No. 129248

IN THE SUPREME COURT OF ILLINOIS

JAMES R. ROWE, in his official capacity as Kankakee County State's Attorney; MICHAEL DOWNEY, in his official capacity as Kankakee County Sheriff, et al.,	)	Appeal from the Circuit Court of the Twenty-First Judicial Circuit Kankakee County,
Plaintiffs-Appellees,	)	
vs.	)	
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. 22 CH 16 The Honorable THOMAS W. CUNNINGTON,
Defendants-Appellants.	)	Chief Judge Presiding.

BRIEF AND ARGUMENT FOR PLAINTIFFS-APPELLEES

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POINTS AND AUTHORITIES

ISSUES PRESENTED FOR REVIEW

1. Do the pretrial release provisions of Public Acts (P.A.) 101-652 and 102-1104 violate the Illinois Constitution, namely Article I, Section 9 ("Bail and Habeas Corpus") and Article I, Section 8.1 ("Crime Victims' Rights") by abolishing monetary bail and thereby completely foreclosing the ability of a judge to set an "amount of bail" when assessing whether "sufficient sureties" exist and "setting the conditions of release" and by expanding the list of nonbailable offenses?

2. Do the pretrial release provisions of P.A. 101-652 and 102-1104 violate the Illinois Constitution's Separation of Powers Clause (Article II, Section 1) by abolishing monetary bail altogether and severely restricting the judge's discretion and authority over the management of the case and the administration of the courtroom?

STATEMENT OF FACTS

An appellant's Statement of Facts should be "stated accurately and fairly without argument or comment." Ill. S. Ct. R. 341(h)(6). This Court need not consider "any statements made by defendants that are argumentative or without reference to the record." *Denton v. Universal Am-Can, Ltd*., 2019 IL App (1st) 181525, ¶ 23 (citing *Beitner v. Marzahl*, 354 Ill.App.3d 142 (2d Dist. 2004)). Defendants' "Statement of Facts" contravenes this rule and is replete with legal conclusions and argument. Plaintiffs ask the Court to disregard those portions of Defendants' "Statement of Facts."

This is an action filed by numerous state's attorneys and sheriffs contesting the constitutionality of Public Acts (P.A.) 101-652 and 102-1104. House Bill 3563 began as a seven-page bill amending one statutory section in February 2019. C52-57, 97. After Senate Amendment 2 on January 13, 2021, it grew to 764 pages, affecting over 260 statutes. C542-879, 1649, V2. The legislation passed both houses of the General Assembly on the same day, was signed by the Governor on February 22, 2021, and became P.A. 101-652. C98-99.

Plaintiffs James R. Rowe, Michael Downey, and James W. Glasgow filed suit seeking declaratory and injunctive relief against provisions of P.A. 101-652 on September 16, 2022. C23-428. Over the following weeks, additional Plaintiff state's attorneys and sheriffs filed substantially similar suits, all of which were consolidated by this Court under the Kankakee County Circuit Court case caption on October 31, 2022. C936-43, V3. On December 22, 2022, the Honorable Thomas W. Cunnington ordered consolidation of six additional cases, filed after October 31, 2022, for a total of 64 counties. C1643, V3.

Ultimately, Plaintiffs' complaints raised eight counts. Specifically, each count alleged: I (Improper Amendment of the Constitution (Ill. Const. art. XIV, § 2)); II (Violation of the "Single Subject" clause (Ill. Const. art. IV, § 8)); III (Violation of the "Bail and Habeas Corpus" provision (Ill. Const. art. I, § 9)); IV (Violation of the "Crime Victims' Rights" provisions (Ill. Const. art. I, § 8.1)); V (Violation of the "Separation of Powers" clause (Ill. Const. art. II, § 1)); VI (Violation of the "Three Readings" clause (Ill. Const. art. IV, § 8)); VII (Violation of the Due Process clauses based on Vagueness) (Ill. Const. art. I, § 2; U.S. Const. amends. V, XIV)); VIII (Injunctive Relief). C1151-1177, V3.

After the parties filed cross summary judgment motions, the General Assembly passed House Bill 1095 on December 1 during its fall veto session, which the Governor then signed and became P.A. 102-1104, on December 5, 2022. C1151, 1597-1603, V3. P.A. 102-1104. Because the legislation amended numerous provisions in the pretrial release portions of P.A 101-652, C1597-1603, V3, the court ordered supplemental briefing as to the effect of P.A. 102-1104 on the parties' positions and issues presented. C1143, V3.

On December 20, 2022, oral argument was heard on the Parties' cross motions for summary judgment. Plaintiffs were represented by James Rowe and James Glasgow Defendants by R. Douglas Rees, Darren Kinkead, John Hazinski, Michael J. Kasper, and Adam R. Vaught. (R5). Plaintiffs, while acknowledging the good intentions of the General Assembly, challenged the unconstitutional aspects of the legislation in that it violated the Single Subject clause; the Separation of Powers clause; the Three Readings clause; the Crime Victims' Rights clause; the Bail clause of the Illinois Constitution; and was void for vagueness. R7-11.

On December 28, 2022, the circuit court issued a 33-page Memorandum of Decision. C1644, V3. With respect to the issue of standing, the court first found Plaintiffs had standing to challenge the legislation, because state's attorneys were the only party in a criminal proceeding permitted to petition the court to deny pretrial release under P.A. 101-652 and P.A. 102-1104 (the "Acts") and must abide by and execute its other pretrial requirements of the Acts. Second, the court found that in view of the oath sworn to uphold and defend the Illinois Constitution, state's attorneys have a clear interest in the constitutionality of Acts and would suffer a cognizable injury if they were tasked with abiding by and enforcing unconstitutional bail provisions. C1655-56, V3. Third, the court held that Plaintiffs, representing the People, have a substantial and undeniable interest in ensuring criminal defendants are available for trial and avoiding the ensuing dangers, delays, and expenditures upon failures to appear. C1656-57, V3 (citing *Bell v. Wolfish*, 441 U.S. 520 (1979)). The court found the pretrial release provisions restrict the ability of the court to detain a defendant who will interfere with jurors or witnesses, fulfill threats, or fail to appear for trial, and these provisions would likely lead to delays in cases, increased workloads, expenditures of additional funds, and, in some cases, inability to obtain a defendant's appearance in court. C1657, V3. Lastly, the court recognized that Plaintiff sheriffs also have standing, citing the increased risk to sheriffs arising from serving summons to appear as the pretrial provisions rather than arrest warrants, and by the increased expenditure of resources, and heightened danger to employees in attempting to secure the presence of unwilling criminal defendants. C1657-58, V3.

With respect to the substantive issues, the court found that the legislature

improperly attempted to amend the Illinois Constitution in contravention of Article XIV, Section 2, by redefining "sufficient sureties to exclude, in totality, any monetary bail." C1658, V3. The court found further that the provision eliminating monetary bail in all situations violates the Crime Victims' Rights provision (Ill. Const. art. I, § 8.1) by preventing courts from effectuating the constitutionally mandated safety of victims and their families. C1658-1660, V3. The court found further that the pretrial provisions violate the Separation of Powers clause (Ill. Const. art. II, § 1) and the Bail provision (Ill. Const. art. I, § 9) by stripping "courts of the authority to ever consider monetary bail as a condition of pretrial release." C1660-66, V3. In so doing, the court rejected Defendants' contention that the Bail clause (Ill. Const. art. I, § 9) exists only "to confer a right on criminal defendants." The court instead concluded that 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." C1665, V3. The court also rejected Defendants' contention that Plaintiffs did not meet their burden under the separation of powers challenge of showing unconstitutionality under all circumstances. C1667-68, V3. The court denied the other counts of Plaintiffs' complaint which are not a subject of this appeal.

On December 30, 2022, the court issued a written order, granting Plaintiffs' Motion for Summary Judgment as to Counts I (failure to properly amend the Constitution), III (Bail), IV (Victims' Rights), and V (Separation of Powers) and denying it as to the remaining counts: II (Separation of Powers); VI (Three Readings); VII (Vagueness); VII (Injunctive Relief). C1677-78, V3. Defendants now appeal from this order.

ARGUMENT

Plaintiffs recognize that the April 2020 Illinois Supreme Court Commission, that included former Chief Justice Burke and Justice Neville, prepared the Pretrial Practices Final Report ("Report").[1] The Report is a weighty and important study providing critical guidance and recommendations regarding comprehensive pretrial reform in this State. Defendants, however, selectively focus on portions of the Report that purportedly "urged the General Assembly to enact legislative reform to ensure that 'conditions of release will be nonmonetary, least restrictive, and considerate of the financial ability of the accused,'" Def. Br. 7, citing Report at 39, 69, while bypassing the many other significant "meaningful reforms" in the Report designed to secure a defendant's appearance in court and "to safeguard individual rights and public safety." *Id.* at 5. As a result, in its haste to pass the Acts, the legislature ignored the Commission's stark warning: "Simply eliminating cash bail at the outset, without first implementing meaningful reforms and dedicating adequate resources to allow evidence-based risk assessment and supervision would be pre-mature." Report, 18.

While our dispute centers squarely on whether the Acts' bail provisions comport with the Illinois Constitution, the Plaintiffs acknowledge the Report raised important issues regarding bail and pre-trial detention. However, as the Defendants devote a significant portion of their brief discussing the Report, as a basis for reversing the circuit court's

[1] See 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

order,[2] it is important to note that the issues before this Court are limited to the constitutionality of the pre-trial release provisions of the Acts and therefore Plaintiffs are not engaging in a debate about public policy. See *Best v. Taylor Mach. Works*, 179 Ill.2d 367, 472 (1997) ("[T]he question before this court is not whether the measures contained in the Civil Justice Reform Amendments of 1995 (the Act) are wise, but simply whether they are constitutional."). While the Plaintiffs acknowledge the legislature attempted to remedy many of these issues in passing these laws, the failure to seek a referendum amending the constitution and to seek input from the voters to convert Illinois from a traditional bail state to a risk assessment-based system doomed its attempt. Jordan Gross, *Devil Take the Hindmost: Reform Considerations for States with A Constitutional Right to Bail*, *52* Akron L. Rev. 1043, 1093 (2018) (changing from a traditional bail state to a risk assessment-based state requires a constitutional amendment).

In its effort to enact "comprehensive reform of pretrial procedures" in Illinois Def. Br. 12, the General Assembly during the end of its lame duck session in January 2021 hurriedly passed comprehensive legislation that abolishes monetary bail and significantly alters the constitutional standards by which a court determines whether an individual is to be detained. Defendants attempt to justify the General Assembly's overreach on policy grounds are insufficient to cure these fatal flaws. However, while the Report was well-thought out and deliberative, balancing public safety with the rights of the accused, the General Assembly's legislation substantially ignored and altered some of the "meaningful reforms" required for public safety and ensuring the defendant's appearance in court.

[2] In their brief, *amici* likewise argue the legislature's policy goals as a reason for reversing the lower court's order.

Similarly, Defendants' selective use of certain aspects of the report ignores that, at the outset, the Report offers this cautionary warning:

> [S]imply eliminating cash bail at the outset, without first implementing meaningful reforms and dedicating adequate resources to allow evidence-based risk assessment and supervision would be pre-mature." Report at 18.

The Commission Report explains the first element of "an Effective Pretrial System" as follows: "Pretrial release and detention decisions based on risk and designed to maximize public safety, court appearance, and release." *Id.* at 12. Defendants ignore these critical principles but, in an effort, to preclude this legal challenge maintain that the bail clause "grants rights only to criminal defendants." Def. Br. 27. This not only is incorrect; it is not an excuse for failing to present these critical and fundamental changes to the constitutional right to bail in Illinois to the voters.

By failing to present a constitutional amendment to the voters, the Acts violate the constitution in the following respects:

First, the Acts violate Article I, Section 9 by altogether eliminating monetary bail despite the "sufficient sureties" provision that by its language and as commonly understood at the time of passage encompasses monetary bail, and also violates Article I, Section 8.1(a)(9), the Crime Victims' Rights provision, which was amended in 2014 to expressly provide that a judge is to consider the "amount of bail" sufficient to protect crime victims and their families when setting the "conditions of release." Ill. Const. art I, § 8.1; 9.

Second, the General Assembly has unduly encroached upon a court's inherent powers by divesting the judiciary of its discretion to consider all the available tools provided under the constitution to balance a defendant's liberty interest with the societal

interests of ensuring a defendant's appearance in court and protecting the public.

The standard of review in this matter is *de novo.* Def. Br. 13. See *People v. Chairez*, 2018 IL 121417, ¶ 15 ("The question of whether a statute is unconstitutional is a question of law, which this court reviews *de novo*."). Courts should begin any constitutional analysis with the presumption that the challenged legislation is constitutional (*People v. Shephard*, 152 Ill.2d 489 (1992)), and it is the plaintiff's burden to clearly establish that the challenged provisions are unconstitutional *Best v. Taylor Mach. Works*, 179 Ill.2d 367 (1997). If a statute is unconstitutional, this Court is obligated to declare it invalid and this duty "cannot be evaded or neglected, no matter how desirable or beneficial the legislation may appear to be." *Wilson. v. Dept of Revenue*, 169 Ill.2d 306, 310 (1996). Regardless of the perceived desirability or benefits of the Acts, the legislation presents numerous constitutional infirmities and, under the law as recognized by the circuit court, must fall.

I. PLAINTIFFS HAVE STANDING.

Defendants contend that Plaintiffs lack standing to challenge the Acts' abolition of monetary bail and related pretrial release provisions, as well as the legislation's impact on the Crime Victims' Rights provision of the Illinois Constitution. Def. Br. 25-30. This is Defendants' sole argument concerning standing and they do not raise any other affirmative matter indicating a lack of standing as to this or any other issue. It is Defendants' burden to establish a lack of standing. *Lebron v. Gottlieb Mem'l Hosp*., 237 Ill.2d 217, 252 (2010). Defendants have fallen short of this burden and, accordingly, the circuit court's finding should be upheld.

Defendants first claim Plaintiffs lack standing to challenge the amended statutes

because "the bail clause confers a right on individual criminal defendants" and not courts or law enforcement officers, and therefore Plaintiffs "enjoy no rights protected by that clause." Def. Br. 26-27. As the circuit court correctly recognized, however, 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. C1668, V3. Indeed, the United States Supreme Court has recognized that the federal constitution's bail clause serves not only to protect defendants, but to provide "adequate assurance" that a defendant "will stand trial and submit to sentence if found guilty." *Stack v. Boyle*, 342 U.S. 1, 4 (1951); see also *People v. Purcell*, 201 Ill.2d 542, 550 (2002) ("The object of bail is to make certain the defendant's appearance in court."). The Court in *Boyle* went on to state, "[l]ike 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." *Boyle*, 342 U.S. at 4.

Thus, while Defendants argue the bail provision exists solely to confer a right on criminal defendants, the purpose of the bail provision is clearly much broader. As evidenced by the law review article cited by Defendants, "[b]ail 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." Donald B. Verrilli, Jr., *The Eighth Amendment and the Right to Bail: Historical Perspectives*, 82 Colum. L. Rev. 328, 329-30 (1982).

As elected state's attorneys and sheriffs, Plaintiffs are in a unique position as the

representatives of not only their offices, but the residents of their respective counties to challenge unconstitutional legislation in a way the average citizen cannot. C1083-1084, V3. As the circuit court correctly noted, decades ago this Court recognized that "State's Attorneys have taken an oath of office to uphold and defend the Illinois Constitution and are '…under no duty to refrain from challenging…' an unconstitutional act of the legislature." C1656, 1084, V3 (quoting *People ex rel. Miller v. Fullenwider*, 329 Ill. 65, 75 (1928)). This is consistent with the view of courts from other jurisdictions See, *e.g.*, *State ex rel. Davis v. Love*, 99 Fla. 333, 340-41(1930) (Florida attorney general had standing to challenge constitutionality of law authorizing suits against state agency); *Wilentz v. Hendrickson*, 133 N.J. Eq. 447, 456-57 (1943) (constitutional challenge was properly filed by attorney general "by virtue of the inherent authority of his office."); *State v. Chastain*, 871 S.W.2d 661, 665 (Tenn. 1994) (holding state attorney general and district attorneys general had authority to challenge constitutionality of state statutes). Indeed, this Court has recognized that a state's attorney is a constitutional officer with rights and duties "analogous to or largely coincident with the Attorney General . . . and the one to represent the county or People in matters affected with a public interest." *People ex rel. Alvarez v. Gaughan*, 2016 IL 120110, ¶¶ 27, 30; see also *County of Cook ex. rel Rifkin v. Bear Stearns & Co*., 215 Ill.2d 466, 477 (2005).

Not only do prosecutors have inherent authority to challenge any statute they believe is unconstitutional and are expected to observe and enforce; they likewise have a duty as "a minister or justice and not simply that of an advocate" to defend the rights of the accused:

> A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice and that guilt is decided upon the basis of sufficient evidence...The state's attorney in his official capacity is the representative of all the people, including the defendant, and it was as much his duty to safeguard the constitutional rights of the defendant as those of any other citizen. Ill. R. Prof.'l Conduct R. 3.8 Comment 1, 1A (effective 1/1/2016).

Moreover, the pretrial release provisions at issue here impose a host of obligations on Plaintiffs. For example, under the Acts, the prosecution, *i.e.*, the state's attorney, is the only party permitted to petition the court to deny pretrial release and must abide by the requirements in those sections. C1656, 1084, V3, citing 725 ILCS 5/109-1(b)(4) and 725 ILCS 5/110-6.1, as amended by the Acts, effective January 1, 2023). Sheriffs and their deputies are obligated by law to serve and execute all orders within their counties. C1657, 1085, V3 (citing 55 ILCS 5/3-6019). Thus, Plaintiffs themselves are regulated by the pretrial provisions of the Acts. C1014, 1086, V3; see also *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992) (in a suit "challenging the legality of government action," the usual plaintiff is one who is "an object of" – that is, regulated by – "the action …at issue.") (quoting Defendants' Memorandum in Support of Defendants' Motion for Summary Judgment, C1014, V3.). As the circuit court pointedly observed, if it "were to determine that 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 the Acts take effect." C1656, V3. Therefore, Defendants' argument that state's attorneys and sheriffs do not have standing to bring forth the claim that the Acts violate Article I, Section 9 lacks merit. Ill. Const. art I, § 9.

Defendants similarly argue that Plaintiffs lack standing, as to the Crime Victims' Rights provision, on the ground that the "clause grants rights only to crime victims, not to law enforcement officers like plaintiffs." Def. Br. 29. This argument is similarly meritless. Defendants claim "[t]he constitutional text is clear that *only* '[t]he victim has standing to assert the rights enumerated' in the amendment" Def. Br. 27 (emphasis added), but the limiting word "only" does not appear in that constitutional provision. Significantly, the statute codifying crime victims' constitutional rights expressly states: "The *prosecuting attorney*, a victim, or the victim's retained attorney may assert the victim's rights." 725 ILCS 120/4.5(c-5)(3) (emphasis added). Likewise, the handbook entitled *Enforcement of Crime Victims' Rights: A Handbook for the Prosecution Team and Advocates*, issued in 2021 by the Office of the Illinois Attorney General reiterates this point at page 8: "The prosecuting attorney and the victim's retained attorney may assert the victim's rights on behalf of the victim in the criminal case." A035. Indeed, the Handbook goes on to state: "Section 4.5(c-5)(4) places the primary responsibility to enforce a victim's right on the *prosecuting attorney*." *Id*. (emphasis added).

Defendants cite the inapposite case *People v. Gomez-Ramirez* 2021 IL App (3d) 200121, which addressed the scope of a state's attorney's disclosure obligations to a criminal defendant in the context of a crime victim's privileged medical record. *Gomez-Ramirez*, at ¶¶ 19, 29. The opinion does not conclude that only a crime victim has standing to enforce a victim's right. In *People v. Nestrock*, the other case Defendants rely upon, the appellate court determined that even though victims possess constitutionally protected rights, a trial court cannot balance the victim's rights versus the defendant's rights when

ruling on the admission of evidence. 316 Ill.App.3d 1, 10 (2d Dist. 2000). However, unlike rules for determining the admissibility of evidence, the right asserted in the present case -- "the right to have the safety of the victim and the victim's family considered in denying or fixing the amount of bail" -- is explicitly stated in the crime victims' rights amendment. Defendants claim that Plaintiffs lack standing to challenge the Acts' violation of Article I, Section 8.1 of the constitution also fails.

II. THE PRETRIAL PROVISIONS OF THE ACTS VIOLATE ARTICLE I, SECTION 9 OF THE ILLINOIS CONSTITUTION.

In its haste to fundamentally change Illinois' pretrial detention system, the General Assembly bypassed the critical step of allowing the voters to weigh in on these significant changes to the bail provision of the Illinois Constitution through a legislatively referred constitutional amendment. The Illinois Constitution in Article I, Section 9 expressly and unambiguously states the specific offenses which are potentially nonbailable:

> 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. Ill. Const. art. I, § 9

As the circuit court correctly concluded, the significant changes made by the Acts effectively rewrote this constitutional provision without presenting the proposed changes to the voters through the referendum process.

This Court has repeatedly recognized that "with any constitutional or statutory provision, the best indication of the intent of the drafters is the language which they voted

to adopt." *Coryn v. City of Moline,* 71 Ill.2d 194, 200 (1978). Thus, "[a] court should 'first and foremost look to the plain language.'" *Illinois Road and Transp. Builders Ass'n v. County of Cook*, 2022 IL 127126, ¶ 33 (quoting *Hooker v. Illinois State Board of Elections*, 2016 IL 121077, ¶ 47). The words and phrases of a statute should not be construed in isolation and must be interpreted in light of the other relevant provisions of the statute. *Town & Country Utilities, Inc. v. Illinois Pollution Control Board,* 225 Ill.2d 103, 117 (2007). "If the language of the provision is plain, we will give effect to the language and will not consider extrinsic aids of construction." *Illinois Road,* 2022 IL 127126, ¶ 33. The Court's "chief purpose, when construing a constitutional provision, is to determine and effectuate the common understanding of the persons who adopted it—the citizens of this state." *Walker v. McGuire*, 2015 IL 117138, ¶ 16. "Accordingly, '[o]nly if the provision is ambiguous will we 'consult the drafting history of the provision, including the debates of the delegates to the constitutional convention.'" *Hooker*, 2016 IL 121077, ¶ 35 (quoting *Walker,* 2015 IL 117138, ¶ 16). Although Defendants here – like the appellants in *Illinois Road* – have "every motive to argue that the Amendment is ambiguous to direct [the Court's] attention to several items of extrinsic evidence," 2022 IL 127126, ¶ 58, this Court has made "clear that extrinsic sources do not trump the plain meaning of a provision." *Id.*

A. The Elimination of Monetary Bail Violates the Plain Language of Article I, Section 9.

The plain language of the Illinois Constitution in Article I, Section 9 states: "[a]ll persons shall be bailable by sufficient sureties." Yet the Acts define "pretrial release" as "the meaning ascribed to bail in Section 9 of Article I of the Illinois Constitution *where the sureties provided are nonmonetary in nature.*" 725 ILCS 5/102-6 (emphasis added); *see*

also 725 ILCS 5/110-1(b) ("'[s]ureties' encompasses the nonmonetary requirements set by the court as conditions for release either before or after conviction."). The General Assembly has, without lawful authority, changed the meaning of "sufficient sureties" as commonly understood at the time of passage of Article I, Section 9, effectively amending this provision by mere legislation. *In re Pension Reform Legis.*, 2015 IL 118585, ¶ 81 ([W]e have repeatedly held that the General Assembly cannot enact legislation that conflicts with provisions of the constitution unless the constitution specifically grants it such authority."). Nowhere in the constitution is the legislature empowered to redefine the terms of Article I, Section 9, and tellingly, nowhere in Defendants' brief do they claim, nor could they claim, such an authority exists.

Although Defendants do not actually assert that the constitutional language is ambiguous, they "attempt[] to create ambiguity by discussing these extrinsic sources at the outset of [their] brief." *Illinois Road,* 2022 IL 127126, ¶ 59. Def. Br. 20-21. This Court does "not defer to the legislative branch for its opinion as to whether certain language is plain or ambiguous." *Id.* Instead, the plain language of a provision "remains the best indication" of intent, and "[w]here the language is clear and unambiguous, [the Court] must apply the [provision] *without resort to further aids of statutory construction.*" *Id.* (quoting *In re Marriage of Dynako*, 2021 IL 126835, ¶ 14, and *Andrews v. Kowa Printing Corp.*, 217 Ill.2d 101, 106 (2005) (emphasis in *Illinois Road*).

That is precisely the case here. Not surprisingly, Defendants do not cite a single case in which a court in Illinois or elsewhere has construed this constitutional provision as encompassing only nonmonetary sureties. Instead, they rely on a federal court decision in

Holland v. Rosen, 895 F.3d 272 (3d Cir. 2018), addressing the Eighth Amendment. This reliance is misplaced. The instant case is not about the Eighth Amendment's "excessive bail" clause in the United States Constitution; it is about the textually and historically distinct "sufficient sureties" clause in the Illinois Constitution. The plaintiff in *Holland* claimed that New Jersey's Criminal Justice Reform Act (CJRA), enacted in 2017, violated an implied right to monetary bail contained in the Eighth Amendment. The federal district court "decline[d] plaintiff's invitation to find that a right to money bail is implied within the Eighth Amendment" given the Supreme Court's statement in *United States v. Salerno*, 481 U.S. 752 (1987), that the Eighth Amendment "'says nothing about whether bail shall be available at all.'" 277 F.Supp.3d at 707, 741 (D. N.J. 2017). Whether the Eighth Amendment contains an implied right to monetary bail has no bearing on whether monetary bail is contemplated by the terms of Article I, Section 9.

Moreover, unlike Illinois, New Jersey did not simply pass a statute eliminating monetary bail. Instead, the question was properly placed before its residents in a proposed constitutional amendment. Specifically, prior to the CJRA, New Jersey's Constitution contained a bail provision which provided that all criminal defendants are "bailable by sufficient sureties." N.J. Const. of 1947, art. I, ¶ 11. After the Joint Committee on Criminal Justice recommended that New Jersey move from a largely resource-based system of pretrial release to a risk-based system using an objective risk assessment instrument, the state legislature proposed amending the constitution to replace the "sufficient sureties" language with the following:

> All persons shall, before conviction, be eligible for pretrial release. Pretrial release may be denied to a person if the court finds that no

> amount of monetary bail, non-monetary conditions of pretrial release, or combination of monetary bail and non-monetary conditions would reasonably assure the person's appearance in court when required, or protect the safety of any other person or the community, or prevent the person from obstructing or attempting to obstruct the criminal justice process. It shall be lawful for the Legislature to establish by law procedures, terms, and conditions applicable to pretrial release and the denial thereof authorized under this provision. 277 F. Supp. 3d at 716 (quoting N.J. Const. art. 1, ¶ 11).

It was only after the constitutional amendment was approved by the voters that the CJRA went into effect.

Another critical difference is that under the CJRA, a court must order a defendant released without monetary bail only if nonmonetary conditions are adequate to ensure the defendant's appearance in court and the safety of the public. If nonmonetary conditions are inadequate, "the court may release the defendant subject to monetary bail, but *only* to reasonably assure the defendant's appearance in court," or "release the defendant subject to a combination of monetary and non-monetary conditions reasonably calculated to assure the defendant's appearance in court and safety of the public." *Id.* at 717 (citing N.J.S.A. 2A:162-16(b)(2)(c)-17(d) (emphasis added). Finally, the court may order a defendant detained pending a pretrial detention hearing if the judge determines "no combination of monetary and non-monetary conditions are adequate to ensure the defendant's appearance in court or the safety of the public." *Id.* (citing N.J.S.A. 2A:162-16(b)(2)(d)-18(a)(1). The judge is required to consider the Pretrial Services Program's risk assessment and recommendations on conditions of release, but "is not bound by" them and may enter an order contrary to the recommendation in the assessment. *Id.*

It is important to note that several states, including New Jersey and New Mexico,

have passed amendments to their constitutional bail provisions to address the interplay between a defendant's right to monetary bail, the defendant's appearance in court, and the societal interest of public safety. See Report at 34 (referencing movements to reform bail practices in both New Jersey and New Mexico). In neither state was monetary bail abolished entirely as has been attempted in Illinois, nor were the reforms solely accomplished by legislative action.

Plaintiffs would strongly support a system, like those in New Jersey and New Mexico, which effectively implement a comprehensive risk-based assessment system that appropriately balances a defendant's liberty interests with the societal interests in court appearance and public safety following a legislatively referred constitutional amendment approved by the voters. This did not occur. Instead, the General Assembly twice rushed through these mammoth pieces of legislation without a full opportunity for review and debate by lawmakers. They further compounded this error by failing to present a constitutional amendment to the voters as was done in New Jersey and New Mexico, and as was done in Illinois on the two previous occasions when Article I, Section 9 was amended. Ill. Const. art I, § 9.

In so doing, the General Assembly has illegitimately attempted to amend the Illinois Constitution without adhering to the procedures for doing so set forth in Article XIV, Section 2 (for revisions instituted through the General Assembly, amendments must be "approved by the vote of three-fifths of the members elected to each house" and "shall be submitted to the electors at the general election"). Ill. Const. art. XIV, § 2. A proposed amendment only becomes effective "if approved by either three-fifths of those voting on

the question or a majority of those voting in the election". *Id.* In enacting the pretrial release provisions of the Acts, which contravene the language of the constitution, the General Assembly has deprived the public of the right to have a say in this significant change to Illinois' constitutional system of bail under which all of us are governed.

This Court has on previous occasions considered what does not qualify as a "sufficient surety." In *People ex rel. Gendron v. Ingram,* 34 Ill.2d 623 (1966), this Court found that a bail bond issued by a surety company was not a "sufficient surety" for purposes of the Illinois Constitution because the defendant himself might incur no risk. *Id.* at 626. Rather, a sufficient surety must involve some threat of loss and, accordingly, bail bonds secured by cash deposit or stocks and bonds equal in value to the bail are constitutional. *Id. Gendron* was a habeas corpus proceeding in which a prisoner contended that his tender of a bail bond with a commercial surety was wrongfully refused by the clerk. In rejecting his argument, the Court observed:

> Sufficient, as used in the constitution, *means sufficient to accomplish the purpose of bail*, not just the ability to pay in the event of a 'skip'. The State is not primarily interested in collecting bond forfeitures, but *is more concerned with granting liberty to an accused pending trial while obtaining the greatest possible assurance that he will appear. Id.* (emphasis added).

The Court continued, "[r]equiring bond with sufficient sureties is premised on the assumption that *economic loss* to the accused, his family or friends, will assure his appearance for trial." *Id.* at 626 (emphasis added). The Court emphasized that "the purpose of the constitutional provision is to give the accused liberty until he is proved guilty, but yet have some assurance that he will appear for trial." *Id.* Here, in entirely removing monetary bail and limiting the court to nonmonetary sureties, which a defendant can neither

lose nor gain, the legislature has fundamentally changed the very logic and meaning of "surety" as described in *Gendron.* No longer is a defendant incentivized by the threat of loss of what is "put up" and held conditionally upon performance of some duty. Under the Acts, "surety" becomes merely a set of injunctions and mandates that coerce, as opposed to incentivize compliance. Moreover, unlike monetary bail, nonmonetary conditions imposed in lieu of monetary bail (*e.g.*, electronic monitoring, curfews, "refrain from going to certain described geographic locations," "be placed under the supervision of pretrial services," "vacate the household," etc.) interfere considerably with a defendant's liberty while that individual is still cloaked with the presumption of liberty. See 725 ILCS 5/110-10. The Acts eliminated a tool under which a court can "accomplish the purpose of bail" in "obtaining the greatest possible assurance that" a defendant "will appear." *Gendron*, 34 Ill. 2d at 626.

Indeed, before the Acts were adopted, the General Assembly previously recognized that the word "'[s]ureties' encompasses the monetary and nonmonetary requirements set by the court as conditions for release either before or after conviction." 725 ILCS 5/110-1(b)(2020). The General Assembly cannot change the meaning of "sufficient sureties" in the Constitution itself through legislation. *In re Pension Reform Legis.*, 2015 IL 118585, ¶ 81 ("[W]e have repeatedly held that the General Assembly cannot enact legislation that conflicts with provisions of the constitution unless the constitution specifically grants it such authority.").

Similarly, the General Assembly had previously defined "bail" as "the amount of money set by the court which is required to be obligated and secured as provided by law

for the release of a person in custody in order that he will appear before the court in which his appearance may be required and that he will comply with such conditions as set forth in the bail bond." 725 ILCS 5/102-6 (2020). The General Assembly's elimination of this provision and replacement with a definition of "pretrial release," cannot erase the right to "bail" in the Constitution. See 725 ILCS 5/102-6 (effective Jan. 1, 2023). This does not mean, however, that a judge *must* impose monetary bail in every case in which a defendant is released before trial. Rather, the term "sureties" as used in the Illinois Constitution and interpreted by this Court, includes a monetary component among a wide variety of forms of assurance, while the term "sufficient" empowers the courts to determine which sureties should be imposed in a particular case.

Here, the circuit court correctly concluded that "by defining 'sufficient sureties' to exclude, in totality, any monetary bail," the General Assembly "has improperly attempted to amend the Constitution in contravention of Ill. Const. Art. XIV, Sec. 2." C1658, V3. As it stated: "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." C1658, V3.

B. The Elimination of Monetary Bail is Contrary to the History of the Enactment of Article I, Section 9.

The debate at the 1970 Constitutional Convention confirms the common understanding that the bail provision in Article I, Section 9 encompasses a monetary component. As this Court stated in *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—the citizens of this state."

During extensive debate at the 1970 Constitutional Convention, *see* Rec. of Proceedings, *Sixth Illinois Constitutional Convention*, at 1654-1676 (1970) (http://www.idaillinois.org/digital/collection/isl2/id/10512/) ("Transcript"), Delegate Pechous, in presenting the amendment as ultimately adopted and incorporated into the 1970 Illinois Constitution, replied affirmatively when asked by another delegate whether "sufficient sureties" meant "enough money so that [a criminal defendant] will obey the conditions of the bond rather than lose that amount of money." *Id*. at 1657. Even Delegate Weisberg, who presented a different proposed amendment later rejected in favor of Delegate Pechous' proposal, conceded that both the majority and minority proposals would continue "the money bail system." *Id*. at 1664.

To support their claim that the elimination of monetary bail by the General Assembly is constitutionally permissible, Defendants assert without citation that "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 cause." Def. Br. 20. In fact, their *only* support for this position is a statement by Delegate Weisberg who presented the *minority* position rejected by the delegates in a unanimous 82-0 vote.

And even as to this statement, Defendants selectively excise the quotation and its context. Def. Br. 21. Delegate Weisberg did not answer "Yes" on behalf of any delegation when asked whether the legislature could constitutionality abolish monetary bail; but instead, by his own admission, he was offering only his personal opinion:

> Mr. Dove: Could the money bail system be abolished by the legislature under either of the two system?
>
> Mr. Weisberg: Yes, it could – *in my judgment – opinion* — it could." Transcript, 1664 (emphasis added).

Indeed, the course of the entire discussion at the constitutional convention reflects the delegates' understanding that money bail is a component of the court's determination of "sufficient sureties" regardless of whether the judge imposes monetary bail. *See generally* Transcript, 1655-1676. When Delegate Pechous was discussing the majority position, the following colloquy occurred:

> Mrs. Leahy: Would you tell me what the word "sufficient" means? Sufficient for what?
> ….
> Mr. Pechous: There are many conditions, and the judge sets the bond insofar as any financial sanction or amount is able to control these conditions. That is what he considers sufficient.
>
> Mrs. Leahy: So, in other words then, it is enough money so that he will obey the conditions of the bond rather than lose that amount of money?
>
> Mr. Pechous: Right. *Id.* at 1657.

Pechous also stated the determination of amount of sufficient sureties "is all within the judicial discretion" and the "financial aspect is just one of the things. That is all I can say. It is not the sole test." *Id.* at 1658.

Rather than abolishing monetary bail, the minority's proposal would have required that "[s]security shall be required only to assure the appearance of the accused" and "shall not exceed the financial means of the accused; and that, of course, is designed to state that it is constitutionally unacceptable to fix bail which discriminates solely on the basis of a defendant's wealth or poverty." *Id*. at 1659-60. Delegate Weisberg made clear that even

the rejected minority position did not eliminate monetary bail:

> "The minority proposal also provides that where the court determines – and I should stress that the minority proposal does not abolish the system of money bail – courts could still, under the minority proposal, fix money bail amounts. They would, however, have to observe the principles that the amount of security which is required shall not exceed what the defendant is able to put up." *Id.* at 1661.

Furthermore, Defendants' discussions of 18th century law does not advance their argument. A *bona fide* jurist of the 18th Century English common law, Sir William Blackstone, described bail not as a release to freedom from jail, but delivery into the "friendly custody" of sureties. J. Duffy and R. Hynes, *Asymmetric Subsidies and the Bail Crisis*, 88 U. Chi. L. Rev. 1285, 1299 (October 2021). Blackstone also understood there were circumstances that warranted protection of the public: and that, in such cases, the accused was permitted to have "no other sureties but the four walls of the prison." *Id*. In the common law surety system, the surety was a person of sufficient means that would guarantee the prisoner's appearance on penalty of forfeiture of property, at a time when forfeiture of land was a powerful incentive. M. Hegreness, *America's Fundamental and Vanishing Right to Bail*, 55 Ariz. L. Rev. 909, 939 (2013). In Colonial America, judges "set the only limitation on pretrial freedom available at the time—the amount of money that a personal surety would be obligated to pay." Report at 16. By the early 20th Century, as Justice Oliver Wendell Holmes observed, "The distinction between bail and suretyship is pretty nearly forgotten. The interest to produce the body of the principal in court is impersonal and wholly pecuniary. If, as in this case, the bond was for $40,000, that sum was the measure of the interest on anybody's part, and it did not matter to the government what person ultimately felt the loss, so long as it had the obligation it was content to take."

Leary v. United States, 224 U.S. 567, 575-76 (1912). This observation well reflects the understanding of "bail" enacted by the people of this State in the constitutional amendments.

Defendants concede that "defendants released before trial, or 'bailed,' historically were released with conditions, both monetary and nonmonetary, meant to assure their appearance at trial." Def. Br. 19. They go on to argue, however, that the Acts' "pretrial release provisions permit a court to do just that" through such conditions as electronic monitoring. *Id*. This misses the point. The Constitution—as drafted, and as understood by the delegates to the Illinois Constitution and the public in voting on the provision in 1970, 1982, and 1986—includes among the court's powers the ability to require a sum of money or an item of value as a surety to guarantee a criminal defendant's appearance in court. The Acts contravene the Constitution in abolishing monetary bail and limiting the court solely to nonmonetary conditions. See 725 ILCS 5/110-1.5 ("*Abolition of monetary bail*. On and after January 1, 2023, the requirement of posting *monetary bail is abolished*") (emphasis added); 725 ILCS 5/110-1(b) ("'Sureties' encompasses the *nonmonetary* requirements set by the court as conditions for release either before or after conviction.") (emphasis added).

Moreover, contrary to Defendants' contention, this Court in *People ex rel. Gendron v. Ingram*, 34 Ill.2d 623 (1966), did not consider and reject an argument "that the bail clause requires a particular *kind* of 'surety.'" Def. Br. 21 (emphasis added). Rather, as discussed *supra*, this Court approved a system whereby criminal defendants awaiting trial could pay a 10% deposit on the total amount of bail to secure their release rather than a

system where the defendant had to pay the whole amount and the bail bondsman received the 10% of the bail premium regardless of whether the defendant appeared in court and was acquitted. *Gendron*, 34 Ill.2d at 624-26. The Court approved this system of money bail because the potential economic loss to the accused would assure his appearance for trial. *Id*. at 626. Thus, the purposes of sufficient sureties or "bail"—to grant an accused pending trial liberty "while obtaining the greatest possible assurance that he" would appear—would still be satisfied. *Id.*

Nor does Defendants' contention that the bail provision only pertains to individual criminal defendants because of its placement in Article I of the Illinois Constitution have merit. Def. Br. 25. Article I sets forth rights that pertain to society and groups, and not simply to individual criminal defendants (See, *e.g,* Ill. Const. art. I, § 3 (religious freedom), *id*. § 5 (right of "the people" to assemble, consult for the common good, and to make known their opinions); *see also id*. §§ 3, 5, 8.1; 15; 17; 19; 20; 25. Clearly, Article I recognizes societal as well as individual rights. Indeed, the constitutional drafters have expressly limited provisions to individual rights where they saw fit but did not do so in the case of the bail provision. For example, the right to bear arms is expressly limited to "the right of the individual citizen." Ill. Const. art. I, § 22. Moreover, this argument ignores that the right to bail guaranteed to an individual defendant ascribes a commensurate power or authority to set bail, which is given to the judiciary. See *People ex rel. Hemingway v. Elrod,* 60 Ill.2d 74, 79 (1975). Regardless, in view of the fact that that "the state's attorney in his official capacity is the representative of all the people, including the defendant," Ill. R. Prof.'l Conduct R. 3.8 Comment 1, 1A (effective 1/1/2016), whether Article I deals exclusively

with individual rights of a defendant is of no consequence.

The Acts conflict with the constitution's plain language, the common understanding, and legislative intent as shown by the debates at the 1970 constitutional convention and are unconstitutional as a matter of law.

C. The Acts Deviate from the Constitution's List of Potentially Nonbailable Offenses Approved by Voters Through the Constitutional Amendment Process.

Since the adoption of the Illinois Constitution in 1970, the categories of potentially nonbailable offenses have twice been expanded; both times, these changes were legislatively referred to the voters for approval consistent with the process set forth in the Constitution in Article XIV, Section 2. See generally, A001-014. Here, in contrast, the General Assembly altered the categories of nonbailable offenses set forth in the constitution without presenting the issue to the voters for approval, effectively rewriting the language of the constitution. This unbridled overreach on the part of the General Assembly should be rejected and the Acts' provisions deemed void as they violate the express language of Article 1, Section 9. Ill. Const. art I, § 9.

In 1982, Illinois voters were presented with a constitutional amendment to expand the categories of offenses for which a defendant could be denied to include offenses that could result in a sentence of life imprisonment. The pamphlet sent to voters explaining the proposed amendment stated:

> The proposed amendment deals with the category of persons who may be denied bail under the Illinois Constitution. The present constitutional provision permits denial of bail only to persons charged with offenses punishable by death where the proof is evident or the presumption is great. *If the People of Illinois adopt this proposed amendment, persons charged with offenses for which a sentence of life imprisonment may be imposed may*

> *also be denied bail* where the proof is evident or the presumption is great. A006, 1982 Pamphlet (emphasis added).

The pamphlets additionally informed Illinois residents in the arguments in favor of the proposal that "[b]y assuring appearance at trial as well as protecting society against dangerous persons, the proposed amendment is wholly consistent with our ideas of justice in striking a balance between defendants' rights and society's rights." A004.

On November 2, 1982, voters approved the amendment, and the category of potentially nonbailable offenses was expanded so that the constitutional language read as follows:

> All persons shall be bailable by sufficient sureties, except for capital offenses *and offenses for which a sentence of life imprisonment may be imposed as a consequence of conviction* where the proof is evident or the presumption great. A003 (emphasis added).

Four years later, another legislatively referred constitutional amendment relating to the categories of nonbailable offenses was placed on the ballot. A008-014, 1986 Pamphlet. This amendment expanded the population that may be denied bail to defendants alleged to have committed a felony offense carrying a mandatory prison sentence upon conviction. *Id.* Once again, voters were provided an explanation of the constitutional amendment:

> *The proposed amendment deals with the category of persons who may be denied bail under the Illinois Constitution*. The present constitutional provision permits denial of bail only for persons charged with crimes punishable by death or life imprisonment, and only where the proof is evident or the presumption is great that the person charged committed the crime. *If the People of Illinois adopt this proposed amendment, courts would also be empowered to deny bail to persons charged with felonies that carry a mandatory sentence of imprisonment upon conviction* where: (1) the proof is evident or the presumption great that the person charged committed the crime; and (2) the court, after a hearing, finds that that the defendant poses a real and present threat to the safety of any person. . . The denial of

> bail means the defendant would not be released from custody prior to trial. A014 (emphasis added).

The pamphlet in the section supporting the amendment additionally stated that "[u]nder this proposed constitutional amendment, the rights of the people to their personal safety would be enhanced" and that "there is a need to balance the rights of an accused person to be free on bail against the right of the pubic to receive protection from defendants who pose a substantial threat to others if released." A010. The amendment was approved by voters on November 4, 1986, by a vote of 1,368,242 to 402,891. Article I, Section 9 of the constitution currently reflects the language approved by the voters through this amendment.

In stark contrast, when the General Assembly passed these Acts, absolutely nothing was explained to, submitted to, or approved by the voters through a constitutional referendum. Instead, the General Assembly hurriedly passed H.B. 3563 during a lame-duck legislative session in the middle of the night on January 13, 2021. The bill, which grew from 7 to 764 pages in a matter of just two days, statutorily altered the standard for determining who is bailable and set forth a litany of offenses for which a defendant "may be denied pretrial release" *without* the opportunity for bail. See generally 725 ILCS 5/110-6.1(1)-(6.5).

As the circuit court observed, quoting from this court's opinion in *In re Pension Reform Legis.*, 2015 IL 118585:

> 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.' '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.'

> '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.' C1665, V3 (internal citations omitted).

The General Assembly does not have the authority to unilaterally alter the offenses subject to the bail exceptions set forth in the constitution. *Hemingway*, 60 Ill.2d at 79 ("To the extent that section 110-4 of the Code of Criminal Procedure attempts to render nonbailable offenses other than those for which the death penalty may be imposed, we hold the same to be invalid and contrary to the provisions of Section 9 of Article I of the 1970 Constitution.").

Regardless of whether the General Assembly statutorily expands or diminishes the offenses for which a judge is permitted to hold a defendant pretrial without bail, it has enacted statutory language in conflict with the Illinois Constitution without following the appropriate constitutional procedures for revising that document.

III. THE ELIMINATION OF MONETARY BAIL VIOLATES THE ILLINOIS CONSTITUTION'S CRIME VICTIMS' RIGHTS PROVISION.

Likewise, eliminating monetary bail violates the plain language and history of the Crime Victims' Rights provision in the Illinois Constitution. This provision, originally adopted by the voters and added to the constitution in 1992, was amended in 2014 to add that the rights of crime victims include:

> 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).

As the circuit court recognized, "fixing the amount of bail" under the provision "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 the 2014 amendment C1659, V3 (emphasis added). As the court found, "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).)." C1659-60, V3. Thus, the plain language makes clear that the "amount of bail" set by the court is wholly distinct from any other "conditions of release" that might also be imposed.

The pamphlet sent to voters prior to the referendum in 2014 explaining the proposed constitutional amendment confirms that the "amount of bail" was understood to involve money. The explanation states:

> . . . 2) A victim would have the right to have the judge consider the victim's safety and the safety of his or her family before deciding whether to release a criminal defendant, *setting the amount of bail to be paid* before release, or setting conditions of release after arrest or conviction. A023, 2014 Proposed Amendments and Additions to the Illinois Constitution (emphasis added).

Although Defendants contend that construing the provision to require bail would somehow upend the Constitution, it is in fact the elimination of monetary bail that does so – as demonstrated by both the language and history of Article I, Section 9 discussed *supra*. Indeed, Plaintiffs do not "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" as Defendants assert. Def. Br. 31. Rather, the point is that at the time voters adopted the 2014 amendment, the public understood that the constitution already authorized judges to set monetary bail and by this amendment, provided that the judge must consider the rights of victims and their families

in imposing conditions of release which include "setting the amount of bail to be paid before release." Defendants' proposed interpretation would read the "amount of bail" language out of the constitution. It should, therefore, be rejected.

IV. THE ACTS VIOLATE THE SEPARATION OF POWERS CLAUSE.

Defendants further contend that the circuit court erroneously found the pretrial release provisions contained in the Acts were also facially unconstitutional under the Separation of Powers doctrine because they infringe on the judiciary's "inherent authority to administer and control their courtrooms and to set bail." C1675, V3; Def. Br. 33-49. Specifically, although they acknowledge that in *Hemingway*, 60 Ill. 2d 74, this Court held that courts have the "inherent judicial authority to detain defendants pending trial," they assert that the legislature may nonetheless "regulate" the exercise of that judicial authority. Def. Br. 34, 35-39. Defendants also maintain that the circuit court mistakenly believed that any infringement on the judicial authority was unconstitutional and claim that the court failed to address the proper question – whether the pretrial release provisions at issue "'unduly' infringe upon the narrow authority described in *Hemingway* to detain defendants pending trial." Def. Br. 41. Finally, they argue that the court erred in ruling that the statutory provisions were facially unconstitutional because the statutes do not violate the separation of powers doctrine "in all circumstances" since there may be situations where the outcome of a pretrial detention hearing would be the same under both the newly amended provisions and the prior statutes. Def. Br. 42-49.

Defendants are wrong on all points. First, the General Assembly did not merely regulate the process or adopt guidelines under which the court's inherent authority over

pretrial release should be exercised. Instead, as found by the circuit court, by prohibiting courts from even considering monetary bail as a condition of release, the legislature has impaired the court's ability to determine if "sufficient sureties" exist which would ensure a defendant's appearance in court and the safety of the victims and others if the defendant were to be released. C1659, 1670, V3. Moreover, the Acts do not merely "regulate" those categories of offenses for which a defendant may be detained, but rather prohibits the court from "denying or revoking" bail in most instances even though a court might determine "such action is appropriate to preserve the orderly administration of justice." See *Hemingway,* 60 Ill. 2d at 79.

While it is true that the circuit court did not expressly state that such interference "*unduly* infringed" upon the judicial authority, the court's opinion makes clear that it necessarily reached such a conclusion. (See, *e.g.* C1657, V3 ("although the effect was lessened somewhat by P.A. 102-1104, the pretrial release provisions [of P.A. 101-652] still restricts [*sic*] 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")). Regardless, Illinois law is clear that it is the court's judgment which is under review, not its rationale. See *People v. Jackson*, 232 Ill.2d 246, 280 (2009) (this Court "may affirm a lower court's holding for any reason warranted by the record, regardless of the reasons relied on by the lower court").

Finally, the circuit court properly determined that the legislature's prohibition of monetary bail was facially unconstitutional because the "judiciary's inherent authority to set or deny bond will necessarily be infringed in all cases" since "all judges will be

categorically prohibited from even considering in their discretion a monetary component to the conditions of release…if P.A. 101-652 and P.A. 102-1104 become effective." C1668, V3. Moreover, as the court correctly recognized, "[t]his is true even if a judge would ultimately decide not to include a monetary component." *Id.*

The Separation of Powers clause of the Illinois Constitution provides: "The legislative, executive and judicial branches are separate. No branch shall exercise powers properly belonging to another." Ill. Const. 1970, art. II, § 1. 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). Although this provision clearly distinguishes the three branches of State government, it is not designed to achieve a complete divorce among them. *People v. Peterson*, 2017 IL 120331, ¶ 30. Inevitably, there will be areas in which the separate spheres of government overlap, and in which certain functions are shared. *County of Kane v. Carlson*, 116 Ill.2d 186, 208 (1987). Nevertheless, although the constitution does not specifically delineate which powers are legislative, which are executive, and which are judicial, this Court has determined that the judicial power includes the adjudication and application of law, *People v. Joseph*, 113 Ill.2d 36, 41 (1986), as well as the procedural administration of the courts. *People v. Walker*, 119 Ill.2d 465, 475 (1988). See also *People v. Hawkinson*, 324 Ill. 285, 287 (1927) ("Judicial power is the power which adjudicates upon the rights of citizens and to that end construes and applies the law.").

Moreover, while this Court has long recognized that the Illinois General Assembly is empowered to "enact laws concerning judicial practice," it has also repeatedly held that

the legislature exceeds its lawful authority whenever it adopts a statute that "unduly infringes" upon the "inherent powers of the judiciary.'" *Walker*, 119 Ill.2d at 474 (quoting *People v. Taylor*, 102 Ill.2d 201, 207 (1984)). As a result, "[w]hen the legislature encroaches upon a fundamentally judicial prerogative, this [C]ourt has not hesitated to protect the court's authority." *Murneigh v. Gainer*, 177 Ill.2d 287, 303 (1997).

Notably, in *Best v. Taylor Mach. Works*, 179 Ill.2d 367 (1997), the Court held that a statute placing a mandatory limit on damages for non-economic injuries in tort cases violated the Separation of Powers doctrine because it encroached upon the 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 414.[3] The Court explained that "[t]he practice of ordering a remittitur of excessive damages ha[d] long been recognized and accepted as part of Illinois law" and that the remittitur doctrine "promot[ed] both the administration of justice and the conclusion of litigation." *Id.* at 412. Accordingly, the Court determined that since the ability to issue a remitter is an "inherent power of the court" and is "essential to the judicial management of trials" (*id.* at 413), the statute was unconstitutional because it "function[ed] as a 'legislative remittitur'" which "undercuts the power, and obligation, of the judiciary to reduce excessive verdicts." *Id.* Furthermore, the court noted that the statute was also problematic because "[t]he cap on damages [wa]s mandatory and operates wholly apart from the specific circumstances of a particular

[3] In *Lebron*, this Court determined that although the separation of powers analysis in *Best* was not necessary to the ultimate decision since the Court had already determined that the statute was unconstitutional under the special legislation doctrine, it was judicial *dictum* as opposed to *obiter dictum* and is therefore "entitled to much weight and should be followed unless found to be erroneous." *Lebron*, 237 Ill.2d at 236-37.

plaintiff's noneconomic injuries." *Id.* at 414.

Likewise, in *Lebron*, this Court followed *Best* and held that a similar, but more narrowly tailored, statute imposing caps on noneconomic damages in medical malpractice cases was unconstitutional because "the encroachment upon the inherent power of the judiciary is the same . . . as it was in *Best*." 237 Ill.2d at 238. The Court in *Lebron* explained that "the inquiry under the separation of powers clause is not whether the damages cap is rationally related to a legitimate government interest but, rather, whether the legislature, through its adoption of the damages cap, is exercising powers properly belonging to the judiciary." *Id.* at 239. Furthermore, the court rejected the Attorney General's argument that the statute should be upheld despite the infringement on the inherent judicial authority because it served "legitimate legislative goals," and noted that while the "the legislative purpose or goal of a statute is [not] irrelevant to a separation of powers analysis," the "crux of [the] analysis is whether the statute unduly infringes upon the inherent power of the judiciary." *Id.* at 244-45.

In addition to *Best* and *Lebron*, this Court has also ruled that the legislature improperly encroached upon judicial authority in numerous other cases. See, *e,g.*, *People v. Warren*, 173 Ill.2d 348, 367-71 (1996) (holding that a statute which prohibited the imposition of a civil contempt finding by a judge presiding over a domestic relations matter following a conviction for unlawful visitation interference was unconstitutional under the separation of powers doctrine because the power to hold someone in contempt of court "inheres in the judicial branch of government" and therefore "the legislature may not restrict its use"); *Murneigh v. Gainer*, 177 Ill.2d 287, 301-07 (1997) (holding that statutes

which required Illinois courts to issue orders for the collection of blood from certain convicted sex offenders and then to enforce those through the court's contempt power violated separation of powers because "the legislatively prescribed contempt sanction [wa]s not consistent with the exercise of the court's traditional and inherent power"); *Ardt v. Illinois Dept. of Professional Regulation*, 154 Ill. 2d 138, 151 (1992) (holding that where "the power to grant injunctive relief in cases over which it has jurisdiction is inherent in a circuit court," a statute requiring professional discipline to be imposed even if the defendant seeks judicial review was unconstitutional because it "restrict[ed] the inherent power of the court to issue a stay where appropriate"); *People v. Joseph*, 113 Ill. 2d 36, 43-45 (1986) (holding that a statute requiring post-conviction petitions be assigned to a different judge than presided over the defendant's trial violated separation of powers because it encroached upon a fundamental judicial prerogative).

Here, it is beyond question that the authority of Illinois judges to consider and impose monetary bail as a condition of pretrial release "has long been recognized and accepted as part of Illinois law" and is "essential to the judicial management of trials," *Best*, 179 Ill.2d at 412-13. The caselaw clearly demonstrates that this authority has been employed in Illinois since well *before* the adoption of the *1870 constitution*. See, *e.g.*, *County of Rock Island v. County of Mercer,* 24 Ill. 35 (1860) (noting that the court set the defendants' bail at $1,500); *Ex Parte Milburn*, 34 U.S. (9 Pet.) 704, 705 (1835) (noting that the defendant's bail was "in the sum of £100, Maryland currency" or $266.67). Moreover, this Court has expressly recognized that the power to set or deny bond is inherent within the judicial power as it is a key component of the court's ability to "preserve the orderly

process of criminal procedure." *Hemingway,* 60 Ill.2d at 79.

Defendants acknowledge this inherent judicial power but claim that it is "narrow" (Def. Br. 41) and that the court's authority to wholly deny the opportunity for pretrial release may only be exercised "(1) 'to prevent interference with witnesses or jurors,' (2) 'to prevent the fulfillment of threats,' and (3) 'if a court is satisfied by the proof that an accused will not appear for trial regardless of the amount or conditions of bail.'" Def. Br. 36 (quoting *Hemingway*, 60 Ill.2d at 79-80). In other words, Defendants assume that the court's inherent authority in this area is limited to the narrow question of whether a particular person accused of committing a crime should either be released pending trial or detained without bond.

This narrow reading misrepresents *Hemingway*. There, this Court recognized that the right to bail, like all rights, is not "absolute," and that the court has inherent authority to deny or revoke bail in any case "when such action is appropriate to preserve the orderly process of criminal procedure" and provided the denial or revocation of bail is "supported by sufficient evidence." 60 Ill.2d at 79-80. The Court did not necessarily and categorically limit "preservation of the orderly process of criminal procedure" to interference of witnesses, fulfillment of threats, or failure to appear for trial. Rather, these exigencies were set these forth as examples of the type of things that have been previously recognized or could imperil an orderly process.

Moreover, a court's inherent judicial authority necessarily includes the obligation and responsibility to consider *all* possible conditions of bond which might allow the accused to be safely released while also ensuring his appearance at trial. One such

condition, which has been utilized in common law jurisdictions like Illinois for centuries, is monetary bail because it provides a strong incentive for the accused to abide by all the terms and conditions of pretrial release. As this Court recognized in *People ex rel. Gendron v. Ingram*, 34 Ill.2d 623, 626 (1966), "[r]equiring a bond with sufficient sureties is premised on the assumption that economic loss to the accused, his family or friends, will assure his appearance for trial." Determining the appropriate surety to compel the appearance of a defendant is a judicial, not legislative function. The Acts unconstitutionally foist upon the court a limited number of alternatives that it may deem inadequate, interfering with the court's inherent authority to determine what constitutes a sufficient surety to secure pretrial release.

Indeed, in the wake of *Hemingway,* this Court has ruled that courts have inherent authority 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.* There was no provision in the JCA for the setting of monetary bond. *Id.* at 138. Despite this, in one of the cases, the court set a monetary bond, but later reconsidered and vacated the order. *Id.* at 139. On an original *mandamus* proceeding regarding the transfer, this Court *sua sponte* vacated the juvenile offender's release and reinstated the previous order setting bail. *Id.* This Court found that, "under the circumstances" and though there was no statutory authority, the defendants here should have the same right to bail as adult offenders as "the Constitution does not draw a distinction based on the age of the accused." *Id.* at 147. The

Court, citing *Hemingway*, ultimately pronounced, "[w]e 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.

However, under 725 ILCS 5/110-6.1 as amended, and in direct opposition to *Hemingway* and a court's inherent authority recognized therein, a court is precluded from denying bail to a defendant who is charged with any number of non-domestic related misdemeanor or Class 4 felony offenses. Contrary to *Hemingway*, under the Acts a court is precluded from denying bail to a defendant who is not deemed to have a "high likelihood of willful flight" and is not charged with an offense delineated in section 110-6.1(a)(1) through (a)(7) – or in other words the vast majority of offenses in the criminal code. For example, a defendant charged with aggravated battery to elderly victim in violation of 720 ILCS 5.12-3.3(d)(1) or sale of human body parts in violation of 720 ILCS 5/12-20 cannot be detained even upon sufficient evidence that detention is necessary to "prevent interference with witnesses or jurors," "the fulfillment of threats," or any other exigency exists imperiling an orderly process and no set of conditions can be imposed to mitigate the danger posed.

Under section 725 ILCS 5/110-6, also in direct opposition to *Hemingway* and a court's inherent authority recognized therein, the court is precluded from revoking a defendant's bond unless he is charged with a Class A misdemeanor or greater offense or violates a protective order. In other words, irrespective of the severity of the violation of a condition, the brazenness of the violation, the importance of the condition violated to an

orderly process, the importance of the condition to preventing interference with witnesses or jurors, the importance of the condition in preventing the fulfillment of threats, the number of conditions violated, or the frequency by which the conditions are violated, in all cases where defendants violate conditions of bond other than not getting rearrested, the court is without authority to revoke bond.

The court, not the General Assembly, is the branch charged with using its discretion to determine the appropriate remedy, for violations of its orders–especially involving matters primarily within its knowledge and expertise, such as court administration.

The 90-day provision under which a defendant "shall not be denied pretrial release" if "not brought to trial within the 90-day period," 725 ILCS 5/110-6.1(i), further illustrates how the provisions of the Acts "unduly" encroach upon the judiciary's ability to manage its docket and control the proceedings before it. *Hemingway*, 60 Ill.2d at 79-80. As a practical matter, most felony cases involving forensic evidence cannot be tried in 90 days given the time-lags in testing. The General Assembly has recognized the time issue relating to DNA testing in Illinois crime labs. 730 ILCS 5/5-4-3a (2020 as amended). As required by Illinois law, the Illinois State police must report to the Defendants regarding the DNA testing backlog. In the FY 2022 DNA testing accountability report submitted by the Illinois State Police, the backlog as defined by the agency was nearly 7,887 cases. See https://isp.illinois.gov/StaticFiles/docs/ForensicServices/Reports/2022dnareport.pdf. In addition, digital technology has changed the landscape of the amount and type of evidence which greatly expands the time required to thoroughly process evidence in a case.

This Court, in July 2022, provided a list of the time standards for cases in Illinois

courts. A037-40, Time Standards for Case Closure in the Illinois Trial Courts. The timeline for criminal felony cases is listed at a minimum of 18 months, or 548 days. The maximum time allotted for a criminal felony case is 30 months, or 913 days. That is in stark contrast to the Acts which require the pretrial release, 27 months earlier, of all defendants, and irrespective of risk.

The mandatory provisions at issue here are akin to the legislative remittiturs which were struck down by the Supreme Court in *Best* and *Lebron*, as well as the statutory prohibitions on civil contempt findings in *Warren*, and stays pending judicial review in *Ardt* which were declared unconstitutional. Specifically, these statutes, like the ones in the previous cases, unduly interfere with the judiciary's inherent authority by wholly removing long-standing judicial discretion over the matter and replacing the case-by-case judicial determinations with legislatively mandated outcomes.

While it is true that the legislature has previously enacted procedural statutes implicating this inherent judicial authority without violating the separation of powers doctrine, see Def. Br. 37-38 (discussing Article 110 of the Code of Criminal Procedure), Defendants fail to recognize that the provisions of the Acts go much further than simply setting out the procedures by which the court's inherent authority to set bail can be exercised. Instead, the General Assembly has declared which conditions of release judges will be permitted to impose and how those conditions will be enforced, while also specifically precluding the courts from fully exercising their discretion.

Although Defendants attempt to justify the legislature's efforts to thoroughly restructure the system of bond and pretrial release by likening the statutes' effects to the

provisions setting out mandatory minimum sentences, Def. Br. 38-39, the comparison falls flat because sentencing statutes are enacted pursuant to the "undoubted legislative power to define crimes and fix punishments," which when exercised, "necessarily limit the discretion of courts when imposing sentence." *People v. Taylor*, 102 Ill.2d 201, 208 (1984). Thus, although imposing sentence is an inherently judicial act, selecting the appropriate sentencing range also necessarily involves the valid exercise of legislative power. As such, the legislative and judicial branches share *concurrent* authority over criminal sentencing, which necessarily means that there are *no* separation of powers concerns when the legislature imposes minimum and maximum sentencing ranges as neither branch unduly encroaches upon the other. See *People v. Dunigan*, 165 Ill.2d 235, 245 (1995) ("Our decisions have recognized that the legislature's power necessarily includes the authority to establish mandatory minimum sentences, even though such sentences, by definition, restrict the inquiry and function of the judiciary in imposing sentence.").

But, once the legislature goes beyond the proper exercise of its own authority, and mandates that an inherent judicial power be exercised in a particular manner, the separation of powers doctrine is necessarily implicated. That is precisely what occurred in *People v. Davis*, 93 Ill. 2d 155, 162 (1982), where the court read a statutory requirement that sentencing judges in felony cases "shall set forth [their] reasons for imposing the particular sentence" as directory instead of mandatory. The Court explained that such a construction was necessary because even though it would not be a significant burden on judges, a mandatory construction would unduly infringe on the inherent powers of the judiciary and violate separation of powers since the statute "attempt[ed] to dictate the actual content of

the judge's pronouncement of sentence." *Id.* at 160-61.

Like *Davis*, this case involves an attempt by the General Assembly to require the courts to exercise their inherent judicial authority to set bond and impose bail in a particular and highly restrictive manner. However, as the circuit court recognized, such legislative attempts to dictate the actual content of the court's ruling are unconstitutional.

Defendants further argue that the circuit court erroneously found the statutes facially unconstitutional under the separation of powers doctrine because, according to them, the provisions of the Acts "do not unduly infringe upon an inherent judicial authority *in all circumstances*." Def. Br. 42 (emphasis added). Specifically, they assert that even though the legislation wholly prohibits trial courts from even considering the imposition of monetary bail as a condition of pretrial release, the finding of facial unconstitutionality was improper because "[a] plaintiff bringing a facial challenge must establish that 'no set of circumstances exists under which' the challenged statute 'would be valid.'" Def. Br. 44 (quoting *Napleton v. Village of Hinsdale*, 229 Ill.2d 296, 306 (2008)). They state that no such showing was made in this case because "the detention provisions are valid under *Hemingway* in at least *most* circumstances" since a court may choose to detain a criminal defendant under section 110-6.1(a) based on a finding that he poses a "high likelihood of willful flight." Def. Br. 44-45 (emphasis in original) (citing 725 ILCS 5/110-6.1(a)(8)(B)).

However, the circuit court properly rejected this precise argument, finding that "under section 110-1.5 [725 ILCS 5/110-1.5] all judges will be categorically prohibited from even considering in their discretion a monetary component to the conditions of release," and that therefore, "the judiciary's inherent authority to set or deny bond will

necessarily be infringed in all cases . . . even if a judge would ultimately decide not to include a monetary component." C1668, V3. This was clearly correct, as the question of whether a statute unduly infringes on an inherent judicial authority depends upon how it affects the judicial process, not whether the judge's ultimate decision would be different as defendants maintain. See *Joseph*, 113 Ill.2d at 42 (noting that "[a]t 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 . . . and was prohibited from limiting or handicapping a judge in the performance of his duties") (citations omitted).

Furthermore, to accept Defendants' arguments to the contrary would mean that this Court necessarily erred when it struck down the statutes in *Best*, *Lebron*, *Ardt* and *Joseph*. For example, even though the Court ruled that the legislative remittitur in *Best* and *Lebron* was unconstitutional because it "undercut[] the power, and obligation, of the judiciary to reduce excessive verdicts," if Defendants' "hypothetical outcome" analysis were the appropriate standard for separation of powers challenges, those statutes should have been upheld because a court *could have* exercised its inherent authority and reduced the jury's award of non-economic damages to the same amount as called for by the legislature. Similarly, because it was always possible that a court *might* exercise its discretion and refuse to stay pending professional discipline while a petition for judicial review was pending, or assign a post-conviction petition to a judge other than the original trial judge, under Defendants' theory, *Ardt* and *Joseph* were wrongly decided because the infringement on the inherent judicial authority did not exist in every conceivable application.

All of this shows that separation of powers claims require a binary analysis — a

statute either unduly infringes on a separate branch of government or it does not. Contrary to Defendants' insinuations, there can be no situation where a statute only *sometimes* unduly intrudes on the inherent functions of another branch. See *Lebron*, 237 Ill.2d at 245 ("The crux of our analysis is whether the statute unduly infringes upon the inherent power of the judiciary."). In this regard, a separation of powers challenge is similar to a single subject challenge, in that the essential question to be decided is simply whether the General Assembly had the lawful authority to adopt the legislation, as written, in the first place. See, *e.g.*, Meier, *Facial Challenges and Separation of Powers*, 85 Ind. L.J. 1557, 1558 (Fall 2010) (arguing that when addressing separation of powers challenges to a federal statute, courts should not pick and choose the constitutional applications from unconstitutional applications). Accordingly, the circuit court accurately noted that this court "has never engaged in the type of 'as applied' analysis proposed by defendants in cases involving a facial challenge" based on a separation of powers violation. C1668, V3.

Nevertheless, Defendants point to *Davis v. Brown*, 221 Ill.2d 435, 442-43 (2006), *In re Derrico G.*, 2014 IL 114463, ¶ 57, and *People v. Greco*, 204 Ill.2d 400, 406-07 (2003), as examples of where this Court "acknowledged the traditional distinction between facial challenges and as-applied challenges in separation-of-powers cases." Def. Br. 48. In each of those cases, however, the Court simply stated the general rule for distinguishing facial challenges from as-applied challenges when identifying the various constitutional challenges at issue in those cases. *Greco*, 204 Ill.2d at 406-07 (stating that the defendant raised due process, vagueness and separation of powers challenges to the statute at issue); *Davis*, 221 Ill.2d at 442 (stating that the plaintiffs raised due process, takings clause and

separation of powers challenges to the statute at issue); *Derrico G.*, 2014 IL 114463 at ¶ 56 (stating that the trial court found the statute at issue "violates separation of powers, equal protection, and due process guarantees"). More importantly, when addressing the specific separation of powers questions raised by the parties, *none* of these cases engaged in speculation or considered mere hypothetical situations. See *Davis*, 221 Ill.2d at 448-50; *Derrico G.*, at ¶¶ 75-85; *Greco*, 204 Ill.2d at 412-13. Instead, in all of these cases, the Court simply addressed the plain language of the statutes at issue and considered how the statute functioned in light of the pre-existing caselaw regarding the particular government actors at issue. *Davis*, *Derrico G.*, *Greco*, *supra*.

Thus, Defendants are clearly wrong when they claim that a statute must violate the separation of powers doctrine under *every conceivable set of facts* before it can be declared facially unconstitutional. But, even if Defendants were correct about the limited nature of a facial challenge based on separation of powers principles, their arguments would still fail because by wholly prohibiting a judge's mere consideration of a monetary component as a condition of pretrial release (725 ILCS 5/110-1.5), and also by prohibiting a judge from detaining any defendant more than 90 days regardless of the particular facts of the case (725 ILCS 5/110-6.1(i)), the pretrial release provisions of the Acts obviously "unduly encroach upon the judicial authority."

V. THE CIRCUIT COURT'S SEVERABILITY DETERMINATION WAS CORRECT.

Contrary to Defendants' characterization, the circuit court did not conclude that any individual constitutional defect in the detention provisions would necessarily require the invalidation of the pretrial release provisions as a whole. Def. Br. 56. Rather, the court

properly applied the Acts' severability provision in separating the pretrial release provisions of the Acts from the remaining provisions of the Acts following its determination that the pretrial release provisions are unconstitutional. The court's order identifies those specific provisions it determined are unconstitutional, C1678, V3 (citing P.A. 101-652 Section 10-255 and P.A. 102-1104 Section 70, which in turn list specific provisions of Criminal Code of 1963), and severed those provisions which address processes and procedures relating to pretrial release in the absence of monetary bail from the remainder of the Acts.

The court's determination is consistent with the structure of the Acts and severability principles. "It is a well-established canon of statutory construction that a statutory severability clause serves only to establish a presumption that the legislature intended for an invalid statutory provision to be severable." *People ex rel. Chicago Bar Ass'n v. State Board of Elections,* 136 Ill.2d 513, 532 (1990) (citing 2 N. Singer, *Sutherland on Statutory Construction* § 44.08, at 508 (Sands 4th ed. 1986)). Severability clauses do not conclusively establish such intent. *Id*. This Court "has frequently held that unconstitutional provisions of a statute were not severable from the remainder of the statute even though the statute itself contained a severability clause." *Chicago Bar Ass'n,* 136 Ill.2d 513 at 532 . To determine whether a provision is severable, the court considers "whether the valid and invalid provisions of the Act are 'so mutually connected with and dependent on each other, as conditions, considerations or compensations for each other, as to warrant the belief that the legislature intended them as a whole, and if all could not be carried into effect the legislature would not pass the residue independently . . ..'" *Kakos v.*

Butler, 2016 IL 120377, ¶ 32 (quoting *Fiorito v. Jones*, 39 Ill.2d 531, 540 (1968)). Provisions "are not severable if 'they are essentially and inseparably connected in substance." *Chicago Bar Ass'n,* 136 Ill. 2d at 533 (quoting *Fiorito*, 39 Ill.2d at 540).

The constitutional infirmities relating to Article I, Section 9 impact the entire structure and mechanism in the pretrial detention provisions of the Acts. The abolition of monetary bail, and the list of potentially nonbailable offenses setting forth the parameters as to which offenders are eligible to be detained pending trial, are at the heart of every pretrial release determination in the Acts. These remaining provisions cannot be individually extricated because they all are premised on a "pretrial release" system based on categories of offenses that deviate from the constitution's list of potentially nonbailable offenses and premised on the elimination of monetary bail. If the provision setting forth which offenses are and are not bailable is unconstitutional, how is a judge to render a determination as to the appropriate conditions of release and/or detention for a given offense?

Section 110-6.1, for example, is inextricably intertwined with the provision setting forth the overall standard governing pretrial release. Section 110-2, titled "Pretrial release," expressly relies on 110-6.1: "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." 725 ILCS 5/110-2. This introductory paragraph setting forth the overall standards governing pretrial release states:

> *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 convincing evidence that no condition or combination of conditions can reasonably ensure the effectuation of these goals*. 725 ILCS 5/110-2(e) (emphasis added).

Defendants do not offer any workable means for making the subsection-by-subsection severance determination they seem to suggest. Def. Br. 57. The elimination of monetary bail is inherently tied to the risk assessment used to determine the conditions of "pretrial release by nonmonetary means" that underlies the Acts' overall pretrial release provisions. As one of the sponsors stated in the brief discussion of H.B. 3563:

> [W]e are seeking to become the second state in America to eliminate cash bail. Many of us would believe that we have a system that is based on an individual being a threat to the community or a flight risk, but that's not the case. We actually have a system that is based on one's inability to pay. . . .And so, we usher in a new system that is based on verified risk assessments that we believe is a more fair system. C108.

Neither the provision abolishing monetary bail, nor the provision governing the offenses and conduct that can render an individual ineligible for pretrial release, can be excised from the remainder of the Acts' pretrial release provisions flowing from these premises. Therefore, the unconstitutional provisions of P.A. 101-652 and its amendments in P.A. 102-1104 are not severable from the remainder of the pretrial detention section of the Acts.

CONCLUSION

Plaintiffs respectfully urge this Court to affirm the judgment entered in the Kankakee County Circuit Court.

Respectfully submitted,

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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, is 14,848 words.

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OF THE APPENDIX

PROPOSED AMENDMENT

to the

CONSTITUTION OF ILLINOIS

THAT WILL BE SUBMITTED TO THE VOTERS

NOVEMBER 2, 1982

This folder includes

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PROPOSED AMENDMENT TO CONSTITUTION
EXPLANATION OF PROPOSED AMENDMENT
ARGUMENTS IN FAVOR OF PROPOSED AMENDMENT
ARGUMENTS AGAINST PROPOSED AMENDMENT
FORM OF BALLOT

Published in compliance with Statute

by

JIM EDGAR
Secretary of State

(Printed by Authority of the State of Illinois)
P.O. 31806
September 1982 — 6.5 million

To the Electors of the State of Illinois:

At the general election to be held on the 2nd day of November, 1982, a blue ballot will be given to you and you will be called upon in your sovereign capacity as citizens to adopt or reject the following proposed amendment to the Constitution of Illinois.

PROPOSED AMENDMENT TO SECTION 9 OF ARTICLE I
(Bail)

ARTICLE I
(Present Form)

SECTION 9. BAIL AND HABEAS CORPUS

All persons shall be bailable by sufficient sureties, except for capital offenses where the proof is evident or the presumption great. 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.

ARTICLE I
(Proposed Amendment)

(Proposed changes in the existing Constitutional provision are indicated by underscoring all new matter. This proposed amendment does not delete any existing matter.)

SECTION 9. BAIL AND HABEAS CORPUS

All persons shall be bailable by sufficient sureties, except for capital offenses and offenses for which a sentence of life imprisonment may be imposed as a consequence of conviction where the proof is evident or the presumption great. 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.

SCHEDULE

If approved by the electors, this Amendment to the Illinois Constitution shall take effect the next day following proclamation of the result of the vote.

EXPLANATION OF AMENDMENT
(See Form of Ballot on page 6)

ARGUMENTS IN FAVOR OF THE PROPOSED "BAIL" AMENDMENT

The proposed constitutional amendment should be adopted because:

**It will help ensure that persons charged with serious crimes do not avoid prosecution;

**It is an important step in protecting the public against dangerous persons who otherwise would be out on bail;

**In recognizing society's need for protection and justice it does not infringe upon the accused's presumption of innocence;

**It is the product of careful analysis and long hours of study.

ENSURING ATTENDANCE AT TRIAL

The purpose of bail is to secure an accused's attendance at trial while not unduly limiting his or her right to be free prior to conviction. The Illinois Constitution has a provision dealing with bail which dates back to 1818. That provision requires bail in every case except where an accused is charged with an offense which carries the death penalty where the proof is evident or the presumption great. In such cases the courts are given discretion to withhold bail. The reason the Constitution allows courts to deny pretrial bail to a person charged with an offense for which the death sentence might be imposed, is that a person, faced with such a prospect, and released on bail, might well leave the jurisdiction never to return for trial. This same reasoning supports the establishment of discretion in the courts to deny bail to a person who stands accused of a crime for which, upon conviction, he could be sentenced to life imprisonment. A life sentence may be imposed for a second conviction for murder, for the murder of more than one victim, for a murder committed in an exceptionally brutal or heinous manner or where certain other aggravating factors are present, or for a third conviction of certain serious felonies, including: murder, rape, deviate sexual assault, armed robbery, aggravated kidnapping, home invasion or certain very large volume drug offenses.

PROTECTING THE PUBLIC

Present law has proven inadequate to protect the public from criminal defendants awaiting trial. Under the present Constitution judges feel they have no choice but to grant bail to even the most dangerous criminals. This proposed amendment will give judges the power to deny bail to those whose past records indicate they pose so serious a threat to the public that if convicted they may spend the rest of their lives in prison. The amendment will complement efforts in recent years to increase the penalties for more serious crimes and to lengthen the sentences given to those who are repeat offenders.

THE PRESUMPTION OF INNOCENCE

Central to our system of justice is the presumption a defendant is innocent until proven guilty. That presumption, however, has never been interpreted to give defendants the right to bail in all cases. Indeed, the opposite is true. The law in Illinois has always been that persons charged with capital offenses need not be granted bail where the proof is evident or the presumption is great. By assuring appearance at trial as well as protecting society against dangerous persons, the proposed amendment is wholly consistent with our ideas of justice in striking a balance between defendants' rights and society's rights. The proposed amendment would not deny bail to all defendants but only to those who have the greatest incentive to flee prosecution - persons facing life in prison in cases where the proof is evident or the presumption great.

THE AMENDMENT IS THE PRODUCT OF LONG HOURS OF STUDY

The proposed amendment is the product of long hours of study and careful analysis by a committee of the Illinois State Bar Association. It has already been passed by both houses of the Illinois legislature. In the Senate the vote in its favor was unanimous - - 54 to 0; and in the House of Representatives it was adopted 155 to 1. These results demonstrate almost the entire legislature's estimate of the need for this amendment and reflect its public acceptance.

ARGUMENTS AGAINST THE PROPOSED "BAIL" AMENDMENT

The proposed amendment regarding bail should be rejected because:

**It erodes the presumption of innocence which our laws accord to all defendants;

**It uses criteria irrelevant to a proper decision regarding bail;

**It will not have any significant effect upon serious crime;

**There are more effective means of curbing crimes committed by persons on bail.

PRESUMPTION OF INNOCENCE

Under both the United States Constitution and the Constitution of the State of Illinois, accused persons awaiting trial are presumed to be innocent of criminal charges pending against them. As a result, they are allowed to remain at liberty, before trial, to continue to lead normal lives, to earn money to support their families, to pay for legal counsel, and to prepare their defense to pending charges.

The proposed amendment will violate these fundamental constitutional protections. The proposed amendment will interfere with the ability of defendants accused of crimes carrying a penalty of life imprisonment to support their families, to hire attorneys, and to assist in defending themselves. Furthermore, the proposed amendment will unlawfully and illegally reverse the time-honored presumption, fundamental to our jurisprudence, that those accused of crime are cloaked with a presumption of innocence.

PROPER CONSIDERATIONS IN SETTING BAIL

The purpose of bail is to assure the presence of defendants at trial. Under our federal and State Constitutions, bail may not be excessive nor may it be denied arbitrarily.

A court may deny bail when a judge's consideration of the accused's suitability for pretrial release leads to the conclusion that that defendant is not likely to appear at trial, is likely to intimidate witnesses, or is likely to otherwise interfere with the workings of our system of justice.

The determination by a court regarding bail is properly based upon consideration of the accused's suitability for pretrial release, measured by such factors as family and community ties, reputation for honesty, job history, and prior criminal record. The proposed amendment instead improperly focuses on the crime charged. Under this amendment, an Illinois judge would be expected to deny bail to an accused even if the judge were certain, based on the traditional considerations, that the accused would appear for trial and would not interfere with the course of justice.

The right to bail has existed in Illinois since this State entered the Union; it existed here even earlier under the Northwest Ordinance of 1787. For almost 200 years the right to bail has existed in Illinois with one exception - for crimes carrying the death penalty. This exception is based on the assumption that people facing execution may well not appear for trial. Proponents of the proposed amendment can show no evidence that those accused of serious, but non-capital, crimes are unlikely to appear for trial. Experience demonstrates that an overwhelming portion of accused persons released on bail appear for trial - regardless of the severity of the punishment they face if convicted. Therefore, proponents of this amendment fail to show the need to change an almost two-century-old provision of our laws.

THIS MEASURE IS NOT A SERIOUS ANTI-CRIME PROPOSAL

Those convicted of horrible crimes deserve significant punishment. Many of those accused of the most serious crimes currently are not admitted to bail, because of the use by judges of the proper bail criteria. Consequently, this proposed amendment will have little effect on crime. Such a small effect is not worth the price of undermining the fundamental constitutional rights inherent in our bail system.

EFFECTIVE ANTI-CRIME MEASURES ARE AVAILABLE

Providing speedy trials would be a more effective anti-crime measure. Speedy trials consistent with protections of the rights of the accused are possible - if our legislators will make clear that they want to provide speedy fair trials and will allocate the resources necessary to bring about that end.

Under Illinois criminal law, numerous factors may be used by a judge to determine the proper punishments to impose on convicted persons. The legislature could add as an aggravating factor the commission of a crime while on bail for another charge, when both lead to convictions.

This proposed amendment represents an erosion of our liberties regarding bail and the presumption of innocence. It would deny judges the opportunity to employ traditional considerations in deciding on bail for those accused of serious crimes. If adopted, the proposed amendment will have no measurable effect on crime. This proposed amendment is unnecessary, essentially useless, and a diversion from serious anti-crime measures.

FORM OF BALLOT

PROPOSED AMENDMENT TO SECTION 9 OF ARTICLE I

(Bail)

Explanation of Proposed Amendment

The proposed amendment deals with the category of persons who may be denied bail under the Illinois Constitution. The present constitutional provision permits denial of bail only to persons charged with offenses punishable by death where the proof is evident or the presumption is great. If the People of Illinois adopt this proposed amendment, persons charged with offenses for which a sentence of life imprisonment may be imposed may also be denied bail where the proof is evident or the presumption is great.

Place an X in blank opposite "YES" or "NO" to indicate your choice.

For the proposed amendment to Section 9 of Article I of the Illinois Constitution to permit a court to deny bail for offenses where the proof is evident or the presumption great and a sentence of life imprisonment may be imposed as a consequence of conviction.	YES	
	NO	

* * * * *

CAPITOL BUILDING

SPRINGFIELD, ILLINOIS

OFFICE OF THE SECRETARY OF STATE

I, JIM EDGAR, Secretary of State of the State of Illinois, do hereby certify that the foregoing contains a true and correct copy of the existing form of the constitutional provision, the proposed amended form of the constitutional provision, the explanation of the proposed amendment, the arguments in favor of the proposed amendment, the arguments against the proposed amendment and the form in which said amendment will appear upon a separate blue ballot pursuant to Senate Joint Resolution Constitutional Amendment No. 36 and Senate Joint Resolution No. 108 of the Eighty-second General Assembly, the originals of which are on file in this office.

IN WITNESS WHEREOF, I hereunto set my hand and affix the Great Seal of the State of Illinois. Done at my office in the Capitol Building in the City of Springfield, this 15th day of July A.D. 1982.

Jim Edgar

Secretary of State

(SEAL)

PROPOSED AMENDMENTS
to the
CONSTITUTION OF ILLINOIS

THAT WILL BE SUBMITTED TO THE VOTERS
NOVEMBER 4, 1986

This pamphlet includes

PRESENT FORM OF CONSTITUTION
PROPOSED AMENDMENTS TO CONSTITUTION
EXPLANATIONS OF PROPOSED AMENDMENTS
ARGUMENTS IN FAVOR OF PROPOSED AMENDMENTS
ARGUMENTS AGAINST PROPOSED AMENDMENTS
FORM OF BALLOT

Published in compliance with Statute
by
JIM EDGAR
Secretary of State

A008

To the Electors of the State of Illinois:

At the general election to be held on the 4th day of November, 1986, you will be called upon in your capacity as citizens to adopt or reject the following proposed amendments to the Constitution of Illinois.

PROPOSED AMENDMENT TO SECTION 9 OF ARTICLE I
(Bail)

ARTICLE I
(Present Form)

SECTION 9. BAIL AND HABEAS CORPUS

All persons shall be bailable by sufficient sureties, except for capital offenses and offenses for which a sentence of life imprisonment may be imposed as a consequence of conviction where the proof is evident or the presumption great. 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.

ARTICLE I
(Proposed Amendment)

(Proposed changes in the existing constitutional provision are indicated by underscoring all new matter and by crossing with a line all matter which is to be omitted.)

SECTION 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; ~~and~~ 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 ~~where the proof is evident or the presumption great~~. 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.

SCHEDULE

If approved by the voters of this State, this Amendment shall take effect one day following the proclamation of the results of the votes on this referendum.

EXPLANATION OF AMENDMENT

(See Form of Ballot on page 7)

ARGUMENTS IN FAVOR OF THE PROPOSED "BAIL" AMENDMENT

The proposed constitutional amendment should be adopted because:

** Current Illinois law permits some of the most dangerous criminal defendants to be released on bail;

** This amendment is an important step in protecting the public against persons who pose a serious threat to others;

** Each defendant's rights are protected in that there must be a court hearing to decide whether release would be a threat to the public; and

** Judges in some states and in the federal courts already have the power to deny bail to persons charged with serious crimes.

Current Law Inadequate

As now stated, the Illinois Constitution makes it clear that all persons are allowed bail, except those charged with an offense where the death penalty or where life imprisonment may be imposed, providing that the proof is evident and the presumption great that the person committed the offense.

As a result, some defendants charged with serious and violent crimes can be released on bail even though they might pose a serious threat to the community. These crimes include murder when the death penalty is not available, criminal sexual assault and armed robbery. In the case of these and other serious offenses, the People of Illinois need to give the courts the authority to deny bail.

The Proposed Amendment Better Protects The Public

Under this proposed constitutional amendment, the rights of the people to their personal safety would be enhanced. While maintaining the presumption of innocence, there is a need to balance the rights of an accused person to be free on bail against the right of the public to receive protection from defendants who pose a substantial threat to others if released.

The existing constitutional bail provisions are too restrictive. What is needed now, in Illinois, is for the people to consider broadening these provisions. This amendment would add other felony offenses for which judges may deny bail. The additional offenses include murder where neither the death penalty nor life imprisonment may be imposed, attempted murder, armed robbery, aggravated arson, aggravated kidnapping, heinous battery, sale or delivery of a controlled substance on or near school property, calculated criminal cannabis conspiracy, residential burglary, and criminal sexual assault cases not involving family members. Persons who have previously been convicted of certain serious felonies and who are again charged with such crimes as robbery, burglary, kidnapping and arson could also be denied bail under this amendment.

The public policy of Illinois requires that certain serious offenses carry a required prison sentence. This proposed amendment will give judges the power to deny bail in these serious cases, where the evidence indicates that there is a substantial threat to the public.

Court Hearings And State Reimbursement For Costs Are Required

The proposed amendment is not a sweeping authorization to withhold bail. Rather, it is a precise authorization for the courts to deny bail for a specific set of serious offenses.

In each case the defendant's right to a fair hearing is assured. The judge must decide that the proof is evident that the person charged committed the offense and that release would represent a real and immediate threat to the safety of any person.

It should be clearly understood that this amendment will not interfere with the existing law for releasing nonviolent defendants who pose little risk or threat to the community. This beneficial aspect of current bail law will be retained.

Therefore, the rights of the defendant will be adequately balanced with the rights of the public.

State reimbursement of local government is required only for additional expenses of holding persons who otherwise would have been released from jail prior to trial. Therefore, the cost of this additional protection should be minimal.

Other Courts Have This Power

Other states and the federal government have recognized this serious problem and have enacted laws to address the issue. Under federal law, the denial of bail is in part tied to the dangerousness of the defendant and the list of offenses for which bail may be denied is far more extensive. In some other states, courts have the authority to deny bail in similar circumstances. This proposed amendment puts Illinois in line with the federal government and other states that authorize the denial of bail to a broad range of serious cases.

Summary

Without this amendment, judges must continue to consider bail for many serious offenses, even though a threat to the public is recognized. The revolving door policy of defendants going in and out of jail in a day or two must be halted. We owe it to ourselves and our neighbors to take this important step.

ARGUMENTS AGAINST THE PROPOSED "BAIL" AMENDMENT

The proposed amendment regarding bail should be rejected because:

** It will increase the costs of government and likely increase taxes without adding to the courts' current ability to protect the public;

** The amendment misleads the People of Illinois by implying that judges currently are unable to protect society from dangerous people;

** This measure is not an effective anti-crime proposal; and

** It erodes the presumption of innocence accorded to all persons accused of crimes.

Increased Costs And Taxes For Illinois Taxpayers

The proposed amendment would require the State to reimburse local governments for any costs that they incur as a result of the denial of bail. There is, however, no explanation as to what costs are reimbursable and no limit on the amount of those costs. The proposed amendment is overly broad in this regard and consequently could result in excessive costs to the public.

Under the proposed amendment, for example, the State will be required to reimburse local governments for incarcerating persons who are denied bail while awaiting trial and might be required to reimburse local governments for the cost of the salaries of prosecutors, bailiffs and public defenders for the hearings that result in denial of bail. Because many more people accused of crimes could be denied bail under this amendment, the costs for detention are likely to increase significantly. In addition, local jails are already overcrowded and, thus, more space will have to be found. This proposed amendment might be construed as requiring the State to reimburse a local government for the cost of building these new jails. These new expenses will almost certainly result in higher income and sales taxes for Illinois taxpayers.

The Amendment Misleads The People Of Illinois By Implying That Judges Currently Are Unable To Protect Society

The proposed amendment authorizes the denial of bail for those persons accused of crimes for which probation is not available, after a judge determines that the release of the person would pose a threat to the physical safety of any person.

Traditionally, the right to bail could only be denied if a judge determined that the defendant would not appear at trial. However, our laws were recently changed to allow a judge to consider the safety of persons in the community in determining the amount or conditions of a defendant's bail. A potentially dangerous defendant may be assessed high bail.

Therefore, Illinois courts already have the means to protect society.

This Measure Is Not An Effective Anti-Crime Proposal

Under the proposed amendment, a judge could deny bail for non-probationable offenses after determining that the proof is evident that the person charged committed the offense and that the accused poses a threat to any person. However, there are many serious and violent crimes (such as voluntary manslaughter, kidnapping, child abduction, arson and criminal sexual assault against a member of one's family) to which the proposed amendment would not apply. Since the proposed amendment does not allow judges to deny bail for these offenses, it does not rationally address the perceived problem of crimes being committed by accused persons while out on bail.

This proposal will result in an expansion or restriction of a basic constitutional right at the whim of the General Assembly. Under the proposed amendment, the number of crimes for which bail can be denied will be increased or decreased merely by the General Assembly's action in changing the authorized sentence for those crimes, without having to seek voters' approval for the change. Constitutional provisions should not be subject to this kind of manipulation.

Furthermore, the proposed amendment would allow a denial of bail when a judge determines that the release of the accused would pose a threat to the safety of any person. Conceivably, a judge could deny bail to a person even though only the defendant's safety would be jeopardized by release and without hearing any evidence whatsoever that the person poses a threat to any member of the community.

It Erodes The Presumption of Innocence Accorded To All Persons Accused Of Crimes

Under both the United States Constitution and the Illinois Constitution, everyone accused of crime is presumed to be innocent until proved guilty. This is a fundamental protection all Americans have enjoyed since the birth of our nation. This principle allows people who have merely been accused of a crime, but who have not been tried, to continue to support their families. If they are innocent, but were held in jail before trial, they and their families would suffer unjustly.

The reason a judge sets bail is to assure that the accused will show up for trial. If the accused person does not show up, he forfeits his bail money.

By curtailing the right to bail, the proposed amendment seriously undermines the presumption of "innocent until proved guilty".

In addition, the amendment does not specify whether it is the prosecutor or the defendant who must produce evidence regarding the threat or lack of threat to the community which the defendant may pose if released. Bail hearings usually are conducted shortly after arrest – before a defendant has a constitutional right to be assisted in court by an attorney. Therefore, a defendant could be ordered held without bail without having an opportunity to present the best possible evidence to the court.

Summary

A "no" vote for this amendment will ensure that a basic constitutional right granted to all Illinois citizens is not abrogated by a proposal that might increase taxes, will not effectively protect citizens of this State and will ultimately erode the presumption of innocence guaranteed to all Illinois citizens.

FORM OF BALLOT

PROPOSED AMENDMENT TO SECTION 9 OF ARTICLE I
(Bail)

Explanation of Proposed Amendment

The proposed amendment deals with the category of persons who may be denied bail under the Illinois Constitution. The present constitutional provision permits denial of bail only for persons charged with offenses punishable by death or life imprisonment, and only where the proof is evident or the presumption is great that the person charged committed the crime. If the People of Illinois adopt this proposed amendment, judges would also be empowered to deny bail to persons charged with felonies that carry a mandatory sentence of imprisonment upon conviction where: (1) the proof is evident or the presumption great that the person charged committed the crime; and (2) the court, after a hearing, finds that the defendant poses a real and present threat to the safety of any person. The proposed amendment also requires the State to reimburse any unit of local government for additional costs incurred as a result of the denial of bail under this provision. The denial of bail means the defendant would not be released from custody prior to trial.

Place an X in the blank opposite "YES" or "NO" to indicate your choice.

For the proposed amendment to Section 9 of Article I of the Illinois Constitution which will permit a court to deny bail: a) to persons charged with felony offenses if conviction would carry a mandatory sentence of imprisonment; b) when the proof is evident and the presumption great; and c) if the court, after a hearing, finds that the defendant poses a real and present threat to the safety of any person. Further, the amendment would require the State to reimburse a unit of local government for costs incurred as a result of this provision.	YES	
	NO	

* * * *

PROPOSED AMENDMENT TO SECTION 6 OF ARTICLE IX
(Veterans' Property Tax Exemption)

ARTICLE IX
(Present Form)

SECTION 6. EXEMPTIONS FROM PROPERTY TAXATION

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes. The General Assembly by law may grant homestead exemptions or rent credits.

ARTICLE IX
(Proposed Amendment)

(Proposed changes in the existing constitutional provision are indicated by underscoring all new matter. This proposed amendment does not delete any existing matter.)

SECTION 6. EXEMPTIONS FROM PROPERTY TAXATION

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for veterans' organizations, agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes. The General Assembly by law may grant homestead exemptions or rent credits.

The loss in revenue incurred by a unit of local government as a result of the exemption from taxation of property used exclusively for veterans' organizations shall be reimbursed by the State to the unit of local government.

Schedule

This Constitutional Amendment shall take effect upon adoption by the electors of this State.

EXPLANATION OF AMENDMENT
(See Form of Ballot on page 10)

ARGUMENTS IN FAVOR OF THE PROPOSED "VETERANS' PROPERTY TAX EXEMPTION" AMENDMENT

Veterans' organizations are valuable assets to communities throughout the State of Illinois. These groups annually conduct numerous activities to honor America's war heroes. They provide aid to indigent veterans and their families, support homes for veterans and their children, and annually decorate the graves of thousands of American veterans. In addition, veterans' organizations provide educational and summer-camp scholarships for children, donate medical equipment to hospitals, sponsor athletic programs, and promote the scouting movement. In short, through their facilities and services, these organizations have become an important part of local communities throughout Illinois.

Unfortunately, monetary difficulties threaten the continued existence of the State's veterans' organizations. Over the past few years, approximately one-half of the veterans' post homes in Illinois have closed their doors due to rising costs. As these posts vanish in your local community, so do the

services which they render. Adoption of this proposal would help reverse this disturbing trend.

In addition, the proposed amendment would require the State to reimburse local governments for any revenue lost as a result of this exemption. This means that there would be no increase in property taxes and no disruption of local government functions. Moreover, the cost to the State is expected to be very small because little property is involved.

The proposed amendment offers the General Assembly an opportunity to consider whether it is appropriate to grant tax exemptions for property used exclusively for veterans' organizations in recognition of their many contributions to our State. It must be remembered that many members of these organizations served our country in time of war. They have established post homes and other facilities to continue their service to our country and community in time of peace. Your "yes" vote on this amendment represents one small way of saying "thank you" for the voluntary contributions that these organizations offer.

ARGUMENTS AGAINST THE PROPOSED "VETERANS' PROPERTY TAX EXEMPTION" AMENDMENT

The proposed amendment would drain more money from the State's funds. Schools, roads and other worthwhile projects might suffer as a result. At a time of growing deficits and rising costs, it makes no sense to narrow the tax base by granting additional exemptions.

The proposed amendment would require the State to reimburse all units of local government for revenues lost as a result of this new property tax exemption. To replace these lost funds, the State may find it necessary to increase income or sales taxes, or both.

The proposed amendment discriminates against other organizations which also provide valuable civic and social services to the people of Illinois. Under the proposed amendment, property owned by many social and fraternal organizations would not qualify for tax exemptions. If this amendment is approved, these organizations may also demand exemption from property taxation. Their argument may be difficult to resist; once the door to tax exemption is opened, it may be difficult to close. As the list of exempt properties grow, so too may the tax burden on Illinois taxpayers.

The proposed amendment is also vague. Under the amendment it is difficult to identify what constitutes a property used exclusively by veterans' organizations. This vagueness makes it very difficult to identify the property that will be affected and to estimate how much property tax revenue may be lost. If an overly broad interpretation of the language is adopted, many undeserving organizations may ultimately qualify for tax exempt status.

Veterans' organizations certainly serve praiseworthy functions, but they are not always charitable in nature. Some groups use their property primarily as a social center for members. Veterans' posts are frequently rented out for weddings, bingo and other private social activities. Government should not subsidize these activities through property tax exemptions. Veterans' organizations should continue to look to their membership and private donations for their support.

For all of these reasons, this proposed amendment to the Illinois Constitution should be defeated.

FORM OF BALLOT

PROPOSED AMENDMENT TO SECTION 6 OF ARTICLE IX
(Veterans' Property Tax Exemption)

Explanation of Proposed Amendment

This proposed Amendment to Article IX, Section 6 of the Illinois Constitution would authorize the General Assembly to pass legislation that exempts from taxation property used exclusively for veterans' organizations.

The proposed amendment would require the State to reimburse a unit of local government for the loss in revenue incurred by such unit of local government as a result of the property tax exemption for veterans' organizations.

The Constitution now authorizes property tax exemptions only for:

* State property;
* Local government and school district property;
* Property used exclusively for agricultural and horticultural societies; and
* Property used exclusively for school, religious, cemetery or charitable purposes.

Place an X in the blank opposite "YES" or "NO" to indicate your choice.

For the proposed amendment to Section 6 of Article IX of the Constitution which will authorize property tax exemptions for property used exclusively for veterans' organizations and require the State to reimburse units of local government for the loss in revenue incurred as a result of such property tax exemptions for veterans' organizations.	YES	
	NO	

CAPITOL BUILDING
SPRINGFIELD, ILLINOIS
OFFICE OF THE SECRETARY OF STATE

I, Jim Edgar, Secretary of State of the State of Illinois, do hereby certify that the foregoing contains a true and correct copy of the existing form of the constitutional provisions, the proposed amended form of the constitutional provisions, the explanations of the proposed amendments, the arguments in favor of the proposed amendments, the arguments against the proposed amendments and the form in which said amendments will appear upon the ballot at the November 4, 1986, General Election pursuant to Senate Joint Constitutional Amendment Resolutions 22 and 11 and Senate Joint Resolutions 179 and 180 the originals of which are on file in this office.

(SEAL)

IN WITNESS WHEREOF, I hereunto set my hand and affix the Great Seal of the State of Illinois. Done at my office in the Capitol Building in the City of Springfield, this 9th day of July A.D. 1986.

Jim Edgar

Secretary of State

State law requires a copy of this pamphlet be mailed to every registered voter.

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(Printed by Authority of the State of Illinois)
P.O. 54687
September 1986, 7 million
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PROPOSED AMENDMENTS AND ADDITION TO THE ILLINOIS CONSTITUTION

That will be submitted to the voters
November 4, 2014

This pamphlet includes
EXPLANATION OF THE PROPOSED AMENDMENTS;
ARGUMENTS IN FAVOR OF THE AMENDMENTS;
ARGUMENTS AGAINST THE AMENDMENTS;
FORM OF BALLOT

Published as set forth in compliance with the Illinois Constitutional Amendment Act (5 ILCS 20) by:

Jesse White • Secretary of State

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To the Electors of the State of Illinois:

At the General Election to be held on the 4th day of November, 2014, you will be called upon to adopt or reject the following proposed amendments to the Illinois Constitution. As required by law, I provide you with the following information.

JESSE WHITE
Secretary of State

The purpose of a state constitution is to establish a structure for government and laws. There are three ways to initiate change to the Illinois Constitution: (1) a constitutional convention may propose changes to any part; (2) the General Assembly may propose changes to any part; or (3) a petition initiative may propose amendments limited to structural and procedural subjects contained in the Legislative Article. The people of Illinois must approve any changes to the Constitution before they become effective.

PROPOSED AMENDMENT TO SECTION 8.1 OF ARTICLE I OF THE ILLINOIS CONSTITUTION

ARTICLE I – BILL OF RIGHTS

SECTION 8.1. CRIME VICTIMS' ~~VICTIM'S~~ RIGHTS.

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

(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) ~~(2)~~ The right to timely notification of all court proceedings.

(4) ~~(3)~~ The right to communicate with the prosecution.

(5) ~~(4)~~ 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. ~~make a statement to the court at sentencing.~~

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

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

(8) ~~(7)~~ 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) ~~(8)~~ 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 tes timony at the trial.

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

(12) ~~(10)~~ 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 re quest. 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, du ties, and responsibilities of the prosecuting attorney ~~The General Assembly may pro vide by law for the enforcement of this Section~~.

(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, ~~or in any law enacted under~~

(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 ~~appellate relief in any criminal case~~.

EXPLANATION

The Constitution sets forth substantial rights for crime victims. The proposed amend ment expands certain current rights:

1) Victims are currently entitled to fairness and respect throughout the criminal justice process. The amendment would also provide that they shall be protected from harass ment, intimidation and abuse.
2) Victims currently can make a statement to the court when a criminal defendant is sen tenced to punishment. The amendment would allow a victim to be heard at any pro ceeding that involves the victim's rights, and any proceeding involving a plea agreement, release of the defendant or convicted individual, or sentencing.
3) Victims may obtain information about conviction, sentencing, imprisonment or re lease. The amendment would require prosecutors and the court to notify victims of those events before they happen.

The amendment would also grant additional rights to crime victims:

1) A victim would have a right to formal notice and a hearing before the court rules on any request for access to the victim's information which is privileged or confidential information.

2) A victim would have the right to have the judge consider the victim's safety and the safety of his or her family before deciding whether to release a criminal defendant, setting the amount of bail to be paid before release, or setting conditions of release after arrest or conviction.
3) The victim would have the right to assert his or her rights in any court with jurisdic tion over the criminal case, but would not have the same rights as the prosecutor or the criminal defendant and the court could not appoint an attorney for the victim at tax payer expense.

The proposed amendment would not alter the powers, duties or responsibilities of the prosecutor. Further, a criminal defendant would not be able to challenge his or her convic tion on the basis of a failure to follow these provisions.

Arguments in Favor of the Proposed Amendment

Victims of violent crimes deserve stronger protections under the Constitution than are currently provided. Victims should not have to fear intimidation and harassment when they participate in the criminal justice process. Judges must consider a victim's safety when set ting bail, deciding whether a criminal defendant should be released during his or her trial, or sentencing a convicted defendant.

Further, victims should also be allowed to object when a defendant or a defendant's attorney attempts to obtain information about the victim that is confidential or private, like the victim's mental health records or personal journals. A judge would still be able to require a victim to turn those records or communications over to the court, but the amendment would allow the victim to object if he or she feels that a privacy violation would result.

A constitutional amendment is necessary because victims need the ability to enforce their rights. This amendment would provide that judges and prosecutors have a constitu tional duty to keep the victim informed of developments in the case, and to allow the vic tim to participate when appropriate.

Arguments Against the Proposed Amendment

The proposed amendment would disrupt the criminal justice process and impede the work of prosecutors. Our criminal justice system tasks prosecutors, not victims, with pun ishing criminals and restoring justice after a crime is committed. Victims and their attorneys may attempt to take over that important role, second guessing prosecutors and objecting to decisions made by judges.

Victims already have a right to be present and informed during the process, and Illinois already provides extensive rights to crime victims under the Rights of Crime Victims and Witnesses Act.

The proposed amendment threatens the rights of criminal defendants, both the guilty and the innocent. Our system gives criminal defendants the right to access information, documents and records that could prove their innocence; however, the amendment would give a victim the opportunity to prevent disclosure of certain materials or documents that might prove the defendant's innocence.

FORM OF BALLOT

Proposed Amendment to the 1970 Illinois Constitution

Explanation of Amendment

The proposed amendment makes changes to Section 8.1 of Article I of the Illinois Constitution, the Crime Victims' Bill of Rights. The proposed amendment would expand certain rights already granted to crime victims in Illinois, and give crime victims the abil ity to enforce their rights in a court of law. You are asked to decide whether the proposed amendment should become part of the Illinois Constitution.

YES For the proposed amendment–
--- of Section 8.1 of Article I
NO of the Illinois Constitution.

To the Electors of the State of Illinois:

The purpose of a state constitution is to establish a structure for government and laws. There are three ways to initiate change to the Illinois Constitution: (1) a constitutional convention may propose changes to any part; (2) the General Assembly may propose changes to any part; or (3) a petition initiative may propose amendments limited to structural and procedural subjects contained in the Legislative Article. The people of Illinois must approve any changes to the Constitution before they become effective.

The proposed amendment adds a new section to the Suffrage and Elections Article of the Illinois Constitution. The section would ensure no person could be denied the right to reg ister to vote or cast a ballot based on his or her race, color, ethnicity, status as a member of a language minority, national origin, religion, sex, sexual orientation, or income. At the gen eral election to be held on November 4, 2014, you will be called upon to decide whether the proposed amendment should become part of the Illinois Constitution.

PROPOSED AMENDMENT TO ADD SECTION 8 TO ARTICLE III OF THE ILLINOIS CONSTITUTION

ARTICLE III – SUFFRAGE AND ELECTIONS

SECTION 8. VOTER DISCRIMINATION

No person shall be denied the right to register to vote or to cast a ballot in an election based on race, color, ethnicity, status as a member of a language minority, national origin, religion, sex, sexual orientation, or income.

EXPLANATION

The proposed amendment would prohibit any law or procedure that intentionally discrim inates or has an unequal effect upon the right of a person to register to vote or cast a ballot based on the voter's race, color, ethnicity, status as a member of a language minority, na tional origin, religion, sex, sexual orientation, or income.

The proposed amendment does not change the requirements for voting. A voter must still be a citizen of the United States, a permanent resident of Illinois for more than 30 days, and be 18 years of age.

Arguments in Favor of the Proposed Amendment

The proposed amendment is a demonstration that the people of Illinois believe all eligible Illinois citizens have a fundamental right to vote, and that laws and regulations that seek to prohibit eligible Illinois citizens from voting in an election should not be tolerated in a civil society. Under the amendment, any law or procedure that has a disparate impact upon the ability of a person to register to vote or cast a ballot based on the voter's race, color, ethnicity, status as a member of a language minority, national origin, religion, sex, sex ual orientation, or income would be subject to strict judicial scrutiny.

Arguments Against the Proposed Amendment

This amendment is not necessary. Many of these protections are already provided by federal law. The proponents have not identified any instances of voter discrimination in Illinois that would justify the creation of a State cause of action. The proposed amendment will only serve to increase litigation.

FORM OF BALLOT

Proposed Amendment to the 1970 Illinois Constitution

Explanation of Amendment

The proposed amendment adds a new section to the Suffrage and Elections Article of the Illinois Constitution. The proposed amendment would prohibit any law that disproportion ately affects the rights of eligible Illinois citizens to register to vote or cast a ballot based on the voter's race, color, ethnicity, status as a member of a language minority, national ori gin, religion, sex, sexual orientation, or income. You are asked to decide whether the pro posed amendment should become part of the Illinois Constitution.

YES For the proposed addition–
--- of Section 8 to Article III
NO of the Illinois Constitution.

CAPITOL BUILDING
SPRINGFIELD, ILLINOIS
OFFICE OF THE SECRETARY OF STATE

I, Jesse White, Secretary of the State of Illinois, do hereby certify that the foregoing is a true copy of the Proposed Amendments, the Explanation of the Proposed Amendments, Arguments in Favor of the Amendments and Arguments Against the Amendments and a true copy of the Form of Ballot for this call as the regularly scheduled general election on Tuesday, November 4, 2014, as set forth in compliance with the Illinois Constitutional Amendment Act.

IN WITNESS WHEREOF, I hereunto set my hand and affix the Great Seal of the State of Illinois, Done in the City of Springfield, this 27th day of June, 2014.

Jesse White

Jesse White
Secretary of State

These voter information materials are available in written format in English, Chinese, Polish, Hindi and Spanish, and Braille and in audio format in English. For more information visit www.cyberdriveillinois.com or write the Secretary of State's office at 111 East Monroe Street, Springfield, IL 62756.

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Enforcement of Crime Victims' Rights

A HANDBOOK FOR THE PROSECUTION TEAM AND ADVOCATES

Enforcement of Crime Victims' Rights

A HANDBOOK FOR PROSECUTORS AND ADVOCATES

Contents

Standing to Assert a Victim's Constitutional and Statutory Rights

The Victim

Article I, Section 8.1(b) of the Illinois Constitution and Section 4.5(c-5)(3) of the Rights of Crime Victims and Witnesses Act[21] expressly give the victim standing to assert the victim's constitutional and statutory rights in any court exercising jurisdiction over the criminal case, including trial and appellate courts. The victim's standing is limited to the assertion and enforcement of the victim's rights.

The prosecuting attorney and the victim's retained attorney may assert the victim's rights on behalf of the victim in the criminal case.[22] Section 4.5(c-5)(4) places the primary responsibility to assert and enforce a victim's right on the prosecuting attorney.[23]

The Defendant

Article I, Section 8.1(b) of the Illinois Constitution and Section 4.5(c-5)(3) of the Rights of Crime Victims and Witnesses Act [725 ILCS 120/4.5(c-5)(3)] expressly deny the defendant standing to assert or seek enforcement of the rights of a victim. Nor can the defendant seek a remedy for a violation of a victim's right.

[21] 725 ILCS 120/4.5(c-5)(3).
[22] 725 ILCS 120/4.5(c-5) (3).
[23] See "Procedure for Asserting and Enforcing Rights" on page 20.

the court proceeding, the court cannot: (1) rule on any substantive issue that was to be considered at the proceeding, (2) accept a plea or (3) impose a sentence. The court must continue the proceeding for the time necessary to notify the victim of the time, place and nature of the court proceeding. 725 ILCS 120/4.5(c-5)(1) and (10).

The time between court proceedings shall not be attributable to the State under Section 103-5 of the Code of Criminal Procedure of 1963. 725 ILCS 120/4.5(c-5) (10).

Example: The victim has asserted the right to notice of court proceedings and the right to be heard. The victim is notified of a status hearing to be held in one week. The victim decides not to take off work to attend the status hearing. At the start of the hearing, defense counsel informs the court that the defendant has accepted the plea offer and wants to enter his plea. At this point, the prosecuting attorney should object to going forward with a change of plea because the victim was told the proceeding was a status hearing, not a change of plea. The prosecuting attorney should request a hearing be scheduled at least several days out so the victim can be notified and arrange to attend the proceeding and be heard at the change of plea hearing.

General Procedures for the Assertion and Enforcement of Victims' Rights

Section 4.5(c-5)(4) of the Rights of Crime Victims and Witnesses Act sets forth the procedure governing the assertion and enforcement of victims' rights.[65] The law places primary responsibility on the prosecuting attorney to assert the victim's rights. The victim or the victim's retained attorney does not file a pleading or argue an issue unless the prosecuting attorney refuses to assert the victim's right or the court rejects the prosecuting attorney's assertion or request for enforcement of the right.

The Prosecuting Attorney Initially Asserts a Right or Seeks Enforcement

The prosecuting attorney asserts the victim's constitutional and statutory rights on behalf of the victim. The prosecuting attorney should consult with the victim and, if the victim has retained counsel, the victim's attorney about the assertion and enforcement of the victim's rights.

The prosecuting attorney asserts a victim's right by filing a motion or by orally asserting the right or requesting enforcement in open court. The prosecuting attorney's assertion in open court must take place outside the presence of the jury. If the prosecuting attorney asserts the victim's right, the victim and the victim's attorney do not file a motion or make an oral assertion in court.[66]

Example: The victim checked all of the rights on the written notice. Defense counsel files a motion to subpoena the victim's counseling records from the therapist the victim began seeing after the crime. The prosecuting attorney decides that he will assert the victim's right to be heard and files a written opposition to the motion. If the victim has retained an attorney, the victim's attorney may provide information and discuss legal responses to the motion with the prosecuting attorney, but the

[65] 725 ILCS 120/4.5(c- 5)(4).
[66] 725 ILCS 120/4.5(c-5)(4)(A).

Time Standards for Case Closure in the Illinois Trial Courts
Effective July 1, 2022

Family/Juvenile Categories

Case Type/Category	% Complete	Time in Months to Completion	Time in Days to Completion	Notes
DC	75%	9 Months	274 Days	Date of Filing to Final Order/Judgment (Case Closed per 1/1/22 RKM)
	90%	15 Months	457 Days	
	98%	18 Months	548 Days	
DN	75%	9 Months	274 Days	Date of Filing to Final Order/Judgment (Case Closed per 1/1/22 RKM)
	90%	12 Months	365 Days	
	98%	15 Months	457 Days	
JD	90%	3 Months	91 Days	Date of Filing to Disposition (Case Closed per 1/1/22 RKM)
	98%	6 Months	183 Days	
JA	75%	6 Months	183 Days	Date of Filing of the TPR or Final Order/Judgment (Case Closed per 1/1/22 RKM)
	90%	15 Months	457 Days	
	98%	24 Months	731 Days	
FA	75%	9 Months	274 Days	Custody & Paternity; Date of Filing to Final Order/Judgment (Case Closed per 1/1/22 RKM)
	90%	15 Months	457 Days	
	98%	18 Months	548 Days	
JV	75%	9 Months	274 Days	Date of Filing to Final Order/Judgment (Case Closed per 1/1/22 RKM)
	90%	15 Months	457 Days	
	98%	18 Months	548 Days	
AD	75%	9 Months	274 Days	Date of Filing to Final Order/Judgment (Case Closed per 1/1/22 RKM)
	90%	15 Months	457 Days	
	98%	18 Months	548 Days	

Criminal/Quasi Criminal Categories

Case Type/Category	% Complete	Time in Months to Completion	Time in Days to Completion	Notes
CF	75%	18 Months	548 Days	Date of Filing to Sentencing/Dismissal (Case Closed per 1/1/22 RKM)
	90%	24 Months	731 Days	
	98%	30 Months	913 Days	
CM DV	75%	6 Months	183 Days	Date of Filing to Sentencing/Dismissal (Case Closed per 1/1/22 RKM)
	90%	9 Months	274 Days	
	98%	12 Months	365 Days	
DT MT	75%	9 Months	274 Days	Date of Filing to Sentencing/Dismissal (Case Closed per 1/1/22 RKM)
	90%	12 Months	365 Days	
	98%	15 Months	457 Days	
TR	75%	3 Months	91 Days	Date of Filing to Sentencing/Dismissal (Case Closed per 1/1/22 RKM)
OV QC CV	98%	6 Months	183 Days	

Time Standards for Case Closure in the Illinois Trial Courts
Effective July 1, 2022

Civil Case Categories

Case Type/Category	% Complete	Time in Months to Completion	Time in Days to Completion	Notes
Complex:	75%	18 Months	548 Days	Date of Filing to Final Order/Judgment (Case Closed per 1/1/22 RKM)
ED	90%	24 Months	731 Days	
FC **LA** **CH** **PR**	98%	36 Months	1096 Days	
General:	75%	12 Months	365 Days	Date of Filing to Final Order/Judgment (Case Closed per 1/1/22 RKM)
AR	90%	18 Months	548 Days	
GC **LM** **MR**	98%	24 Months	731 Days	
Summary:	75%	6 Months	183 Days	Date of Filing to Final Order/Judgment (Case Closed per 1/1/22 RKM)
EV **MH** **SC** **TX**	98%	12 Months	365 Days	
GR	75%	6 Months	183 Days	Date of Filing to Appointment of Guardian (Case Closed per 1/1/22 RKM)
	98%	12 Months	365 Days	

Other Case Categories

Case Type/Category	% Complete	Time in Months to Completion	Time in Days to Completion	Notes
CC	75%	6 Months	183 Days	Date of Filing to Final Order/Judgment (Case Closed per 1/1/22 RKM)
	98%	12 Months	365 Days	
OP*	98%	3 Months	91 Days	Date of Filing to Order/Judgment (Case Closed per 1/1/22 RKM)
CL	75%	3 Months	91 Days	Date of Filing to Final Order/Judgment (Case Closed per 1/1/22 RKM)
	98%	6 Months	183 Days	
MX	75%	9 Months	274 Days	Date of Filing to Final Order/Judgment (Case Closed per 1/1/22 RKM)
	90%	12 Months	365 Days	
	98%	15 Months	457 Days	

*There is an assumption the majority of Order of Protection cases are initiated by a petition for an emergency order. The case is closed upon entry of the first order in the case. If the first order is for an emergency order of protection, any further interim or plenary proceedings are post-judgment.

Time Standards for Case Closure in the Illinois Trial Courts
Effective July 1, 2022
Case Category Descriptions

Family & Juvenile:

Category Code	Category Title	Category Description
DC	Dissolution with Children	Dissolution of marriage or civil union, declaration of invalidity (annulment), petitions for legal separation, or separate maintenance as defined in 750 ILCS 5/303 when at the time of filing there are minor children
DN	Dissolution without Children	Dissolution of marriage or civil union, declaration of invalidity (annulment), petition for legal separation, or separate maintenance as defined in 750 ILCS 5/303 when at the time of filing there are no minor children
JD	Juvenile Delinquent	Addicted minors as defined by the Substance Use Disorder Act (20 ILCS 301/1-1 et seq.) in the Juvenile Court Act of 1987 (705 ILCS 405/4-1 et seq.) or delinquent minors as defined by the Juvenile Court Act of 1987 (705 ILCS405/5-101 et seq.)
JA	Juvenile Abuse & Neglect	Dependent, neglected or abused minor as defined by 705 ILCS 405/2-1, et seq. of the Juvenile Court Act of 1987
JV	Juvenile	Minors requiring authoritative intervention as defined by 705 ILCS 405/3-1 et seq. of the Juvenile Court Act of 1987 or to any other proceedings initiated under 705ILCS 405/1-1 et seq. of the Juvenile Court Act of 1987
FA	Family	Proceedings to establish the parent-child relationship, notice to putative fathers, and certain actions relating to child support
AD	Adoption	Cases filed pursuant to 750 ILCS 50/0.01 et seq

Criminal & Quasi-Criminal:

Category Code	Category Title	Category Description
CF	Criminal Felony	Complaint, information or indictment is filed in which at least one count charges a felony as defined in the Unified Code of Corrections (730 ILCS 5/5-1 et seq.) (Class M, X, 1, 2, 3, or 4)
CM	Criminal Misdemeanor	most serious charge carries a penalty of less than one-year imprisonment, limited to Class A, B or C offenses as defined in the Unified Code of Corrections (730 ILCS 5/5-1 et seq.)
DV	Domestic Violence	Violation of domestic battery under Section 12-3.2 of the Criminal Code (720 ILCS 5/12-3.2).
DT	Driving Under the Influence (DUI)	charging a violation of a statute, ordinance, or regulation governing driving or operating under the influence of alcohol, other drug, or combination thereof under Section 11-501 of the Illinois Vehicle Code (625 ILCS 5/11-501), Section 5-7 of the Snowmobile Registration and Safety Act (625 ILCS 40/5-7), and Section 5-16 of the Boat Registration and Safety Act (625 ILCS 45/5-16) and not classified as a felony
MT	Major Traffic	Class A, B, or C as defined by Supreme Court Rule 501(f)(1)(i), except DUI cases.
TR	Minor Traffic	Class P or B as defined by Supreme Court Rule 501(f)(1)(ii)
OV	Ordinance Violation	violation of a local ordinance is charged, other than a traffic ordinance
QC	Quasi-Criminal	Any offense classified as Petty or Business as defined in the Unified Code of Corrections (730 ILCS 5/5-1 et seq.), which is not otherwise defined as a DT, MT, TR, or CV case
CV	Conservation	As defined by Supreme Court Rule 501(c)

Time Standards for Case Closure in the Illinois Trial Courts
Effective July 1, 2022

Civil:

Category Code	Category Title	Category Description
ED	Eminent Domain	Proceedings involving compensation to an owner for property taken for public use
FC	Foreclosure	Residential or commercial foreclosure proceedings
LA	Law	Tort, contract, and a variety of other actions in which the damages sought are greater than $50,000
CH	Chancery	Complaints for equitable relief in matters such as contract actions, trusts, and title to real property
PR	Probate	Estates of decedents and missing persons
AR	Arbitration	Arbitration-eligible cases are defined by Supreme Court Rules 86 - 95
GC	Governmental Corporation	Petition seeking consideration by the court on new matters not included in the permanent case containing such matters as organization, appointment of officers, approval of bonds, and routine orders confirming annexation
LM	Law Magistrate	Tort, contract, and a variety of other actions in which the damages sought are $50,000 or less
MR	Miscellaneous Remedy	Review of administrative decisions (other than of a tax commission) and a variety of other actions that include change of name, demolition, and corporation dissolution
EV	Eviction	Commercial or residential eviction proceedings and for any proceeding for ejectment
MH	Mental Health	Proceedings involving hospitalization, discharge, or restoration to legal status
SC	Small Claims	Tort or contract for money not in excess of $10,000, exclusive of interest and costs (defined in Supreme Court Rule 281)
TX	Tax	Annual tax sale, petitions for tax deed, objections, and a variety of other actions relating to the collection of taxes
GR	Guardianship	Guardianship of a minor, person with a disability, or an estate of any person under the Probate Act of 1975, as amended

Other:

Category Code	Category Title	Category Description
CC	Contempt of Court	Direct or indirect contempt of court, for charges initiated against a person who is not a party to the action in which the contemptuous conduct allegedly occurred, including a juror who has been impaneled
OP	Order of Protection	Any petition for an order of protection, petition for stalking no contact order, firearms restraining order, or civil no contact order
CL	Civil Law	Civil law violations as defined in Supreme Court Rule 585
MX	Miscellaneous Criminal	Variety of actions for civil processes relating to criminal proceedings such as search warrants, grand jury proceedings, statutory summary suspensions (when no DT case exists), probationer transfers, eavesdropping, seized property, sealing and expungement petitions (when no criminal case exists), habeas corpus and administrative subpoenas

CERTIFICATE OF FILING AND SERVICE

I, the undersigned, certify that on February 17, 2023, I electronically filed the foregoing **Brief and Argument of Plaintiffs-Appellees** with the Clerk of the Illinois Supreme Court by using 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 Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct to the best of his knowledge, information and belief.

By: /s/ James W. Glasgow

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