

No. SJC-13824

Commonwealth of Massachusetts
Supreme Judicial Court

COMMITTEE FOR PUBLIC COUNSEL SERVICES,
ON BEHALF OF UNREPRESENTED DEFENDANTS IN
MIDDLESEX AND SUFFOLK COUNTIES,
Petitioners-Appellants

v.

MIDDLESEX AND SUFFOLK COUNTY DISTRICT
COURTS AND BOSTON MUNICIPAL COURT,
Respondents-Appellees

REPLY BRIEF FOR PETITIONERS-APPELLANTS

ON RESERVATION AND REPORT FROM
THE SUPREME JUDICIAL COURT FOR SUFFOLK COUNTY

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ARGUMENT

I. This Court has the inherent authority to order increased compensation.

Respondents argue that it would violate the separation of powers doctrine under art. 30 if a court were to order increased compensation rates for court-appointed counsel, because courts do not have the authority to appropriate money or to order the Legislature to appropriate money. Resp. Br. 26-29. In some circumstances, this is a complete and accurate statement of the law. In the present circumstances, it is not.

First, the fact that a court order requires the expenditure of funds by the Commonwealth does not mean that the court is either itself appropriating funds or ordering the Legislature to do so. For example, in *Commonwealth v. Gonsalves*, 432 Mass. 613 (2000), the Court ordered the District Attorney to pay attorney's fees and costs related to a Commonwealth's interlocutory appeal of a motion to suppress. *Id.* at 614. The Commonwealth appealed, arguing, *inter alia*, that the order was an unlawful appropriation in violation of art. 30. *Id.* at 619. The Court disagreed, stating that because the order "merely directs" the prosecutor's office to pay attorney's fees out of already-appropriated funds, it is "obviously not an appropriation, nor does it purport to direct the Legislature to make an appropriation." *Id.* at 619-620. See also *id.* at 618 n.5 (noting that judge ordered payment was to be made "from funds of the Commonwealth appropriated to the

office of the District Attorney”), quoting *Commonwealth v. Murphy*, 423 Mass. 1010, 1011 (1996). Accordingly, a judicial order that merely directed the expenditure of already-appropriated funds in a manner that restored unrepresented defendants’ right to counsel would not implicate art. 30.

Second, the prohibition against ordering a legislative appropriation does not apply “[w]hen the funds provided for the judicial branch are not enough to maintain a minimally adequate court system.” *County of Barnstable v. Commonwealth*, 410 Mass. 326, 330 (1991), citing *O’Coin’s, Inc. v. Treasurer of the County of Worcester*, 362 Mass. 507 (1972). In those circumstances, “the judiciary has the power to order the provision of such funds, with or without legislative appropriation.” *Id.* See also *Sullivan v. Chief Justice for Admin. and Mgt. of the Trial Court*, 448 Mass. 15, 42–43 (2006) (“Where the administration of justice is in jeopardy, from whatever source, . . . there is no limitation on this court’s inherent judicial authority.”). As stated in *O’Coin’s*,

It would be illogical to interpret the Constitution as creating a judicial department with awesome powers over the life, liberty, and property of every citizen while, at the same time, denying to the judges authority to determine the basic needs of their courts as to equipment, facilities and supporting personnel. Such authority must be vested in the judiciary if the courts are to provide justice, and the people are to be secure in their rights, under the Constitution.

Id. at 510.

The cases cited by respondents for the proposition that an order increasing compensation for court-appointed attorneys would “necessarily encroach upon the Legislature’s role,” Resp. Br. at 26, and “conflict with the Massachusetts Declaration of Rights,” *id.*, acknowledge that courts have the “inherent judicial power” to order payment “when the functioning of the courts requires reasonably necessary expenses.” *Bromfield v. Treasurer and Receiver Gen.*, 390 Mass. 665, 672–673 (1983), cited in Resp. Br. at 26. See also *Carrasquillo v. Hampden County District Courts*, 484 Mass. 367, 393-394 (2020) (deferring to Legislature as branch that appropriates funds but noting judiciary’s inherent power to protect courts from impairment), cited in Resp. Br. at 26; *Lavallee v. Justices in the Hampden County Superior Court*, 442 Mass. 228, 241 (2004) (court may order payment to protect court from impairment), cited in Resp. Br. at 26; *Gray v. Commissioner of Revenue*, 422 Mass. 666, 672-673 (1996) (courts have inherent power to order payment “for adequate resources to ensure the proper operation of the courts”), cited in Resp. Br. at 27; *Hancock v. Commissioner of Educ.*, 443 Mass. 428, 467 (2005) (mentioning *O’Coin’s* as an exception to general rule prohibiting judicial intervention in legislative affairs), cited in Resp. Br. at 28. Indeed, “separation of powers does not require three ‘watertight compartments’ within the government,” *Gonsalves*, 432 Mass. at 619 (internal citations omitted), because “many ‘legislative’ powers sufficiently implicate judicial functions to permit their exercise by the judiciary.”

Opinions of the Justices to the Senate, 372 Mass. 883, 892 (1977). It is thus unsurprising that each of the cases on which respondents most heavily rely may also be read to support the proposition that the courts have the inherent authority to order increased compensation for court-appointed counsel, if that is what is required in order for the courts to be able to carry out their core function of adjudicating cases. See *First Justice of the Bristol Div. of the Juvenile Court Dep't v. Clerk–Magistrate of the Bristol Div. of the Juvenile Court Dep't*, 438 Mass. 387, 396 (2003) (“What art. 30 forbids—‘the essence of what cannot be tolerated’—is legislative interference with the judiciary's core functions.”).

Nevertheless, respondents suggest that this Court declined to raise the rates in *Lavallee* and *Carrasquillo* because it did not have the authority to do so. Resp. Br. at 37. This is inaccurate. In both cases, the Court took pains to make clear that it was deferring in the first instance to see if the Legislature would act to restore the right to counsel. See *Lavallee*, 442 Mass. at 242 (citing with approval to decisions in other jurisdictions that “temporarily *deferred* in the first instance, and only temporarily, to legislative action to ensure that the system for compensation for indigent representation meets constitutional standards”) (emphasis supplied); *Carrasquillo*, 484 Mass. at 393 (“As we did in *Lavallee*, we *defer* to the Legislature . . . to determine the best approach to increase compensation rates for bar advocates.”) (emphasis supplied). A court cannot “defer” exercising authority that it does not

have. It is thus implicit in both *Lavallee* and *Carrasquillo* that this Court's inherent authority to procure the services of the "supporting personnel," *Lavallee*, 442 Mass. at 242, quoting *O'Coin's*, 362 Mass. at 510, that is essential for the court to adjudicate cases extends to ordering an increase in compensation rates for court-appointed attorneys. Accordingly, respondents' argument that this Court should ignore the out-of-state cases cited in *Lavallee* and in petitioners' principal brief because *Lavallee* did not follow them at that time, Resp. Br. at 37, falls flat; the cases that pre-date *Lavallee* were relevant and persuasive then, and they are relevant and persuasive now.

In addition, opinions by other States' highest courts decided after *Lavallee* have also approved direct judicial intervention in ordering funding essential to actualizing the right to counsel. The New Mexico Supreme Court, for example, held in 2007 that compensation for defense counsel in a particular case was inadequate and, as a consequence, stayed the prosecution of the death penalty unless and until New Mexico made "adequate funds available for the defense . . . set[ting] the hourly rate and maximum compensation based on the unique circumstances of th[at] case." *State v. Young*, 143 N.M. 1, 7 (2007). In 2008, the Florida Supreme Court held that the trial court had the authority to order compensation for court-appointed counsel greater than that permitted by statute. See *Maas v. Olive*, 992 So. 2d 196, 198–199 (Fla. 2008) ("[W]e affirm the trial court's order

declaring that in appropriate capital collateral cases involving extraordinary circumstances, registry attorneys may request and, upon judicial approval, receive compensation in excess of the statutory fee schedule, despite the language to the contrary in [the governing Florida statute].” And in 2016, the Supreme Court of Pennsylvania endorsed the authority of a trial court to order increased funding for an inadequate indigent defense system. See *Kuren v. Luzerne Cnty.*, 637 Pa. 33, 94 (2016) (trial court may order increased funding for public defender’s office if plaintiffs established “that the level of funding” created “the likelihood of a systematic, widespread constructive denial of counsel in contravention of the Sixth Amendment to the United States Constitution”). Although the latter two post-*Lavallee* cases involve trial court decisions to order increased funding and compensation for court-appointed counsel, they are nonetheless pertinent here, inasmuch as it would be incongruous if a trial court had the authority to do something that a State’s highest court did not.

II. Where the lack of counsel is a systemic problem of constitutional dimension, the courts are not functioning properly, and this Court or a single justice thereof has the inherent authority to act.

Respondents maintain that because the courts are able to hold *Lavallee* hearings, the court system is “minimally adequate.” Resp. Br. at 35, 41-42. Petitioners disagree. A court system that does not provide indigent defendants with lawyers for over five months is not “a minimally adequate court system.”

County of Barnstable, 410 Mass. at 330.¹ “Defense counsel is essential to the administration of criminal justice.” American Bar Association Criminal Justice Standards for the Defense Function, Standard 4-1.2(a) (4th ed. 2017). The importance of defense counsel to the proper functioning of the courts is recognized both by the Legislature, which has included “expenses incurred for assignment by the court of counsel” as a “cost[] of maintenance and operation of the judicial branch” that “shall be paid by the [C]ommonwealth,” G. L. c. 29A, § 1, as well as by this Court. See *Carrasquillo*, 484 Mass. at 395 (defense attorneys “help to ensure the integrity of our justice system”); *Guerin v. Commonwealth*, 339 Mass. 731, 734 (1959) (right to counsel is “a right upon which the essential element of fairness in the administration of justice depends”). Due to the ongoing systemic failure to provide counsel, the Court’s inherent authority, as discussed above and in petitioners’ principal brief at pages 22 to 25, is properly exercised in these circumstances.

¹ This Court has used various phrases to describe when it is necessary to exercise its inherent authority, and the shortage of counsel in Middlesex and Suffolk Counties meets the criteria set forth in all of them. For instance, a situation in which thousands of defendants are without counsel is an “extraordinary circumstance[] leading to a severe, adverse impact on the administration of justice” warranting the exercise of this Court’s inherent authority. *Sullivan*, 448 Mass. at 43. Similarly, without counsel, indigent defendants are not “secure in their rights, under the Constitution,” which demonstrates that the courts are not operating properly and that use of the court’s inherent authority is appropriate. *O’Coin’s*, 362 Mass. at 510.

Although respondents argue that a judge never has the authority to raise compensation rates, they also indicate that, if this Court holds otherwise, then both the full Court and a single justice would be authorized to exercise such authority under G. L. c. 211, § 3. Resp. Br. at 40 n.15. Petitioners agree. While petitioners' principal brief argued that G. L. c. 211, § 3 could only authorize the raising of compensation rates by a single justice if the full Court had found the rates to be unconstitutionally low, Pet. Br. at 28, the inherent authority of a single justice cannot be so limited. As this Court previously held when asked whether language added to G. L. c. 211, § 3, by St. 1992, c. 379, § 61, constituted a valid limitation on the Court's inherent power to superintend the court system, "[a]ny legislation that purports to divest the Supreme Judicial Court of its inherent powers of judicial administration 'would be ineffective as beyond the power of the General Court.'" *Sullivan*, 448 Mass. at 42, quoting *Opinions of the Justices*, 372 Mass. at 889. Thus, if a single justice has the inherent power to increase compensation for court-appointed counsel, the Legislature cannot validly limit the exercise of that authority by statute.

CONCLUSION

For the reasons set forth above and in petitioners' principal brief, this Court should hold that the full Court, a single justice of the Supreme Judicial Court, and any justice of any trial court department is authorized to order compensation rates

beyond those provided in G. L. c. 211D, § 11(a), for attorneys accepting representation of indigent criminal defendants.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with Rules 17 and 20 of the Massachusetts Rules of Appellate Procedure. The brief is set in fourteen-point Athelas font, and contains 2,025 words excluding the cover page, table of contents, table of authorities, and certificates of compliance and service. The word count was determined through use of the “Word Count” feature in Microsoft Word for Office 365.

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CERTIFICATE OF SERVICE

I hereby certify that on October 24, 2025, I served a copy of this Reply Brief
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