusetts Constitution](#) nor the [US Constitution](#).

3) DISCUSSION

3.1) The Plaintiffs' basic position on appeal

In the Plaintiffs' appellate briefs they argued that [M.G.L. c. 90, section 20A½](#) violated the state constitutional guarantees of access to courts, due process of law, equal protection and separation of powers and they cited Part The First, Articles, 1, 10, 11 and 30 of the Mass. Constitution. ([Appellate Opening Brief](#), p. 12.³)

They also argued that unlike the US Constitution, Part The First, Article 11 of the Mass. Constitution guarantees access to the courts as a fundamental right. ([Appellate Reply Brief](#), pp. 7-11.) This means that even if an analysis of a given law under the US Constitution indicates that the law is constitutional it could still be unconstitutional under Article 11 of the Mass. Constitution if it prevents Mass. citizens from getting their issues properly adjudicated in court.

3.2) The SJC'S analysis of substantive due process rights

3.2.1) The SJC's treatment of Article 11

3.2.1.1) About Article 11

The [SJC's 7/14/11 decision](#) in the [Parking Ticket Case](#) is very flawed and there are a number of significant problems with its reasoning and analysis.

To begin, let's examine Article 11 of the [Mass. Constitution](#):

Article XI. Every subject of the commonwealth ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which he may receive in his

² On the same day (9/10/10) the SJC also took to itself sua sponte another case which was pending before the Appeals Court, that of [Police Department of Salem vs. Ralph Sullivan](#), 460 Mass. 637. That case had similarities with the [Parking Ticket Case](#). The former challenged the law requiring a total of \$75 in non-refundable filing fees to appeal a moving violation citation to a judge in Massachusetts ([M.G.L. c. 90C, section 3\(A\)\(4\)](#)). Oral arguments for both cases were heard before the SJC on 3/10/2011.

³ The appellate briefs as well as the 7/14/11 decision and other documents and information relating to this case can be found online at: www.massdriversrights.com/the-parking-ticket-lawsuit-2/

person, property, or character. He ought to obtain right and justice freely, and without being obliged to purchase it; completely, and without any denial; promptly, and without delay; conformably to the laws.

A facial reading of Article 11 shows that it seems to unequivocally guarantee the right of access to the courts for all “injuries and wrongs” which Mass. citizens might incur. This observation is consistent with the position set forth in [Piselli v. 75th St. Med.](#), 371 Md. 188, 204 (2002).^{4,5} (This is a Maryland case but it discusses the meaning of Article 11 type provisions in state constitutions generally).

3.2.1.2) *The SJC held that the right to judicial review of an administrative agency decision is not a fundamental right under Article 11*

One of the major problems with [the 7/14/11 decision](#) is that in essence it evaluated the constitutionality of M.G.L. c. 90, section 20A½ under the equal protection and due process clauses of the federal constitution while ignoring Article 11 of the [Mass. Constitution](#) which guarantees access to courts as a fundamental right.⁶ How did the SJC justify this? It did this by purporting to establish, in the first section of its discussion section – which analyzed whether or not [M.G.L. c. 90, section 20A½](#) violated substantive due process rights – that, in essence, the right to judicial review of an administrative agency decision (which, in Massachusetts, would

⁴ [Piselli v. 75th St. Med.](#), 371 Md. 188 (2002) at pp. 204-205 includes the following statements:

“While the United States Constitution contains no comparable provision, today the constitutions of 39 states have clauses similar to Article 19. **These provisions, often referred to as “Remedy Clauses” or “Open Courts Clauses” or “Access to Courts Clauses,”** are based on Chapter *205 40 of the Magna Carta or, more particularly, Lord Coke's interpretation of Chapter 40.” [Footnote omitted.] For a review of the history, purpose, interpretation, **518 and application of such clauses, see, e.g., [Smothers v. Gresham Transfer, Inc.](#), 332 Or. 83, 23 P.3d 333 (2001);...” [Numerous additional citations omitted.]

...
...
...

“[\[9\]\[10\]](#) **An examination of our opinions concerning Article 19 discloses that the constitutional provision generally protects two interrelated rights:** (1) a right to a remedy for an injury to one's person or property; (2) **a right of access to the courts.**”

(Bold font emphasis added [except regarding the page numbers of the [Piselli](#) case, which are preceded by asterisks].)

⁵ See also: Daniel W. Halston, “[The Meaning of the Massachusetts ‘Open Courts’ Clause and its Relevance to the Current Court Crisis.](#)” *Massachusetts Law Review*, Volume 88, number 3, the second paragraph of the article.

⁶ Note that the Mass. Constitution contains its own due process and equal protection clauses, in Part The First, Articles X and I, respectively.

include parking ticket appeals) forms an exception to the rule that Article 11 of the Mass. Constitution guarantees the right of access to courts as a fundamental right. (A violation of “substantive due process” rights refers to a law which prevents citizens from exercising a fundamental right.)

Let’s examine the SJC’s arguments on this point. As noted above, the Plaintiffs argued that Article 11 of the Mass. Constitution guarantees access to the courts as a fundamental right. ([Appellate Reply Brief](#), pp. 7-11.) The SJC, (at least partly) in response to this, wrote the following on p. 154 of [its 7/14/11 decision](#):

The plaintiffs argue that judicial review of an adjudicatory decision made by an administrative body is a "venerable right" grounded in the Massachusetts Constitution and rendered "illusory" by the imposition in § 20A 1/2 of filing fees far in excess of the challenged fine. ...

While the plaintiffs are well within reason to classify the role of judicial review of administrative agency decisions as "venerable," no court has concluded that it is a fundamental right under [the Massachusetts] Constitution, or that the right to bring a judicial challenge, once provided by statute, is of such a fundamental character that it may never be fettered by the payment of a filing fee. See *Longval v. Superior Court Dep't of the Trial Court*, 434 Mass. 718, 723 (2001), citing *Cacicio v. Secretary of Pub. Safety*, 422 Mass. 764, 773 (1996) (statute that requires nonindigent prisoners to pay for court filings does not abridge any fundamental right). See *Nicholas v. Tucker*, 114 F.3d 17, 21 (2d Cir. 1997), cert. denied sub nom. *Nicholas v. Miller*, 523 U.S. 1126 (1998), quoting *Roller v. Gunn*, 107 F.3d 227, 233 (4th Cir. 1997) ("Requiring [litigants] to make economic decisions about filing lawsuits does not deny access to the courts").

In other words, while the SJC does not directly dispute that Article 11 guarantees access to the courts as a fundamental right, it takes the position that: (1) judicial review of an administrative agency adjudicatory decision (such as a decision of a parking clerk denying a parking ticket appeal) is not a fundamental right under the [Mass. Constitution](#) (i.e., it forms an exception to the guarantee of access to the courts provided by Article 11) and/or (2) such judicial review, if it is provided by statute, is not of “...such a fundamental character...” that it may not be “fettered” by a filing fee (i.e., having a filing fee on such an appeal does not violate the “Access to Courts” clause of Article 11).⁷ The SJC cited the [Longval](#) and [Nicholas](#)⁸ cases to support these positions.

⁷ Notice also that the SJC does not explicitly mention Article 11 of the Mass. Constitution here even though its discussion must be about that clause (because the court is addressing the issue of the right to judicial review

[Footnote continued on next page...]

However, these cases do not support the SJC’s position and the Longval case contains some significant problems in its reasoning. Let’s examine each of these cases:

3.2.1.3) *The Longval case*

One of the main questions in the Longval case was whether or not a Mass. State law which required prisoners (who are usually indigent) to pay reduced filing fees to file court cases if they could afford to do so (as opposed to no fees at all) was constitutional. The Longval court held that this requirement did not violate the prisoners’ rights under Article 11 of the Mass. Constitution nor the federal constitution.

However, the Longval court effectively ignored Article 11 by *assuming* that it offered no greater protection than that provided by the federal constitution. Near the beginning of its discussion section the Longval court wrote the following:

From the outset, we note that the plaintiff does not suggest that the Massachusetts constitutional provisions afford him any greater rights or protections than the comparable Federal constitutional provisions.

(Longval at 721.)

The Longval court then spent most of the rest of its discussion section analyzing the propriety of the filing fee assessment for prisoners *under the federal constitution and citing federal cases* and not under the Mass. Constitution.⁹

Thus, the Longval court effectively ignored Article 11 and, moreover (as reflected in the foregoing quote from the Longval case), *it did this by seizing on an error of the pro se Plaintiff in that case*. (His error was that he neglected to argue that Article 11 of the Mass. Constitution, unlike the federal constitution, guarantees access to courts as a fundamental right.) But this

under the Mass. Constitution and Article 11 is the clause which covers that right). (In fact Article 11 is not explicitly mentioned anywhere in the 7/14/11 decision until near the end in the “Purchase of justice” section, a section which is only two sentences long, which introduces no new information, and which relies on the fallacious conclusions, reasoning and case law that it used earlier in the decision. See discussion, fn 14, below.) The fact that the SJC addressed Article 11 without explicitly stating that it was doing so created a sort of murky atmosphere of discussion which may have been intended to help hide the dubious arguments the SJC was using to get around the guarantees of Article 11 (as discussed below).

⁸ Nicholas vs. Tucker, et al., 114 F.3d 17 (2d Cir. 1997).

⁹ Addressing this point, the Longval court wrote the following (on p. 722):

“Given the Federal precedent rejecting similar constitutional challenges to similar legislative enactments, we find the challenged provisions [of state law] constitutional. Cf. Scaccia v. State Ethics Comm'n, 431 Mass. 351, 354-355 (2000) (recognizing that the court will “look to Federal law for guidance in construing” a Massachusetts statute that is similar to Federal statute).”

plaintiff, Norman Longval, was a prison inmate serving a 30 to 40 year sentence after being convicted of armed robbery, assault by means of dangerous weapon, unlawfully carrying a sawed-off shotgun, and using a motor vehicle without authority. [Commonwealth v. Longval](#), 378 Mass. 246, 246-247 (1979). His criminal background also involved significant additional details and prior convictions.¹⁰ Mr. Longval does not appear to be a very credible source for legal information! Yet based on his error the SJC essentially negated the protections of Article 11 in the [Longval](#) case. (And – since the SJC cited the [Longval](#) case in its 7/14/11 decision – based on this career criminal’s legal error we are not allowed to appeal parking tickets to the courts! Can you see a problem with this picture?)

The [Longval court](#) did make a superficial effort to cite a Massachusetts case to support its position that the law in question which required prisoners to pay partial filing fees to file cases did not violate Article 11 of the Mass. Constitution. It asserted, near the end of its discussion section, that “free access to the courts” is not a fundamental right and in support of this it cited the Mass. case of [Caccio v. Secretary of Pub. Safety](#), [422 Mass. 764](#) , 773 (1996). *However, the Caccio case does not say that free access to the courts is not a fundamental right under Article 11 of the Mass. Constitution* (and it is also not clear that the [Caccio](#) court said that this was so under the federal constitution; it does not seem to address the issue of free access to courts at all).¹¹ (Note that the issue is not the right to appeal parking tickets without a filing fee. The issue is filing fees that are so high that they preclude meaningful judicial review.)

¹⁰ Norman Longval’s criminal record includes additional facts: He also stole a car, according to his own testimony. [Commonwealth v. Longval](#), 378 Mass. 246, 250. The armed robbery for which he was convicted and sentenced to 30 to 40 years involved him and accomplices stealing drugs and money at gunpoint from a pharmacy. *Id.* at 248. He admitted that he had “...apparently conceived of and led the robbery, and carried the more dangerous weapon [the shotgun] inside the pharmacy...” *Id.* at 253. He also had a substantial prior criminal record:

“[Mr. Longval had] a record of almost twenty years of repeated, serious offenses, most involving stealing in some form, and some involving breaking and entering. He has served prison terms on a number of occasions. Perhaps of overriding importance is the fact that the defendant served a prior five- to eight-year sentence for armed robbery. In all, the judge could conclude, and obviously did, that the defendant was a confirmed and dangerous offender.”

(*Id.* at 253.)

¹¹ The [Caccio](#) court did not consider Article 11: In fn 3 of the [Caccio](#) case that decision states that in their amended complaint the Plaintiffs claimed that their rights under Article 11 (and several other state and federal constitutional provisions) were being denied. However, there is no evidence that the Plaintiffs raised the issue of Article 11 on appeal. The [Caccio](#) court (at pp. 768-769) states only that the Plaintiffs claim of their right of access to the courts was raised on appeal under the federal constitution:

[Footnote continued on next page...]

Additionally, fn 10 of the [Caccio](#) case reads as follows:

[Note 10] In *Bell v. Wolfish*, 441 U.S. 520, 545-547 (1979), the Supreme Court described the authority of prison officials more broadly in these terms: "[S]imply because prison inmates retain certain constitutional rights does not mean that these rights are not subject to restrictions and limitations.... The fact of confinement as well as the legitimate goals and policies of the penal institution limits these retained constitutional rights.... Accordingly, we have held that even when an institutional restriction infringes a specific constitutional guarantee . . . the practice must be evaluated in the light of the central objective of prison administration, safeguarding institutional security."

In other words, prisoners' constitutional rights and any curtailment of such rights in a prison setting cannot be viewed in the same light as that of constitutional rights of members of the general public. Therefore, the SJC's attempt to take conclusions about limitations of rights placed on prisoners (in the [Longval](#) and [Nicholas](#) cases) and apply them to the general public – as they have done in the [Parking Ticket Case](#) – is improper.

In conclusion, the [Longval](#) case does not really address the question of whether or not access to courts is a fundamental right under Article 11 (nor whether or not requiring payment of filing fees – neither disproportionately large filing fees, nor filing fees generally – violates Article 11). Furthermore, it is not appropriate to transfer conclusions about constitutional rights of prisoners, which is what the [Longval](#) case is about, to those of the general public. Therefore, the SJC's reliance on the [Longval](#) case to support its contention in the [Parking Ticket Case](#) that judicial review of administrative agency decisions is not a fundamental right under Article 11

"On appeal, the plaintiffs argue that the regulations violate ...their right of access to the courts and of effective assistance of counsel as protected by the First, Fourteenth, and Sixth Amendments to [*769] the United States Constitution..."

Fn 9 of [Caccio](#) states: "The various other claims which the plaintiffs stated in their amended complaint, but have not raised on appeal, are deemed waived." Therefore, since the [Caccio](#) court deemed that other issues which had been raised below but not on appeal had been waived, it seems safe to conclude that that court did not consider the right of access to courts under Article 11 (which had apparently not been raised in that appeal).

Note also that the [Caccio](#) case was not about filing fees. It was about the propriety of a new, automated prison phone system which put certain constraints on prisoners, such as the following: most phone calls were to be monitored, prisoners were limited to 15 phone numbers to call, they were limited to one way, collect calls (no toll free numbers, nor three party or conference calls), and duration of calls and times that phones were to be available might be limited. [Caccio](#) at 767. The phone system was designed to prevent illegal activities such as planning escapes, organizing drug trafficking, solicitations to murder; and to prevent harassment of media, victims and others by prisoners. *Id.* at 768. *How the Longval court went from these facts (set in the unique environment of a prison) to the conclusion that the Caccio case held that "free access" to the courts was not a fundamental right under either the US Constitution or the Mass. Constitution is unclear and unexplained.*

(and the contention “...that the right to bring [such] a judicial challenge, once provided by statute, is [not] of such a fundamental character that it may never be fettered by the payment of a filing fee...” is inappropriate.

3.2.1.4) The Nicholas case

Regarding the [Nicholas](#) case, a federal case based on events which took place in New York, while it also held that requiring prisoners who had adequate funds to pay filing fees (in installments) to file or appeal cases was not unconstitutional, it dealt with rights under the federal constitution, not Article 11 of the [Massachusetts Constitution](#) (nor any similar clause of any other state’s constitution).

3.2.1.5) Conclusion regarding the SJC’s treatment of Article 11

So the SJC purported to establish in the substantive due process section of [its 7/14/11 decision](#) that, in essence, (1) the right to judicial review of an administrative agency decision is not a fundamental right under the Mass. Constitution (i.e., under Article 11) and (2) having a filing fee associated with such an appeal does not violate Article 11. However, the SJC took these positions based on cases which do not really support them.

3.2.2) The SJC’s treatment of the rational basis test

After the SJC purported to have dispensed with the “Access to Courts” clause of Article 11 in the substantive due process section of its 7/14/11 decision, by concluding that under the Mass. Constitution there is no fundamental right to judicial review of parking clerks’ decisions on parking ticket appeals (nor any other administrative agency adjudicatory decision), it then proceeded to finish its substantive due process analysis using a rational basis test (consistent with a discussion in *Goodridge v. Department of Pub. Health*, 440 Mass. 309, 330 [2003]) and without any further consideration of Article 11. pp. 154-155 of [the SJC’s 7/14/11 decision](#) states the following:

There being no fundamental right at stake, the statute survives constitutional review [under a substantive due process analysis] if it is rationally related to a valid government ***155** interest. See *Goodridge v. Department of Pub. Health, supra*.

The SJC then asserted that there are two legitimate government interests advanced by [M.G.L. c. 90, section 20A½](#) (which would enable that law to pass the rational basis test):

The first is that “...it is entirely rational for the Legislature to aim to establish a consistent procedure and forum for such appeals without weighing the individual economic interest at stake

against the cost of Superior Court filing fees in each instance.” ([The 7/14/11 decision](#), p. 155.) With this assertion the SJC was straining logic and ignoring the obvious, common sense conclusion that sending a \$10 (or \$20 or \$50) parking ticket appeal to Superior Court with a non-refundable \$275 filing fee is an irrational forum.¹²

Another reason, besides the high, non-refundable filing fees, why sending parking ticket appeals to Superior Court is an irrational process (contrary to the SJC’s position) is that Superior Court is designated for serious felony criminal cases and civil cases involving \$25,000 or more. Why do we have parking ticket appeals mixed in with murder cases, medical malpractice cases and other more serious cases? This makes no sense. Small Claims Court would be a much more appropriate forum for parking ticket appeals than Superior Court.

An additional reason why it is irrational to send parking ticket appeals to Superior Court (contrary to the SJC’s position) is that such appeals are governed by [M.G.L. c. 30A, section 14](#), which requires that such appeals “...shall be confined to the record...” (with certain exceptions) and in a parking ticket appeal there is almost no record to review.¹³

The second “legitimate” government interest which the SJC asserts is advanced by [M.G.L. c. 90, section 20A½](#) includes the claim that it “...discourages the filing of nonmeritorious appeals.” ([The 7/14/11 decision](#), p. 155.) In response, let us note, first of all, that this argument ignores the fact that these high filing fees also thwart the filing of meritorious

¹² The SJC tries to minimize the issue of how out of proportion the filing fees are under [M.G.L. c. 90, section 20A½](#) compared to the amounts at issue by claiming, in essence, that although the filing fees are relatively high some appeals can still get through. It expresses this on p. 161 of [the 7/14/11 decision](#) by saying that M.G.L. c. 90, section 20A½ does “...not entirely frustrat[e] all citizens ... from bringing a meritorious appeal.” However, this is a very misleading statement. While it might technically be true, it is also true that M.G.L. c. 90, section 20A½ *does* entirely frustrate all citizens from bringing a *meaningful* meritorious appeal. (See related discussion below in fn 16, second paragraph.)

¹³ One reason why Superior Court is an irrational forum to adjudicate parking ticket appeals is because [M.G.L. c. 90, § 20A½](#) requires that such appeals shall be governed by [M.G.L. c. 30A, section 14](#), which states that “...the original or a certified copy of the record of the proceeding under review...” (i.e., the record of the hearing before the parking clerk) shall be filed with the court and that the court’s review of the case “...shall be confined to the record...” (with certain exceptions that are probably usually not pertinent here). (In other words, the Superior Court is not supposed to hear the parking ticket recipient tell his story again nor any other new evidence. It is only supposed to look in the record for errors committed by the lower court [the parking clerk in this kind of case], similar to the process used in appeals to the Court of Appeals in regular civil cases.) But the thing is that there is almost no record produced by a hearing before a parking clerk. That hearing is not recorded (so there is no transcript to review) and there are just one or two or three pages produced (i.e., the decision of the parking clerk, the ticket itself, and any written statement which might or might not have been submitted by the parking ticket recipient). So how can the Superior Court meaningfully evaluate a parking ticket appeal in the way it is required to by law, by only considering the record? Again, the SJC’s claim that M.G.L. c. 90, section 20A½ is “...entirely rational...” is quite wrong.

appeals. Second, the implied claim that parking ticket appeals tend to be frivolous (or “nonmeritorous”) is completely unsubstantiated. See discussion below on pp. 12-14.

3.2.3) Concluding points regarding the SJC’s treatment of substantive due process rights

In summary: The SJC held (in essence) that the right to judicial review of administrative agency adjudicatory decisions forms an exception to our right of access to the courts guaranteed as a fundamental right by Article 11 of the Mass. Constitution but that position does not stand up to scrutiny. The cases cited by the SJC to support that position do not really address Article 11. Also, those cases involve prisoners’ rights, which cannot be viewed in the same light as those of the general public. Furthermore, the SJC’s claim that M.G.L. c. 90, section 20A½ passes the rational basis test also does not stand up to scrutiny. The SJC’s entire analysis of substantive due process rights in its 7/14/11 decision is flawed.

Nonetheless, after the SJC purported to establish in the substantive due process section of its 7/14/11 decision that (in essence) we have no fundamental right under Article 11 to have parking ticket appeals heard in the courts, the SJC then proceeded in the rest of its decision (for the most part) to analyze the constitutionality of [M.G.L. c. 90, section 20A½](#) under the due process and equal protection clauses of the federal constitution. The SJC basically ignored Article 11 in the rest of its decision.¹⁴

There are also significant additional problems in the reasoning of [the 7/14/11 decision](#):

3.3) The SJC’s analysis of procedural due process rights

After the discussion about substantive due process rights the next topic covered by the SJC in [its 7/14/11 decision](#) (on pp. 155-158) was whether or not [M.G.L. c. 90, section 20A½](#) violated parking ticket appellants’ procedural due process rights. (A violation of procedural due

¹⁴ The SJC does have a short section near the end of the decision (pp. 161-162) titled “Purchase of justice” which holds that M.G.L. c. 90, section 20A½ does not violate Article 11’s “purchase of justice clause.”

There are several things to say in response to this:

First of all, the “purchase of justice clause” of Article 11 may not be the same as the “Access to Courts Clause” of Article 11. Whether or not the statute violates the “purchase of justice clause” the Plaintiffs’ position is that it violates the “Access to Courts Clause.”

Second, the SJC’s reasoning in this section of its decision relies on the premise that “...§ 20A 1/2 does not reach a fundamental right...” (See [the SJC’s 7/14/11 decision](#), pp. 161-162.) The SJC purports to have established this premise in its substantive due process section but the court’s analysis on this point does not stand up to scrutiny, as discussed above (pp. 2-10).

Third, the SJC relies on the [Longval](#) case again in the “Purchase of justice” section to help substantiate its claim that “free access to the courts” is not a fundamental right. *Id.* However, as discussed on pp. 5-8, above, the [Longval](#) case does not establish that this is so under Article 11.

process rights refers to an adjudication process which prevents people from getting a proper and fair resolution of whatever issue they need adjudicated.¹⁵) The SJC did this by analyzing the statute using a three part test laid out in Mathews vs. Eldridge, 424 US 319 (1976), a federal case which evaluates procedural due process rights under the federal constitution (the SJC did not mention Article 11 of the Mass. Constitution in this section of its 7/14/11 decision):

Balancing under *Mathews v. Eldridge*, *supra* at 335, requires us to weigh: "First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedure used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." See *Duarte v. Commissioner of Revenue*, 451 Mass. 399, 412 (2008).

(The SJC's 7/14/11 decision, p. 156.)

However, the SJC's application of this three part test was flawed. One flaw was that the SJC considered the affects of only a single parking ticket on a single ticket recipient for part one of the test, the private interest affected (Id., p. 156), while it considered the affects of "...millions of parking citations [which are issued] annually.." for part three of the test, the government's interest (Id., p. 157). With that unfair methodology it concluded that the private interest affected was small (Id., p. 156) and that the affect on the government's interest, if parking ticket appeals were allowed in the courts, would be to create an "overwhelming" burden (Id., p. 157).

If the large number of parking tickets should be considered in evaluating the government's interest (part three of the test) then it should also be considered in evaluating the private interest that will be affected (part one of the test) (i.e., the affects on millions of motorists who get tickets and cannot appeal to the courts) and if it should not be considered in evaluating the latter then it should not be considered in evaluating the former. To consider the large number of parking tickets for part three of the test but not for part one, as the SJC did, amounts to a way of skewing the results of the test.

¹⁵ For example, if a judicial system for choosing jurors tended to stack juries with people who were actively working in DA's Offices this would tend to result in juries which were biased against criminal defendants and it would violate their procedural due process right to an impartial jury (guaranteed in the Sixth Amendment to the US Constitution).

(Another problem with the SJC’s application of the three part test from the Matthews case – in which the SJC relies on the unsubstantiated assumption that parking ticket appeals tend to be frivolous – is discussed just below in the first paragraph of the next section.)

The SJC’s application of the three part test from the Matthews case – and therefore its analysis of the procedural due process issue – was flawed.¹⁶

3.4) The SJC’s reliance on the premise that parking ticket appeals tend to be frivolous

Another problematic area in the SJC’s 7/14/11 decision is that it repeatedly relies on the unsubstantiated premise that parking ticket appeals tend to be frivolous. For example, in its discussion of whether or not M.G.L. c. 90, section 20A½ violates procedural due process rights (see discussion above on pp. 10-12) the SJC asserted that if parking ticket appeals were heard in Mass. courts the burden imposed on the government by the frivolous appeals which would ensue (along with the burden of dealing with the large number of parking ticket appeals generally) would be “overwhelming.” *However, the SJC did not cite any evidence at all to support either of these positions* (that parking ticket appeals tend to be frivolous and that the burden on the government would be “overwhelming” if parking ticket appeals were heard in the courts) and they remain unsubstantiated. (See pp. 157-158 of the 7/14/11 decision.)

Furthermore, note that the SJC relied on the argument that parking ticket appeals tend to be frivolous, and the accompanying argument that discouraging frivolous appeals by thwarting virtually all parking ticket appeals to the courts is a valid state objective (and/or similar arguments), repeatedly in its 7/14/11 decision, in a total of four different places.¹⁷

¹⁶ After the SJC’s discussion of procedural due process rights, on p. 161 of the 7/14/11 decision, there is a very short section titled “Purchase of justice” in which the court purported to address Article 11. (See discussion above in fn 14.)

After that there is a short section titled “Separation of powers” in which the SJC rejected the appellant’s arguments that M.G.L. c. 90, § 20A½ violated the constitutional principle that the three branches of government (judicial, executive and legislative) must not infringe each others’ areas of jurisdiction by creating an area of executive authority (parking tickets) which (effectively) cannot be reviewed by the courts. However, in concluding that there was no separation of powers violation the SJC wrote, in part, that M.G.L. c. 90, § 20A½ “...does, in fact, afford the opportunity for judicial review.” The 7/14/11 decision at p. 162. That statement is very misleading. That law does *not* afford the opportunity for *meaningful* judicial review. (See related discussion in fn 12, above.)

¹⁷ The SJC raised the issue of frivolous or unmeritorious parking ticket appeals four times in its 7/14/11 decision, as shown below (bold font in each of the following four quotes has been added):

More important, especially in light of the fact that municipalities annually issue several million parking citations, § 20A ½ conserves scarce judicial resources and **discourages the filing of nonmeritorious appeals.**

(The SJC’s 7/14/11 decision, p. 155.)

[Footnote continued on next page...]

Where did the SJC even get this idea, that parking ticket appeals tend to be frivolous and that the courts would be overwhelmed with a vast flood of frivolous appeals if parking ticket appeals were allowed in the courts? The SJC appears to have adopted this idea, and the idea that court filing fees could be used as a means of curbing frivolous appeals, from the [Nicholas](#) case, which the SJC cited three times in [its 7/14/11 decision](#) (on p. 154, 155 and 162), and also the [Longval](#) case, which the SJC cited twice in its 7/14/11 decision (on pp. 154 and 161).¹⁸

However, while these cases do say that filing fees may be assessed to curb frivolous litigation, both of these cases pertain exclusively to litigation initiated by *prisoners*. Litigation by prisoners is unique in a number of ways and it is not the same animal as parking ticket appeals. As the [Nicholas](#) case explained:

The problem of frivolous prisoner lawsuits has been well-documented and need not be repeated here. Suffice it to say that federal courts spend an inordinate amount of time on prisoner lawsuits, only a very small percentage of which have any merit. See [Roller, 107 F.3d at 230](#) (documenting excessive pro-se filings by prisoners); [Young v. Selsky, 41 F.3d 47, 54-57 \(2d Cir.1994\)](#) (Van Graafeiland, J., dissenting) (same), *cert. denied*, [514 U.S. 1102, 115 S.Ct. 1837, 131 L.Ed.2d 756 \(1995\)](#). Although Nicholas contends that the charges of excessive prisoner litigation are exaggerated, Congress's conclusion to the

As a final matter, the government interest in judicial economy and **deterrence of frivolous appeals** is substantial. Municipalities issue millions of parking citations annually, and the "fiscal and administrative burdens [of] additional or substitute procedural requirements" would be overwhelming. *Mathews v. Eldridge*, *158 *supra* at 335.

([The SJC's 7/14/11 decision](#), pp. 157-158.)

Once again, the **deterrence of frivolous appeals and the conservation of judicial resources are legitimate legislative purposes**, and the classification drawn between alleged parking offenders and those other administrative appellants routed to District Court is anchored within the boundaries of the Constitution.

([The SJC's 7/14/11 decision](#), p. 160.)

The inclusion of an indigency waiver in § 20A ½ rationally balances **the Legislature's competing goals of deterring frivolous appeals** while not entirely frustrating all citizens, whether capable or incapable of paying the requisite filing fees, from bringing a meritorious appeal. See G.L. c. 90A § 20A ½.

([The SJC's 7/14/11 decision](#), p. 161.)

¹⁸ These cases were cited in the [Appellate Response Brief](#) of the Intervenors-Appellees, the Mass. Attorney General's Office, et al. (The SJC might have gotten the idea of relying on these cases from reading about them there.)

contrary is amply supportable and clearly reasonable. We therefore have little trouble holding that the Act's goal of relieving the pressure of excessive prisoner filings on our overburdened federal courts is a constitutionally legitimate one. *See Hampton, 106 F.3d at 1287* (“Deterring frivolous prisoner filings in the federal courts falls within the realm of Congress's legitimate interests....”).

[8] Moreover, the means Congress chose to achieve this objective are plainly rational. Prior to the enactment of the *in forma pauperis* amendments, inmates suffered no economic disincentive to filing lawsuits. **Indeed, the very nature of incarceration-prisoners have substantial free time on their hands, their basic living expenses are paid by the state and they are provided free of charge the essential resources needed to file actions and appeals, such as paper, pens, envelopes and legal materials-has fostered a “ ‘nothing to lose and everything to gain’ ” environment which allows inmates indiscriminately to file suit at taxpayers' expense.** *See Anderson v. Coughlin, 700 F.2d 37, 42 (2d Cir.1983)* (opinion of Cardamone, J.) (quoting *Jones v. Bales, 58 F.R.D. 453, 463-64 (N.D.Ga.1972)*, *aff'd, 480 F.2d 805 (5th Cir.1973)*). **“As a result, the federal courts have observed that prisoner litigation has assumed something of the nature of a ‘recreational activity.’ ”** *21*Roller, 107 F.3d at 234* (citing *Gabel v. Lynaugh, 835 F.2d 124, 125 n. 1 (5th Cir.1988)*(per curiam)). By making prisoners at least partially responsible for the costs of their suits, the Act undoubtedly will discourage frivolous filings.

(Bold font added.)

([Nicholas](#) at 20-21.)

As the reader can see, the [Nicholas](#) case explains that the claim that prisoners frequently file frivolous cases has been well documented, that the very nature of incarceration tends to foster frivolous litigation, and that (federal courts had observed that) prisoner litigation had become something like a recreational activity. (As with the [Nicholas](#) case, the [Longval](#) case endorses filing fees as a means of curbing frivolous legal actions filed by prisoners.) This is nothing like the situation we have with parking ticket appeals regarding which no evidence showing that these appeals tend to be frivolous was cited nor included anywhere in the record of the instant case. The SJC's (stated and/or implied) argument that parking ticket appeals tend to be frivolous, apparently based on its reading of the [Nicholas](#) and [Longval](#) cases, is an apples to oranges comparison and it is completely unwarranted and unsubstantiated.¹⁹

¹⁹ The SJC, in its 7/14/11 decision, may have been trying to indicate that it was the *legislature's* belief that parking ticket appeals tend to be frivolous and that it was the *legislature's* intention to prevent frivolous appeals by thwarting parking ticket appeals by passing M.G.L. c. 90, section 20A½, and not that the SJC itself had any opinion on whether or not parking ticket appeals tend to be frivolous. However, regardless of whether it was the legislature's opinion and/or the SJC's opinion that parking ticket appeals tend to be frivolous, there is no evidence in

[Footnote continued on next page...]

**3.5) No other state in the country prevents access to the courts
or a judge to appeal parking tickets**

Furthermore, as noted above (and as the Plaintiffs discussed in their [Appellate Opening Brief](#), pp. 30-36, including footnotes 18-20), every other state in the country besides Massachusetts – including both those with Article 11 type clauses in their state constitutions (“Access to Courts Clauses”) and those states that do not have such clauses – allow parking ticket appeals to be heard in their courts²⁰ and, contrary to the SJC’s position on p. 157 of [the 7/14/11 decision](#) (see fn 17, above), there is no significant evidence in the record indicating that any of those states have found this process to be “overwhelming” or even problematic. How could the SJC have taken such a dramatic departure from what all other states are doing based on such a dubious and poorly supported decision as the 7/14/11 decision?

The SJC addressed this issue (the fact that Mass. filing fees to appeal parking tickets are far higher than those of other states) on p. 161 of [its 7/14/11 decision](#). It wrote: “As a final matter, we are not unmindful of the fact that Massachusetts imposes filing fees for judicial review of parking citations in excess of those imposed in most other States.” (Note that it is ALL other states that have higher filing fees, not “most other states.” Note also that most states charge *no filing fee at all* to appeal a parking ticket to a court. See the [Appellant’s Opening Brief](#), fn 18 [plus some of the states cited in fn 20]. Others charge modest fees. See the [Appellant’s Opening Brief](#), fn 19-20. Additionally note that presumably the filing fees of all other states are refundable if the appellant prevails, unlike in Massachusetts.) The SJC also stated that its decision was not evaluating whether the amount of the filing fees required by [M.G.L. c. 90, section 20A½](#) was “wise or unwise” and (in essence) that it was up to the legislature to change the law if it was “unwise.” (“It is the sole province of the Legislature to set the amount of those fees.”) [The 7/14/11 decision](#), p. 161.

the record to substantiate this position and so the arguments based on it (such as the claim that thwarting parking ticket appeals will reduce frivolous appeals) are also unsubstantiated.

Also, even if we assume, just for the sake of argument, that parking ticket appeals do tend to be frivolous (to a substantially greater extent than other types of appeals and cases) the argument that M.G.L. c. 90, section 20A½ is justified because it prevents frivolous appeals is still very flawed because that statute also eliminates *all meaningful parking ticket appeals, no matter how meritorious*. This creates a great injustice which is one of the basic problems with that statute.

²⁰ As noted above, New York uses an administrative law judicial system for parking ticket appeals.

Charging a \$275 non-refundable filing fee to appeal a parking ticket is “unwise” – it is also an assault on our fundamental right of access to courts guaranteed by the Article 11 of the [Mass. Constitution](#) – and thus, as the SJC indicated in its decision, it is up to the legislature to resolve this matter.

Efforts in this area are under way: There is presently a bill, [H1576](#) (sponsored by [Rep. Byron Rushing](#) [D-Boston, South End]) and [Rep. Evandro Carvalho](#) (D-Dorchester), pending in the [Joint Committee on the Judiciary](#) in the Massachusetts State House which would reroute parking ticket appeals to Small Claims Court instead of Superior Court and limit the filing fees and make them refundable if the appellant prevails. (Isn’t that much more sensible than the present law?) (See further discussion about this bill and what Massachusetts citizens can do to help get it passed below on pp. 17-18.)

3.6) The SJC’s decision in the instant case creates a legal precedent with wide ranging and dangerous implications

Although the wording of the SJC’s 7/14/11 decision might seem to imply that it was carving out only a limited exception to the guarantee by Article 11 of access to the courts as a fundamental right (the exception was for judicial review of administrative agency adjudicatory decisions, including appeals from the decisions of parking clerks regarding parking tickets), the reality is that this is an assault and an encroachment on one of our basic rights. The wording of Article 11 is very inclusive and it does not easily lend itself to permitting exceptions. The SJC’s [7/14/11 decision](#) is flawed in many ways and it presents no legitimate legal basis for limiting our fundamental right of access to the courts.

Furthermore, the exception to the protection of Article 11 that the SJC purported to create is actually a very broad one. According to the logic of that decision we do not have any guaranteed right of appeal to the courts regarding *any administrative agency adjudicatory decision*. (As discussed above [p. 4], the [7/14/11 decision](#) stated [on p. 154] that “..... no court has concluded that [judicial review of administrative agency adjudicatory decisions] is a fundamental right under [the Massachusetts] Constitution ...” The language used by the SJC in its [7/14/11 decision](#) does not limit this concept to appeals of decisions of town parking clerks. It could be applied to an appeal of *any* administrative agency adjudicatory decision.)

Note that the SJC has already expanded the use of this legal precedent to include another area (in addition to parking ticket appeals) where we are now often prevented from bringing a

meaningful appeal to the courts: moving violations. [M.G.L. c. 90C, section 3\(A\)\(4\)](#) requires payment of a total of \$75 in non-refundable filing fees before someone appealing a moving violation can have his case heard in a court. (Many moving violation fines are \$100 and some are less than that and thus the \$75 in non-refundable filing fees may largely or entirely negate meaningful appeals of moving violations to the courts.) In the case of [Police Department of Salem vs. Ralph Sullivan](#), 460 Mass. 637, the SJC held that this law was constitutional. The SJC in the [Sullivan](#) case (on pp. 642 and 643) cited the [Parking Ticket Case](#) as part of its justification for its ruling.

Thus, the SJC ruled in the [Sullivan](#) case that appeals of moving violations, like parking ticket appeals, form an exception to the guarantee of Article 11 of access to the courts "...for all injuries or wrongs which [one] may receive in his person, property, or character." In what area will we next be (entirely or largely) precluded from (meaningfully) appealing to the courts? It could be any administrative agency adjudicatory decision. For example, if the Registry of Motor Vehicles (or a town building department or the Mass. Fish and Game Department or any other government agency) decided (after an administrative adjudicatory hearing) to stick someone (such as YOU) with a penalty which he (or you) did not deserve, that person, according to the SJC's [7/14/11 decision](#), would have no guaranteed right to appeal that decision to the courts. If he did appeal his case could be dismissed or denied based on the legal precedent of the [Parking Ticket Case](#).

3.7) What must be done

Article 11 was incorporated into our state constitution by our Massachusetts forefathers to protect the rights of their posterity – *our* rights – including our right of access to the courts as a fundamental right. This is an important, rare and valuable gift that our forefathers gave to us, something not found in most of the rest of the world. We should have the integrity to meet our forefathers half way by fighting to preserve this right when it is threatened, as it is now.

All members of the public and Massachusetts State Legislators are asked to step up and help to get [H1576](#) passed and made into law (see below for more on this).

4) CONCLUSION

Massachusetts citizens are asked to contact their state representatives and senators (by phone, email and/or snail mail) to ask them to contact the members of the [Joint Committee on the Judiciary](#) to urge them to report [H1576](#) favorably out of that committee. Mass. citizens are

also asked to directly contact the members of the [Joint Committee on the Judiciary](#) in the Mass. State House to urge them to report favorably on that bill and to move it out of the committee and onto the next step in the process. For (phone, email and snail mail) contact information for the legislators (those on the Joint Committee on the Judiciary and others) and suggested instructions for contacting them see: <http://massdriversrights.com/take-action/> (and hyperlinks on that webpage).

Also, an easy way to contact one's state legislators is to call the Mass. State House at 617-722-2000. This one phone number can be used both to (1) find out who one's state representatives and senators are (just ask the receptionist), and (2) be transferred to speak to one's representative's and/or senator's office so that one can express one's concerns to them.

Likewise, all members of the Joint Committee on the Judiciary are hereby asked by this author to report favorably on [H1576](#) and to move it out of the Committee.

Additional information about this case can be found at: www.massdriversrights.com