No. 129248

IN THE
SUPREME COURT OF ILLINOIS

JAMES R. ROWE, in his official capacity as Kankakee County State's Attorney, and MICHAEL DOWNEY, in his official capacity as Kankakee County Sheriff, Plaintiffs-Appellees, v. KWAME RAOUL, in his official capacity as Illinois Attorney General; JAY ROBERT PRITZKER, in his official capacity as Governor of the State of Illinois; EMANUEL CHRISTOPHER WELCH, in his official capacity as Speaker of the Illinois House of Representatives; and DON HARMON, in his official capacity as Illinois Senate President, Defendants-Appellants.	)	On Appeal from the Circuit Court of the Twenty-First Judicial Circuit, Kankakee County, Illinois No. 2022CH16 The Honorable THOMAS W. CUNNINGTON, Chief Judge Presiding.

BRIEF OF DEFENDANTS-APPELLANTS

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POINTS AND AUTHORITIES

NATURE OF THE ACTION

This appeal concerns a facial constitutional challenge to the Safety, Accountability, Fairness and Equity-Today ("SAFE-T") Act, a statute passed in 2021 by the General Assembly and signed into law by Governor Pritzker. *See* Pub. Act No. 101-652 (2021). The Act made comprehensive reforms to the State's criminal justice system, in areas ranging from pre-arrest diversion to policing to sentencing. Among the Act's principal goals was the reform of the procedures governing pretrial release—i.e., procedures that govern whether a criminal defendant who has been charged with a crime is detained or released pending trial. The Act accomplished that goal in two primary ways: It ended the use of monetary bail in Illinois, and it established a new set of procedures governing a court's decision whether to detain an individual before trial.

Plaintiffs are the state's attorneys (and, in some cases, the sheriffs) of 64 Illinois counties. They filed substantively identical civil actions contending that the Act as a whole, and the pretrial release provisions specifically, violate various provisions of the Illinois Constitution.[1] The cases were consolidated by this Court under Supreme Court Rule 384, and they proceeded to judgment. The circuit court issued an opinion rejecting plaintiffs' challenges to the Act as a whole but declaring the pretrial release provisions facially unconstitutional. Defendants appealed directly to this Court under Rule 302(a).

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[1] A complete caption identifying all parties to all 64 cases can be found in the notice of appeal. A37-64. (The appendix is cited as "A__" and the common-law record as "C__.")

JURISDICTION

This court has jurisdiction over this appeal under Supreme Court Rules 301, 302(a), and 303. The circuit court issued an opinion finding the pretrial release provisions facially unconstitutional on December 28, 2022, and issued a final judgment (containing the findings required by Rule 18) on December 30, 2022. A1, A34. Defendants filed a notice of appeal on the day the judgment issued, A37, which was timely under Rule 303(a)(1).

ISSUES PRESENTED FOR REVIEW

1. Whether the Illinois Constitution prevents the General Assembly from eliminating monetary bail, because monetary bail is required by either (a) article I, section 9 (which makes criminal defendants "bailable," subject to certain exceptions), or (b) article I, section 8.1 (which guarantees certain rights to crime victims).

2. Whether the Constitution prevents the General Assembly from enacting statutes governing the circumstances under which courts may detain individuals pending trial.

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

This appeal concerns the constitutionality of the pretrial release provisions of the SAFE-T Act, Pub. Act No. 101-652, § 10-255, as amended, Pub. Act No. 102-1104, § 70. Relevant portions of the statutory text can be found in the appendix. A71-93.

The relevant constitutional provisions are article I, sections 8.1 and 9, and article II, section 1. Those provisions' text can be found in the appendix. A69-70.

STATEMENT OF FACTS

The SAFE-T Act

In 2021, the General Assembly passed, and Governor Pritzker signed into law, the Safety, Accountability, Fairness and Equity-Today ("SAFE-T") Act, Pub. Act No. 101-652 (2021). The Act made a range of reforms to the State's criminal justice system. Among other things, the Act comprehensively revised the standards for police officers' use of force in making arrests, *see id.* § 10-216; conferred new authority on the Attorney General to investigate and combat alleged violations of civil rights by law enforcement agencies, *id.* § 10-116.7; and imposed new requirements on correctional facilities, including the requirement that they report all deaths in custody, *id.* § 3-1. Many of the Act's provisions (including each of the provisions described above) have taken effect in the two years since its enactment, while others were set to take effect on January 1, 2023. *Id.* § 99-999 (setting effective dates).

This case concerns provisions of the Act that changed the statutory regime governing when a criminal defendant who has been charged with a crime (and is presumed innocent) may be released or detained pending trial—the Act's "pretrial release provisions." *See id.* § 10-255 (amending 725 ILCS 5/110 *et seq.*). For at least the past six decades, since the enactment of the Code of Criminal Procedure of 1963, the General Assembly has regulated the circumstances under which such a defendant can be detained. *See* 1963 Ill. Laws 2836, 2852. That code, which stemmed from the report of a joint

committee comprising judges, prosecutors, private lawyers, and professors,[2] established a presumption that a defendant was eligible for pretrial release, directing courts to "liberally construe" the code in favor of release on personal recognizance—i.e., without a monetary payment—and to avoid "financial loss" to defendants. *Id.* (adding § 110-2). The Code also established other reforms, including requiring courts to consider a range of factors, such as a defendant's "financial ability," in setting any monetary bail, *id.* (adding § 110-5(a)), and all but eliminating the use of professional "bail bondsmen" by requiring courts to release defendants upon a deposit of 10% of any monetary bail required, *id.* (adding § 110-7(a)). Many of the reforms enacted by the Code remain in effect today.

In 2017, this Court established the Illinois Supreme Court Commission on Pretrial Practices and charged it with "conducting a comprehensive review of the State's pretrial detention system," and with making recommendations to reform and modernize that system. Ill. S. Ct. Comm'n on Pretrial Practices, *Preliminary Report* 4 (2018).[3] After a multi-year effort—including analysis of best pretrial practices used elsewhere in the Nation, consultation with a range of stakeholders, and public hearings—the Commission issued a comprehensive

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[2] *See* Charles H. Bowman, *The Illinois Criminal Code of 1961 and Code of Criminal Procedure of 1963*, 4 J. L. Reform 461, 471-73 (1971).

[3] *Available at* https://ilcourtsaudio.blob.core.windows.net/antilles-resources/resources/3c2435c7-c00a-4a7e-bebb-141afa154102/12-18.pdf. All websites last visited January 26, 2023.

report setting out over 50 recommendations for reform of pretrial practices in the State. Ill. Supreme Court Comm'n on Pretrial Practices, *Final Report* 5 (2020).[4] Those recommendations—which reflect the goal of "ensur[ing] defendants are not denied liberty solely due to their inability to financially secure their release from custody," *id.* at 22—included multiple suggestions addressing pretrial release, including that the State limit pretrial detention only to "arrestees charged with defined 'violent' offenses" or who are unlikely, absent detention, to appear for future hearings. *Id.* at 32-33. The Committee, observing that it was the "legislative branch of government" that bore the responsibility to revise the Code of Criminal Procedure as appropriate, urged the General Assembly to enact legislative reform to ensure that "conditions of release will be non-monetary, least restrictive, and considerate of the financial ability of the accused." *Id.* at 39, 69.

The SAFE-T Act's pretrial release provisions respond to the report by modernizing and reforming the procedures governing when a defendant may be detained pending trial. *See* Pub. Act No. 101-652, § 10-255. The pretrial release provisions retain many aspects of the regime enacted by the 1963 Code of Criminal Procedure, including the admonition that courts should "liberally construe" the statutory regime in favor of pretrial release. *See* 725 ILCS

[4] *Available at* https://ilcourtsaudio.blob.core.windows.net/antilles-resources/resources/227a0374-1909-4a7b-83e3-c63cdf61476e/Illinois%20Supreme%20Court%20Commission%20on%20Pretrial%20Practices%20Final%20Report%20-%20April%202020.pdf.

5/110-2(e).[5] But the provisions expand upon that longstanding statutory preference for pretrial release, principally by abolishing monetary bail—i.e., the practice of allowing defendants to be released pretrial only if they provide payment. *See id.* 5/110-1.5. In place of monetary bail, the pretrial release provisions establish a default rule that "[a]ll persons charged with an offense shall be eligible for pretrial release," *id.* 5/110-2(a), subject to those conditions of release that the court deems appropriate (such as electronic monitoring or home supervision), *id.* 5/110-5(c); *see also id.* 5/110-10 (setting out possible conditions of release).

The pretrial release provisions nonetheless allow the State to seek, and a court to order, pretrial detention in a wide range of cases. *See id.* 5/110-6.1. To start, a court may order a defendant detained pending trial if he or she is charged with any of an array of enumerated felony offenses and "poses a real and present threat to the safety of any person or persons or the community." *See id.* 5/110-6.1(a)(1)-(7). A court may likewise order a defendant detained pending trial if he or she has been charged with an enumerated offense, or any felony "other than a Class 4 offense," and the court concludes there is "a high likelihood of willful flight to avoid prosecution." *Id.* 5/110-6.1(a)(8). The State bears the burden of establishing a defendant's eligibility for pretrial detention. *Id.* 5/110-6.1(e). Collectively, these provisions permit pretrial detention based

[5] Except where noted, all citations to the Illinois Compiled Statutes are to the version of those statutes as amended by the SAFE-T Act and the amendatory act passed on December 6, 2022. *See* Pub. Act No. 102-1104, § 70 (2022).

on either dangerousness or flight risk for a large majority of felony defendants in Illinois, and, indeed, in *all* cases in which a defendant could, before the Act's enactment, be detained pretrial without bail.

Plaintiffs' action

Plaintiffs are the state's attorneys (and, in some cases, the sheriffs) of 64 Illinois counties. In fall 2022, several months before the January 1, 2023, effective date of the pretrial release provisions, they filed materially identical civil actions challenging the Act as a whole, and the pretrial release provisions specifically, arguing that the Act and the provisions violated various clauses of the Illinois Constitution. *E.g.*, C1144-1603 (complaint in *Rowe*). Specifically, plaintiffs argued that the Act was unconstitutionally enacted because it (1) did not comply with the Constitution's single-subject clause, Ill. Const. art. IV, § 8(d); and (2) was not read three times on the floor of each house, *id.* They also contended that various provisions governing pretrial release violated (3) the Constitution's "bail" clause, which makes criminal defendants "bailable" under certain circumstances, *id.* art. I, § 9; (4) its separation-of-powers clause, *id.* art. II, § 1; and (5) the clause guaranteeing certain rights to crime victims, *id.* art. I, § 8.1. Plaintiffs finally contended that (6) certain provisions of the Act were unconstitutionally vague and that (7) as a result of the supposed constitutional defects they identified, the Act should have been proposed to Illinois voters and enacted as a constitutional amendment under the procedures set out in article XIV of the Constitution.

Pursuant to Rule 384, this Court transferred these cases to the Circuit Court for the Twenty-First Judicial Circuit, and consolidated them with *Rowe v. Raoul*, the first-filed case.[6] The parties stipulated to a schedule for cross-motions for summary judgment, and agreed to file supplemental briefs, and an amended complaint, addressing the effect of an amendatory act passed by the General Assembly in December 2022, *see supra* p. 8 n.5. C934, C1143.

The circuit court issued an opinion on December 28, 2022. A1-33. It agreed with defendants that the Act was lawfully enacted as a whole, and thus granted defendants summary judgment as to those claims challenging the Act in its entirety. *See* A3-12, A27-28. Specifically, the court held that the Act as a whole involved a single subject—namely, the criminal justice system—and that each of the provisions plaintiffs identified as deviating from that subject in fact had a "natural and logical connection" to it. A3-12. The court also agreed with defendants that plaintiffs' "three readings" argument was foreclosed by this Court's longstanding precedent. A27-28. The court finally rejected plaintiffs' argument that various terms of the Act were unconstitutionally vague, explaining that the statute was sufficiently clear and, in any event, did not impair any liberty interests held by plaintiffs in their capacity as law enforcement officers. A28-31.

[6] At the time of the Court's order, only 58 cases had been filed. The other six cases were transferred and consolidated with *Rowe* on the parties' agreement. *See* C1643.

The court granted summary judgment to plaintiffs, however, on their claims challenging the pretrial release provisions. A12-27. It held that the Act's abolition of monetary bail contravened the bail clause by "eradicat[ing] monetary bail as a consideration" for courts in all cases, rejecting defendants' arguments that the clause guarantees rights only to criminal defendants, not to prosecutors or courts. A23. It further held that the provisions violated separation-of-powers principles by purporting to withdraw from courts their inherent authority to detain defendants pending trial. A17-27. And it held that the provisions violated the crime victims' rights clause by eliminating monetary bail as a permissible tool for courts, in contravention—in the court's view—of the Constitution's textual reference to "bail" in that clause. A15-17. On the basis of these perceived constitutional defects, the court held that the pretrial release provisions should have been enacted as an amendment to the Constitution. A15.

Defendants appealed directly to this Court under Rule 302(a). A37. On December 31, 2022, this Court issued an order staying the effective date of the pretrial release provisions on a statewide basis while this appeal is pending. *See People ex rel. Berlin v. Raoul*, No. 129249 (Dec. 31, 2022).

ARGUMENT

In 2021, responding to a report commissioned by this Court that detailed the ways in which the State's system of pretrial release had failed to fulfill its aims, the General Assembly enacted a comprehensive reform of pretrial procedures within the State. That reform took two primary forms: the elimination of monetary bail and the comprehensive regulation of pretrial detention procedures. Plaintiffs, who are the state's attorneys (and some sheriffs) of 64 counties, brought these consolidated actions contending that the reforms enacted by the General Assembly—and the broader statute in which those reforms were passed—were facially unconstitutional.

The circuit court concluded that the General Assembly, in regulating the circumstances under which courts may detain defendants pending trial, exceeded its authority under the Illinois Constitution in eliminating monetary bail and transgressed separation-of-powers principles.[7] That decision is flawed for multiple reasons. Neither of the two constitutional provisions the circuit court read to independently require the State to maintain a system of monetary bail can be read to impose that requirement; indeed, each clause

[7] The circuit court also held that the pretrial release provisions constituted an "improper attempt[] to amend the Constitution" in violation of article XIV (which sets out the procedures by which such an amendment may be enacted). A15. But, as the court itself observed, that conclusion followed only from the court's view that the provisions violated the bail clause, separation-of-powers clause, and crime victims' rights clause. *See id.* Because the provisions violate none of those constitutional provisions, as discussed below, *infra* pp. 14-54, the General Assembly was not obligated to amend the Constitution to enact them, and plaintiffs have never made any argument to the contrary.

guarantees rights to individuals who are interacting with the criminal justice system, not power to courts to set monetary bail. And although courts possess inherent power to detain defendants pending trial, this Court has never held that the General Assembly unduly infringes upon that power by setting terms and conditions under which it can be exercised. For these reasons, among others, the decision below should be reversed.[8]

I. The Court Reviews The Decision Below De Novo.

This appeal involves questions of law that this Court reviews de novo, without deference to the circuit court's decision. *See Bartlow v. Costigan*, 2014 IL 115152, ¶ 17 ("Our review of the constitutionality of the Act, and its proper statutory construction, is . . . subject to *de novo* review."); *Hayashi v. IDFPR*, 2014 IL 116023, ¶ 22 (same). In reviewing the statute, the Court "presume[s]" it "to be constitutional, and the party challenging the statute bears the burden of demonstrating its invalidity." *Hayashi*, 2014 IL 116023, ¶ 22. Indeed, the

[8] As defendants explained below, C1016, plaintiffs' challenge to the pretrial release provisions separately fails because no named defendant (the Governor, the Attorney General, and the legislative leaders) enforces those provisions, and so defendants cannot be enjoined from exercising enforcement authority that they do not possess. *See Cahokia Unit Sch. Dist. No. 187 v. Pritzker*, 2021 IL 126212, ¶ 41 (explaining that case did "not involve an actual controversy between the parties," and so was not justiciable, because the named defendant had "no authority to take the action requested by plaintiffs"). Nonetheless, under the unusual circumstances of this case—i.e., where this Court exercises "supervisory authority" over the courts that *do* enforce the pretrial release provisions, Ill. Const. art. VI, § 16, and where, as the Court has recognized, the public interest would be served by the adjudication of plaintiffs' claims on the merits, *see supra* p. 11—defendants do not renew that specific argument here. *See Lebron v. Gottlieb Mem'l Hosp.*, 237 Ill. 2d 217, 253 (2010) (matters going to justiciability, unlike matters going to jurisdiction, may be waived).

Court "has a duty to construe a statute in a manner that upholds its validity and constitutionality if it can reasonably be done." *Id.*

II. The Elimination Of Monetary Bail Does Not Violate The Constitution.

One of the General Assembly's principal goals in enacting the pretrial release provisions was to eliminate the monetary bail system, which it viewed as having contributed to unequal detention outcomes within the State. It did so by enacting section 110-1.5, which "abolished" the "requirement of posting monetary bail." 725 ILCS 5/110-1.5. Plaintiffs contend, and the circuit court agreed, that the General Assembly violated two separate provisions of the Illinois Constitution in doing so: (a) the Constitution's bail clause, which makes criminal defendants "bailable" subject to certain exceptions, Ill. Const. art. I, § 9; and (b) its crime victims' rights clause, which grants crime victims certain procedural rights, *id.* art. I, § 8.1.[9] Those arguments are flawed on multiple levels, most fundamentally because neither constitutional provision requires the State to maintain a system of monetary bail. The circuit court's contrary decision should be reversed.

A. Section 110-1.5 does not violate the bail clause.

To start, the circuit court erred by holding that section 110-1.5 violates article I, section 9, of the Constitution, which makes criminal defendants

[9] Plaintiffs also briefly suggested below that the General Assembly's decision to eliminate monetary bail transgressed upon separation-of-powers principles, in that courts have an inherent authority to set monetary bail. *E.g.*, C1611-12. That contention likewise fails, as discussed further below. *See infra* pp. 46-47.

"bailable" under certain circumstances. *See* Ill. Const. art. I, § 9. The circuit court reasoned primarily that this clause's reference to "bail" entitles law enforcement officers (i.e., prosecutors) to seek, and courts to order, pretrial release conditioned on a defendant's payment—i.e., that the bail clause *requires* a system in which courts can impose monetary bail. A27. But that reading is inconsistent with text, history, and precedent, all of which show that the clause confers on criminal defendants the right to seek release, and grants no authority to law enforcement officers or courts. Section 110-1.5 thus does no more than build upon the rights guaranteed to criminal defendants by the clause, and does not conflict with it in any way.

1. The bail clause confers a right to seek release, which section 110-1.5 secures.

The Constitution's bail clause provides, as relevant, that "[a]ll persons shall be bailable by sufficient sureties," except for defendants who are charged with certain enumerated offenses and upon a certain showing by the State. Ill. Const. art. I, § 9; *see People v. Bailey*, 167 Ill. 2d 210, 238-39 (1995). Plaintiffs' primary argument, which the circuit court appeared to accept, A21-23, is that the bail clause *requires* the State to maintain a system in which prosecutors can seek, and courts can order, monetary bail. That reasoning rests on the premise that the clause's description of defendants as "bailable" presupposes—and thus requires—the existence of monetary bail. That premise is incorrect. The bail clause confers on criminal defendants the right to seek pretrial release, secured by those conditions a court concludes are appropriate. So

understood, section 110-1.5 is consistent with, and not in conflict with, the clause.

To start, the text and history of the bail clause establish that it secures the right to seek pretrial release, and does not mandate any particular system for obtaining such release. The bail clause dates to the State's first constitution, the Illinois Constitution of 1818, which—using the same language as today—made all defendants (save capital defendants) "bailable by sufficient sureties." Ill. Const. of 1818, art. VIII, § 13.[10] The drafters of the 1870 and 1970 constitutions preserved the clause in substantially the same form, *see* 1 *Record of Proceedings*, Sixth Illinois Constitutional Convention ("Proceedings") 699 (describing 1970 version as a "minor rephrasing" of the 1870 version, leaving "[t]he substance . . . unchanged"), and Illinois voters amended it twice in the 1980s to permit the State to deny bail to other classes of defendants, including defendants charged with "felony offenses for which a sentence of imprisonment, without conditional and revocable release, shall be imposed by law as a consequence of conviction." Ill. Const. art. I, § 9.

Under these circumstances—i.e., where the relevant text has remained unaltered since the 1818 Constitution, and where legislative history suggests

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[10] The full text read: "That all persons shall be bailable by sufficient sureties, unless for capital offences, where the proof is evident or the presumption great . . . ." *Id.* Illinois was one of the first States to adopt such a clause, but by the 1960s, roughly forty States had enacted similar provisions. *See Fry v. State*, 990 N.E.2d 429, 438-39 (Ind. 2013); *State v. Koningsberg*, 164 A.2d 740, 742 (N.J. 1960).

that the drafters of the 1970 text meant to leave "[t]he substance" of the bail clause "unchanged," 1 Proceedings 699—the proper reference point for the meaning of the bail clause is the early nineteenth century, when the text was drafted. *See Walker v. McGuire*, 2015 IL 117138, ¶ 16 ("[O]ur chief purpose, when construing a constitutional provision, is to determine and effectuate the common understanding of the persons who adopted it . . . ."); *see also id.* ¶ 19 (consulting history of prior enactment "[b]ecause no change in meaning was intended" with 1970 Constitution); *People v. Moon*, 2022 IL 125959, ¶¶ 35-36 (where "no substantial difference" exists between jury-trial provisions set out in prior constitution and those set out in 1970 version, "the right . . . was the same under one constitution as under the other" (cleaned up)).

And in the early nineteenth century, "bail" did not mean monetary bail—i.e., the practice of allowing a defendant to be released pretrial only upon payment. Rather, the term "bail" referred to pretrial release more generally, granted on conditions designed to ensure the defendant's appearance at future court appearances—i.e., "sufficient sureties." Indeed, monetary bail was all but unknown at the time the 1818 Constitution was drafted. At that time, as one court has explained, "'bail' in criminal cases relied on *personal* sureties"—individual guarantors, including friends or relatives, who agreed to "guarantee the defendant's appearance at trial and, in the event of nonappearance, a sum of money." *Holland v. Rosen*, 895 F.3d 272, 288 (3d Cir. 2018) (emphasis added); *see* Anthony Highmore, *A Digest of the Doctrine of Bail: In Civil and*

Criminal Cases v-vi, 197 (1783).[11] "In the English tradition of bail that influenced early American practice, the pledge did not require any upfront payment" at all. *Holland*, 895 F.3d at 290. Today's system of monetary bail "appear[s] to have emerged in the mid-to-late Nineteenth Century," *id.* at 293; *accord* Nat'l Inst. of Corrections, *Fundamentals of Bail* 26 (2014),[12] decades after the bail clause was enacted as part of the 1818 Constitution. *See also id.* at 38 ("What we in America today know as the traditional money bail system . . . is, historically speaking, a relatively new system . . . .").

Dictionaries from this era further refute the claim that "bail" means monetary bail specifically. Samuel Johnson's dictionary of 1755 defines "bail" as "the freeing or setting at liberty [of] one arrested or imprisoned . . . , under security taken for his appearance," 1 Samuel Johnson, *A Dictionary of the English Language* (1755),[13] a definition reprised in the 1818 version, published the year the bail clause was enacted, *see* 1 Samuel Johnson, *A Dictionary of the English Language* (H.J. Todd. ed. 1818)[14]; *accord* Thomas Walter Williams, *A Compendious and Comprehensive Law Dictionary* (1816) ("the freeing or setting at liberty of one arrested or imprisoned . . . , on surety taken for his

[11] *Available at* https://bit.ly/3vVla7Q.

[12] *Available at* https://nicic.gov/fundamentals-bail-resource-guide-pretrial-practitioners-and-framework-american-pretrial-reform.

[13] *Available at* https://bit.ly/3GTkRQ2.

[14] *Available at* https://bit.ly/3H2adqp.

appearance").[15] Even later dictionaries preserve this basic meaning, defining bail as "the means of procuring the release from custody of a person charged with a criminal offense . . . by assuring his future appearance in court," James A. Ballentine, *Ballentine's Law Dictionary* 119 (William S. Anderson ed., 3d ed. 1969),[16] or even "the process by which a person is released from custody," 1 *Webster's Third New Int'l Dictionary* 163 (1971) (def. e).

To be sure, defendants released before trial, or "bailed," historically were released with conditions, both monetary and non-monetary, meant to assure their appearance at trial. But the Act's pretrial release provisions permit a court to do just that. *See* 725 ILCS 5/110-5(c), 5/110-10. A court may require a defendant to submit to electronic monitoring to ensure his or her appearance at trial; it may require a defendant to remain at home, with or without the supervision of the Pretrial Services Agency, to ensure that he or she does not flee the State; it may require a defendant to report to the court, or to a third party, as frequently as it deems necessary; and it may impose any other "reasonable conditions" that it believes are needed to ensure the defendant's appearance. *Id.* 5/110-10(b). These non-monetary conditions of release, just like monetary bail, allow a court to ensure that a defendant will return, and so constitute "sufficient" sureties within the scope of the clause. *See People ex rel. Gendron v. Ingram*, 34 Ill. 2d 623, 626 (1966) ("Sufficient, as

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[15] *Available at* https://bit.ly/3XF8yO6.

[16] *Available at* https://bit.ly/3iTQMId.

used in [the bail clause], means sufficient to accomplish the purpose of bail": "granting liberty to an accused pending trial while obtaining the greatest possible assurance that he will appear.").

The legislative history of the 1970 Convention also refutes plaintiffs' reading of the clause, which would protect not defendants' liberty interests but instead the institution of monetary bail. Indeed, the convention drafters expressly discussed the possibility that the General Assembly might at some future point abolish monetary bail, and agreed that doing so would not violate the bail clause. As noted, *supra* p. 16, the Constitution's drafters concluded—consistent with recommendations made by the Convention's Bill of Rights Committee—that the bail clause should remain essentially "unchanged" from the relevant provision in the 1870 Constitution. 1 Proceedings 699. But a minority of the relevant committee had proposed revising the clause to reflect their view that "[t]he money bail system leads each year to the jailing, solely because of their poverty, of thousands of defendants awaiting trial." 6 Proceedings 178. The minority would have amended the bail clause to state that "[s]ecurity shall be required only to assure the appearance of the accused and shall not exceed the financial means of the accused." *Id.* The minority proposal was discussed on the convention floor, *see* 3 Proceedings 1659-68, but ultimately rejected, with the committee's reporter "recogniz[ing]" the "problems and inequities in the present bail system" but observing that the clause as drafted "permitted the legislature to delve into the problems and do

something about them," *id.* at 1674. The minority's spokesperson, Bernard Weisberg, agreed: Asked whether, under "both the minority and the majority proposals," the legislature could constitutionally "abolish[]" "the money bail system," Weisberg answered, "Yes." *Id.* at 1664. That view of legislative power is consistent only with a reading of the clause that protects the liberty of criminal defendants, not with plaintiffs' reading, under which it protects the institution of monetary bail itself.

This Court has also considered and rejected a version of plaintiffs' argument before—namely, that the bail clause requires a particular *kind* of "surety." As discussed, *supra* p. 6, the Code of Criminal Procedure of 1963 contained provisions designed to eliminate or reduce defendants' reliance on professional surety companies, an industry the General Assembly viewed as predatory. The statute thus permitted a defendant for whom monetary bail was set to obtain release by furnishing only 10% of the amount, but imposed more onerous burdens on professional surety companies, requiring them to furnish a cash deposit for 100% of the amount. *See Gendron*, 34 Ill. 2d at 624-25. A criminal defendant challenged the statute, contending that it violated the bail clause by effectively making professional surety companies (which had historically furnished unsecured bail bonds) unlawful. *Id.* at 625. The Court rejected the defendant's argument that the bail clause required the State to maintain a particular kind of surety system—there, the prior system under which professional surety companies put up unsecured bonds. *Id.* at 626. It

explained that the legislature had determined that such a method "does not accomplish the purpose of bail"—namely, "to give the accused liberty until he is proved guilty, but yet have some assurance that he will appear for trial"—and the Court would defer to that decision. *Id.* at 625-26. The same is true here: The General Assembly has determined that conditioning pretrial release on payment "does not accomplish the purpose of bail" and so has removed it as an option, while preserving other means of ensuring a defendant's appearance at trial. *Id.* Nothing in the bail clause prohibits the General Assembly from making that decision.

Other courts, too, agree that "bail" means pretrial release conditioned on whatever terms a court chooses to impose, not pretrial release conditioned specifically on a monetary payment by the defendant. In *Holland*, a criminal defendant sued to challenge a New Jersey statute generally requiring courts to impose non-monetary conditions of release rather than monetary bail, arguing among other things that the Eighth Amendment to the United States Constitution—which prohibits "[e]xcessive bail," U.S. Const. amend. VIII—presupposed, and thus guaranteed, a system of monetary bail, in the same manner that plaintiffs suggest that Illinois's bail clause does. 895 F.3d at 288. After conducting an exhaustive review of the history of bail in the United States, the court rejected that argument, explaining that neither the history nor the text of the Eighth Amendment supported the idea that "bail mean[t] exclusively monetary bail; non-monetary conditions of release are also bail."

Id. at 291; *see id.* at 290 (defining "bail" as "a means of achieving pretrial release from custody conditioned on adequate assurances"). And in another context, the United States Supreme Court has described the bail right—in that case, a right secured by a federal law—as "[t]he right to release before trial . . . conditioned upon the accused's giving adequate assurance that he will stand trial and submit to sentence if found guilty." *Stack v. Boyle*, 342 U.S. 1, 4 (1951).

All this shows that the bail clause protects a defendant's right to seek pretrial release, subject to those conditions that a court imposes; it does not require the State to maintain a system of monetary bail. So understood, section 110-1.5 is consistent with, not in conflict with, the bail clause: The clause protects defendants' right to seek pretrial release, and section 110-1.5, and the pretrial release provisions generally, secure that right by ensuring that all defendants deemed "bailable" by the Constitution can seek pretrial release. Section 110-1.5 simply removes one condition previously available to a court in setting the conditions of release—monetary bail. 725 ILCS 5/110-1.5. But that does not violate the bail clause, because the bail clause does not guarantee the existence of such a system.

The circuit court disagreed, A21-23, but its reasons do not withstand scrutiny. The primary premise of the circuit court's opinion appears to be its view that the bail clause's use of the words "bail[]" and "sureties" requires the existence of a monetary bail system. *See* A23 (reasoning that the Act violated

the clause by "eras[ing] the word 'bail' out of multitudinous Codes, criminal and otherwise"); A27 (holding that "'sufficient sureties' does involve monetary bail"). But the court identified no authority supporting that reading of the text, and, as discussed, *supra* pp. 15-23, it is inconsistent with text, history, and precedent. *See Gendron*, 34 Ill. 2d at 626 ("Sufficient, as used in [the bail clause], means sufficient to accomplish the purpose of bail": "granting liberty to an accused pending trial while obtaining the greatest possible assurance that he will appear.").

The court also reasoned that the bail clause serves interests broader than merely protecting a defendant's liberty, insofar as bail "'accommodate[s] both the defendant's interest in pretrial liberty and society's interest in assuring the defendant's presence at trial.'" A22 (quoting Donald B. Verrilli, Jr., Note, *The Eighth Amendment and the Right to Bail: Historical Perspectives*, 82 Colum. L. Rev. 328, 329-30 (1982)). Defendants agree that conditions on pretrial release serve that interest. *See supra* p. 19. But it does not follow, as the circuit court appeared to suggest, that the General Assembly is somehow precluded from preventing courts from employing one particular form of condition on pretrial release (monetary bail), any more than the General Assembly was precluded in the 1960s from regulating in a manner that all but excluded reliance on professional surety companies. *See Gendron*, 34 Ill. 2d at 626. The pretrial release provisions preserve a wide range of

conditions that courts may impose to ensure defendants' appearance at trial, *see supra* p. 19; 725 ILCS 5/110-10(b), and so are consistent with the clause.

2. No matter how it is read, the bail clause confers rights on criminal defendants and does not mandate any particular system of pretrial release.

Even if the circuit court were correct that the bail clause's reference to "bail" should be read to refer to *monetary* bail, it would not follow that section 110-1.5, or the pretrial release provisions generally, violate the clause. That is because, no matter how it is read, the bail clause plainly confers a right on criminal defendants only—that is, it establishes a constitutional floor, under which a defendant is entitled to be released *at least* upon furnishing monetary bail. Plaintiffs, by contrast, would have the Court read the bail clause to confer some sort of entitlement on courts or law enforcement officers, under which such actors are constitutionally entitled to set or seek monetary bail. That reading cannot be squared with the text, structure, or purpose of the clause.

To start, the text and structure of the bail clause demonstrate that it confers rights on criminal defendants, not on law enforcement officers or on courts. The bail clause appears in article I of the Constitution, which is the "bill of rights." *See* Ill. Const., art. I. Article I secures the rights of the "person[s]" or "people," *see, e.g.*, *id.* § 2 ("No person shall be deprived of life, liberty or property without due process of law . . . ."), and the bail clause is no different. That section enables "people" who are the subject of criminal

proceedings—that is, criminal defendants—to seek release, whether pending trial (in the case of bail) or after a conviction (in the case of habeas corpus). *Id.* § 9. Its text reveals no intent to confer rights on prosecutors or courts.

This Court has recognized that the bail clause confers a right on individual criminal defendants. It explained in *People v. Purcell*, 201 Ill. 2d 542 (2002), that the bail clause protects "[t]he right of an accused to obtain pretrial bail," *id.* at 545, and struck down a statute that would have deprived a criminal defendant of that right, *see id.* at 550 ("[O]ur constitution expressly protects the right of a defendant to bail unless certain circumstances exist . . . ."). Authority from other states with similar constitutional provisions is to the same effect. *See, e.g.*, *Fry*, 990 N.E.2d at 440-41 (describing analogous provision as conferring a "right to bail" on criminal defendants); *Konigsberg*, 164 A.2d at 742 (describing analogous provision as codifying "the right of the individual to bail"); *see also Stack*, 342 U.S. at 4 (describing a similar federal statute as conferring a "right to freedom before conviction").

That the bail clause secures the rights of criminal defendants, and does not confer any entitlement on courts or law enforcement officers, defeats plaintiffs' claims, no matter the scope of the right the clause confers. For one, it means that plaintiffs lack standing to advance a claim based on an alleged deprivation of rights under the bail clause. A party that seeks to invalidate a statute as unconstitutional must assert his or her *own* rights, not the rights of third parties. *See, e.g.*, *State v. Funches*, 212 Ill. 2d 334, 346 (2004) ("A party

has standing to challenge the constitutionality of a statute only insofar as it adversely impacts his or her own rights."); *People v. Jaudon*, 307 Ill. App. 3d 427, 435-36 (1st Dist. 1999) ("A party does not have standing to assert the constitutional rights of others not before the court."). And, as discussed, the bail clause grants rights only to criminal defendants, not to prosecutors or to sheriffs. Plaintiffs thus lack standing to seek the invalidation of section 110-1.5 on the ground of an asserted conflict between that section and the bail clause, because they enjoy no rights protected by that clause.

But even if plaintiffs could invoke the bail clause, it would not matter, because the fact that it guarantees a right to criminal defendants, and not to law enforcement officers or courts, also means that plaintiffs' theory fails on the merits. That is because, even if the clause were understood to guarantee criminal defendants the right to release upon providing monetary bail, rather than simply to release on conditions imposed by a court, section 110-1.5 would not contravene the bail clause by conferring statutory rights that exceed that constitutional right—namely, the right to release *without* furnishing monetary bail. Just as the General Assembly has acted in other areas to confer rights on individuals that exceed the relevant constitutional rights, *see, e.g.*, 725 ILCS 5/103-5(a) (speedy trial); 735 ILCS 30/5-5-5 (eminent domain); 775 ILCS 5/2-102 (employment discrimination), so too may the General Assembly confer on criminal defendants a statutory right to pretrial release that goes beyond the right conferred (on plaintiffs' account) by the bail clause.

The circuit court appeared to reject this argument on its belief that the bail clause serves a "broader" purpose, namely to "balance a defendant's rights with the requirements of the criminal justice system, assuring the defendant's presence at trial[] and the protection of the public." A22. But that conclusion does not follow the premise. Even if the rights conferred by the bail clause are limited, in that they do not grant a defendant an *unqualified* right to release (as opposed to a right to release on conditions imposed by a court), that does not change that the rights belong to criminal defendants, as opposed to prosecutors or courts. Many rights are limited, and many of those limitations serve "broader" purposes. A22. For instance, the right to be free of searches and seizures is a qualified one, in that it protects only against "unreasonable" intrusions, Ill. Const. art. I, § 6, but the right still serves to protect defendants, not others whose rights have not been infringed, *see People v. Kidd*, 178 Ill. 2d 92, 135 (1997). The court should reject the circuit court's conclusion that the bail clause provides rights to prosecutors or courts that prevail over the rights of criminal defendants who are presumed innocent pending trial.

B. Section 110-1.5 does not violate the crime victims' rights clause.

The circuit court also erred in holding that section 110-1.5 separately violates article I, section 8.1, of the Constitution, which guarantees certain rights to crime victims. *See* A15-17; Ill. Const. art. I, § 8.1. That clause—which was added by Illinois voters to the Constitution in 1992 and amended in 2014—guarantees victims various rights, including a right to have a victim's

safety (and the safety of the victim's family) "considered in denying or fixing the amount of bail, determining whether to release the defendant, and setting conditions of release after arrest and conviction." *Id.* art. I, § 8.1(a)(9). The circuit court held that this clause, too, requires the State to maintain a system of monetary bail, A15-17, but that conclusion is mistaken in multiple respects.

First, plaintiffs lack standing to invoke the crime victims' rights clause, because that clause grants rights only to crime victims, not to law enforcement officers like plaintiffs. The clause's plain text makes that clear. The clause enumerates twelve rights that belong to "[c]rime victims," including, as relevant here, the right to "have the safety of the victim and the victim's family considered in denying or fixing the amount of bail, determining whether to release the defendant, and setting conditions of release after arrest and conviction." Ill. Const. art. I, § 8.1(a)(9). The clause *expressly* identifies who may enforce the rights set out therein: It provides that only "[t]he victim has standing to assert the rights" set out in the clause, and goes on to specify that "[n]othing in" the clause "shall be construed to alter the powers, duties, and responsibilities of the prosecuting attorney." *Id.* § 8.1(b). As discussed, *supra* p. 26, a party must assert his or her own rights, not third parties', and here the constitutional text establishes that those rights belong to the victims of crimes, not to law enforcement officers like plaintiffs. *See, e.g.*, *People v. Gomez-Ramirez*, 2021 IL App (3d) 200121, ¶ 29 (explaining that clause "offers crime victims an avenue by which they can assert their rights" and rejecting

prosecutor's argument that it expanded the State's rights in criminal proceedings). This claim fails on that basis alone.

Second, and relatedly, the clause cannot be read to require a monetary bail system, as plaintiffs suggest and the circuit court held. *See* A16. The purpose of the clause, as this Court has explained, was to "serve as a shield to protect the rights of victims," *People v. Richardson*, 196 Ill. 2d 225, 231 (2001) (cleaned up), not to enact sweeping changes to the State's criminal justice system. But under plaintiffs' account, even if the bail clause does *not* require the existence of a system of monetary bail, the crime victims' rights clause independently has that exact same effect. Plaintiffs, in other words, contend that Illinois voters in 2014 agreed to amend the Constitution to mandate the existence of a monetary bail system under the auspices of a provision securing procedural rights to crime victims. But the drafters of proposed constitutional amendments, like legislators, do not "hide elephants in mouseholes," *People ex rel. Ryan v. Agpro, Inc.*, 214 Ill. 2d 222, 228 (2005), and plaintiffs identify no evidence that the amendment was understood to make such a monumental change to the State's criminal justice system. Indeed, courts have repeatedly rejected arguments that the clause made any substantive changes to the criminal justice system that exceed the narrow procedural rights given to crime victims by its plain text. *See, e.g.*, *Gomez-Ramirez*, 2021 IL App (3d) 200121, ¶¶ 28-29 (agreeing that the clause "do[es] not alter the fundamental principles on which our legal system is based"); *People v. Nestrock*, 316 Ill.

App. 3d 1, 10 (2d Dist. 2000) (same). The same principle defeats plaintiffs' claim here.

Finally, and in any event, section 110-1.5, and the pretrial release provisions more broadly, comply with the clause. The clause requires only that courts consider the safety of victims and their families "in denying or fixing the amount of bail, determining whether to release the defendant, and setting conditions of release after arrest and conviction." Ill. Const. art. I, § 8.1(a)(9). The pretrial release provisions do just that: They require a court to consider the "nature and seriousness of the real and present threat to the safety of any person or persons that would be posed by the defendant's release," including crime victims and their family members, "as required under" the Rights of Crime Victims and Witnesses Act. *See* 725 ILCS 5/110-5(a)(4). Consistent with the clause, the provisions also require the court to give notice to crime victims before holding a pretrial release hearing, before revoking a condition of pretrial release, and in a range of other contexts. *See id.* 5/110-5(a)(j); 5/110-6(h); 5/110-6.1(m). The pretrial release provisions thus secure, rather than contravene, the rights guaranteed by the clause, in that they require the court to consider the safety of victims at every stage at which the court determines whether and on what conditions a defendant should be released.

Defendants explained these points below, *e.g.*, C1024-25, but the circuit court did not substantively address them, A15-17. It reasoned primarily that the clause's textual reference to "fixing the amount of bail" requires courts to

be able to impose a monetary condition as a term of release, and that section 110-1.5 violated the clause by "leav[ing] courts with no 'amount of bail' to fix." A16. But that reading of the clause would, as discussed, work a major change to the State's criminal justice system, contravening this Court's admonition that the clause merely "serve[s] as a shield to protect the rights of victims." *Richardson*, 196 Ill. 2d at 231 (cleaned up). Indeed, the circuit court's logic would call into question a large portion of the Code of Criminal Procedure of 1963. For one, even under the pre-SAFE-T Act regime, the Code directed courts to release defendants on personal recognizance where possible, *supra* p. 6, contrary to the circuit court's apparent view that the crime victims' rights clause *requires* courts to "fix[] the amount of bail."

Likewise, if the crime victims' rights clause in fact granted substantive authority to courts, entitling them to "fix[] the amount of bail" as they saw fit to protect crime victims' interests, the clause would presumably also entitle courts to "determin[e] whether to release [a] defendant" and to "set[] conditions of release" as they saw fit, Ill. Const. art. I, § 8.1(a)(9), all free of regulation by the General Assembly. But that has never been the law: The General Assembly has for decades regulated exactly which criminal defendants may be detained pending trial and what conditions may be imposed by a court upon release. *Supra* pp. 5-6. The circuit court's reading of the crime victims' rights clause, though, under which the clause guarantees certain powers to courts and protects those powers from regulation, would call into question the

constitutionality of these longstanding provisions. That alone is reason to reject it.

III. The Detention Provisions Do Not Violate The Constitution.

In addition to eliminating monetary bail, the General Assembly passed wide-ranging reforms to the provisions of the Code of Criminal Procedure that govern who can be detained before trial and what conditions may be imposed on a defendant who is released. As amended by the SAFE-T Act, these provisions make every criminal defendant eligible for pretrial release, *see* 725 ILCS 5/110-2(a), but let the State seek pretrial detention in a wide range of circumstances, including because the defendant poses a threat to public safety (if the defendant has been charged with any of a range of enumerated felony offenses) or is a flight risk (if the defendant has been charged with any felony other than a Class 4 felony), *id.* 5/110-6.1(a). The circuit court held that these provisions are facially unconstitutional, primarily on separation-of-powers grounds. A17-21, A25-27; *see also* A21-22 (briefly suggesting that the detention provisions likewise violate the bail clause). That decision is flawed for multiple reasons: The legislature may regulate courts' authority to detain defendants pretrial, and, regardless, the detention provisions do not unduly infringe upon judicial authority in *every* case, as plaintiffs' facial challenge to those provisions requires. The circuit court's decision finding the detention provisions unconstitutional should be reversed.

A. The detention provisions do not violate separation-of-powers principles.

At the outset, the circuit court erred in holding that the detention provisions facially violate separation-of-powers principles. A17-21, A25-27. The circuit court reasoned that the provisions violate the Constitution by authorizing courts to detain only defendants charged with certain crimes, thus contravening this Court's opinion in *People ex rel. Hemingway v. Elrod*, 60 Ill. 2d 74 (1975). The circuit court was mistaken. Although this Court in *Hemingway* recognized an inherent judicial authority to detain defendants pending trial, the Act's detention provisions do not unduly infringe upon that authority by regulating the circumstances under which it may be exercised. And even if there were cases under which the detention provisions do infringe upon that authority, plaintiffs cannot show that they do so in *every* case, as their facial challenge requires.

1. The detention provisions do not unduly infringe upon an inherent judicial power.

a. The detention provisions are facially constitutional.

The separation-of-powers clause provides that "[t]he legislative, executive, and judicial branches are separate," such that "[n]o branch shall exercise powers properly belonging to another." Ill. Const. art. II, § 1. But the clause "was not designed to achieve a complete divorce among the three branches of government; nor does it prescribe a division of governmental powers into rigid, mutually exclusive compartments." *In re Derrico G.*, 2014

IL 114463, ¶ 76. "By necessity, the branches of government do not operate in isolation, and between them there are some shared or overlapping powers." *People v. Hammond*, 2011 IL 110044, ¶ 52. As a result, "[t]he legislature may enact laws involving judicial practice" without violating separation-of-powers principles as long as those laws "do not infringe unduly upon the judiciary's inherent powers." *Murneigh v. Gainer*, 177 Ill. 2d 287, 303 (1997). The Act's detention provisions reflect, and are consistent with, these principles: They merely regulate the courts' exercise of an inherent judicial authority, namely the authority to detain defendants pending trial, and do not unduly infringe upon it. The circuit court erred in reaching a contrary conclusion.

As the circuit court recognized, A18, the Court first considered whether courts have inherent authority to detain defendants pending trial in *Hemingway*, 60 Ill. 2d 74. *Hemingway* came to the Court shortly after the United States Supreme Court held in *Furman v. Georgia*, 408 U.S. 238 (1972), that the arbitrary and capricious imposition of capital punishment violated the Eighth Amendment to the United States Constitution, thus effectively barring the State from imposing capital punishment. 60 Ill. 2d at 76-77. At that time, the bail clause permitted only defendants charged with capital offenses to be detained without bail. *Id.* Recognizing the impact of the *Furman* decision on the State's bail practices, the General Assembly passed a statute making defendants charged with "murder, aggravated kidnapping, or treason" (which had previously been crimes for which capital punishment was permissible)

eligible for pretrial detention without bail. *Id.* at 77. A defendant charged with murder and detained under the new law appealed his detention to the Court, arguing that the statute violated the bail clause and that he was thus entitled to release on bail. *Id.* at 76. The State, by contrast, argued that the new statute was consistent with the bail clause, because, properly read, that clause made all particularly serious offenses, and not literally only capital offenses, non-bailable offenses. *Id.* at 78.

The Court agreed that the statute was inconsistent with the bail clause, but nonetheless held that the defendant was not entitled to pretrial release. *Id.* at 79. It reasoned that "the constitutional right to be bail must be qualified by the authority of the courts, as an incident of their power to manage the conduct of proceedings before them, to deny or revoke bail when such action is appropriate to preserve the orderly process of criminal procedure." *Id.* The Court held that courts could exercise that inherent authority in three specific circumstances: (1) "to prevent interference with witnesses or jurors," (2) "to prevent the fulfillment of threats," or (3) to ensure that "an accused will . . . appear for trial," if the court was "satisfied by the proof that" a defendant would not do so "regardless of the amount or conditions of bail." *Id.* at 80. In holding that courts have inherent authority to detain criminal defendants in these specific circumstances, though, the Court noted that it was not "adopting the principle of preventive detention of one charged with a criminal offense for the protection of the public." *Id.*

Hemingway, then, establishes that courts have an inherent authority to detain defendants pending trial under certain circumstances. But *Hemingway* did not hold, or even suggest, that the legislature was generally precluded from regulating courts' exercise of that authority. To the contrary, the Court repeatedly emphasized with approval various ways that the Code of Criminal Procedure set out standards for courts to apply in achieving the "appropriate balance . . . between the right of an accused to be free on bail pending trial and the need of the public to be given necessary protection." *Id.* at 84; *see also id.* at 81-84 (citing with approval the predecessors of 725 ILCS 5/110-3, 5/110-6, and 5/110-10). And the Court ultimately rejected the defendant's argument that he was entitled to pretrial release as a categorical matter, thus allowing the State to seek detention (just as the General Assembly had envisioned).

In the decades since *Hemingway*, the General Assembly has repeatedly revised the section of the Code of Criminal Procedure that governs pretrial release, establishing detailed and comprehensive regulations for courts to apply in determining whether and on what conditions to release a defendant pending trial. Indeed, the legislature has amended section 110-5 of the Code over 20 times, setting out an increasingly detailed list of factors that courts are *required* to consider in "determining the amount of monetary bail or conditions of release" in any given case. *See* 725 ILCS 5/110-5(a) (2020) (identifying over 100 factors that courts "shall" consider). For example, in 1992, the legislature amended the Code to permit courts to detain defendants

charged with stalking, but set out a detailed set of procedures that courts must follow in imposing detention, including the requirement that the court hold a hearing (at which the defendant may have counsel appointed), consider evidence, and state its findings on the record. *Id.* 5/110-6.3(a), (c), (e)(1) (2020); *see also Bailey*, 167 Ill. 2d at 238-39 (upholding this statute against a constitutional challenge). And in 2019, the General Assembly amended the Code to provide that pregnant detainees should not generally be held pretrial, and to require courts considering detention to hold a hearing and "consider[] the circumstances of the pregnancy," 725 ILCS 5/110-5.2(a), (b) (2020), before detaining such a person. "[T]he historical practice of the legislature may aid in the interpretation of a constitutional provision," *Graham v. Ill. State Toll Highway Auth.*, 182 Ill. 2d 287, 312 (1998), and here the legislature has for six decades regulated the manner in which courts may grant or deny pretrial release, consonant with *Hemingway*.

The legislature has also taken a prominent role in other areas in which courts retain inherent authority—for instance, sentencing. This Court has held that "the power to impose sentence is exclusively a function of the judiciary." *People v. Davis*, 93 Ill. 2d 155, 161 (1982). But the legislature has for decades played a substantial role in determining *how* courts exercise that authority, including by withdrawing judicial discretion to impose certain sentences for certain crimes. And this Court has approved this practice, holding, for example, that the legislature does not unduly infringe upon the

role of the judiciary in passing a statute providing for a mandatory sentence, notwithstanding that such a statute "necessarily limit[s] the discretion of courts." *People v. Taylor*, 102 Ill. 2d 201, 208 (1984); *accord People ex rel. Carey v. Cousins*, 77 Ill. 2d 531, 549 (1979) ("[T]he legislature may restrict the exercise of judicial discretion in sentencing, such as by providing for mandatory sentences."). The same principle applies in the area of pretrial detention: Although courts retain a degree of inherent authority, under specific circumstances, to detain defendants pending trial, the legislature may "limit the discretion" of courts exercising that authority, *Taylor*, 102 Ill. 2d at 208, by enacting statutes governing when and how it is used. Such statutes do not unduly infringe upon judicial authority any more than laws governing what sentences courts may impose on which defendants.

b. The circuit court erred in reaching a contrary conclusion.

The circuit court disagreed, A17-21, but its reasoning is badly flawed. The circuit court appeared to begin from an incorrect understanding of the separation-of-powers doctrine, one in which the legislature is "expressly prohibited" from regulating in *any* area in which courts have inherent authority. A17 (quoting *People v. Jackson*, 69 Ill. 2d 252, 256 (1977)); *accord* A18 (reasoning that "the legislature is 'without power to specify how the judicial power shall be exercised under a given circumstance'" (quoting *People v. Joseph*, 113 Ill. 2d 36, 42-43 (1986)). But this Court has repeatedly held that, although it is "empowered to promulgate procedural rules to facilitate

the exercise of judicial power, the legislature has, as the branch of government charged with the determination of public policy, the concurrent authority to enact complementary statutes" even on those same subjects. *People v. Walker*, 119 Ill. 2d 465, 475 (1988). Thus, although "it is not within the legislature's power to enact statutes solely concerning court administration or the day-to-day administration of courts," where the legislature enacts a law of civil or criminal procedure that rests on "a public policy determination," the law is constitutional unless it "*unduly* infringe[s] upon the inherent powers of the judiciary" or "directly and irreconcilably conflicts with a rule of th[e] Court on a matter within [its] authority." *Id.* at 474-75 (emphasis added); *accord, e.g.*, *In re S.G.*, 175 Ill. 2d 471, 487 (1997); *People v. Williams*, 124 Ill. 2d 300, 305-06 (1988).

The circuit court failed to acknowledge these principles, much less explain why the detention provisions violate them. The court appeared to suggest, citing *Hemingway*, that the power to detain a defendant "is 'administrative' in nature," A18, violating the rule that "it is not within the legislature's power to enact statutes solely concerning court administration," *Walker*, 119 Ill. 2d at 475. But *Hemingway* rests on no such holding: It holds that courts have, in certain circumstances, "the authority . . . to deny or revoke bail . . . to preserve the orderly process of criminal procedure," 60 Ill. 2d at 79, not that pretrial detention is an area "solely concerning court administration," *Walker*, 119 Ill. 2d at 475, such that the legislature cannot regulate it at all.

Indeed, were the circuit court correct, the bail provisions enacted in 1963 and applied without controversy for decades since would be unconstitutional en masse—a result that cannot be squared with common sense, history, or, for that matter, *Hemingway* itself, which discusses at length the importance of "the sections of the Code of Criminal Procedure" regulating pretrial release. *Hemingway*, 60 Ill. 2d at 81-84. Because the pretrial release provisions do not conflict with a rule of this Court, the question the circuit court should have asked—but did not—is whether they "unduly" infringe upon the narrow authority described in *Hemingway* to detain defendants pending trial. *Walker*, 119 Ill. 2d at 474. The answer to that question, as discussed, *supra* pp. 34-39, is no.

The circuit court cited a handful of out-of-state cases to support its conclusion, A20-21, but those cases are inapposite. Most obviously, all arise from jurisdictions with different constitutional rules governing the separation of powers. *See, e.g.*, *Lebron*, 237 Ill. 2d at 249-50 ("That the courts of other states would hold differently based on their constitutional jurisprudence . . . is of no moment."). But even on their own terms, each case is distinguishable. In *State v. Smith*, 527 P.2d 674 (Wash. 1974), the Washington legislature had delegated to that State's supreme court "the power to prescribe rules for bail pending appeal," and the court had done so, *id.* at 677-78, giving those rules precedence over any conflicting statute. Here, by contrast, this Court has not enacted a rule governing pretrial detention that conflicts with the challenged

provisions of the Act. *Gregory v. State ex rel. Gudgel*, 94 Ind. 384 (1884), considers only whether the power to *apply* bail rules to particular criminal defendants can be delegated to county clerks, a question of no relevance here. *Id.* at 388-89. And *United States v. Crowell*, No. 06-M-1095, 2006 WL 3541736 (W.D.N.Y. Dec. 7, 2006), and *People v. Johnston*, 121 N.Y.S.3d 836 (Cohoes City Ct. 2020), are outlier decisions issued by trial courts in other jurisdictions whose reasoning has not been followed and, in *Crowell*'s case, has repeatedly been rejected, *see, e.g.*, *United States v. Arzberger*, 592 F. Supp. 2d 590, 606-07 (S.D.N.Y. 2008) (rejecting *Crowell* on the ground that in the federal system, as in Illinois, "there are numerous areas," like "sentencing," "in which the responsibilities of the branches overlap"); *United States v. Gardner*, 523 F. Supp. 2d 1025, 1034-36 (N.D. Cal. 2007) (rejecting *Crowell* and explaining that "regulating a field already immersed in legislative prescription," namely bail, does not violate separation-of-powers principles). The circuit court erred in following these cases, rather than this Court's longstanding precedent, in considering plaintiffs' separation-of-powers claim.

2. The detention provisions are, at the very least, not facially unconstitutional.

Plaintiffs' separation-of-powers claim also fails for a second reason: The detention provisions are not *facially* unconstitutional, contrary to the circuit court's opinion, A24-27, because they do not unduly infringe upon an inherent judicial authority in all circumstances.

a. The detention provisions are not facially unconstitutional.

Plaintiffs do not dispute that their challenge to the detention provisions is a facial one—that is, one in which they are seeking to have the provisions "declared void" entirely, not just declared inapplicable in one case or one application. *Morr-Fitz, Inc. v. Blagojevich*, 231 Ill. 2d 474, 498 (2008); *see* A24 (noting that plaintiffs "agree" as to the facial nature of their claim). Plaintiffs thus face a "difficult" burden, because a statute "is facially invalid only if *no* set of circumstances exists under which it would be valid." *Napleton v. Vill. of Hinsdale*, 229 Ill. 2d 296, 306 (2008) (emphasis added). "The fact that the [law] could be found unconstitutional under some set of circumstances does not establish its facial invalidity," *id.*; rather, the prospect that "specific future applications . . . may produce actual constitutional problems" means only that the Court should wait to "consider any such problems when they arise." *Oswald v. Hamer*, 2018 IL 122203, ¶ 43.

Plaintiffs cannot come close to showing that the detention provisions are unconstitutional in every application. *Hemingway* holds that courts possess the inherent authority to detain defendants pending trial in three specific circumstances (to prevent interference with witnesses or jurors, to prevent the fulfillment of threats, and to ensure appearance at trial). *Supra* p. 36. But the detention provisions largely "codif[y]" that authority, *Bailey*, 167 Ill. 2d at 239; they do not countermand it. As discussed, *supra* pp. 8-9, the provisions permit courts to detain criminal defendants under a wide range of

circumstances, including when a defendant has been charged with any felony offense (except a Class 4 felony) and the court concludes that the defendant "has a high likelihood of willful flight." 725 ILCS 5/110-6.1(a)(8)(B). A court can also detain someone who has been charged with any of an array of enumerated felonies and whom it concludes "poses a real and present threat to the safety of any person or persons or the community." *E.g.*, *id.* 5/110-6.1(a)(1), (1.5), (6). The detention provisions thus grant courts considerable authority to impose pretrial detention—indeed, authority that in many ways *exceeds* the narrow inherent authority recognized in *Hemingway*, which can be exercised only for one of three reasons (and not for the purpose of protecting the public, as the Act permits). *See* 60 Ill. 2d at 80.

The fact that the detention provisions largely "codif[y]" (and, in some ways, exceed) the inherent authority recognized in *Hemingway*, *see Bailey*, 167 Ill. 2d at 239, dooms plaintiffs' facial challenge to those provisions. A plaintiff bringing a facial challenge must establish that "no set of circumstances exists under which" the challenged statute "would be valid," *Napleton*, 229 Ill. 2d at 306, but the detention provisions are valid under *Hemingway* in at least *most* circumstances, insofar as they largely parallel the authority recognized in that case. Put differently, under this Court's precedent, a facial challenge fails if a court can identify even one "situation in which [the law] could be validly applied," *Hill v. Cowan*, 202 Ill. 2d 151, 157 (2002), and here doing so requires little work: *Every time* a court applies section 110-6.1(a) to detain a criminal

defendant on the ground that he or she has a "high likelihood of willful flight," *e.g.*, 725 ILCS 5/110-6.1(a)(8)(B), it acts consistent with both the Act and the power described under *Hemingway*. That alone means that plaintiffs' "facial challenge must fail." *Hill*, 202 Ill. 2d at 157.

Plaintiffs' counterargument proceeds largely from the premise that a court might want to impose pretrial detention on a defendant charged with a minor offense *not* enumerated in section 110-6.1(a). *E.g.*, C966. But even setting aside that *Hemingway* would, at most, permit such a defendant to be detained only if one of the three conditions described in that case are met, *see* 60 Ill. 2d at 80, and not in every case, the prospect that such a case might in theory arise in the future does not make the statute facially unconstitutional. Rather, as this Court has repeatedly observed, there "will be time enough to consider any such problems as they arise." *Oswald*, 2018 IL 122203, ¶ 43; *accord, e.g.*, *Napleton*, 299 Ill. 2d at 306. Certainly, to the extent the Court has any uncertainty about the scope and reach of *Hemingway*, it need only reject plaintiffs' separation-of-powers claim on the ground that it fails as a facial matter, thus deferring any question about the interpretation of *Hemingway* until a case involving an actual defendant arises. *See People v. Bingham*, 2018 IL 122008, ¶ 22 (because as-applied challenges are "dependent on application of the law to the specific facts and circumstances alleged by the challenger," "it is crucial that the record be sufficiently developed with respect to those facts and circumstances for purposes of appellate review").

b. The circuit court erred in reaching a contrary conclusion.

Defendants explained below why plaintiffs' facial claim failed, but the circuit court disagreed for two reasons, positing that (a) the pretrial release provisions violated separation-of-powers principles "in all instances" by prohibiting monetary bail; and (b) the standard governing facial challenges does not apply to separation-of-powers claims. A25-26. Neither reason withstands scrutiny.

First, this Court has never held—and certainly did not hold in *Hemingway*—that courts have an inherent authority to *set monetary bail*, as opposed to an inherent authority to detain a defendant pending trial. *Hemingway* said nothing about monetary bail; indeed, it expressly held only that courts have authority "to deny or revoke bail" (i.e., to *detain* a criminal defendant), not to set monetary bail. *See* 60 Ill. 2d at 80. The circuit court appeared to rely on a later opinion, *People ex rel. Davis v. Vazquez*, 92 Ill. 2d 132 (1982), for that proposition, A19-20, but *Davis* rests on no such holding. *Davis* primarily concerned the meaning of a statute requiring the State to release a minor from detention if no hearing was held within ten days. 92 Ill. 2d at 143-44. The Court agreed with the minors' reading of the statute, but concluded that the statute did not apply, by its own terms, to the minors in question. *Id.* at 146-48. It explained, though, that even absent a statute expressly permitting release, the bail clause "entitled" the minors "to be admitted to bail." *Id.* at 147-48. "[T]he juvenile court," the Court reasoned,

"therefore had authority to set bail in an appropriate amount, to release [the minors] on recognizance, and/or to impose conditions on [the minors'] release, as discussed in [*Hemingway*]." *Id.* at 148.

Davis, in other words, is a bail-clause case, not a separation-of-powers case: Its constitutional holding is that a minor is protected by the bail clause in the same manner that an adult is, *id.* at 147-48, and has nothing to do with courts' inherent authority. The circuit court drew a different meaning from the Court's use of the word "authority" and its citation to *Hemingway*, but that reading cannot be squared with the actual text of the opinion, which has nothing to do with separation-of-powers principles. Rather, the Court's reference to "authority" simply referred to the court's authority under the 1963 Code, which at that time permitted courts to require monetary bail as a condition of pretrial release, and to *Hemingway*'s discussion of that statutory scheme, *see* 60 Ill. 2d at 81-84. To defendants' knowledge, no court has ever read *Davis* the way that the circuit court did—as holding, without analysis or support, that courts have inherent authority under the separation-of-powers clause to require monetary bail. The circuit court erred in giving *Davis* that reading.

Second, the circuit court incorrectly rejected this Court's precedent distinguishing between facial and as-applied challenges. A25-26. The court acknowledged that, as a general matter, a plaintiff bringing a facial challenge to a statute bears the burden of showing that it is unconstitutional in every

application, *see Napleton*, 229 Ill. 2d at 306, but appeared to reason that this Court has "never engaged in" an "'as applied' analysis" in a case involving the separation-of-powers doctrine, A25-26, and thus that the legal principles discussed above do not apply in such a case. That reasoning fails.

To start, as the circuit court conceded, A25, this Court has on multiple occasions acknowledged the traditional distinction between facial challenges and as-applied challenges in separation-of-powers cases. In *In re Derrico G.*, 2014 IL 114463, for instance, which involved a separation-of-powers challenge to a provision of the Juvenile Court Act, this Court discussed the applicable principles at length, explaining that the challenger had brought both a facial claim and an as-applied one, *id.* ¶ 1, and that, to succeed on his facial claim, he was required to "establish that no set of circumstances exists under which the statute would be valid," *id.* ¶ 57. Multiple other separation-of-powers cases are to similar effect. *See, e.g.*, *Davis v. Brown*, 221 Ill. 2d 435, 442-43 (2006) (same rule); *People v. Greco*, 204 Ill. 2d 400, 406-07 (2003) (same).

The circuit court nevertheless reasoned that it could set this binding line of caselaw aside because none of these cases *rejects* a facial separation-of-powers claim on the ground that a statute was constitutional at least in some applications. A26. But in none of these cases did this Court hold, or even suggest, that the legal standard traditionally applicable to facial claims would not apply in a separation-of-powers case; indeed, the Court expressly *recited* that standard in each case, before resolving each case on grounds that made its

application unnecessary. *See Derrico G.*, 2014 IL 114463, ¶¶ 75-85 (holding challenged statute facially constitutional); *Davis*, 221 Ill. 2d at 448-50 (same); *Greco*, 204 Ill. 2d at 415 (holding challenged provision unconstitutional as applied on other grounds). Similarly, the fact that this Court has, in some cases, A26, declared state laws unconstitutional on separation-of-powers grounds without expressly finding those statutes unconstitutional in every application does not mean that the Court was applying some sort of special rule favoring facial challenges in separation-of-powers cases; it presumably means only that the Court found that the ordinary standard was satisfied. These cases cannot be read to establish a rule allowing plaintiffs bringing separation-of-powers claims—unlike plaintiffs bringing any other constitutional challenge—to establish a statute's facial invalidity simply by showing that it may be invalid in *some* circumstances. The circuit court identified no good reason for such a rule, and this Court should decline to create one now.

Measured under the ordinary standard—under which a plaintiff bringing a facial constitutional challenge to a statute must show that "no set of circumstances exists under which it would be valid," *Napleton*, 229 Ill. 2d at 306—plaintiffs' facial constitutional challenge to the detention provisions fails, because those provisions largely codify the inherent power this Court described in *Hemingway*. The circuit court erred in reaching a contrary conclusion.

B. Plaintiffs' additional attacks on the detention provisions likewise fail.

In the proceedings below, plaintiffs identified a grab-bag of additional reasons why, in their view, the detention provisions were constitutionally infirm. *E.g.*, C1613-14. The circuit court appeared to agree with two of these reasons, concluding without elaboration that the detention provisions violated the bail clause by "creat[ing] new classes of offenses exempt from bail" that do not fall within the exceptions set out in the bail clause and by "contradict[ing] the constitutional standard regulating when a defendant may be held without bail." A21-22. Both arguments fail, as do plaintiffs' additional attacks on the provisions.

First, the detention provisions do not "contradict[] the constitutional standard regulating when a defendant may be held without bail," as the circuit court held. A22. The court appeared to mean that the detention provisions—prior to the recent amendments to the Act—required the State to show that certain defendants posed a "threat to the physical safety of any *specifically identifiable* person or persons" to detain such defendants on dangerousness grounds, *see* Pub. Act No. 101-652, § 10-255 (amending, e.g., 725 ILCS 5/110-6.1(a)(6) (emphasis added)), whereas the bail clause requires the State to show only that a defendant's "release . . . would pose a real and present threat to the safety of any person," Ill. Const. art. I, § 9. Even if the distinction between these two standards were constitutionally significant (and it is not), the amendatory act of December 2022 amended the relevant provisions to track

the language of the bail clause, *see, e.g.*, 725 ILCS 5/110-6.1(a)(6), meaning that the circuit court's reasoning proceeded from a mistaken premise: There is no textual difference between the constitutional standard and the standard set out in the Act for detention premised on a defendant's danger to others.

Plaintiffs' attacks on various other aspects of the detention provisions likewise fail. Plaintiffs contended below, for instance, that both section 110-3 (which regulates the way in which courts may handle a defendant's failure to comply with a condition of pretrial release) and section 110-6 (which sets out the terms under which pretrial release may revoked) impermissibly infringe upon the judiciary's authority. C1608-09. But plaintiffs identified nothing in *Hemingway*, or any other case, recognizing an inherent authority to handle such matters free of legislative regulation. Indeed, *Hemingway* discussed at length the statutory provisions enacted by the General Assembly governing exactly these subjects, signaling its view that the legislature *could* regulate matters concerning the enforcement of pretrial release conditions and the revocation of release. *See* 60 Ill. 2d at 80-84.

Second, the circuit court also erred in concluding that the detention provisions violate the bail clause by "creat[ing] new classes of offenses exempt from bail which are not included in the Constitution." A21. Plaintiffs made a similar argument below, suggesting that section 110-6.1(a), which identifies defendants whom the State may seek to detain by reference to the crimes with which they are charged, *see* 725 ILCS 5/110-6.1(a), violates the Constitution by

permitting courts to detain defendants who have the right to seek bail under the bail clause. *See* C1613-14 (identifying "residential burglary," "hate crime," and "violations of the Illinois Humane Care of Animals Act" as those that do not fall within an exception to the bail clause). This argument is flawed on multiple levels.

To start, plaintiffs are not proper parties to make any such argument. Plaintiffs' main criticism of the Act's detention provisions is that they permit pretrial detention of too *few* criminal defendants—an argument the circuit court credited in finding that plaintiffs were injured by the provisions. *See* A14 (pretrial release provisions injure plaintiffs by "restrict[ing] the ability of a court to detain defendants," thus leading to delays in cases when defendants do not appear in court). But this argument rests on the opposite notion—that the detention provisions permit pretrial detention of too *many* defendants, in that they allow courts to detain defendants who are entitled to bail under the bail clause. Again, parties must assert their own rights, not the rights of third parties, *Funches*, 212 Ill. 2d at 346, and here it is evident that plaintiffs are asserting not their own rights but those of criminal defendants, who are the parties properly positioned to advance a claim that the provisions permit too much detention. Indeed, plaintiffs' effort to assert the rights of criminal defendants is particularly jarring here, given that plaintiffs are attempting to stand in the shoes of criminal defendants to whom they are adverse, while seeking to invalidate a statute that benefits those defendants. The principle

that one must assert just one's "own rights," *id.*, exists to prevent just that kind of incongruous and improper result.

In any event, plaintiffs' argument fails for a second, related reason, which is that their attack on section 110-6.1(a) is a facial one, and it fails for the same reason that their separation-of-powers challenge fails: Section 110-6.1(a) does not violate the bail clause in *every* case, or even in most cases, and so plaintiffs cannot show that "no set of circumstances exists under which it would be valid," *Napleton*, 229 Ill. 2d at 306. Plaintiffs, for instance, contend that section 6.1(a) violates the bail clause in part because it permits a court to order pretrial detention of a defendant charged with residential burglary, *see* 725 ILCS 5/110-6.1(a)(1.5), a crime plaintiffs say is a "bailable" one, C1613. But whether a defendant charged with residential burglary is "bailable" or not is a case-by-case determination not amenable to facial determination. The bail clause makes "bailable" all defendants except those who, as relevant here, have been charged with a crime "for which a sentence of imprisonment . . . shall be imposed by law as a consequence of conviction" (i.e., those who cannot be sentenced only to probation). Ill. Const. art. I, § 9. Whether a defendant charged with residential burglary may be sentenced to probation, however, is a case-specific matter: The General Assembly has provided that probation is not generally available to these defendants unless they are eligible to participate in a substance-abuse program. *See* 730 ILCS 5/5-5-3(c)(2)(G); 20 ILCS 301/40-10. Whether such a defendant is "bailable" under the clause, then, will turn on the

facts and circumstances of his or her case, and cannot be resolved in a facial pre-enforcement challenge brought by third parties in which no criminal defendant is present.

As this example illustrates, the application of the bail clause to the offenses enumerated in section 110-6.1(a) will require a case-by-case analysis, the outcome of which will turn not only on the statutory sentencing regime that applies to any given offense, but also on a defendant's criminal history and, in some cases, the grounds on which detention is being sought. *Cf.* *Bailey*, 167 Ill. 2d at 237-40 (sustaining the constitutionality of provisions permitting the State to seek pretrial detention for defendant convicted of stalking to the extent they codified courts' inherent authority). That alone defeats plaintiffs' facial challenge to section 110-6.1(a), given that the inquiry necessarily turns on the application of that section to the facts of a particular case. *See People v. Thompson*, 2015 IL 118151, ¶ 36 (a facial challenge may be appropriate only where "the specific facts relating to the challenging party are irrelevant"). And given that this particular challenge to section 110-6.1(a) is properly brought by a criminal defendant whom the State is seeking to detain (rather than by the prosecutors who are likely to *seek* detention), *supra* pp. 52-53, the Court should hold only that plaintiffs have "failed to establish the facial invalidity" of section 110-6.1(a) and that the Court will, if needed, "consider any" as-applied constitutional challenges to that section "when they arise." *Oswald*, 2018 IL 122203, ¶ 43.

C. The detention provisions are severable.

Finally, even if some aspect of the detention provisions were constitutionally infirm (and none is), it does not follow, as the circuit court appeared to reason, that all of the pretrial release provisions collectively—including the provision eliminating monetary bail—would be unconstitutional. Both the Act as originally passed in January 2021 and the amendatory act of December 2022 contained severability clauses, providing that the "provisions of [each] Act are severable." Pub. Act No. 101-652, § 99-997; *see also* Pub. Act No. 102-1104, § 97. Those clauses "establish a presumption that the legislature intended for [any] invalid statutory provision to be severable." *People v. Mosley*, 2015 IL 115872, ¶ 56. That presumption is overcome, "and the entire act held unconstitutional," only "if the legislative body would not have passed the statute with the invalid portion eliminated." *Id.*

The circuit court acknowledged the Act's severability clause, and relied on it to hold that the constitutional defects it identified in the pretrial release provisions did not require invalidating the remainder of the SAFE-T Act. A32. That conclusion was correct, as far as it went. The SAFE-T Act made a range of reforms to various parts of the State's criminal justice system, from policing to corrections to pretrial detention. And there is no real argument that these separate reforms are "essentially and inseparably connected in substance," *People ex rel. Chicago Bar Ass'n v. State Bd. of Elections*, 136 Ill. 2d 513, 533 (1990), such that (for instance) the General Assembly would not have given

the Attorney General authority to investigate law enforcement misconduct, Pub. Act No. 101-652, § 10-116.7, or revised the State's use-of-force rules, *id.* § 10-216, had it known it could not constitutionally eliminate monetary bail. The circuit court thus correctly held that, at minimum, the pretrial release provisions were collectively severable from the remainder of the Act.

But the circuit court's remedial holding was overbroad in other ways. The court appeared to reason that any individual constitutional defect would require the invalidation of all of the pretrial release provisions as a whole (i.e., that the individual provisions are not severable from one another). *See* A32. But many of plaintiffs' claims go only to discrete aspects of those provisions—for instance, the procedures governing the revocation of pretrial release, 725 ILCS 5/110-6, *see supra* p. 51; or the individual offenses set out in section 110-6.1(a), *see supra* p. 52. Plaintiffs have made no serious argument that the General Assembly "would not have passed the [Act]" with these individual provisions eliminated. *Mosley*, 2015 IL 115872, ¶ 56. In fact, the legislature *did* pass the Act without the current versions of either section, in that the amendatory act passed in December 2022 made changes to both sections (and many others). *See* Pub. Act No. 102-1104, § 70. The circuit court thus erred in concluding that any individual constitutional defect in the detention provisions would necessarily require the invalidation of the pretrial release provisions as a whole, rather than simply the invalidation of the offending provision or provisions.

The same is true for plaintiffs' broader challenge to the detention provisions. *Supra* pp. 34-49. Even if *Hemingway* compelled the conclusion that the detention provisions facially infringe on courts' authority to detain defendants by limiting that authority to certain offenses, *see* 725 ILCS 5/110-2(a) ("Pretrial release may be denied only if a person is charged with an offense listed in [s]ection 110-6.1 . . . ."), the appropriate remedy would not be to hold the detention provisions unconstitutional across the board. Rather, the appropriate remedy would be to simply sever section 110-2(a) of the Act, which sets out that baseline rule, and hold that courts may continue to exercise their detention authority in a broader category of cases, subject to the procedures set out elsewhere in the statute. *See, e.g.*, *id.* 5/110-6.1(a), (c), (e) (placing burden on State to show that detention is appropriate at a detention hearing conducted pursuant to specific procedures). Severing even that aspect of the statute, if necessary, would serve the broader aims of the General Assembly—namely, to reform the process by which courts make the important decision whether to detain an individual who is presumed innocent pending trial.

CONCLUSION

For these reasons, defendants ask this Court to reverse the judgment below.

Respectfully submitted,

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January 26, 2023

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 14,070 words.

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CERTIFICATE OF FILING AND SERVICE

I certify that on January 26, 2023, I electronically filed the foregoing **Brief of Defendants-Appellants** with the Clerk of the Court for the Illinois Supreme Court using the Odyssey eFileIL system.

I further certify that the other participants in this appeal, named below, are registered service contacts on the Odyssey eFileIL system, and thus will be served via the Odyssey eFileIL system.

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Under penalties as provided by law pursuant to section 1-109 of the Illinois Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct to the best of my knowledge, information, and belief.

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No. 129248

IN THE
SUPREME COURT OF ILLINOIS

JAMES R. ROWE, in his official capacity as Kankakee County State's Attorney, and MICHAEL DOWNEY, in his official capacity as Kankakee County Sheriff, Plaintiffs-Appellees, v. KWAME RAOUL, in his official capacity as Illinois Attorney General; JAY ROBERT PRITZKER, in his official capacity as Governor of the State of Illinois; EMANUEL CHRISTOPHER WELCH, in his official capacity as Speaker of the Illinois House of Representatives; and DON HARMON, in his official capacity as Illinois Senate President, Defendants-Appellants.	)	On Appeal from the Circuit Court of the Twenty-First Judicial Circuit, Kankakee County, Illinois No. 2022CH16 The Honorable THOMAS W. CUNNINGTON, Chief Judge Presiding.

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TABLE OF CONTENTS

* The table of contents to the record on appeal is limited to the record in *Rowe v. Raoul*, No. 2022CH16, which was filed with this Court on January 26, 2023. The remainder of the record will be filed at a later date.

IN THE CIRCUIT COURT OF THE TWENTY-FIRST JUDICIAL CIRCUIT KANKAKEE COUNTY, ILLINOIS

JAMES R. ROWE, KANKAKEE COUNTY STATE'S ATTORNEY, and MICHAEL DOWNEY, KANKAKEE COUNTY SHERIFF, et al.

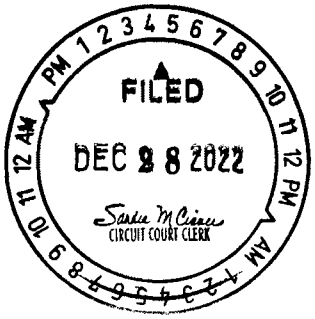
Plaintiffs,

v.

KWAME RAOUL, ILLINOIS ATTORNEY GENERAL, JAY ROBERT PRITZKER, GOVERNOR OF ILLINOIS, EMANUEL CHRISTOPHER WELCH, SPEAKER OF THE HOUSE, DONALD F. HARMON, SENATE PRESIDENT,

Defendants.

Case No. No. 22-CH-16
Consolidated by Supreme Court Order
Rowe v. Raoul; No. 129016



MEMORANDUM OF DECISION

Now this cause having come on for decision, the court having taken plaintiffs' and defendants' Cross Motions for Summary Judgment under advisement after full briefing by the parties and oral arguments heard in open court on December 20, 2022, finds as follows:

HISTORY

The Kankakee County State's Attorney and Sheriff have challenged the constitutionality of Public Acts 101-652, and 102-1104, known as the Safety, Accountability, Fairness and Equity-Today (hereinafter, the "Act"), as amended. Pursuant to Supreme Court order entered October 31, 2022, Order # 129016, the lawsuits filed in 57 other counties throughout the State of Illinois were

consolidated into the above case due to the commonality of issues and defendants and by agreement of all parties. An additional six (6) counties' lawsuits filed after the October 31st order was entered have also been transferred to Kankakee County pursuant to the agreement of all parties and acceptance by the Court. The parties agreed that all complaints filed, transferred, and consolidated into this matter are amended to conform to the Kankakee County's Second Amended Complaint filed December 9, 2022.

POSTURE OF THE CASE

It's the role of this court in considering the constitutionality of Public Acts 101-652 and 102-1104, not to judge the prudence of the General Assembly's decision that reform of the criminal justice system is needed. In this case, there is no doubt that the policy considerations have caused a great deal of disagreement and consternation over the Act itself. The Court recognizes that the judiciary does not and need not balance the advantages and disadvantages of reform or the attendant policy considerations. See *People v. Warren,* 173 Ill.2d 348, 219 Ill. Dec. 533, 671 N.E.2d 700 (1996); see also *Cutinello v. Whitley,* 161 Ill.2d 409, 204 Ill. Dec. 136, 641 N.E.2d 360 (1994). However, the Court must determine the meaning and effect of the Illinois Constitution in light of the challenges made to the legislation in issue. *Warren,* 173 Ill.2d at 355–56, 219 Ill. Dec. 533, 671 N.E.2d 700. The court begins its constitutional analysis with the presumption that the challenged legislation is constitutional (*People v. Shephard,* 152 Ill.2d 489, 178 Ill. Dec. 724, 605 N.E.2d 518 (1992)), and it is the plaintiff's burden to clearly establish that the challenged provisions are unconstitutional (*Bernier v. Burris,* 113

Ill.2d 219, 100 Ill. Dec. 585, 497 N.E.2d 763 (1986)). It is important to note that the Illinois Constitution is not a grant, but a limitation on legislative power. *People v. Chicago Transit Authority,* 392 Ill. 77, 64 N.E.2d 4 (1945); *Italia America Shipping Corp. v. Nelson,* 323 Ill. 427, 154 N.E. 198 (1926); *Taylorville Sanitary District v. Winslow,* 317 Ill. 25, 147 N.E. 401 (1925). If a statute is unconstitutional, this court is obligated to declare it invalid. *Wilson v. Department of Revenue,* 169 Ill.2d 306, 214 Ill. Dec. 849, 662 N.E.2d 415 (1996). This duty cannot be evaded or neglected, no matter how desirable or beneficial the legislation may appear to be. *Wilson,* 169 Ill.2d at 310, 214 Ill. Dec. 849, 662 N.E.2d 415; *Grasse v. Dealer's Transport Co.,* 412 Ill. 179, 190, 106 N.E.2d 124 (1952). See also: *Best v. Taylor Mach. Works*, 179 Ill. 2d 367, 377–78, 689 N.E.2d 1057, 1063–64 (1997)

COUNT I

Plaintiffs in Count I submit that they are entitled to a Declaratory Judgment because the Act "amended multiple portions of the Illinois Constitution effecting bail, the Judiciary and victim's rights." (P. 2d Com, P. 9, par. 53.) Because these subject matters are also dealt with in Counts III, IV and V and the issues overlap, the court will decide the 'failure to properly amend the Constitution' argument along with Counts III, IV and V after a discussion of standing.

COUNT II

Count II alleges that the Public Act 101–652 violates the single subject clause found in Article 4, Section 8(d) of the Illinois Constitution. A finding that the act and the amendment, (Public Act 102-1044) violates the single subject rule

would mandate a ruling that the entire act is void. There is no severability of the Act when the legislature violates this rule, notwithstanding that the Act provides for severability.

The law concerning the single subject rule has been well settled in Illinois. The Court quotes extensively from *Wirtz v. Quinn*, 2011 Il 111903, 953 N.E. 2d 899, 904-05:

> The single subject rule regulates the process by which legislation is enacted, by prohibiting a legislative enactment from "clearly embracing more than one subject on its face." *Arangold Corp. v. Zehnder,* 187 Ill.2d 341, 351, 240 Ill.Dec. 710, 718 N.E.2d 191 (1999); *People v. Olender,* 222 Ill.2d 123, 131, 305 Ill.Dec. 1, 854 N.E.2d 593 (2005). One purpose of the single subject requirement is to preclude the passage of legislation which, standing alone, would not receive the necessary votes for enactment. *Olender,* 222 Ill.2d at 132, 305 Ill.Dec. 1, 854 N.E.2d 593; *People v. Cervantes,* 189 Ill.2d 80, 83, 243 Ill.Dec. 233, 723 N.E.2d 265 (1999). This disfavored practice is known as "logrolling," or "bundling unpopular legislation with more palatable bills, so that the well-received bills would carry the unpopular ones to passage." *People v. Wooters,* 188 Ill.2d 500, 518, 243 Ill.Dec. 33, 722 N.E.2d 1102 (1999). Thus, the single subject rule "ensures that the legislature addresses the difficult decisions it faces directly and subject to public scrutiny, rather than passing unpopular measures on the backs of popular ones." *Johnson v. Edgar,* 176 Ill.2d 499, 515, 224 Ill.Dec. 1, 680 N.E.2d 1372 (1997). Another reason for the single subject rule is to promote an orderly legislative process. *Wooters,* 188 Ill.2d at 518, 243 Ill.Dec. 33, 722 N.E.2d 1102. "'By limiting each bill to a single subject, the issues presented by each bill can be better grasped and more intelligently discussed.' " *Johnson,* 176 Ill.2d at 514–15, 224 Ill.Dec. 1, 680 N.E.2d 1372 (quoting Millard H. Ruud, *No Law Shall Embrace More Than One Subject,* 42 Minn. L.Rev. 389, 391 (1958)).

The rule first requires a determination of what is the single subject to which the Act refers. The parties agree that the Act specifically states that it is an act concerning "criminal law". Defendants maintain that the single subject is broader than just criminal law and more correctly is identified as an act concerning, "the criminal justice system" To support this proposition, the Defendants also cite the *Wirtz, id.* case which referred to

the *Boclair* case and held, "Defendants are not limited solely to the contents of the title of an act in offering a single subject rationale. *Boclair*, 202 Ill.2d at 109–10, 273 Ill. Dec. 560, 789 N.E.2d 734.

Plaintiffs emphatically argue that under either the single subject mentioned in the Act or the subject designation espoused by defendants, that the Act alters or amends a multitude of statutes that do not logically or naturally relate to criminal law. They do not concede that the single subject is the broader category of the criminal justice system, but argue that even in the event the court determines the single subject to be the criminal justice system, that the Act still violates this single subject rule. The court finds that the "Criminal Justice System" is a legitimate single subject that Illinois Supreme Court has approved on multiple occasions. The Illinois Supreme Court has repeatedly recognized this to be a legitimate single subject within the meaning of the constitutional rule. *E.g., Boclair*, 202 Ill. 2d at 110; *Sypien*, 198 Ill. 2d at 339; *People v. Malchow*, 193 Ill. 2d 413, 428 (2000); *People v. Reedy*, 186 Ill. 2d 1, 12 (1999); *see also People Sharpe*, 321 Ill. App. 3d 994, 996–97 (3d Dist. 2001); *People v. Jones*, 317 Ill. App. 3d 283, 287 (5th Dist. 2000); *People v. Dixon*, 308 Ill. App. 3d 1008, 1014 (4th Dist. 1999).

Because the Act involves a legitimate single subject, "the dispositive question becomes whether the individual provisions of the Act have a 'natural and logical' connection to that subject." *People v. Burdunice*, 211 Ill. 2d 264, 267 (2004). It is plaintiffs' "substantial burden" to show these provisions "bear no natural or logical connection to a single subject." *Malchow*, 193 Ill. 2d at 429.

The Illinois Supreme Court has also held:

> The requirement of singleness of subject has been frequently construed, and the applicable principles are settled. The term "subject" is comprehensive in its scope and may be as broad as the legislature chooses, so long as the matters included have a natural or logical connection. An Act may include all matters germane to a general subject, including the means reasonably necessary or appropriate to the accomplishment of legislative purpose. Nor is the constitutional provision a limitation on the comprehensiveness of the subject; rather, it prohibits the inclusion of "discordant provisions that by no fair intendment can be considered as having any legitimate relation to each other." ' " (*People ex rel. Ogilvie v. Lewis* (1971), 49 Ill.2d 476, 487, 274 N.E.2d 87, quoting *People ex rel. Gutknecht v. City of Chicago* (1953), 414 Ill. 600, 607–08, 111 N.E.2d 626.)
> The single-subject requirement is therefore construed liberally and is not intended to handicap the legislature by requiring it to make unnecessarily restrictive laws. For this reason, courts have often upheld legislation involving comprehensive subjects. *See, e.g., Advanced Systems, Inc. v. Johnson* (1989), 126 Ill.2d 484, 129 Ill. Dec. 32, 535 N.E.2d 797 (real property taxation); *People ex rel. Carey v. Board of Education* (1973), 55 Ill.2d 533, 304 N.E.2d 273 (schools); see also *In re Marriage of Thompson* (1979), 79 Ill.App.3d 310, 34 Ill. Dec. 342, 398 N.E.2d 17 (domestic relations).
>
> *Cutinello v. Whitley*, 161 Ill. 2d 409, 423–24, 641 N.E.2d 360, 366 (1994)

The Plaintiffs point out that the Act "is over 764 pages and addresses 265 separate statutes." (Pl.'s Ex.6,8,9.) The Illinois Supreme Court has held these factors are not determinative to a single subject challenge. *E.g., Wirtz*, 2011 IL 111903, Par. 15; *Arangold*, 187 Ill. 2d at 352. The test is whether the Act's provisions have a natural and logical connection to a single subject, not the number of pages in the legislation or the number of statutes it amends. It does stand to reason, however, that the more pages and the more statutes that are affected, the more likely the act would run afoul of the position that all of the provisions have a logical and natural connection to that single subject.

In the instant case, the plaintiffs have identified six separate subjects that they allege violates the single subject rule. These six subjects, plaintiffs argue, do not have a natural and logical connection to criminal law or the criminal justice system. Those

subjects contested are: 1) Police Officer Prohibited Activities Act; 2) Expanding the Partnership for Deflection and Substance Abuse Disorder Treatment Act to include first responders other than police officers; 3) The No Representation Without Population Act 4) The granting to the Attorney General increased powers to pursue certain civil actions, some newly created; 5) The New Task Force on Constitutional Rights and Remedies Act and 6) Amendments to the Public Labor Relations Act.

1) Plaintiffs first challenge to the single subject rule concerns Section 10-135 of the Act, which amends the Public Officer Prohibited Activities Act, 50 ILCS 105, to add a new section 4.1. Plaintiffs insist this provision merely "expanded whistleblower protection.," This is true, but it is also true that Section 4.1 creates a criminal offense and penalties for retaliation against a local government employee or contractor who reports, cooperates with an investigation into, or testifies in a proceeding arising out of "improper governmental action," including law enforcement misconduct. 50 ILCS 105/4.1(a), (g), (i); *see People v. Jones*, 318 Ill. App. 3d 1189, 1192 (4th Dist. 2001) (provision expanding the scope of a criminal offense has a natural and logical connection to the criminal justice system). Defendants correctly point out in their pleadings that, "A court confronted with a single subject challenge does not parse legislation at an atomic level." *Wirtz*, 2011 IL 111903, Par. 38. Its task, rather, is to determine whether any provision "stands out as being constitutionally unrelated to the single subject." *Id. Par.* 42; *see Cutinello*, 161 Ill. 2d at 423 ("The single-subject requirement is therefore construed liberally and is not intended to handicap the legislature by requiring it to make unnecessarily restrictive laws.").

The Court finds that when the legislation's subject contains a provision creating

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a criminal offense, like new section 4.1 of the Public Officer Prohibited Activities Act, that the provision has a natural and logical relationship to the single subject in this matter.

2) With regard to Section 10-116.5 of the Act, which amends the Community-Law Enforcement Partnership for Deflection and Substance Use Disorder Treatment Act, 5 ILCS 820 ("Treatment Act"). The purpose of the Treatment Act is "to develop and implement collaborative deflection programs in Illinois that offer immediate pathways to substance use treatment and other services as an alternative to traditional case processing and involvement in the criminal justice system." 5 ILCS 820/5. Previously, those deflection programs, which offer services to addicts whom peace officers encounter in performing their duties, could be established only by law enforcement agencies. Pub. Act 101-652, § 10-116.5. The Act changes this by authorizing fire departments and emergency medical services providers to establish such programs too, **but only in collaboration with a municipal police department or county sheriff's office**. (emphasis added) The Act provides that "Programs established by another first responder entity shall also include a law enforcement agency." 5 ILCS 820/10, 15(a). In other words, these provisions allow law enforcement agencies to work with additional partners to provide comprehensive treatment options to addicts as an alternative to the criminal justice system. "An act may include all matters germane to its general subject, including the means reasonably necessary or appropriate to the accomplishment of the legislative purpose." *People ex rel. Gutknecht v. City of Chicago*, 414 Ill. 600, 607–08 (1953); *see Cutinello*, 161 Ill. 2d at 424. Here, the legislature expanded a program through which law enforcement agencies attempt to divert potential offenders from the criminal justice system. The Court finds that this amendment has a natural and logical connection to the criminal justice system.

3) Plaintiffs next alleged violation is a reference to Article 2 of the Act, which enacts the No Representation Without Population Act, codified at 730 ILCS 205 and effective January 1, 2025. Its amendment requires prisoners to be counted, for legislative redistricting purposes, as residents of their last known street address prior to incarceration, rather than as residents of the correctional facility where they are incarcerated. Pub. Act. 101-652, Par. 2-20. It has been codified in Chapter 730 of the Illinois Compiled Statutes, which is titled "Corrections." Plaintiff argues this does nothing as far as the prisoners themselves are concerned because they don't even have a right to vote. The court finds that it does indirectly affect the prisoners in that it determines who are their elected representatives in government. Although they could not vote for them unless and until they are released and their civil rights are restored, they are still their representatives. In view of the Illinois Supreme Court's repeated holding that legislation addressing prisoners and correctional facilities is naturally and logically related to the criminal justice system as a whole, *Boclair*, 202 Ill. 2d at 110; *Malchow*, 193 Ill. 2d at 428–29, The Court finds that plaintiffs cannot establish that the No Representation Without Population Act does not have a logical and natural connection to the criminal justice system.

4) Plaintiffs next challenge the provisions in the Act that give the Attorney General increased powers to pursue certain civil actions. However, this amendment authorizes the Attorney General to investigate and pursue civil remedies against law enforcement agencies. Section 116.7 of the Act amends the Attorney General Act, 15 ILCS 205, to add a new section 10. This provision forbids state and local governments to "engage in a pattern or practice of conduct by officers that deprives any person of

rights, privileges, or immunities secured or protected by the Constitution or laws of the United States or by the Constitution or laws of Illinois." 15 ILCS 205/10(b). It authorizes the Attorney General to investigate suspected violations and commence a civil action "to obtain appropriate equitable and declaratory relief to eliminate the pattern or practice." 15 ILCS 205/10(c), (d). The conduct of law enforcement officers is naturally and logically connected to the Criminal Justice System. The court finds that the legislature does not violate the single subject rule when the provision articulates a purpose to seek to eliminate certain unlawful conduct by law enforcement officers and provides the means necessary to accomplish the legislative purpose, even if the means involves a civil proceeding. *Cutinello*, 161 Ill. 2d at 424; *see Gutknecht*, 414 Ill. at 607–08.

5) Plaintiffs also allege Article 4 of the Act, which enacted the Task Force on Constitutional Rights and Remedies Act ("Remedies Act"), formerly codified at 20 ILCS 5165 but repealed as of January 1, 2022. Pub. Act 101-652, Sec. 4-20; P. Mem. at 10, violates the single subject rule. The Remedies Act created a task force "to develop and propose policies and procedures to review and reform constitutional rights and remedies, including qualified immunity for peace officers," Pub. Act 101-652, Par 4-5, with support from the Illinois Criminal Justice Information Authority, *id. Par* 4-10(c). Plaintiffs argue these constitutional rights and remedies might include some unrelated to "criminal law," P. Mem. at 10, but the text of the statute does not bear that out. By highlighting "qualified immunity for peace officers", a doctrine that clearly relates to the criminal justice system, the legislature indicated its intent that the constitutional rights and remedies considered by the task force should be of the same

nature. *Cf. Bd. of Trs. v. Dep't of Human Rights*, 159 Ill. 2d 206, 211 (1994) ("the class of unarticulated persons or things will be interpreted as those 'others such like' the named persons or things"). Additionally, with regard to the Remedies Act's connection to criminal justice, the legislature provided "[t]he Illinois Criminal Justice Information Authority shall provide administrative and technical support to the Task Force and be responsible for administering its operations, appointing a chairperson, and ensuring that the requirements of the Task Force are met." Pub. Act 101-652, Par. 4-10(c). The court finds that the plaintiffs have not shown that the repealed Remedies Act did not have a logical and natural connection to the criminal justice system.

6) The court next looked at plaintiff's allegation that Section 10-116 of the Act which amends section 14(i) of the Illinois Public Labor Relations Act to change the disputes an arbitrator may resolve in a collective bargaining impasse between a public body and its "peace officers," does not have a logical and natural connection to the criminal justice system. The term "peace officers" is a term defined to include "any persons who have been or are hereafter appointed to a police force, department, or agency and sworn or commissioned to perform police duties." 5 ILCS 315/3(k), 14(i). The amendments to section 14(i) address labor disputes with law enforcement officers like police officers and sheriff's deputies. The court finds that law enforcement officers are essential components of the criminal justice system, and addressing these labor disputes is therefore critical to the system's functioning. The court finds this amendment has a logical and natural connection to the criminal justice system.

Plaintiffs also argue that the provisions challenged in their complaint and motion are only "a few of the myriad examples demonstrating how Public Act 101-

652 fails to adhere to single- subject clause." P. Mem. at 6. It is plaintiff's burden to show how the Act violates the Illinois Constitution, *e.g., Malchow*, 193 Ill. 2d at 429, and they have not done so with respect to provisions they have not mentioned. The court finds that plaintiffs have not carried their "substantial burden" to show the Act's provisions lack a "natural or logical connection to" the criminal justice system. Therefore, the court grants Summary Judgment on Count II of plaintiffs' second amended complaint in favor of Defendants.

COUNTS I, III, IV, & V

The court will now decide the Counts I, III, IV and V as they relate to the pretrial release provisions of the Act. The court must first decide the issue of standing to bring this suit in the first place as raised by the defendants. Defendants argue that plaintiffs do not have standing because they cannot show that they are "in immediate danger of sustaining a direct injury as a result of the enforcement of the challenged statute or that the injury is distinct and palpable", quoting from *Carr v Koch*, 2012 Il 113414, par. 28. They argue further that the Act's pretrial release provisions govern criminal defendants, not plaintiffs in their official capacity as State's Attorney and Sheriff. Def. Memo P. 17.

It is defendants' burden to establish lack of standing. *Lebron v. Gottlieb Mem'l Hosp.*, 237 Ill.2d 217, 252 (2010). However, as explained below, the court finds that plaintiffs have standing to bring forward these claims.

"In order to have standing to bring a constitutional challenge, a person must show himself to be within the class aggrieved by the alleged unconstitutionality." *In re M.I.*,

2013 IL 113776, ¶ 32 (citing *People v. Morgan*, 203 Ill.2d 470 (2003)). Furthermore, a challenger to the constitutionality of a law must show that they are "directly or materially affected" by the statute or in instant danger of harm due to the enforcement of the statute. *Id.* Plaintiffs, elected State's Attorneys and Sheriffs, are in a unique position as the representatives of not only their offices but the citizens of their respective counties. In this way, they are uniquely qualified to challenge unconstitutional legislation in a way the average citizen cannot. Furthermore, plaintiff State's Attorneys have taken an oath to uphold and defend the Illinois Constitution and are "...under no duty to refrain from challenging..." an unconstitutional act of the legislature. *People ex rel. Miller v. Fullenwider*, 329 Ill. 65, 75 (1928). If the court were to determine that these plaintiffs do not have standing in this factual scenario, it becomes difficult to imagine a plaintiff who would have standing to bring a declaratory action before P.A. 101-652 and 102-1144 goes into effect.

Plaintiffs Second Amended Complaint sets forth how plaintiffs are directly and materially affected by the provisions of P.A. 101-652 and 102-1104 as they relate to pretrial release. Pursuant to the versions of 725 ILCS 5/109-1(b)(4) and 725 ILCS 5/110-6.1, effective January 1, 2023, the State (which in criminal proceedings is represented by that county's State's Attorney) is the only entity permitted to petition the court to deny pretrial release and must abide by the requirements in those sections. The individual State's Attorneys who have brought these actions are regulated by these provisions and have a clear interest in their constitutionality, as well as a cognizable injury should they be tasked with enforcing an unconstitutional act.

Additionally, the government has a substantial and undeniable interest in ensuring

criminal defendants are available for trial. *Bell v. Wolfish*, 441 U.S. 520, 534 (1979). P.A. 101-652, although the effect was lessened somewhat by P.A. 102-1104, the pretrial release provisions still restricts the ability of the court to detain a defendant where the court finds that the defendant will interfere with jurors or witnesses, fulfill threats, or not appear for trial. These provisions will likely lead to delays in cases, increased workloads, expenditures of additional funds, and in some cases, an inability to obtain defendant's appearance in court. The court finds that these likely injuries occasioned by the enforcement of an unconstitutional law, are cognizable injuries which provide constitutional standing to plaintiff State's Attorneys.

Plaintiff Sheriffs also are injured in sufficient measure to establish constitutional standing. Sheriffs and their deputies are obligated by law to serve and execute all orders within their counties. 55 ILCS 5/3-6019. In the place of the long-standing practice of issuing warrants when defendants fail to appear, P.A. 101-652 and P.A. 102-1104, mandates that the court first consider issuing a summons instead of a warrant. Although the Act, as amended, now provides for the issuance of a warrant as is currently the case, the amendment requires the court to first consider a summons as the appropriate response to a defendant who fails to appear for court. The increased risk and injury to the Sheriff is still present with the added requirement of consideration of a summons in the first instance. These summonses must or most likely will be served by the Sheriff's Office. Unlike arrest warrants, summonses do not authorize the use of force to gain entry into the defendant's dwelling, or even command the individual to open the door, nor authorize taking the defendant into custody. If the defendant still refuses to appear, the Plaintiff Sheriffs must expend resources and endanger their employees in an additional attempt

to secure the presence of an unwilling criminal defendant by service of a warrant now authorized by the amendment. This will undoubtably lead to increased overtime, staffing needs, and other costs. More importantly, it puts the Sheriff's staff at increased risk. The court finds that this issue is not simply a police dispute, as defendants urge, but a clear matter of law enforcement safety. For the reasons stated above, the court finds that plaintiffs have standing to pursue this action.

COUNT I

With regard to Count I, the court finds that the Legislature, through P.A. 101-652 and P.A. 102-1104 by defining "sufficient sureties to exclude, in totality, any monetary bail, has improperly attempted to amend the Constitution in contravention of Ill. Const. Art. XIV, Sec. 2. A more thorough discussion of the manner in which the Act attempts to amend the Constitution is set forth below. The court finds that had the Legislature wanted to change the provisions in the Constitution regarding eliminating monetary bail as a surety, they should have submitted the question on the ballot to the electorate at a general election and otherwise complied with the requirements of Art. XIV, Sec. 2. Therefore, the court finds that the Legislature unconstitutionally attempted to change the provisions of the Constitution and Summary Judgment on Count I is granted in favor of plaintiffs.

COUNT IV

The court further finds with regard to Count IV involving the Crime Victims' Rights found in Article 1, Sec. 8.1(a)(9) that P.A. 101-652 and P.A. 102-1104 that the provision eliminating monetary bail in all situations in Illinois, prevents the court from effectuating the constitutionally mandated safety of the victims and their families. This

section of the Illinois Constitution is intended to serve "as a shield to protect the rights of victims." *People v. Richardson*, 196 Ill.2d 225, 237 (2001), discussing Ill. Const. Art. I, § 8.1. Section 8.1(a)(9) of the Illinois Constitution explicitly provides that "the safety of the victim and the victim's family" must be considered "in denying or fixing the amount of bail, determining whether to release the defendant, and setting conditions of release after arrest and upon conviction." The plain reading of "fixing the amount of bail", the court finds, clearly refers to the requirement that the court consider the victims' rights in setting the amount of monetary bail as the court does and has done since the passage of this amendment. In eliminating monetary bail, the discretion constitutionally vested to the courts to protect victims and their families by this method is gone. The constitutional requirement of bail is meant to help ensure victims' safety, the defendant's compliance with the terms of release, and the defendant's appearance in court. The Act instead leaves courts with no "amount of bail" to fix and confines the court to legislatively enacted standards for detention.

Under P.A. 102-1104, all persons charged with an offense shall be eligible for pretrial release before conviction," and a court is prohibited from ordering monetary bail, except under certain interstate agreements. 725 ILCS 5/110-2. All of this impairs the court's ability to ensure the safety of the victim and victim's family between the time the defendant fails to appear in court and the rule to show cause hearing, in violation of the Crime Victim's Bill of Rights. The court finds that setting an "amount of bail" and the accompanying discretion accorded to the judge to ensure a defendant's appearance in court and for the protection of victims and their families has been stripped away in violation of the Illinois Constitution in violation of Article

I, Section 8.1(a)(9) and the attempt by defendants in the Act is unconstitutional because it is an attempt to amend the Constitution in violation of Article XIV, Sec. 2 (d). Judgement for the plaintiff is entered on Count IV and against the defendants.

COUNTS III & V

Article II, Section I of the Illinois Constitution provides: "The legislative, executive, and judicial branches are separate. No branch shall exercise powers properly belonging to another." Ill. Const. art. II, § 1. *Lebron v. Gottlieb Mem'l Hosp.*, 237 Ill.2d 217, 239 (2010).

The Illinois Supreme Court has held that if "power is judicial in character; the legislature is expressly prohibited from exercising it." *People v. Jackson*, 69 Ill.2d 252, 256 (1977). The Court has long recognized that "judicial power is that which adjudicates upon the rights of citizens and to that end construes and applies the law." *People v. Hawkinson*, 324 Ill. 285, 287 (1927). The courts have supplemented this "very general" definition by looking at the traditional role of courts historically and at common law. *People v. Brumfield*, 51 Ill.App.3d 637, 643 (3d Dist. 1977). Legislative enactments undermining the "traditional and inherent" powers of the judicial branch, particularly, those restricting judicial discretion, violate the Separation of Powers Clause. *Best v. Taylor Mach. Works, 179 Ill 2d 367 (1997).* (holding that statutory limit on compensatory damages for noneconomic injuries unconstitutionally interfered with "remitter," a court's discretionary power to reduce excessive damages).

The Supreme Court has also recognized that "matters concerning court administration" fall within the inherent power of the judiciary, and the legislature is "without power to specify how the judicial power shall be exercised under a given

circumstance":

> At common law, it was recognized that the legislative branch was "without power to specify how the judicial power shall be exercised under a given circumstance" The legislature was prohibited from limiting or handicapping a judge in the performance of his duties. Thus, the concept of "judicial power" included the inherent authority to prescribe and institute rules of procedure. Clearly, this common law prohibition would include matters of how the court was to function, that is, matters concerning court administration.
>
> The history of our judicial branch also indicates that court administration falls within the ambit of the courts' inherent "judicial power." The Constitution of 1870 (Ill. Const. 1870, art. VI, sec. 1 et seq.) granted to the courts all powers necessary for the complete performance of the judicial function. Our present constitution provides that the "[g]eneral administrative and supervisory authority over all courts is vested in the Supreme Court and shall be exercised in accordance with its rules." (Ill. Const. 1970, art. VI, sec. 16.) The words "and supervisory" were added in the 1970 provision to emphasize and strengthen the concept of central supervision of the judicial system. *People v. Joseph*, 113 Ill.2d 36, 42-43 (1986) (internal citations omitted).

The Illinois Supreme Court has specifically held that bail is "administrative" in nature, and that the court has independent, inherent authority to deny or revoke bail to "preserve the orderly process of criminal procedure." *People ex rel. Hemingway v. Elrod*, 60 Ill.2d 74, 79 (1975); *see also People v. Bailey*, 167 Ill.2d 210 (1995). In *Bailey*, a defendant appealed after having been denied bail pursuant to 725 ILCS 5/110-6.3, which allowed courts to hold a defendant charged with stalking without bail. *Bailey*, 167 Ill.2d at 218. The Supreme Court, citing to Elrod, found that the court had inherent discretion to hold the defendant even though he was eligible for bail under the Illinois Constitution. *Id.* at 239-40.

In *Elrod,* the Supreme Court expressly recognized that the court has the ultimate authority in determining the appropriateness of bail. The defendant in *Elrod* was

charged with non-capital murder and held without bail, even though the Illinois Constitution at the time imparted a right to bail to "all persons...except for capital offenses." *Elrod,* 60 Ill.2d. at 76. The Court began its analysis by stating:

> In our opinion, the constitutional right to bail must be qualified by the authority of the courts, as an incident of their power to manage the conduct of the proceedings before them, to deny or revoke bail when such action is appropriate to preserve the orderly process of criminal procedure. *Elrod,* 60 Ill.2d. at 79.

The Court recognized that the denial of bail "must not be based on mere suspicion but must be supported by sufficient evidence to show that it is required," but went on to hold that "bail may properly be denied" when "keeping an accused in custody pending trial to prevent interference with witnesses or jurors or to prevent the fulfillment of threats," and "if a court is satisfied by the proof that an accused will not appear for trial regardless of the amount or conditions of bail." *Id.* at 79-80. According to the Supreme Court, in light of a court's inherent authority "to enforce its orders and to require reasonable conduct from those over whom it has jurisdiction," the court likewise "has the authority to impose sanctions for the violation of conditions imposed upon a defendant's release and for the commission of a felony by a defendant while released on bail or recognizance, including the revocation of his release." *Id.* at 83-84.

The Illinois Supreme Court has ruled further that courts have inherent authority derived from the Illinois Constitution to set monetary bail. *People ex rel. Davis v. Vazquez*, 92 Ill.2d 132 (1982). In *Davis*, the court consolidated the State's appeal denying the transfer of two juveniles to adult court. *Id.* at 137. Under the Juvenile Court

Act (JCA), a juvenile defendant must be released unless there is an "immediate and urgent" necessity for detention. *Id.* Although there was no provision in the JCA for the setting of monetary bond, the court set a monetary bond in one of the cases but later reconsidered and vacated the order. *Id.* at 138-39. In a mandamus action regarding the transfer, the Illinois Supreme Court *sua sponte* vacated the juvenile offender's release and reinstated the previous order setting bail. *Id.* at 139. The court found that, although there was no statutory provision for bond, the defendants should have the same right to bail as adult offenders since "the Constitution does not draw a distinction based on the age of the accused." *Id.* at 147. Citing *Elrod*, the Court pronounced: "We hold that the minors in these cases were entitled to be admitted to bail and that the juvenile court therefore had authority to set bail in an appropriate amount, to release on recognizance, and/or to impose conditions on their release." *Id.* at 148.

Other states and at least one federal court have concluded that the power to fix bail and release from custody is a judicial power that exclusively belongs to the courts. *Gregory v. State*, 94 Ind. 384 (1884) (striking down statute permitting county clerks to fix bail because power to admit to bail demands discretion and is judicial that cannot be delegated); *State v. Smith*, 84 Wn.2d 498 (1974) (because bail is procedural in nature, power to fix bail and release from custody is a judicial power); *United States v. Crowell*, 2006 U.S. Dist. LEXIS 88489, 2006 WL 3541736 (06-M-1095 W. D. NY Dec. 7, 2006) (bail decisions, "the quintessential exercise of judicial power," must be "individualized"; legislature cannot prescribe "a rule of decision for courts" in these determinations "without permitting courts to exercise their judicial powers independently").

To date, only one trial court has ruled on whether the elimination of cash bail withstands a separation of powers inquiry. *People v. Johnston*, 67 Misc.3d. 267, 121 N.Y.S.3d 386 (N.Y. City Ct. Cohoes 2020). The defendant in *Johnston* who was charged with minor traffic offenses, had a "long and incorrigible record of refusing to come back to court." *Id.* at 270. Unable to set monetary bail pursuant to a new state statute eliminating cash bail, the court concluded that the "least restrictive set of conditions" to assure the defendant's appearance was electronic monitoring. *Id.* at 271. Because placing the defendant on electronic monitoring for a misdemeanor offense "would be quite the intrusion on defendant's liberty," the court found the prohibition on cash bail unconstitutional. *Id.* at 271-77. In doing so, the court concluded that the "categorical" nature of the cash bail prohibition had eliminated court discretion. *Id.* at 274. Finding that "history counsels that bail is ultimately a judicial function," *id.* at 275, the court surmised that bail historically "broke the way of the courts" because it was not a punishment. *Id.* at 276. Rather, its purpose was "to ensure an orderly process for the courts and that defendants answer" on the charge. *Id.* While the legislature may "alter and regulate the proceedings in law," the court held, it may not wrest "from courts . . . final discretion" in determining "the least onerous conditions to ensure that a defendant answers the charges." *Id.* at 277.

Plaintiffs, in their opening brief, demonstrated the several ways in which P.A. 101-652 deviates from and contradicts the express language of the Illinois Constitution's bail provision. Ill. Const. art. I, §9; Pl. Brief, pp. 23-29. Namely, P.A. 101-652 creates new classes of offenses exempt from bail which are not included in the Constitution; it utterly abolishes monetary bail as an option for a judge to utilize to ensure a criminal

defendant's appearance in court; and contradicts the constitutional standard regulating when a defendant may be held without bail (when the court determines that "release of the offender would pose a real and present threat to the physical safety of any person"). Ill. Const. art. I, §9.

Our State Supreme Court has "repeatedly held that the legislature cannot enact legislation that conflicts with the provisions of the constitution unless the constitution specifically grants it such authority." *In re Pension Reform Legis.*, 2015 IL 118585, Par. 81. "It is through the Illinois Constitution that the people have decreed how their sovereign power may be exercised, by whom and under what conditions or restrictions." *Id.* at Par.79. "Where rights have been conferred and limits on governmental action have been defined by the people through the constitution, the legislature cannot enact legislation in contravention of those rights and restrictions." *Id.*

Defendants argue that the bail provision exists to confer a right on criminal defendants. Def. Brief, p. 21. In fact, as evidenced by the case law cited by *all* parties, the purpose of the bail provision is much broader. Interestingly, the law review article cited by defendants recognizes this. Donald B. Verrilli, Jr., *The Eighth Amendment and the Right to Bail: Historical Perspectives*, 82 Colum. L. Rev. 328, 329–30 (1982) ("Bail acts as a reconciling mechanism to accommodate both the defendant's interest in pretrial liberty and society's interest in assuring the defendant's presence at trial.").

Bail exists, as it has for centuries, to balance a defendant's rights with the requirements of the criminal justice system, assuring the defendant's presence at trial, and the protection of the public. The cases cited by defendants which are binding on this Court reinforce this point. *See Stack v. Boyle*, 342 U.S. 1, 4-5 (1951) ("The right to

release before trial is conditioned upon the accused's giving adequate assurance that he will stand trial and submit to sentence if found guilty...Like the ancient practice of securing the oaths of responsible persons to stand as sureties for the accused, the modern practice of requiring a bail bond or the deposit of a sum of money subject to forfeiture serves as additional assurance of the presence of an accused."); *People v. Purcell*, 201 Ill.2d 542, 550 (2002)("The object of bail is to make certain the defendant's appearance in court and bail is not allowed or refused because of his presumed guilt or innocence.").

To the extent defendants argue that P.A. 101-652 and 102-1104 effectuates the text and purpose of the bail provision to ensure that criminal defendants can access pretrial release, defendants do not explain why the Act strips courts of the authority to ever consider monetary bail as a condition of pretrial release in every case, except a few interstate situations. P.A. 101-652 contains the following provision: "Abolition of monetary bail. On and after January 1, 2023, the requirement of posting monetary bail is abolished, except as provided in the Uniform Criminal Extradition Act, the Driver License Compact, or the Nonresident Violator Compact which are compacts that have been entered into between this State and its sister states." 725 ILCS 5/110-1.5 (effective 1/1/23). Further, many of the statutes amended by P.A. 101-652 and 102-1104 represent efforts to erase the word "bail" out of multitudinous Codes, criminal and otherwise. Plaintiffs are not arguing to seek to require monetary bail in every case, but the Act passed by defendants eradicates monetary bail as a judicial consideration in every Illinois case.

Plaintiffs correctly point out that, "Bail, the pretrial release of a criminal defendant after security has been taken for the defendant's future appearance at trial, has for

centuries been the answer of the Anglo-American system of criminal justice to a vexing question: what is to be done with the accused...between arrest and final adjudication." Verrilli, Jr., *supra* at 328, 329–30.

The Illinois Constitution of 1870, largely consistent with the current Constitution, provided: "All persons shall be bailable by sufficient sureties, except for capital offenses, where the proof is evident or the presumption great; and the privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it." Ill. Const. 1870 art. II, §7. The current constitutional provision has been twice amended to expand the categories of offenders who may be denied bail based on a judge's determination of dangerousness. Pl. Brief, p. 24.

Defendants argue that the plaintiffs had failed to show the Act's pretrial release provisions are unconstitutional under every set of facts. The parties agree that plaintiffs bring a facial challenge to the statute's constitutionality, rather than an as-applied challenge. *People v. Thompson*, 2015 IL 118151, Par. 36. "The distinction is crucial." *People ex rel. Hartrich v. 2010 Harley-Davidson*, 2018 IL 121636, Par.11. Defendants further argue, "A facial challenge to the constitutionality of a legislative enactment is the most difficult challenge to mount successfully because an enactment is facially invalid only if no set of circumstances exists under which it would be valid. The fact that the enactment could be found unconstitutional under some set of circumstances does not establish its facial invalidity." *Napleton v. Vill. of Hinsdale*, 229 Ill. 2d 296, 305–06 (2008) (citations omitted). If it is merely "possible that specific future applications may produce actual constitutional problems, it will be time enough to consider any such

problems when they arise." *Oswald*, 2018 IL 122203, Par 43. However, plaintiffs dispute this interpretation of the law.

The court finds that plaintiffs meet their burden because a legislative prohibition of monetary bail in all instances clearly violates the constitution's express mandate of separation of powers. Specifically, because under section 110-1.5 all judges will be categorically prohibited from even considering in their discretion a monetary component to the conditions of release, the judiciary's inherent authority to set or deny bond will necessarily be infringed in all cases if P.A. 101-652 and P.A. 102-1104 become effective. This is true even if a judge would ultimately decide not to include a monetary component. Notably, none of the cases upon which defendants rely involved separation of powers challenges. Def. Brief, p. 30. *Thompson* and *Hartrich* both involved eighth amendment claims *Napleton* addressed a due process challenge, and *Oswald,* a property tax exemption. Although the Supreme Court in *Davis v. Brown*, 221 Ill.2d 435, 442-43 (2006) and *In re Derrico G.*, 2014 IL 114463, Par.57, stated the general rule for distinguishing facial challenges from as-applied challenges, in neither case did the court speculate or consider hypotheticals when addressing specific separation of powers challenges raised by the parties. *See Davis*, 221 Ill.2d at 448-50; *Derrico G.*, at Pars 75-85. Rather, the court in each case addressed the plain language of the statute at issue and considered how it functioned in light of the pre-existing case law regarding the particular government actors at issue. *Id.*

The Illinois Supreme Court has never engaged in the type of "as applied" analysis proposed by defendants in cases involving a facial challenge. To the contrary, in the litany of cases in which the court has struck down legislation for violating the separation of

powers doctrine, the court analyzed the issues in precisely the same manner it did in *Davis* and *In re Derrico G.*, *See e.g. Bestv. Taylor Mach. Works*, 179 Ill.2d 367, 410-16 (1997) (striking statute placing a mandatory limit on damages for non-economic injuries in tort cases; this encroached upon long-standing and "fundamental judicial prerogative of determining whether a jury's assessment of damages is excessive within the meaning of the law"); *id.* at 438-49 (striking same statute for mandating extensive discovery in certain personal injury cases; "[e]valuating the relevance of discovery requests and limiting such requests to prevent abuse or harassment are, we believe, uniquely judicial functions"); *People v. Warren*, 173 Ill.2d 348, 367-71 (1996) (striking statute prohibiting imposition of a civil contempt finding by a judge presiding over a domestic relations matter following a conviction for unlawful visitation interference; power to hold someone in contempt of court "inheres in the judicial branch of government" and "legislature may not restrict its use"); *Murneigh v. Gainer*, 177 Ill.2d 287, 301-07 (1997) (striking statutes requiring Illinois courts to issue orders for collection of blood from certain convicted sex offenders and to enforce them through contempt power; "legislatively prescribed contempt sanction was not consistent with the exercise of the court's traditional and inherent power"); *People v. Joseph*, 113 Ill.2d 36, 41-45 (1986) (striking the statute requiring that post-conviction petitions be assigned to a judge other than who presided over defendant's trial as this "encroached upon a fundamental[] judicial prerogative"; legislature lacks "power to specify how the judicial power shall be exercised under a given circumstance" and is "prohibited from limiting or handicapping a judge in the performance of his duties").

The court therefore finds, for the reasons stated above, that P.A. 101-652 and 102-

1104, are found to be facially unconstitutional. The court finds under the Act, that "persons are no longer bailable with sufficient sureties" pursuant to the pretrial release provisions of the Act because 'sufficient sureties' does involve monetary bail as one of the conditions of bail which is abolished with the Act. See Article I, Sec. 9 of the Illinois Constitution. The court also finds with regard to the Separation of Powers challenge, that the passage of the Act also violates the separation of powers clause of the Illinois Constitution found at Article II, Sec. 1. Summary judgment is entered in favor of plaintiffs and against defendants as to Counts III and V only as they relate to the pretrial provisions of the Act.

COUNT VI

Plaintiffs allege in Count VI of their complaint and motion for summary judgment, that the manner in which the Act was passed, violates Article IV Section 8(d) of the Illinois Constitution, which requires that bills must be read by title on three different days in each house. The three readings requirement and Article IV Section 8(d) is a procedural requirement intended to ensure legislators have adequate notice of pending legislation, *Gaja's Café v Metro. Pier & Exposition Auth.* 153 Ill. 2d 239, 258–60 1992. This court finds that the undisputed facts of this case, and the history of how the safety act was passed in the legislature confirmed that this act was not read on three different days in each house as required by the Constitution. House Bill 3653 passed the House on April 3, 2019 and arrived in the Senate the next day. The Senate then took a seven-page House Bill and filed two amendments and increased the bill to 760 Pages. On January 13, 2021, House Bill 3653, with the two amendments was presented to the Senate for second reading status and it

was approved. On the same day, in the early morning hours a third reading was held and it also passed. See, P.'s Ex. 5. Later, in the same day, January 13, 2021, the House also passed the bill. The governor signed the bill on February 22, 2021 See P.'s Ex. 6, It became Public Act 101–652, which is also called the Safe-T Act.

Although the court has made findings of fact, The Supreme Court has held that under the Enrolled Bill Doctrine, so long as the Speaker of the House, and the Senate President certified that the procedural requirements for passage have been met, that it is conclusively presumed that all procedural requirements for passage have been met. *Gajes Café, id.* at 259. In this case, the House Speaker, and the Senate President so certified that the passage of these bills met the procedural requirements. This court must follow the precedent that the Enrolled Bill Doctrine forecloses any litigation challenging the three readings requirement. To this end, defendant's motion for summary judgment, as to count VI is allowed. Judgment for defendants is entered on Count VI.

COUNT VII

Plaintiff's next claim in Count VII is that the Act is unconstitutionally vague. "A well-established element of the guarantees of due process" under both the U.S. and Illinois Constitutions "is the requirement that the proscriptions of a criminal statute be clearly defined." *City of Chicago v. Morales*, 177 Ill. 2d 440, 448 (1997), *aff'd*, 527 U.S. 41 (1999). Because plaintiffs are bringing a pre-enforcement challenge to the Act, their vagueness claim is "facial" rather than "as-applied." *See Planned Parenthood of Ind. & Ky., Inc. v. Marion Cty. Prosecutor*, 7 F.4th 594, 603 (7th Cir. 2021). "Outside

of the First Amendment context, such facial challenges are disfavored." *Id.* Where, as here, the alleged vagueness in the statute does not burden free speech or any other fundamental right, plaintiffs can prevail on a facial challenge only by showing that "the enactment is impermissibly vague in all of its applications." *Vill. of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 495 (1982).

The court finds that plaintiffs have not identified any portion of the statute that is impermissibly vague. They cite just two specific examples of alleged vagueness: the term "in police custody" in 725 ILCS 5/103-3.5, Complaint pars. 203–04, and the circumstances authorizing court appearances to be conducted by two-way audiovisual communication, *id. Par.* 205. In the first example, the concept of being in the "custody" of law enforcement is not unduly vague; on the contrary, it is a critical element of many Illinois statutes, *e.g.*, 705 ILCS 405/3-7; 720 ILCS 5/31-6(c); 725 ILCS 5/103-3.5; 730 ILCS 125/19.5; 735 ILCS 5/12-1401, and it is well-defined by numerous cases interpreting those statutes, *e.g.*, *Robinson v. Vill. of Sauk Vill.*, 2022 IL 127236, Par. 26; *People v.Hileman*, 2020 IL App (5th) 170481, Par. 31. With respect to the second example, the supposed contradiction between the two provisions related to audiovisual communications, the court does not find a contradiction. An audiovisual appearance is allowed at a hearing to *set the conditions* of pretrial release, 725 ILCS 5/106D-1(a), but it is not permitted at a hearing to *deny* pretrial release, 725 ILCS 5/109-1(a). The court notes this distinction was not even introduced by the Act; rather, it was established by the preexisting statutes (without any apparent effect on plaintiffs' ability to enforce those laws). *See* Pub. Act 90-140; Pub. Act 95-263. Cases have held that "some uncertainty at the margins does not condemn a statute." *Trs. of Ind. Univ. v.*

Curry, 918 F.3d 537, 540 (7th Cir. 2019); *see also Holder v. Humanitarian Law Project*, 561 U.S. 1, 19 (2010) ("Perfect clarity and precise guidance have never been required even of regulations that restrict expressive activity.").

Second, the court finds that plaintiffs have not shown that the Act "is impermissibly vague in all of its applications." *Hoffman Estates*, 455 U.S. at 495. The term "in police custody" does not present a genuine uncertainty about whether or when someone was taken into custody, the meaning of the term is straightforward in everyday legal parlance. "Speculation about possible vagueness in hypothetical situations not before the Court will not support a facial attack on a statute when it is surely valid 'in the vast majority of its intended applications.'" *Hill v. Colorado*, 530 U.S. 703, 733 (2000).

Third, the Court finds that the provisions the plaintiffs contend are vague do not impose criminal liability or risk the "arbitrary deprivation of liberty interests." *City of Chicago v. Morales*, 527 U.S. 41, 52 (1999). Because their vagueness claim is based on the due process clauses of the U.S. and Illinois constitutions, plaintiffs must establish a threatened injury to their lives, liberty, or property. *See Johnson v. United States*, 576 U.S. 591, 595 (2015); *City of Chicago*, 177 Ill. 2d at 448.

Further, the court notes that even if plaintiffs could establish that select provisions of the Act are impermissibly vague that would not serve to invalidate the statute as a whole. Here, the allegedly vague statutory sections do not pervade the Act such that "the entire statute is contaminated by unconstitutional vagueness." *People v. Bossie*, 108 Ill. 2d 236, 242 (1985); *Wilson v. Cty. of Cook*, 2012 IL 112026, ¶ 23 ("In order to succeed in a facial vagueness challenge, as opposed to an as-applied challenge,

the vagueness must permeate the text of such a law.") (internal quotation marks omitted). The Court finds that the Act is not unconstitutional due to vagueness and defendants are entitled to summary judgment on Count VII.

COUNT VIII

In Count VIII, Plaintiffs are seeking a preliminary injunction against defendants to prevent the enforcement of the bail provisions in Public Act, 101–652 and Public Act 102-1104 until all of the plaintiffs' claims in this case can be fully litigated.

In order for a plaintiff to be successful on a motion for preliminary injunction, they must show "(1) a clearly ascertainable right in need of protection, (2) irreparable injury in the absence of an injunction, (3) no adequate remedy at law, and (4) a likelihood of success on the merits of the case." *Mohanty v St. John Heart Clinic*, 225 Ill 2d 52, 62 (2006).

The court finds that a preliminary injunction is not appropriate at this juncture of the case. A preliminary injunction is a provisional remedy granted to preserve the status quo until the case can be decided on the merits." *Hensley Construction, LLC., The Pulte Home Corporation v. Del Webb Communications Of Illinois, Inc.*. 399 Ill. App., 3d 184, 190. We are well past the beginning stage of this suit where a preliminary injunction might be warranted. The case is being decided on the merits, by way of cross motions for summary judgment. This will result in a final appealable decision by the trial court. Therefore, the Court grants summary judgment in favor of defendants and against plaintiffs on Count VIII.

CONCLUSION

Because, as the Illinois Supreme Court has determined, the administration of the justice system is an inherent power of the courts upon which the legislature may not infringe and the setting of bail falls within that administrative power, the appropriateness of bail rests with the authority of the court and may not be determined by legislative fiat. Therefore, the court finds that Public Acts 101- 652 and 102-1104 as they relate only to the pretrial release provisions do violate this separation of powers principle underlying our system of governance by depriving the courts of their inherent authority to administer and control their courtrooms and to set bail. *Elrod, supra.*

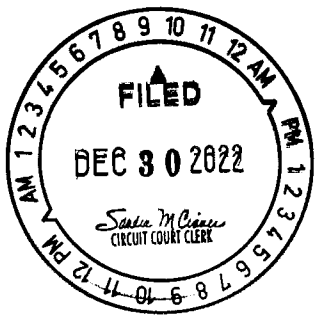
Inasmuch as Section 99-997 of P.A. 101-652 entitled "Severability" provides that "The provisions of this Act are severable under Section 1.31 of the Statutes on Statutes and Section 97 of P.A. Act 102-1104 entitled "Severability" provides that "The provisions of this Act are severable under Section 1.31 of the Statutes on Statutes, the court is severing the provisions of the pretrial release provisions from the entire Act, as amended. The court finds that declaratory judgment is proper in this case and that plaintiffs have met their burden to show to this court that P.A. 101-652 and P.A. 102-1104, as they relate only to the pretrial release provisions are facially unconstitutional and Declaratory Summary Judgment on the pleadings is entered in favor of plaintiffs and against defendants as to Count I, III, IV and V. As previously stated above, defendants have met their burden on Counts II, VI, VII, and VIII and summary judgment on the pleadings is entered in favor of Defendants on those counts. Plaintiffs are ordered to prepare an order consistent with this opinion.

Entered this 28th day of December, 2022.

Thomas W. Cunnington, Circuit Judge, 21st Circuit

IN THE CIRCUIT COURT OF THE TWENTY-FIRST JUDICIAL CIRCUIT
KANKAKEE COUNTY, ILLINOIS

JAMES R. ROWE, KANKAKEE COUNTY STATE'S ATTORNEY and MICHAEL DOWNEY, KANKAKEE COUNTY SHERIFF, et al	)	
Plaintiffs,	)	Case No. 22-CH-16
v.	)	Consolidated by Supreme Court Order Rowe v Raoul: No. 129016
KWAME RAOUL, ILLINOIS ATTORNEY GENERAL, JAY ROBERT PRITZKER, GOVERNOR OF ILLINOIS, EMANUEL CHRISTOPHER WELCH, SPEAKER OF THE HOUSE, DONALD F. HARMON, SENATE PRESIDENT,	)	
Defendants.	)	



ORDER

This matter comes before the Court for cross motions for summary judgment. The Court having ruled that the Pre-Trial Fairness Act of Public Act 101-652, 102-1104 and any subsequent relevant amendments violate the Separation of Powers and the Bail and Crime Victim provisions of the Illinois Constitution; Pursuant to Illinois Supreme Court Rule 18, the Court opinion of 12/28/2022 in this matter is hereby incorporated as if set forth fully herein; Pursuant to the Illinois Supreme Court Order entered on 10/31/2022 and the Court Order of 12/20/2022 entered by this Court, the Order has a binding effect pursuant to Illinois Supreme Court Rules 384 and 187, respectively. The Court hereby finds that all proper notices pursuant to Supreme Court Rule 19 have been served:

IT IS HEREBY ORDERED:

1) The Court grants Plaintiff's Motion for Declaratory Summary Judgment as Counts I, III, IV and V and denies it as to the remaining counts.

2) The Court grants Defendant's Motion for Summary Judgment as to Counts II, VI, VII and VIII and denies it as to the remaining counts.

3) That the pre-trial provisions of Public Act 101-652 and 102-1104 that amend the term "bail" with "pre-trial release" are facially unconstitutional, void, and unenforceable.

4) Pursuant to Supreme Court Rule 18, and in accordance with the Court's memorandum of decision, the Court finds that:

(a) Section 10-255 of Public Act 101-0652 and Section 70 of Public Act 102-1104 violate:

(1) Article I, Section 8.1 of the Illinois Constitution;

(2) Article I, Section 9 of the Illinois Constitution;

(3) Article II, Section 1 of the Illinois Constitution; and

(4) Article XIV, Section 2 of the Illinois Constitution;

(b) Section 10-255 of Public Act 101-0652 and Section 70 of Public Act 102-1104 are facially unconstitutional under these provisions of the Illinois Constitution;

(c) Section 10-255 of Public Act 101-0652 and Section 70 of Public Act 102-1104 cannot reasonably be construed in a manner that would preserve their validity;

(d) the finding of unconstitutionality is necessary to the Court's decision and judgment; and this decision and judgment cannot rest upon an alternative ground.

5) That this order is final and appealable pursuant to applicable rules.

DATED: 12/30/2022

ENTER: _____
JUDGE
Thomas W. Cunningham

Prepared by:

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FILED
Kankakee County
21st Judicial Circuit
12/30/2022 12:32 PM
Sandra M Cianci
CIRCUIT COURT CLERK

APPEAL TO THE ILLINOIS SUPREME COURT

FROM THE CIRCUIT COURT OF THE TWENTY-FIRST JUDICIAL CIRCUIT
KANKAKEE COUNTY, ILLINOIS

JAMES R. ROWE, in his official capacity as Kankakee County State's Attorney, and MICHAEL DOWNEY, in his official capacity as Kankakee County Sheriff, Plaintiffs-Appellees, v. KWAME RAOUL, in his official capacity as Illinois Attorney General; JAY ROBERT PRITZKER, in his official capacity as Governor of the State of Illinois; EMANUEL CHRISTOPHER WELCH, in his official capacity as Speaker of the Illinois House of Representatives; and DONALD F. HARMON, in his official capacity as Illinois Senate President, Defendants-Appellants.	No. 2022 CH 16 Hon. Thomas W. Cunnington Chief Judge Presiding
CHARLES A. BOONSTRA, in his official capacity as Lee County State's Attorney, and JOHN SIMONTON, in his official capacity as Lee County Sheriff, Plaintiffs-Appellees, v. KWAME RAOUL, in his official capacity as Illinois Attorney General; JAY ROBERT PRITZKER, in his official capacity as Governor of the State of Illinois; EMANUEL CHRISTOPHER WELCH, in his official capacity as Speaker of the Illinois House of Representatives; and DONALD F. HARMON, in his official capacity as Illinois Senate President, Defendants-Appellants.	No. 2022 CH 23 Hon. Thomas W. Cunnington Chief Judge Presiding

MICHAEL L. HILL, in his official capacity as Brown County State's Attorney, and JUSTIN OLIVER, in his official capacity as Brown County Sheriff, Plaintiffs-Appellees, v. KWAME RAOUL, in his official capacity as Illinois Attorney General; JAY ROBERT PRITZKER, in his official capacity as Governor of the State of Illinois; EMANUEL CHRISTOPHER WELCH, in his official capacity as Speaker of the Illinois House of Representatives; and DONALD F. HARMON, in his official capacity as Illinois Senate President, Defendants-Appellants.	No. 2022 CH 24 Hon. Thomas W. Cunnington Chief Judge Presiding
CRAIG MILLER, in his official capacity as Cass County State's Attorney, and DEVRON OHRN, in his official capacity as Cass County Sheriff, Plaintiffs-Appellees, v. JAY ROBERT PRITZKER, in his official capacity as Governor of the State of Illinois; EMANUEL CHRISTOPHER WELCH, in his official capacity as Speaker of the Illinois House of Representatives; and DONALD F. HARMON, in his official capacity as Illinois Senate President, Defendants-Appellants.	No. 2022 CH 25 Hon. Thomas W. Cunnington Chief Judge Presiding
BENJAMIN GOETTEN, in his official capacity as Jersey County State's Attorney, Plaintiff-Appellee, v.	No. 2022 CH 26 Hon. Thomas W. Cunnington Chief Judge Presiding

KWAME RAOUL, in his official capacity as Illinois Attorney General; JAY ROBERT PRITZKER, in his official capacity as Governor of the State of Illinois; EMANUEL CHRISTOPHER WELCH, in his official capacity as Speaker of the Illinois House of Representatives; and DONALD F. HARMON, in his official capacity as Illinois Senate President, Defendants-Appellants.	
ANDREW AFFRUNTI, in his official capacity as Montgomery County State's Attorney, and RICK ROBBINS, in his official capacity as Montgomery County Sheriff, Plaintiffs-Appellees, v. KWAME RAOUL, in his official capacity as Illinois Attorney General; JAY ROBERT PRITZKER, in his official capacity as Governor of the State of Illinois, Defendants-Appellants.	No. 2022 CH 27 Hon. Thomas W. Cunnington Chief Judge Presiding
JASON HELLAND, in his official capacity as Grundy County State's Attorney, and KEN BRILEY, in his official capacity as Grundy County Sheriff, Plaintiffs-Appellees, v. KWAME RAOUL, in his official capacity as Illinois Attorney General; JAY ROBERT PRITZKER, in his official capacity as Governor of the State of Illinois, Defendants-Appellants.	No. 2022 CH 28 Hon. Thomas W. Cunnington Chief Judge Presiding
ERIC C. WEIS, in his official capacity as Kendall County State's Attorney, and DWIGHT BAIRD, in his official capacity as Kendall County Sheriff,	No. 2022 CH 29 Hon. Thomas W. Cunnington

Plaintiffs-Appellees, v. KWAME RAOUL, in his official capacity as Illinois Attorney General; JAY ROBERT PRITZKER, in his official capacity as Governor of the State of Illinois, Defendants-Appellants.	Chief Judge Presiding
RICK AMATO, in his official capacity as DeKalb County State's Attorney, and ANDREW SULLIVAN, in his official capacity as DeKalb County Sheriff, Plaintiffs-Appellees, v. KWAME RAOUL, in his official capacity as Illinois Attorney General; JAY ROBERT PRITZKER, in his official capacity as Governor of the State of Illinois; EMANUEL CHRISTOPHER WELCH, in his official capacity as Speaker of the Illinois House of Representatives; and DONALD F. HARMON, in his official capacity as Illinois Senate President, Defendants-Appellants.	No. 2022 CH 30 Hon. Thomas W. Cunnington Chief Judge Presiding
CALEB L. BRISCOE, in his official capacity as Greene County State's Attorney, and ROBERT MCMILLEN, in his official capacity as Greene County Sheriff, Plaintiffs-Appellees, v. KWAME RAOUL, in his official capacity as Illinois Attorney General; JAY ROBERT PRITZKER, in his official capacity as Governor of the State of Illinois; EMANUEL CHRISTOPHER WELCH, in his official capacity as Speaker of the	No. 2022 CH 31 Hon. Thomas W. Cunnington Chief Judge Presiding

Illinois House of Representatives; and DONALD F. HARMON, in his official capacity as Illinois Senate President, Defendants-Appellants.	
PHILLIP M. GIVENS, in his official capacity as Clay County State's Attorney, Plaintiff-Appellee, v. KWAME RAOUL, in his official capacity as Illinois Attorney General; JAY ROBERT PRITZKER, in his official capacity as Governor of the State of Illinois; EMANUEL CHRISTOPHER WELCH, in his official capacity as Speaker of the Illinois House of Representatives; and DONALD F. HARMON, in his official capacity as Illinois Senate President, Defendants-Appellants.	No. 2022 CH 32 Hon. Thomas W. Cunnington Chief Judge Presiding
MATTHEW P. KWACALA, in his official capacity as McDonough County State's Attorney, and NICK PETITGOUT, in his official capacity as McDonough County Sheriff, Plaintiffs-Appellees, v. KWAME RAOUL, in his official capacity as Illinois Attorney General; JAY ROBERT PRITZKER, in his official capacity as Governor of the State of Illinois, Defendants-Appellants.	No. 2022 CH 33 Hon. Thomas W. Cunnington Chief Judge Presiding
MIKE ROCK, in his official capacity as Ogle County State's Attorney, andBRIAN VANVICKLE, in his official capacity as Ogle County Sheriff, Plaintiffs-Appellees,	No. 2022 CH 34 Hon. Thomas W. Cunnington Chief Judge Presiding

v. KWAME RAOUL, in his official capacity as Illinois Attorney General; JAY ROBERT PRITZKER, in his official capacity as Governor of the State of Illinois, Defendants-Appellants.	
ZACHARY A. BRYANT, in his official capacity as Mason County State's Attorney, and PAUL GANN, in his official capacity as Mason County Sheriff, Plaintiffs-Appellees, v. KWAME RAOUL, in his official capacity as Illinois Attorney General; JAY ROBERT PRITZKER, in his official capacity as Governor of the State of Illinois; EMANUEL CHRISTOPHER WELCH, in his official capacity as Speaker of the Illinois House of Representatives; and DONALD F. HARMON, in his official capacity as Illinois Senate President, Defendants-Appellants.	No. 2022 CH 35 Hon. Thomas W. Cunnington Chief Judge Presiding
GARY L. FARHA, in his official capacity as Adams County State's Attorney, Plaintiff-Appellee, v. KWAME RAOUL, in his official capacity as Illinois Attorney General; JAY ROBERT PRITZKER, in his official capacity as Governor of the State of Illinois; EMANUEL CHRISTOPHER WELCH, in his official capacity as Speaker of the Illinois House of Representatives; and DONALD F. HARMON, in his official capacity as Illinois Senate President, Defendants-Appellants.	No. 2022 CH 36 Hon. Thomas W. Cunnington Chief Judge Presiding

NICHOLE KRONCKE, in her official capacity as Shelby County State's Attorney, Plaintiff-Appellee, v. KWAME RAOUL, in his official capacity as Illinois Attorney General; JAY ROBERT PRITZKER, in his official capacity as Governor of the State of Illinois; EMANUEL CHRISTOPHER WELCH, in his official capacity as Speaker of the Illinois House of Representatives; and DONALD F. HARMON, in his official capacity as Illinois Senate President, Defendants-Appellants.	No. 2022 CH 37 Hon. Thomas W. Cunnington
JEREMY S. KARLIN, in his official capacity as Knox County State's Attorney, and DAVID CLAGUE, in his official capacity as Knox County Sheriff, Plaintiffs-Appellees, v. KWAME RAOUL, in his official capacity as Illinois Attorney General; JAY ROBERT PRITZKER, in his official capacity as Governor of the State of Illinois; EMANUEL CHRISTOPHER WELCH, in his official capacity as Speaker of the Illinois House of Representatives; and DONALD F. HARMON, in his official capacity as Illinois Senate President, Defendants-Appellants.	No. 2022 CH 38 Hon. Thomas W. Cunnington Chief Judge Presiding
TRACY L. WEAVER, in her official capacity as Moultrie County State's Attorney, Plaintiff-Appellee, v.	No. 2022 CH 39 Hon. Thomas W. Cunnington Chief Judge Presiding

KWAME RAOUL, in his official capacity as Illinois Attorney General; JAY ROBERT PRITZKER, in his official capacity as Governor of the State of Illinois; EMANUEL CHRISTOPHER WELCH, in his official capacity as Speaker of the Illinois House of Representatives; and DONALD F. HARMON, in his official capacity as Illinois Senate President, Defendants-Appellants.	
TYLER E. TRIPP, in his official capacity as Union County State's Attorney, and DALE FOSTER, in his official capacity as Union County Sheriff, Plaintiffs-Appellees, v. KWAME RAOUL, in his official capacity as Illinois Attorney General; JAY ROBERT PRITZKER, in his official capacity as Governor of the State of Illinois; EMANUEL CHRISTOPHER WELCH, in his official capacity as Speaker of the Illinois House of Representatives; and DONALD F. HARMON, in his official capacity as Illinois Senate President, Defendants-Appellants.	No. 2022 CH 40 Hon. Thomas W. Cunnington Chief Judge Presiding
JESSE DANLEY, in his official capacity as Coles County State's Attorney, andTYLER HELEINE, in his official capacity as Coles County Sheriff, Plaintiffs-Appellees, v. KWAME RAOUL, in his official capacity as Illinois Attorney General; JAY ROBERT PRITZKER, in his official capacity as Governor of the State of Illinois, Defendants-Appellants.	No. 2022 CH 41 Hon. Thomas W. Cunnington Chief Judge Presiding

JAMES W. GLASGOW, in his official capacity as Will County State's Attorney, Plaintiff-Appellee, v. KWAME RAOUL, in his official capacity as Illinois Attorney General; JAY ROBERT PRITZKER, in his official capacity as Governor of the State of Illinois; EMANUEL CHRISTOPHER WELCH, in his official capacity as Speaker of the Illinois House of Representatives; and DONALD F. HARMON, in his official capacity as Illinois Senate President, Defendants-Appellants.	No. 2022 CH 42 Hon. Thomas W. Cunnington Chief Judge Presiding
J.D. BRANDMEYER, in his official capacity as Clinton County State's Attorney, and DANIEL TRAVOUS, in his official capacity as Clinton County Sheriff, Plaintiffs-Appellees, v. KWAME RAOUL, in his official capacity as Illinois Attorney General; JAY ROBERT PRITZKER, in his official capacity as Governor of the State of Illinois; EMANUEL CHRISTOPHER WELCH, in his official capacity as Speaker of the Illinois House of Representatives; and DONALD F. HARMON, in his official capacity as Illinois Senate President, Defendants-Appellants.	No. 2022 CH 43 Hon. Thomas W. Cunnington Chief Judge Presiding
KEVIN JOHNSON, in his official capacity as Tazewell County State's Attorney, and JEFFREY LOWER, in his official capacity as Tazewell County Sheriff, Plaintiffs-Appellees, v.	No. 2022 CH 44 Hon. Thomas W. Cunnington Chief Judge Presiding

KWAME RAOUL, in his official capacity as Illinois Attorney General; JAY ROBERT PRITZKER, in his official capacity as Governor of the State of Illinois; EMANUEL CHRISTOPHER WELCH, in his official capacity as Speaker of the Illinois House of Representatives; and DONALD F. HARMON, in his official capacity as Illinois Senate President, Defendants-Appellants.	
BRYAN D. ROBBINS, in his official capacity as Cumberland County State's Attorney, and STEVE MAROON, in his official capacity as Cumberland County Sheriff, Plaintiffs-Appellees, v. KWAME RAOUL, in his official capacity as Illinois Attorney General; JAY ROBERT PRITZKER, in his official capacity as Governor of the State of Illinois; EMANUEL CHRISTOPHER WELCH, in his official capacity as Speaker of the Illinois House of Representatives; and DONALD F. HARMON, in his official capacity as Illinois Senate President, Defendants-Appellants.	No. 2022 CH 45 Hon. Thomas W. Cunnington Chief Judge Presiding
TRICIA L. SMITH, in her official capacity as Boone County State's Attorney, and DAVID ERNEST, in his official capacity as Boone County Sheriff, Plaintiffs-Appellees, v. KWAME RAOUL, in his official capacity as Illinois Attorney General; JAY ROBERT PRITZKER, in his official capacity as Governor of the State of Illinois;	No. 2022 CH 46 Hon. Thomas W. Cunnington Chief Judge Presiding

EMANUEL CHRISTOPHER WELCH, in his official capacity as Speaker of the Illinois House of Representatives; and DONALD F. HARMON, in his official capacity as Illinois Senate President, Defendants-Appellants.	
PATRICK KENNEALLY, in his official capacity as McHenry County State's Attorney, and McHENRY COUNTY, Plaintiffs-Appellees, v. KWAME RAOUL, in his official capacity as Illinois Attorney General; JAY ROBERT PRITZKER, in his official capacity as Governor of the State of Illinois, Defendants-Appellants.	No. 2022 CH 47 Hon. Thomas W. Cunnington Chief Judge Presiding
DORA MANN, in her official capacity as Bond County State's Attorney, and JAMES LEITSCHUH, in his official capacity as Bond County Sheriff, Plaintiffs-Appellees, v. KWAME RAOUL, in his official capacity as Illinois Attorney General; JAY ROBERT PRITZKER, in his official capacity as Governor of the State of Illinois; EMANUEL CHRISTOPHER WELCH, in his official capacity as Speaker of the Illinois House of Representatives; and DONALD F. HARMON, in his official capacity as Illinois Senate President, Defendants-Appellants.	No. 2022 CH 48 Hon. Thomas W. Cunnington Chief Judge Presiding
ERIKA REYNOLDS, in her official capacity as McLean County State's Attorney, and JON SANDAGE, in his official capacity as McLean County Sheriff, Plaintiffs-Appellees,	No. 2022 CH 49 Hon. Thomas W. Cunnington Chief Judge Presiding

v.

KWAME RAOUL, in his official capacity as Illinois Attorney General; JAY ROBERT PRITZKER, in his official capacity as Governor of the State of Illinois; EMANUEL CHRISTOPHER WELCH, in his official capacity as Speaker of the Illinois House of Representatives; and DONALD F. HARMON, in his official capacity as Illinois Senate President,

Defendants-Appellants.

RACHEL B. MAST, in her official capacity as Henderson County State's Attorney,

Plaintiff-Appellee,

v.

KWAME RAOUL, in his official capacity as Illinois Attorney General; JAY ROBERT PRITZKER, in his official capacity as Governor of the State of Illinois; EMANUEL CHRISTOPHER WELCH, in his official capacity as Speaker of the Illinois House of Representatives; and DONALD F. HARMON, in his official capacity as Illinois Senate President,

Defendants-Appellants.

No. 2022 CH 50

Hon. Thomas W. Cunnington

Chief Judge Presiding

DAN WRIGHT, in his official capacity as Sangamon County State's Attorney, and JACK CAMPBELL, in his official capacity as Sangamon County Sheriff,

Plaintiffs-Appellees,

v.

JAY ROBERT PRITZKER, in his official capacity as Governor of the State of Illinois; EMANUEL CHRISTOPHER WELCH, in his official capacity as Speaker of the Illinois House of Representatives; and

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Hon. Thomas W. Cunnington

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DONALD F. HARMON, in his official capacity as Illinois Senate President, Defendants-Appellants.	
ANDREW L. KILLIAN, in his official capacity as Ford County State's Attorney, and MIKE DORAN, in his official capacity as Ford County Sheriff, Plaintiffs-Appellees, v. KWAME RAOUL, in his official capacity as Illinois Attorney General; JAY ROBERT PRITZKER, in his official capacity as Governor of the State of Illinois, Defendants-Appellants.	No. 2022 CH 54 Hon. Thomas W. Cunnington Chief Judge Presiding
AARON C. KANEY, in his official capacity as Carroll County State's Attorney, and RYAN KLOEPPING, in his official capacity as Carroll County Sheriff, Plaintiffs-Appellees, v. KWAME RAOUL, in his official capacity as Illinois Attorney General; JAY ROBERT PRITZKER, in his official capacity as Governor of the State of Illinois, Defendants-Appellants.	No. 2022 CH 55 Hon. Thomas W. Cunnington Chief Judge Presiding
MOLLY W. KASIAR, in her official capacity as Saline County State's Attorney, Plaintiff-Appellee, v. KWAME RAOUL, in his official capacity as Illinois Attorney General; JAY ROBERT PRITZKER, in his official capacity as Governor of the State of Illinois; EMANUEL CHRISTOPHER WELCH, in	No. 2022 CH 56 Hon. Thomas W. Cunnington Chief Judge Presiding

his official capacity as Speaker of the Illinois House of Representatives; and DONALD F. HARMON, in his official capacity as Illinois Senate President, Defendants-Appellants.	
JASON A. OLSON, in his official capacity as Pope County State's Attorney, Plaintiff-Appellee, v. KWAME RAOUL, in his official capacity as Illinois Attorney General; JAY ROBERT PRITZKER, in his official capacity as Governor of the State of Illinois; EMANUEL CHRISTOPHER WELCH, in his official capacity as Speaker of the Illinois House of Representatives; and DONALD F. HARMON, in his official capacity as Illinois Senate President, Defendants-Appellants.	No. 2022 CH 57 Hon. Thomas W. Cunnington Chief Judge Presiding
TAMBRA M. CAIN, in her official capacity as Johnson County State's Attorney, and PETE SOPCZAK, in his official capacity as Johnson County Sheriff, Plaintiffs-Appellees, v. KWAME RAOUL, in his official capacity as Illinois Attorney General; JAY ROBERT PRITZKER, in his official capacity as Governor of the State of Illinois; EMANUEL CHRISTOPHER WELCH, in his official capacity as Speaker of the Illinois House of Representatives; and DONALD F. HARMON, in his official capacity as Illinois Senate President, Defendants-Appellants.	No. 2022 CH 58 Hon. Thomas W. Cunnington Chief Judge Presiding
KATE WATSON, in her official capacity as Douglas County State's Attorney,	No. 2022 CH 59

Plaintiff-Appellee, v. KWAME RAOUL, in his official capacity as Illinois Attorney General; JAY ROBERT PRITZKER, in his official capacity as Governor of the State of Illinois; EMANUEL CHRISTOPHER WELCH, in his official capacity as Speaker of the Illinois House of Representatives; and DONALD F. HARMON, in his official capacity as Illinois Senate President, Defendants-Appellants.	Hon. Thomas W. Cunnington Chief Judge Presiding
RANDY A. YEDINAK, in his official capacity as Livingston County State's Attorney, and JEFFREY G. HAMILTON, in his official capacity as Livingston County Sheriff, Plaintiffs-Appellees, v. KWAME RAOUL, in his official capacity as Illinois Attorney General; JAY ROBERT PRITZKER, in his official capacity as Governor of the State of Illinois; EMANUEL CHRISTOPHER WELCH, in his official capacity as Speaker of the Illinois House of Representatives; and DONALD F. HARMON, in his official capacity as Illinois Senate President, Defendants-Appellants.	No. 2022 CH 60 Hon. Thomas W. Cunnington Chief Judge Presiding
GREGORY M. MINGER, in his official capacity as Woodford County State's Attorney, and MATTHEW SMITH, in his official capacity as Woodford County Sheriff, Plaintiffs-Appellees, v.	No. 2022 CH 61 Hon. Thomas W. Cunnington Chief Judge Presiding

KWAME RAOUL, in his official capacity as Illinois Attorney General; JAY ROBERT PRITZKER, in his official capacity as Governor of the State of Illinois; EMANUEL CHRISTOPHER WELCH, in his official capacity as Speaker of the Illinois House of Representatives; and DONALD F. HARMON, in his official capacity as Illinois Senate President, Defendants-Appellants.	
SEAN M. FEATHERSTUN, in his official capacity as Jefferson County State's Attorney, Plaintiff-Appellee, v. KWAME RAOUL, in his official capacity as Illinois Attorney General; JAY ROBERT PRITZKER, in his official capacity as Governor of the State of Illinois; EMANUEL CHRISTOPHER WELCH, in his official capacity as Speaker of the Illinois House of Representatives; and DONALD F. HARMON, in his official capacity as Illinois Senate President, Defendants-Appellants.	No. 2022 CH 62 Hon. Thomas W. Cunnington Chief Judge Presiding
LISA C. CASPER, in her official capacity as Pulaski County State's Attorney, and RANDY KERN, in his official capacity as Pulaski County Sheriff, Plaintiffs-Appellees, v. KWAME RAOUL, in his official capacity as Illinois Attorney General; JAY ROBERT PRITZKER, in his official capacity as Governor of the State of Illinois; EMANUEL CHRISTOPHER WELCH, in his official capacity as Speaker of the	No. 2022 CH 63 Hon. Thomas W. Cunnington Chief Judge Presiding

Illinois House of Representatives; and DONALD F. HARMON, in his official capacity as Illinois Senate President, Defendants-Appellants.	
DAN MARKWELL, in his official capacity as DeWitt County State's Attorney, and MIKE WALKER, in his official capacity as DeWitt County Sheriff, Plaintiffs-Appellees, v. KWAME RAOUL, in his official capacity as Illinois Attorney General; JAY ROBERT PRITZKER, in his official capacity as Governor of the State of Illinois; EMANUEL CHRISTOPHER WELCH, in his official capacity as Speaker of the Illinois House of Representatives; and DONALD F. HARMON, in his official capacity as Illinois Senate President, Defendants-Appellants.	No. 2022 CH 64 Hon. Thomas W. Cunnington Chief Judge Presiding
DANIEL R. JANOWSKI, in his official capacity as Washington County State's Attorney, Plaintiff-Appellee, v. KWAME RAOUL, in his official capacity as Illinois Attorney General; JAY ROBERT PRITZKER, in his official capacity as Governor of the State of Illinois; EMANUEL CHRISTOPHER WELCH, in his official capacity as Speaker of the Illinois House of Representatives; and DONALD F. HARMON, in his official capacity as Illinois Senate President, Defendants-Appellants.	No. 2022 CH 65 Hon. Thomas W. Cunnington Chief Judge Presiding
SCOTT A. RUETER, in his official capacity as Macon County State's Attorney,	No. 2022 CH 66

and JIM ROOT, in his official capacity as Macon County Sheriff, Plaintiffs-Appellees, v. KWAME RAOUL, in his official capacity as Illinois Attorney General; JAY ROBERT PRITZKER, in his official capacity as Governor of the State of Illinois; EMANUEL CHRISTOPHER WELCH, in his official capacity as Speaker of the Illinois House of Representatives; and DONALD F. HARMON, in his official capacity as Illinois Senate President, Defendants-Appellants.	Hon. Thomas W. Cunnington Chief Judge Presiding
JACQUELINE M. LACY, in her official capacity as Vermilion County State's Attorney, Plaintiff-Appellee, v. KWAME RAOUL, in his official capacity as Illinois Attorney General; JAY ROBERT PRITZKER, in his official capacity as Governor of the State of Illinois, Defendants-Appellants.	No. 2022 CH 67 Hon. Thomas W. Cunnington Chief Judge Presiding
JEREMY R. WALKER, in his official capacity as Randolph County State's Attorney, Plaintiff-Appellee, v. KWAME RAOUL, in his official capacity as Illinois Attorney General; JAY ROBERT PRITZKER, in his official capacity as Governor of the State of Illinois; EMANUEL CHRISTOPHER WELCH, in his official capacity as Speaker of the	No. 2022 CH 68 Hon. Thomas W. Cunnington Chief Judge Presiding

Illinois House of Representatives; and DONALD F. HARMON, in his official capacity as Illinois Senate President, Defendants-Appellants.	
JOSEPH A. CERVANTEZ, in his official capacity as Jackson County State's Attorney, Plaintiff-Appellee, v. KWAME RAOUL, in his official capacity as Illinois Attorney General; JAY ROBERT PRITZKER, in his official capacity as Governor of the State of Illinois; EMANUEL CHRISTOPHER WELCH, in his official capacity as Speaker of the Illinois House of Representatives; and DONALD F. HARMON, in his official capacity as Illinois Senate President, Defendants-Appellants.	No. 2022 CH 69 Hon. Thomas W. Cunnington Chief Judge Presiding
AARON C. JONES, in his official capacity as Effingham County State's Attorney, Plaintiff-Appellee, v. KWAME RAOUL, in his official capacity as Illinois Attorney General; JAY ROBERT PRITZKER, in his official capacity as Governor of the State of Illinois; EMANUEL CHRISTOPHER WELCH, in his official capacity as Speaker of the Illinois House of Representatives; and DONALD F. HARMON, in his official capacity as Illinois Senate President, Defendants-Appellants.	No. 2022 CH 70 Hon. Thomas W. Cunnington Chief Judge Presiding
BRADLEY M. HAUGE, in his official capacity as Logan County State's Attorney, and MARK LANDERS, in his official capacity as Logan County Sheriff,	No. 2022 CH 71 Hon. Thomas W. Cunnington

Plaintiffs-Appellees, v. KWAME RAOUL, in his official capacity as Illinois Attorney General; JAY ROBERT PRITZKER, in his official capacity as Governor of the State of Illinois; EMANUEL CHRISTOPHER WELCH, in his official capacity as Speaker of the Illinois House of Representatives; and DONALD F. HARMON, in his official capacity as Illinois Senate President, Defendants-Appellants.	Chief Judge Presiding
DAVID H. SEARBY, JR., in his official capacity as Perry County State's Attorney, Plaintiff-Appellee, v. KWAME RAOUL, in his official capacity as Illinois Attorney General; JAY ROBERT PRITZKER, in his official capacity as Governor of the State of Illinois; EMANUEL CHRISTOPHER WELCH, in his official capacity as Speaker of the Illinois House of Representatives; and DONALD F. HARMON, in his official capacity as Illinois Senate President, Defendants-Appellants.	No. 2022 CH 72 Hon. Thomas W. Cunnington Chief Judge Presiding
DENTON W. AUD, in his official capacity as White County State's Attorney, Plaintiff-Appellee, v. KWAME RAOUL, in his official capacity as Illinois Attorney General; JAY ROBERT PRITZKER, in his official capacity as Governor of the State of Illinois; EMANUEL CHRISTOPHER WELCH, in	No. 2022 CH 73 Hon. Thomas W. Cunnington Chief Judge Presiding

his official capacity as Speaker of the Illinois House of Representatives; and DONALD F. HARMON, in his official capacity as Illinois Senate President, Defendants-Appellants.	
JOSEPH NAVARRO, in his official capacity as LaSalle County State's Attorney, and ADAM DISS, in his official capacity as LaSalle County Sheriff, Plaintiffs-Appellees, v. KWAME RAOUL, in his official capacity as Illinois Attorney General; JAY ROBERT PRITZKER, in his official capacity as Governor of the State of Illinois, Defendants-Appellants.	No. 2022 CH 74 Hon. Thomas W. Cunnington Chief Judge Presiding
JOSHUA A. STRATEMEYER, in his official capacity as Massac County State's Attorney, Plaintiff-Appellee, v. KWAME RAOUL, in his official capacity as Illinois Attorney General; JAY ROBERT PRITZKER, in his official capacity as Governor of the State of Illinois, Defendants-Appellants.	No. 2022 CH 75 Hon. Thomas W. Cunnington Chief Judge Presiding
CHRISTOPHER D. ALLENDORF, in his official capacity as Jo Daviess County State's Attorney, and KEVIN W. TURNER, in his official capacity as Jo Daviess County Sheriff, Plaintiffs-Appellees, v.	No. 2022 CH 76 Hon. Thomas W. Cunnington Chief Judge Presiding

KWAME RAOUL, in his official capacity as Illinois Attorney General; JAY ROBERT PRITZKER, in his official capacity as Governor of the State of Illinois, Defendants-Appellants.	
JOSHUA MORRISON, in his official capacity as Fayette County State's Attorney, and DAVID RUSSELL, in his official capacity as Fayette County Sheriff, Plaintiffs-Appellees, v. JAY ROBERT PRITZKER, in his official capacity as Governor of the State of Illinois; EMANUEL CHRISTOPHER WELCH, in his official capacity as Speaker of the Illinois House of Representatives; and DONALD F. HARMON, in his official capacity as Illinois Senate President, Defendants-Appellants.	No. 2022 CH 77 Hon. Thomas W. Cunnington Chief Judge Presiding
JUSTIN G. JOCHUMS, in his official capacity as Fulton County State's Attorney, and JEFFREY A. STANDARD, in his official capacity as Fulton County Sheriff, Plaintiffs-Appellees, v. KWAME RAOUL, in his official capacity as Illinois Attorney General; JAY ROBERT PRITZKER, in his official capacity as Governor of the State of Illinois; EMANUEL CHRISTOPHER WELCH, in his official capacity as Speaker of the Illinois House of Representatives; and DONALD F. HARMON, in his official capacity as Illinois Senate President, Defendants-Appellants.	No. 2022 CH 78 Hon. Thomas W. Cunnington Chief Judge Presiding
GRACE A. SIMPSON, in her official capacity as Mercer County State's Attorney,	No. 2022 CH 79

Plaintiff-Appellee, v. KWAME RAOUL, in his official capacity as Illinois Attorney General; JAY ROBERT PRITZKER, in his official capacity as Governor of the State of Illinois, Defendants-Appellants.	Hon. Thomas W. Cunnington Chief Judge Presiding
J. HANLEY, in his official capacity as Winnebago County State's Attorney, and GARY CARUANA, in his official capacity as Winnebago County Sheriff, Plaintiffs-Appellee, v. KWAME RAOUL, in his official capacity as Illinois Attorney General; JAY ROBERT PRITZKER, in his official capacity as Governor of the State of Illinois; EMANUEL CHRISTOPHER WELCH, in his official capacity as Speaker of the Illinois House of Representatives; and DONALD F. HARMON, in his official capacity as Illinois Senate President, Defendants-Appellants.	No. 2022 CH 80 Hon. Thomas W. Cunnington Chief Judge Presiding
RACHEL B. MAST, in her official capacity as Hancock County State's Attorney, and TRAVIS DUFFY, in his official capacity as Hancock County Sheriff, Plaintiffs-Appellees, v. KWAME RAOUL, in his official capacity as Illinois Attorney General; JAY ROBERT PRITZKER, in his official capacity as Governor of the State of Illinois, Defendants-Appellants.	No. 2022 CH 81 Hon. Thomas W. Cunnington Chief Judge Presiding

CARL H. LARSON, in his official capacity as Stephenson County State's Attorney, and DAVID SNYDERS, in his official capacity as Stephenson County Sheriff, Plaintiffs-Appellees, v. KWAME RAOUL, in his official capacity as Illinois Attorney General; JAY ROBERT PRITZKER, in his official capacity as Governor of the State of Illinois, Defendants-Appellants.	No. 2022 CH 82 Hon. Thomas W. Cunnington Chief Judge Presiding
THOMAS A. HAINE, in his official capacity as Madison County State's Attorney, and JOHN D. LAKIN, in his official capacity as Madison County Sheriff, Plaintiffs-Appellees, v. KWAME RAOUL, in his official capacity as Illinois Attorney General; JAY ROBERT PRITZKER, in his official capacity as Governor of the State of Illinois; EMANUEL CHRISTOPHER WELCH, in his official capacity as Speaker of the Illinois House of Representatives; and DONALD F. HARMON, in his official capacity as Illinois Senate President, Defendants-Appellants.	No. 2022 CH 83 Hon. Thomas W. Cunnington Chief Judge Presiding
RICHARD K. CREWS, in his official capacity as Scott County State's Attorney, and THOMAS R. EDDINGER, in his official capacity as Scott County Sheriff, Plaintiffs-Appellees, v. KWAME RAOUL, in his official capacity as Illinois Attorney General; JAY ROBERT	No. 2022 CH 84 Hon. Thomas W. Cunnington Chief Judge Presiding

PRITZKER, in his official capacity as Governor of the State of Illinois; EMANUEL CHRISTOPHER WELCH, in his official capacity as Speaker of the Illinois House of Representatives; and DONALD F. HARMON, in his official capacity as Illinois Senate President, Defendants-Appellants.	
JAMES S. TRECCIA, in his official capacity as Jasper County State's Attorney, Plaintiff-Appellee, v. KWAME RAOUL, in his official capacity as Illinois Attorney General; JAY ROBERT PRITZKER, in his official capacity as Governor of the State of Illinois; EMANUEL CHRISTOPHER WELCH, in his official capacity as Speaker of the Illinois House of Representatives; and DONALD F. HARMON, in his official capacity as Illinois Senate President, Defendants-Appellants.	No. 2022 CH 85 Hon. Thomas W. Cunnington Chief Judge Presiding
LUCAS H. LIEFER, in his official capacity as Monroe County State's Attorney, and NEAL ROHLFING, in his official capacity as Monroe County Sheriff, Plaintiffs-Appellees, v. KWAME RAOUL, in his official capacity as Illinois Attorney General; JAY ROBERT PRITZKER, in his official capacity as Governor of the State of Illinois; EMANUEL CHRISTOPHER WELCH, in his official capacity as Speaker of the Illinois House of Representatives; and DONALD F. HARMON, in his official capacity as Illinois Senate President,	No. 2022 CH 86 Hon. Thomas W. Cunnington Chief Judge Presiding

Defendants-Appellants. ABIGAIL D. DINN, in her official capacity as Franklin County State's Attorney, Plaintiff-Appellee, v. KWAME RAOUL, in his official capacity as Illinois Attorney General; JAY ROBERT PRITZKER, in his official capacity as Governor of the State of Illinois; EMANUEL CHRISTOPHER WELCH, in his official capacity as Speaker of the Illinois House of Representatives; and DONALD F. HARMON, in his official capacity as Illinois Senate President, Defendants-Appellants.	No. 2022 CH 88 Hon. Thomas W. Cunnington Chief Judge Presiding

NOTICE OF APPEAL

PLEASE TAKE NOTICE that under Illinois Supreme Court Rule 302(a), Defendants Kwame Raoul, in his official capacity as Attorney General of Illinois; JB Pritzker, in his official capacity as Governor of Illinois; Emanuel Christopher Welch, in his official capacity as Speaker of the Illinois House of Representatives; and Donald F. Harmon, in his official capacity as President of the Illinois Senate, by and through their attorneys, appeal directly to the Illinois Supreme Court from the final judgment entered on December 30, 2022 (Attachment A), and the memorandum of decision entered on December 28, 2022 (Attachment B), by the Honorable Thomas Cunnington, Chief Judge of the Circuit Court of the Twenty-First Judicial Circuit, Kankakee County, Illinois, in these consolidated cases, determining that the pretrial release provisions of the SAFE-T Act (i.e., Section 10-255 of Public Act 101-652 and Section 70 of Public Act 102-1104, and all associated provisions) are unconstitutional on their face.

By this appeal, Defendants request that the Illinois Supreme Court reverse and vacate these orders of the circuit court to the extent that they were adverse to them, and grant them any other relief deemed appropriate.

Dated: December 30, 2022

Respectfully submitted,

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STATUTES AND CONSTITUTIONAL PROVISIONS

Ill. Const. art. I, § 8.1
Crime victims' rights

(a) Crime victims, as defined by law, shall have the following rights:

(1) The right to be treated with fairness and respect for their dignity and privacy and to be free from harassment, intimidation, and abuse throughout the criminal justice process.

(2) The right to notice and to a hearing before a court ruling on a request for access to any of the victim's records, information, or communications which are privileged or confidential by law.

(3) The right to timely notification of all court proceedings.

(4) The right to communicate with the prosecution.

(5) The right to be heard at any post-arraignment court proceeding in which a right of the victim is at issue and any court proceeding involving a post-arraignment release decision, plea, or sentencing.

(6) The right to be notified of the conviction, the sentence, the imprisonment, and the release of the accused.

(7) The right to timely disposition of the case following the arrest of the accused.

(8) The right to be reasonably protected from the accused throughout the criminal justice process.

(9) The right to have the safety of the victim and the victim's family considered in denying or fixing the amount of bail, determining whether to release the defendant, and setting conditions of release after arrest and conviction.

(10) The right to be present at the trial and all other court proceedings on the same basis as the accused, unless the victim is to testify and the court determines that the victim's testimony would be materially affected if the victim hears other testimony at the trial.

(11) The right to have present at all court proceedings, subject to the rules of evidence, an advocate and other support person of the victim's choice.

(12) The right to restitution.

(b) The victim has standing to assert the rights enumerated in subsection (a) in any court exercising jurisdiction over the case. The court shall promptly rule on a victim's request. The victim does not have party status. The accused does not have standing to assert the rights of a victim. The court shall not appoint an attorney for the victim under this Section. Nothing in this Section shall be construed to alter the powers, duties, and responsibilities of the prosecuting attorney.

(c) The General Assembly may provide for an assessment against convicted defendants to pay for crime victims' rights.

(d) Nothing in this Section or any law enacted under this Section creates a cause of action in equity or at law for compensation, attorney's fees, or damages against the State, a political subdivision of the State, an officer, employee, or agent of the State or of any political subdivision of the State, or an officer or employee of the court.

(e) Nothing in this Section or any law enacted under this Section shall be construed as creating (1) a basis for vacating a conviction or (2) a ground for any relief requested by the defendant.

Ill. Const. art. I, § 9
Bail and habeas corpus

All persons shall be bailable by sufficient sureties, except for the following offenses where the proof is evident or the presumption great: capital offenses; offenses for which a sentence of life imprisonment may be imposed as a consequence of conviction; and felony offenses for which a sentence of imprisonment, without conditional and revocable release, shall be imposed by law as a consequence of conviction, when the court, after a hearing, determines that release of the offender would pose a real and present threat to the physical safety of any person. The privilege of the writ of habeas corpus shall not be suspended except in cases of rebellion or invasion when the public safety may require it.

Any costs accruing to a unit of local government as a result of the denial of bail pursuant to the 1986 Amendment to this Section shall be reimbursed by the State to the unit of local government.

Ill. Const. art. II, § 1
Separation of powers

The legislative, executive and judicial branches are separate. No branch shall exercise powers properly belonging to another.

725 ILCS 5/110-1.5[*]
Abolition of monetary bail

On and after January 1, 2023, the requirement of posting monetary bail is abolished, except as provided in the Uniform Criminal Extradition Act, the Driver License Compact, or the Nonresident Violator Compact which are compacts that have been entered into between this State and its sister states.

725 ILCS 5/110-2
Pretrial release

(a) All persons charged with an offense shall be eligible for pretrial release before conviction. It is presumed that a defendant is entitled to release on personal recognizance on the condition that the defendant attend all required court proceedings and the defendant does not commit any criminal offense, and complies with all terms of pretrial release, including, but not limited to, orders of protection under both Section 112A-4 of this Code and Section 214 of the Illinois Domestic Violence Act of 1986, all civil no contact orders, and all stalking no contact orders. Pretrial release may be denied only if a person is charged with an offense listed in Section 110-6.1 and after the court has held a hearing under Section 110-6.1, and in a manner consistent with subsections (b), (c), and (d) of this Section.

(b) At all pretrial hearings, the prosecution shall have the burden to prove by clear and convincing evidence that any condition of release is necessary.

(c) When it is alleged that pretrial release should be denied to a person upon the grounds that the person presents a real and present threat to the safety of any person or persons or the community, based on the specific articulable facts of the case, the burden of proof of such allegations shall be upon the State.

(d) When it is alleged that pretrial release should be denied to a person charged with stalking or aggravated stalking upon the grounds set forth in Section 110-6.3, the burden of proof of those allegations shall be upon the State.

(e) This Section shall be liberally construed to effectuate the purpose of relying on pretrial release by nonmonetary means to reasonably ensure an eligible person's appearance in court, the protection of the safety of any other person or the community, that the person will not attempt or obstruct the criminal justice process, and the person's compliance with all conditions of release, while authorizing the court, upon motion of a prosecutor, to order pretrial detention of the person under Section 110-6.1 when it finds clear and

[*] All statutory text reflects both the SAFE-T Act and the amendatory act of December 2022. *See* Pub. Act No. 101-652 (2021); Pub. Act No. 102-1104 (2022).

convincing evidence that no condition or combination of conditions can reasonably ensure the effectuation of these goals.

725 ILCS 5/110-3
Options for warrant alternatives

(a) Upon failure to comply with any condition of pretrial release, the court having jurisdiction at the time of such failure may, on its own motion or upon motion from the State, issue a summons or a warrant for the arrest of the person at liberty on pretrial release. This Section shall be construed to effectuate the goal of relying upon summonses rather than warrants to ensure the appearance of the defendant in court whenever possible. The contents of such a summons or warrant shall be the same as required for those issued upon complaint under Section 107-9.

(b) A defendant who appears in court on the date assigned or within 48 hours of service, whichever is later, in response to a summons issued for failure to appear in court, shall not be recorded in the official docket as having failed to appear on the initial missed court date. If a person fails to appear in court on the date listed on the summons, the court may issue a warrant for the person's arrest.

(c) For the purpose of any risk assessment or future evaluation of risk of willful flight or risk of failure to appear, a nonappearance in court cured by an appearance in response to a summons shall not be considered as evidence of future likelihood of appearance in court.

725 ILCS 5/110-4
Pretrial release

(a) All persons charged with an offense shall be eligible for pretrial release before conviction. Pretrial release may only be denied when a person is charged with an offense listed in Section 110-6.1 or when the defendant has a high likelihood of willful flight, and after the court has held a hearing under Section 110-6.1.

(b) A person seeking pretrial release who is charged with a capital offense or an offense for which a sentence of life imprisonment may be imposed shall not be eligible for release pretrial until a hearing is held wherein such person has the burden of demonstrating that the proof of his guilt is not evident and the presumption is not great.

(c) Where it is alleged that pretrial should be denied to a person upon the grounds that the person presents a real and present threat to the physical safety of any

person or persons, the burden of proof of such allegations shall be upon the State.

(d) When it is alleged that pretrial should be denied to a person charged with stalking or aggravated stalking upon the grounds set forth in Section 110-6.3 of this Code, the burden of proof of those allegations shall be upon the State.

725 ILCS 5/110-5
Determining the amount of bail and conditions of release

(a) In determining which conditions of pretrial release, if any, will reasonably ensure the appearance of a defendant as required or the safety of any other person or the community and the likelihood of compliance by the defendant with all the conditions of pretrial release, the court shall, on the basis of available information, take into account such matters as:

(1) the nature and circumstances of the offense charged;

(2) the weight of the evidence against the defendant, except that the court may consider the admissibility of any evidence sought to be excluded;

(3) the history and characteristics of the defendant, including:

(A) the defendant's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past relating to drug or alcohol abuse, conduct, history criminal history, and record concerning appearance at court proceedings; and

(B) whether, at the time of the current offense or arrest, the defendant was on probation, parole, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense under federal law, or the law of this or any other state;

(4) the nature and seriousness of the real and present threat to the safety of any person or persons or the community, based on the specific articulable facts of the case, that would be posed by the defendant's release, if applicable, as required under paragraph (7.5) of Section 4 of the Rights of Crime Victims and Witnesses Act;

(5) the nature and seriousness of the risk of obstructing or attempting to obstruct the criminal justice process that would be posed by the defendant's release, if applicable;

(6) when a person is charged with a violation of a protective order, domestic battery, aggravated domestic battery, kidnapping, aggravated

kidnaping, unlawful restraint, aggravated unlawful restraint, cyberstalking, harassment by telephone, harassment through electronic communications, or an attempt to commit first degree murder committed against a spouse or a current or former partner in a cohabitation or dating relationship, regardless of whether an order of protection has been issued against the person, the court may consider the following additional factors:

(A) whether the alleged incident involved harassment or abuse, as defined in the Illinois Domestic Violence Act of 1986;

(B) whether the person has a history of domestic violence, as defined in the Illinois Domestic Violence Act of 1986, or a history of other criminal acts;

(C) the mental health of the person;

(D) whether the person has a history of violating the orders of any court or governmental entity;

(E) whether the person has been, or is, potentially a threat to any other person;

(F) whether the person has access to deadly weapons or a history of using deadly weapons;

(G) whether the person has a history of abusing alcohol or any controlled substance;

(H) the severity of the alleged incident that is the basis of the alleged offense, including, but not limited to, the duration of the current incident, and whether the alleged incident involved the use of a weapon, physical injury, sexual assault, strangulation, abuse during the alleged victim's pregnancy, abuse of pets, or forcible entry to gain access to the alleged victim;

(I) whether a separation of the person from the victim of abuse or a termination of the relationship between the person and the victim of abuse has recently occurred or is pending;

(J) whether the person has exhibited obsessive or controlling behaviors toward the victim of abuse, including, but not limited to, stalking, surveillance, or isolation of the victim of abuse or the victim's family member or members;

(K) whether the person has expressed suicidal or homicidal ideations; and

(L) any other factors deemed by the court to have a reasonable bearing upon the defendant's propensity or reputation for violent, abusive, or assaultive behavior, or lack of that behavior.

(7) in cases of stalking or aggravated stalking under Section 12-7.3 or 12-7.4 of the Criminal Code of 2012, the court may consider the factors listed in paragraph (6) and the following additional factors:

(A) any evidence of the defendant's prior criminal history indicative of violent, abusive or assaultive behavior, or lack of that behavior; the evidence may include testimony or documents received in juvenile proceedings, criminal, quasi-criminal, civil commitment, domestic relations, or other proceedings;

(B) any evidence of the defendant's psychological, psychiatric, or other similar social history that tends to indicate a violent, abusive, or assaultive nature, or lack of any such history;

(C) the nature of the threat that is the basis of the charge against the defendant;

(D) any statements made by, or attributed to, the defendant, together with the circumstances surrounding them;

(E) the age and physical condition of any person allegedly assaulted by the defendant;

(F) whether the defendant is known to possess or have access to any weapon or weapons; and

(G) any other factors deemed by the court to have a reasonable bearing upon the defendant's propensity or reputation for violent, abusive, or assaultive behavior, or lack of that behavior.

(b) The court may use a regularly validated risk assessment tool to aid its determination of appropriate conditions of release as provided under Section 110-6.4. If a risk assessment tool is used, the defendant's counsel shall be provided with the information and scoring system of the risk assessment tool used to arrive at the determination. The defendant retains the right to challenge the validity of a risk assessment tool used by the court and to present evidence relevant to the defendant's challenge.

(c) The court shall impose any conditions that are mandatory under subsection (a) of Section 110-10. The court may impose any conditions that are permissible under subsection (b) of Section 110-10. The conditions of release imposed shall be the least restrictive conditions or combination of conditions necessary to reasonably ensure the appearance of the defendant as required or the safety of any other person or persons or the community.

(d) When a person is charged with a violation of a protective order, the court may order the defendant placed under electronic surveillance as a condition of pretrial release, as provided in Section 5-8A-7 of the Unified Code of Corrections, based on the information collected under paragraph (6) of subsection (a) of this Section, the results of any assessment conducted, or other circumstances of the violation.

(e) If a person remains in pretrial detention 48 hours after having been ordered released with pretrial conditions, the court shall hold a hearing to determine the reason for continued detention. If the reason for continued detention is due to the unavailability or the defendant's ineligibility for one or more pretrial conditions previously ordered by the court or directed by a pretrial services agency, the court shall reopen the conditions of release hearing to determine what available pretrial conditions exist that will reasonably ensure the appearance of a defendant as required, the safety of any other person, and the likelihood of compliance by the defendant with all the conditions of pretrial release. The inability of the defendant to pay for a condition of release or any other ineligibility for a condition of pretrial release shall not be used as a justification for the pretrial detention of that defendant.

(f) Prior to the defendant's first appearance, and with sufficient time for meaningful attorney-client contact to gather information in order to advocate effectively for the defendant's pretrial release, the court shall appoint the public defender or a licensed attorney at law of this State to represent the defendant for purposes of that hearing, unless the defendant has obtained licensed counsel. Defense counsel shall have access to the same documentary information relied upon by the prosecution and presented to the court.

(f-5) At each subsequent appearance of the defendant before the court, the judge must find that the current conditions imposed are necessary to reasonably ensure the appearance of the defendant as required, the safety of any other person, and the compliance of the defendant with all the conditions of pretrial release. The court is not required to be presented with new information or a change in circumstance to remove pretrial conditions.

(g) Electronic monitoring, GPS monitoring, or home confinement can only be imposed as a condition of pretrial release if a no less restrictive condition of release or combination of less restrictive condition of release would reasonably

ensure the appearance of the defendant for later hearings or protect an identifiable person or persons from imminent threat of serious physical harm.

(h) If the court imposes electronic monitoring, GPS monitoring, or home confinement, the court shall set forth in the record the basis for its finding. A defendant shall be given custodial credit for each day he or she was subjected to home confinement, at the same rate described in subsection (b) of Section 5-4.5-100 of the Unified Code of Corrections. The court may give custodial credit to a defendant for each day the defendant was subjected to GPS monitoring without home confinement or electronic monitoring without home confinement.

(i) If electronic monitoring, GPS monitoring, or home confinement is imposed, the court shall determine every 60 days if no less restrictive condition of release or combination of less restrictive conditions of release would reasonably ensure the appearance, or continued appearance, of the defendant for later hearings or protect an identifiable person or persons from imminent threat of serious physical harm. If the court finds that there are less restrictive conditions of release, the court shall order that the condition be removed. This subsection takes effect January 1, 2022.

(j) Crime Victims shall be given notice by the State's Attorney's office of this hearing as required in paragraph (1) of subsection (b) of Section 4.5 of the Rights of Crime Victims and Witnesses Act and shall be informed of their opportunity at this hearing to obtain a protective order.

(k) The State and defendants may appeal court orders imposing conditions of pretrial release.

725 ILCS 5/110-6

Revocation of pretrial release, modification of conditions of pretrial release, and sanctions for violations of conditions of pretrial release

(a) When a defendant has previously been granted pretrial release under this Section for a felony or Class A misdemeanor, that pretrial release may be revoked only if the defendant is charged with a felony or Class A misdemeanor that is alleged to have occurred during the defendant's pretrial release after a hearing on the court's own motion or upon the filing of a verified petition by the State.

When a defendant released pretrial is charged with a violation of a protective order or was previously convicted of a violation of a protective order and the subject of the protective order is the same person as the victim in the current underlying matter, the State shall file a verified petition seeking revocation of pretrial release.

Upon the filing of a petition or upon motion of the court seeking revocation, the court shall order the transfer of the defendant and the petition or motion to the court before which the previous felony or Class A misdemeanor is pending. The defendant may be held in custody pending transfer to and a hearing before such court. The defendant shall be transferred to the court before which the previous matter is pending without unnecessary delay, and the revocation hearing shall occur within 72 hours of the filing of the State's petition or the court's motion for revocation.

A hearing at which pretrial release may be revoked must be conducted in person (and not by way of two-way audio-visual communication) unless the accused waives the right to be present physically in court, the court determines that the physical health and safety of any person necessary to the proceedings would be endangered by appearing in court, or the chief judge of the circuit orders use of that system due to operational challenges in conducting the hearing in person. Such operational challenges must be documented and approved by the chief judge of the circuit, and a plan to address the challenges through reasonable efforts must be presented and approved by the Administrative Office of the Illinois Courts every 6 months.

The court before which the previous felony matter or Class A misdemeanor is pending may revoke the defendant's pretrial release after a hearing. During the hearing for revocation, the defendant shall be represented by counsel and have an opportunity to be heard regarding the violation and evidence in mitigation. The court shall consider all relevant circumstances, including, but not limited to, the nature and seriousness of the violation or criminal act alleged. The State shall bear the burden of proving, by clear and convincing evidence, that no condition or combination of conditions of release would reasonably ensure the appearance of the defendant for later hearings or prevent the defendant from being charged with a subsequent felony or Class A misdemeanor.

In lieu of revocation, the court may release the defendant pre-trial, with or without modification of conditions of pretrial release.

If the case that caused the revocation is dismissed, the defendant is found not guilty in the case causing the revocation, or the defendant completes a lawfully imposed sentence on the case causing the revocation, the court shall, without unnecessary delay, hold a hearing on conditions of pretrial release pursuant to Section 110-5 and release the defendant with or without modification of conditions of pretrial release.

Both the State and the defendant may appeal an order revoking pretrial release or denying a petition for revocation of release.

(b) If a defendant previously has been granted pretrial release under this Section for a Class B or Class C misdemeanor offense, a petty or business offense, or an ordinance violation and if the defendant is subsequently charged with a felony that is alleged to have occurred during the defendant's pretrial release or a Class A misdemeanor offense that is alleged to have occurred during the defendant's pretrial release, such pretrial release may not be revoked, but the court may impose sanctions under subsection (c).

(c) The court shall follow the procedures set forth in Section 110-3 to ensure the defendant's appearance in court if the defendant:

(1) fails to appear in court as required by the defendant's conditions of release;

(2) is charged with a felony or Class A misdemeanor offense that is alleged to have occurred during the defendant's pretrial release after having been previously granted pretrial release for a Class B or Class C misdemeanor, a petty or business offense, or an ordinance violation that is alleged to have occurred during the defendant's pretrial release;

(3) is charged with a Class B or C misdemeanor offense, petty or business offense, or ordinance violation that is alleged to have occurred during the defendant's pretrial release; or

(4) violates any other condition of pretrial release set by the court.

In response to a violation described in this subsection, the court may issue a warrant specifying that the defendant must appear before the court for a hearing for sanctions and may not be released by law enforcement before that appearance.

(d) When a defendant appears in court pursuant to a summons or warrant issued in accordance with Section 110-3 or after being arrested for an offense that is alleged to have occurred during the defendant's pretrial release, the State may file a verified petition requesting a hearing for sanctions.

(e) During the hearing for sanctions, the defendant shall be represented by counsel and have an opportunity to be heard regarding the violation and evidence in mitigation. The State shall bear the burden of proving by clear and convincing evidence that:

(1) the defendant committed an act that violated a term of the defendant's pretrial release;

(2) the defendant had actual knowledge that the defendant's action would violate a court order;

(3) the violation of the court order was willful; and

(4) the violation was not caused by a lack of access to financial monetary resources.

(f) Sanctions for violations of pretrial release may include:

(1) a verbal or written admonishment from the court;

(2) imprisonment in the county jail for a period not exceeding 30 days;

(3) (Blank); or

(4) a modification of the defendant's pretrial conditions.

(g) The court may, at any time, after motion by either party or on its own motion, remove previously set conditions of pretrial release, subject to the provisions in this subsection. The court may only add or increase conditions of pretrial release at a hearing under this Section.

The court shall not remove a previously set condition of pretrial release regulating contact with a victim or witness in the case, unless the subject of the condition has been given notice of the hearing as required in paragraph (1) of subsection (b) of Section 4.5 of the Rights of Crime Victims and Witnesses Act. If the subject of the condition of release is not present, the court shall follow the procedures of paragraph (10) of subsection (c-1) of the Rights of Crime Victims and Witnesses Act.

(h) Crime victims shall be given notice by the State's Attorney's office of all hearings under this Section as required in paragraph (1) of subsection (b) of Section 4.5 of the Rights of Crime Victims and Witnesses Act and shall be informed of their opportunity at these hearings to obtain a protective order.

(i) Nothing in this Section shall be construed to limit the State's ability to file a verified petition seeking denial of pretrial release under subsection (a) of Section 110-6.1 or subdivision (d)(2) of Section 110-6.1.

(j) At each subsequent appearance of the defendant before the court, the judge must find that continued detention under this Section is necessary to reasonably ensure the appearance of the defendant for later hearings or to

prevent the defendant from being charged with a subsequent felony or Class A misdemeanor.

725 ILCS 5/110-6.1
Denial of pretrial release

(a) Upon verified petition by the State, the court shall hold a hearing and may deny a defendant pretrial release only if:

(1) the defendant is charged with a felony offense other than a forcible felony for which, based on the charge or the defendant's criminal history, a sentence of imprisonment, without probation, periodic imprisonment or conditional discharge, is required by law upon conviction, and it is alleged that the defendant's pretrial release poses a real and present threat to the safety of any person or persons or the community, based on the specific articulable facts of the case;

(1.5) the defendant's pretrial release poses a real and present threat to the safety of any person or persons or the community, based on the specific articulable facts of the case, and the defendant is charged with a forcible felony, which as used in this Section, means treason, first degree murder, second degree murder, predatory criminal sexual assault of a child, aggravated criminal sexual assault, criminal sexual assault, armed robbery, aggravated robbery, robbery, burglary where there is use of force against another person, residential burglary, home invasion, vehicular invasion, aggravated arson, arson, aggravated kidnaping, kidnaping, aggravated battery resulting in great bodily harm or permanent disability or disfigurement or any other felony which involves the threat of or infliction of great bodily harm or permanent disability or disfigurement;

(2) the defendant is charged with stalking or aggravated stalking, and it is alleged that the defendant's pre-trial release poses a real and present threat to the safety of a victim of the alleged offense, and denial of release is necessary to prevent fulfillment of the threat upon which the charge is based;

(3) the defendant is charged with a violation of an order of protection issued under Section 112A-14 of this Code or Section 214 of the Illinois Domestic Violence Act of 1986, a stalking no contact order under Section 80 of the Stalking No Contact Order Act, or of a civil no contact order under Section 213 of the Civil No Contact Order Act, and it is alleged that the defendant's pretrial release poses a real and present threat to the safety of any person or persons or the community, based on the specific articulable facts of the case;

(4) the defendant is charged with domestic battery or aggravated domestic battery under Section 12-3.2 or 12-3.3 of the Criminal Code of 2012 and it is alleged that the defendant's pretrial release poses a real and present threat to the safety of any person or persons or the community, based on the specific articulable facts of the case;

(5) the defendant is charged with any offense under Article 11 of the Criminal Code of 2012, except for Sections 11-14, 11-14.1, 11-18, 11-20, 11-30, 11-35, 11-40, and 11-45 of the Criminal Code of 2012, or similar provisions of the Criminal Code of 1961 and it is alleged that the defendant's pretrial release poses a real and present threat to the safety of any person or persons or the community, based on the specific articulable facts of the case;

(6) the defendant is charged with any of the following offenses under the Criminal Code of 2012, and it is alleged that the defendant's pretrial release poses a real and present threat to the safety of any person or persons or the community, based on the specific articulable facts of the case:

(A) Section 24-1.2 (aggravated discharge of a firearm);

(B) Section 24-2.5 (aggravated discharge of a machine gun or a firearm equipped with a device designed or use for silencing the report of a firearm);

(C) Section 24-1.5 (reckless discharge of a firearm);

(D) Section 24-1.7 (armed habitual criminal);

(E) Section 24-2.2 (manufacture, sale or transfer of bullets or shells represented to be armor piercing bullets, dragon's breath shotgun shells, bolo shells, or flechette shells);

(F) Section 24-3 (unlawful sale or delivery of firearms);

(G) Section 24-3.3 (unlawful sale or delivery of firearms on the premises of any school);

(H) Section 24-34 (unlawful sale of firearms by liquor license);

(I) Section 24-3.5 (unlawful purchase of a firearm);

(J) Section 24-3A (gunrunning);

(K) Section 24-3B (firearms trafficking);

(L) Section 10-9(b) (involuntary servitude);

(M) Section 10-9(c) (involuntary sexual servitude of a minor);

(N) Section 10-9(d) (trafficking in persons);

(O) Non-probationable violations: (i) unlawful use or possession of weapons by felons or persons in the Custody of the Department of Corrections facilities (Section 24-1.1), (ii) aggravated unlawful use of a weapon (Section 24-1.6), or (iii) aggravated possession of a stolen firearm (Section 24-3.9);

(P) Section 9-3 (reckless homicide and involuntary manslaughter);

(Q) Section 19-3 (residential burglary);

(R) Section 10-5 (child abduction);

(S) Felony violations of Section 12C-5 (child endangerment);

(T) Section 12-7.1 (hate crime);

(U) Section 10-3.1 (aggravated unlawful restraint);

(V) Section 12-9 (threatening a public official);

(W) Subdivision (f)(1) of Section 12-3.05 (aggravated battery with a deadly weapon other than by discharge of a firearm);

(6.5) the defendant is charged with any of the following offenses, and it is alleged that the defendant's pretrial release poses a real and present threat to the safety of any person or persons or the community, based on the specific articulable facts of the case:

(A) Felony violations of Sections 3.01, 3.02, or 3.03 of the Humane Care for Animals Act (cruel treatment, aggravated cruelty, and animal torture);

(B) Subdivision (d)(1)(B) of Section 11-501 of the Illinois Vehicle Code (aggravated driving under the influence while operating a school bus with passengers);

(C) Subdivision (d)(1)(C) of Section 11-501 of the Illinois Vehicle Code (aggravated driving under the influence causing great bodily harm);

(D) Subdivision (d)(1)(D) of Section 11-501 of the Illinois Vehicle Code (aggravated driving under the influence after a previous reckless homicide conviction);

(E) Subdivision (d)(1)(F) of Section 11-501 of the Illinois Vehicle Code (aggravated driving under the influence leading to death); or

(F) Subdivision (d)(1)(J) of Section 11-501 of the Illinois Vehicle Code (aggravated driving under the influence that resulted in bodily harm to a child under the age of 16);

(7) the defendant is charged with an attempt to commit any charge listed in paragraphs (1) through (6.5), and it is alleged that the defendant's pretrial release poses a real and present threat to the safety of any person or persons or the community, based on the specific articulable facts of the case; or

(8) the person has a high likelihood of willful flight to avoid prosecution and is charged with:

(A) Any felony described in subdivisions (a)(1) through (a)(7) of this Section; or

(B) A felony offense other than a Class 4 offense.

(b) If the charged offense is a felony, as part of the detention hearing, the court shall determine whether there is probable cause the defendant has committed an offense, unless a hearing pursuant to Section 109-3 of this Code has already been held or a grand jury has returned a true bill of indictment against the defendant. If there is a finding of no probable cause, the defendant shall be released. No such finding is necessary if the defendant is charged with a misdemeanor.

(c) Timing of petition.

(1) A petition may be filed without prior notice to the defendant at the first appearance before a judge, or within the 21 calendar days, except as provided in Section 110-6, after arrest and release of the defendant upon reasonable notice to defendant; provided that while such petition is pending before the court, the defendant if previously released shall not be detained.

(2) Upon filing, the court shall immediately hold a hearing on the petition unless a continuance is requested. If a continuance is requested and granted, the hearing shall be held within 48 hours of the defendant's

first appearance if the defendant is charged with first degree murder or a Class X, Class 1, Class 2, or Class 3 felony, and within 24 hours if the defendant is charged with a Class 4 or misdemeanor offense. The Court may deny or grant the request for continuance. If the court decides to grant the continuance, the Court retains the discretion to detain or release the defendant in the time between the filing of the petition and the hearing.

(d) Contents of petition.

(1) The petition shall be verified by the State and shall state the grounds upon which it contends the defendant should be denied pretrial release, including the real and present threat to the safety of any person or persons or the community, based on the specific articulable facts or flight risk, as appropriate.

(2) If the State seeks to file a second or subsequent petition under this Section, the State shall be required to present a verified application setting forth in detail any new facts not known or obtainable at the time of the filing of the previous petition.

(e) Eligibility: All defendants shall be presumed eligible for pretrial release, and the State shall bear the burden of proving by clear and convincing evidence that:

(1) the proof is evident or the presumption great that the defendant has committed an offense listed in subsection (a), and

(2) for offenses listed in paragraphs (1) through (7) of subsection (a), the defendant poses a real and present threat to the safety of any person or persons or the community, based on the specific articulable facts of the case, by conduct which may include, but is not limited to, a forcible felony, the obstruction of justice, intimidation, injury, or abuse as defined by paragraph (1) of Section 103 of the Illinois Domestic Violence Act of 1986, and

(3) no condition or combination of conditions set forth in subsection (b) of Section 110-10 of this Article can mitigate (i) the real and present threat to the safety of any person or persons or the community, based on the specific articulable facts of the case, for offenses listed in paragraphs (1) through (7) of subsection (a), or (ii) the defendant's willful flight for offenses listed in paragraph (8) of subsection (a), and

(4) for offenses under subsection (b) of Section 407 of the Illinois Controlled Substances Act that are subject to paragraph (1) of subsection (a), no condition or combination of conditions set forth in subsection (b) of

Section 110-10 of this Article can mitigate the real and present threat to the safety of any person or persons or the community, based on the specific articulable facts of the case, and the defendant poses a serious risk to not appear in court as required.

(f) Conduct of the hearings.

(1) Prior to the hearing, the State shall tender to the defendant copies of the defendant's criminal history available, any written or recorded statements, and the substance of any oral statements made by any person, if relied upon by the State in its petition, and any police reports in the prosecutor's possession at the time of the hearing.

(2) The State or defendant may present evidence at the hearing by way of proffer based upon reliable information.

(3) The defendant has the right to be represented by counsel, and if he or she is indigent, to have counsel appointed for him or her. The defendant shall have the opportunity to testify, to present witnesses on his or her own behalf, and to cross-examine any witnesses that are called by the State. Defense counsel shall be given adequate opportunity to confer with the defendant before any hearing at which conditions of release or the detention of the defendant are to be considered, with an accommodation for a physical condition made to facilitate attorney/client consultation. If defense counsel needs to confer or consult with the defendant during any hearing conducted via a two-way audio-visual communication system, such consultation shall not be recorded and shall be undertaken consistent with constitutional protections.

(3.5) A hearing at which pretrial release may be denied must be conducted in person (and not by way of two-way audio visual communication) unless the accused waives the right to be present physically in court, the court determines that the physical health and safety of any person necessary to the proceedings would be endangered by appearing in court, or the chief judge of the circuit orders use of that system due to operational challenges in conducting the hearing in person. Such operational challenges must be documented and approved by the chief judge of the circuit, and a plan to address the challenges through reasonable efforts must be presented and approved by the Administrative Office of the Illinois Courts every 6 months.

(4) If the defense seeks to compel the complaining witness to testify as a witness in its favor, it shall petition the court for permission. When the ends of justice so require, the court may exercise its discretion and

compel the appearance of a complaining witness. The court shall state on the record reasons for granting a defense request to compel the presence of a complaining witness only on the issue of the defendant's pretrial detention. In making a determination under this Section, the court shall state on the record the reason for granting a defense request to compel the presence of a complaining witness, and only grant the request if the court finds by clear and convincing evidence that the defendant will be materially prejudiced if the complaining witness does not appear. Cross-examination of a complaining witness at the pretrial detention hearing for the purpose of impeaching the witness' credibility is insufficient reason to compel the presence of the witness. In deciding whether to compel the appearance of a complaining witness, the court shall be considerate of the emotional and physical well-being of the witness. The pre-trial detention hearing is not to be used for purposes of discovery, and the post arraignment rules of discovery do not apply. The State shall tender to the defendant, prior to the hearing, copies, if any, of the defendant's criminal history, if available, and any written or recorded statements and the substance of any oral statements made by any person, if in the State's Attorney's possession at the time of the hearing.

(5) The rules concerning the admissibility of evidence in criminal trials do not apply to the presentation and consideration of information at the hearing. At the trial concerning the offense for which the hearing was conducted neither the finding of the court nor any transcript or other record of the hearing shall be admissible in the State's case-in-chief, but shall be admissible for impeachment, or as provided in Section 115-10.1 of this Code, or in a perjury proceeding.

(6) The defendant may not move to suppress evidence or a confession, however, evidence that proof of the charged crime may have been the result of an unlawful search or seizure, or both, or through improper interrogation, is relevant in assessing the weight of the evidence against the defendant.

(7) Decisions regarding release, conditions of release, and detention prior to trial must be individualized, and no single factor or standard may be used exclusively to order detention. Risk assessment tools may not be used as the sole basis to deny pretrial release.

(g) Factors to be considered in making a determination of dangerousness. The court may, in determining whether the defendant poses a real and present threat to the safety of any person or persons or the community, based on the specific articulable facts of the case, consider, but shall not be limited to, evidence or testimony concerning:

(1) The nature and circumstances of any offense charged, including whether the offense is a crime of violence, involving a weapon, or a sex offense.

(2) The history and characteristics of the defendant including:

(A) Any evidence of the defendant's prior criminal history indicative of violent, abusive or assaultive behavior, or lack of such behavior. Such evidence may include testimony or documents received in juvenile proceedings, criminal, quasi-criminal, civil commitment, domestic relations, or other proceedings.

(B) Any evidence of the defendant's psychological, psychiatric or other similar social history which tends to indicate a violent, abusive, or assaultive nature, or lack of any such history.

(3) The identity of any person or persons to whose safety the defendant is believed to pose a threat, and the nature of the threat.

(4) Any statements made by, or attributed to the defendant, together with the circumstances surrounding them.

(5) The age and physical condition of the defendant.

(6) The age and physical condition of any victim or complaining witness.

(7) Whether the defendant is known to possess or have access to any weapon or weapons.

(8) Whether, at the time of the current offense or any other offense or arrest, the defendant was on probation, parole, aftercare release, mandatory supervised release or other release from custody pending trial, sentencing, appeal or completion of sentence for an offense under federal or state law.

(9) Any other factors, including those listed in Section 110-5 of this Article deemed by the court to have a reasonable bearing upon the defendant's propensity or reputation for violent, abusive, or assaultive behavior, or lack of such behavior.

(h) Detention order. The court shall, in any order for detention:

(1) make a written finding summarizing the court's reasons for concluding that the defendant should be denied pretrial release, including why less restrictive conditions would not avoid a real and present threat to the safety of any person or persons or the community, based on the specific

articulable facts of the case, or prevent the defendant's willful flight from prosecution;

(2) direct that the defendant be committed to the custody of the sheriff for confinement in the county jail pending trial;

(3) direct that the defendant be given a reasonable opportunity for private consultation with counsel, and for communication with others of his or her choice by visitation, mail and telephone; and

(4) direct that the sheriff deliver the defendant as required for appearances in connection with court proceedings.

(i) Detention. If the court enters an order for the detention of the defendant pursuant to subsection (e) of this Section, the defendant shall be brought to trial on the offense for which he is detained within 90 days after the date on which the order for detention was entered. If the defendant is not brought to trial within the 90-day period required by the preceding sentence, he shall not be denied pretrial release. In computing the 90-day period, the court shall omit any period of delay resulting from a continuance granted at the request of the defendant and any period of delay resulting from a continuance granted at the request of the State with good cause shown pursuant to Section 103-5.

(i-5) At each subsequent appearance of the defendant before the court, the judge must find that continued detention is necessary to avoid a real and present threat to the safety of any person or persons or the community, based on the specific articulable facts of the case, or to prevent the defendant's willful flight from prosecution.

(j) Rights of the defendant. The defendant shall be entitled to appeal any order entered under this Section denying his or her pretrial release.

(k) Appeal. The State may appeal any order entered under this Section denying any motion for denial of pretrial release.

(l) Presumption of innocence. Nothing in this Section shall be construed as modifying or limiting in any way the defendant's presumption of innocence in further criminal proceedings.

(m) Interest of victims.

(1) Crime victims shall be given notice by the State's Attorney's office of this hearing as required in paragraph (1) of subsection (b) of Section 4.5 of the Rights of Crime Victims and Witnesses Act and shall be informed of their opportunity at this hearing to obtain a protective order.

(2) If the defendant is denied pretrial release, the court may impose a no contact provision with the victim or other interested party that shall be enforced while the defendant remains in custody.

725 ILCS 5/110-10
Conditions of pretrial release

(a) If a person is released prior to conviction, the conditions of pretrial release shall be that he or she will:

(1) Appear to answer the charge in the court having jurisdiction on a day certain and thereafter as ordered by the court until discharged or final order of the court;

(2) Submit himself or herself to the orders and process of the court;

(3) (Blank);

(4) Not violate any criminal statute of any jurisdiction;

(5) At a time and place designated by the court, surrender all firearms in his or her possession to a law enforcement officer designated by the court to take custody of and impound the firearms and physically surrender his or her Firearm Owner's Identification Card to the clerk of the circuit court when the offense the person has been charged with is a forcible felony, stalking, aggravated stalking, domestic battery, any violation of the Illinois Controlled Substances Act, the Methamphetamine Control and Community Protection Act, or the Cannabis Control Act that is classified as a Class 2 or greater felony, or any felony violation of Article 24 of the Criminal Code of 1961 or the Criminal Code of 2012; the court may, however, forgo the imposition of this condition when the circumstances of the case clearly do not warrant it or when its imposition would be impractical; if the Firearm Owner's Identification Card is confiscated, the clerk of the circuit court shall mail the confiscated card to the Illinois State Police; all legally possessed firearms shall be returned to the person upon the charges being dismissed, or if the person is found not guilty, unless the finding of not guilty is by reason of insanity; and

(6) At a time and place designated by the court, submit to a psychological evaluation when the person has been charged with a violation of item (4) of subsection (a) of Section 24-1 of the Criminal Code of 1961 or the Criminal Code of 2012 and that violation occurred in a school or in any conveyance owned, leased, or contracted by a school to transport students to or from school or a school-related activity, or on any public way within 1,000 feet of real property comprising any school.

Psychological evaluations ordered pursuant to this Section shall be completed promptly and made available to the State, the defendant, and the court. As a further condition of pretrial release under these circumstances, the court shall order the defendant to refrain from entering upon the property of the school, including any conveyance owned, leased, or contracted by a school to transport students to or from school or a school-related activity, or on any public way within 1,000 feet of real property comprising any school. Upon receipt of the psychological evaluation, either the State or the defendant may request a change in the conditions of pretrial release, pursuant to Section 110-6 of this Code. The court may change the conditions of pretrial release to include a requirement that the defendant follow the recommendations of the psychological evaluation, including undergoing psychiatric treatment. The conclusions of the psychological evaluation and any statements elicited from the defendant during its administration are not admissible as evidence of guilt during the course of any trial on the charged offense, unless the defendant places his or her mental competency in issue.

(b) Additional conditions of release shall be set only when it is determined that they are necessary to ensure the defendant's appearance in court, ensure the defendant does not commit any criminal offense, ensure the defendant complies with all conditions of pretrial release, prevent the defendant's unlawful interference with the orderly administration of justice, or ensure compliance with the rules and procedures of problem solving courts. However, conditions shall include the least restrictive means and be individualized. Conditions shall not mandate rehabilitative services unless directly tied to the risk of pretrial misconduct. Conditions of supervision shall not include punitive measures such as community service work or restitution. Conditions may include the following:

(0.05) Not depart this State without leave of the court;

(1) Report to or appear in person before such person or agency as the court may direct;

(2) Refrain from possessing a firearm or other dangerous weapon;

(3) Refrain from approaching or communicating with particular persons or classes of persons;

(4) Refrain from going to certain described geographic areas or premises;

(5) Be placed under direct supervision of the Pretrial Services Agency, Probation Department or Court Services Department in a pretrial home supervision capacity with or without the use of an approved electronic monitoring device subject to Article 8A of Chapter V of the Unified Code of Corrections;

(6) For persons charged with violating Section 11-501 of the Illinois Vehicle Code, refrain from operating a motor vehicle not equipped with an ignition interlock device, as defined in Section 1-129.1 of the Illinois Vehicle Code, pursuant to the rules promulgated by the Secretary of State for the installation of ignition interlock devices. Under this condition the court may allow a defendant who is not self-employed to operate a vehicle owned by the defendant's employer that is not equipped with an ignition interlock device in the course and scope of the defendant's employment;

(7) Comply with the terms and conditions of an order of protection issued by the court under the Illinois Domestic Violence Act of 1986 or an order of protection issued by the court of another state, tribe, or United States territory;

(8) Sign a written admonishment requiring that he or she comply with the provisions of Section 110-12 regarding any change in his or her address. The defendant's address shall at all times remain a matter of record with the clerk of the court; and

(9) Such other reasonable conditions as the court may impose, so long as these conditions are the least restrictive means to achieve the goals listed in subsection (b), are individualized, and are in accordance with national best practices as detailed in the Pretrial Supervision Standards of the Supreme Court.

The defendant shall receive verbal and written notification of conditions of pretrial release and future court dates, including the date, time, and location of court.

(c) When a person is charged with an offense under Section 11-1.20, 11-1.30, 11-1.40, 11-1.50, 11-1.60, 12-13, 12-14, 12-14.1, 12-15 or 12-16 of the Criminal Code of 1961 or the Criminal Code of 2012, involving a victim who is a minor under 18 years of age living in the same household with the defendant at the time of the offense, in releasing the defendant, the judge shall impose conditions to restrict the defendant's access to the victim which may include, but are not limited to conditions that he will:

1. Vacate the household.

2. Make payment of temporary support to his dependents.

3. Refrain from contact or communication with the child victim, except as ordered by the court.

(d) When a person is charged with a criminal offense and the victim is a family or household member as defined in Article 112A, conditions shall be imposed at the time of the defendant's release that restrict the defendant's access to the victim. Unless provided otherwise by the court, the restrictions shall include requirements that the defendant do the following:

(1) refrain from contact or communication with the victim for a minimum period of 72 hours following the defendant's release; and

(2) refrain from entering or remaining at the victim's residence for a minimum period of 72 hours following the defendant's release.

(e) Local law enforcement agencies shall develop standardized pretrial release forms for use in cases involving family or household members as defined in Article 112A, including specific conditions of pretrial release as provided in subsection (d). Failure of any law enforcement department to develop or use those forms shall in no way limit the applicability and enforcement of subsections (d) and (f).

(f) If the defendant is released after conviction following appeal or other post-conviction proceeding, the conditions of the pretrial release shall be that he will, in addition to the conditions set forth in subsections (a) and (b) hereof:

(1) Duly prosecute his appeal;

(2) Appear at such time and place as the court may direct;

(3) Not depart this State without leave of the court;

(4) Comply with such other reasonable conditions as the court may impose; and

(5) If the judgment is affirmed or the cause reversed and remanded for a new trial, forthwith surrender to the officer from whose custody he was released.

(g) Upon a finding of guilty for any felony offense, the defendant shall physically surrender, at a time and place designated by the court, any and all firearms in his or her possession and his or her Firearm Owner's Identification Card as a condition of being released pending sentencing.

CERTIFICATE OF FILING AND SERVICE

I certify that on January 26, 2023, I electronically filed the foregoing **Separate Appendix of Defendants-Appellants** with the Clerk of the Court for the Illinois Supreme Court using the Odyssey eFileIL system.

I further certify that the other participants in this appeal, named below, are registered service contacts on the Odyssey eFileIL system, and thus will be served via the Odyssey eFileIL system.

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Under penalties as provided by law pursuant to section 1-109 of the Illinois Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct to the best of my knowledge, information, and belief.

/s/ Alex Hemmer
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