

FILED

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RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

Starcher, J., concurring:

While I concur in the result reached by the majority of this Court, I write separately to express my concern that the fee in this case is unfair as applied. I recognize the importance of the purposes for which the fee was enacted and I have no personal objection to paying the fee.

The fee, however, is not assessed against some segments of the population that receive the same services paid for by the fee, while the fee overly burdens others. For these reasons I believe the City should seek a more equitable assessment mechanism.

For example, wealthy retired residents who live within the Charleston city limits simply avoid the fee because they are not on the payroll of government or private business. Physicians and other professionals who live in the City's wealthiest neighborhoods and work outside the borders of the City likewise are not required to pay. Tourists and other persons who shop and otherwise participate in the City's commerce similarly escape the fee. All of these folks receive the same benefits from the City as do those who are required to pay the fee.

On the other side of the coin, there are others who are economically less fortunate on whom the fee is more burdensome. These folks might even be required to pay double or more in some instances. For example, a single mother who must work at two jobs

within the City to supply food and shelter to her family may have to pay the fee at both places of employment, since she would be on two separate payrolls. Likewise, low-income families in which both parents work are required to pay twice. Counsel for the City confessed before this Court in oral argument that there was no practical mechanism in place to avoid this.

These concerns may appear *de minimis* at first glance, which arguably is true at the current fee assessment level. However, now that the fee has been approved by this Court, future increases are likely to occur – as recently happened in Huntington. The majority’s assurance that fee increases might be struck down based on the provisions of *W.Va. Code*, 8-13-13 (1971), should the fee be determined unreasonable or excessive, offers no certainty and is little comfort to the economically less advantaged.