

No. 129248

IN THE SUPREME COURT OF ILLINOIS

IN RE: JAMES R. ROWE, KANKAKEE COUNTY STATE'S ATTORNEY, and
MICHAEL DOWNEY, KANKAKEE COUNTY SHERIFF,

Plaintiffs-Appellees,

v.

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

Defendants-Appellants.

On Appeal from the Kankakee County Circuit Court
22CH16
The Honorable Thomas W. Cunnington

**BRIEF OF AMICI CURIAE ILLINOIS NETWORK FOR PRETRIAL JUSTICE
AND 389 OTHERS* IN SUPPORT OF DEFENDANTS-APPELLANTS**

Alexandra K. Block (ARDC No. 6285766)
Roger Baldwin Foundation of ACLU, Inc.
150 N. Michigan Ave. #600
Chicago, IL 60601
312-201-9740
ABlock@aclu-il.org

Matthew J. Piers (ARDC No. 2206161)
Kate Schwartz (ARDC No. 6310130)
Margaret E. Truesdale (ARDC No. 6327706)
Hughes Socol Piers Resnick & Dym, Ltd.
70 West Madison Street, Suite 4000
Chicago, Illinois 60602
312-580-0100
mpiers@hsplegal.com
kschwartz@hsplegal.com
mtruesdale@hsplegal.com

Attorneys for Amici Curiae

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INTERESTS OF AMICI

Amici are 426 organizations and individuals who, collectively, possess a wealth of knowledge and experience regarding effective pretrial justice policy and practice in Illinois and throughout the nation. The Appendix to this brief contains a complete list of all *amici*. As described more fully in the accompanying Motion for Leave to File Brief of *Amici Curiae*, the expertise of *amici* is based both on extensive academic research and the personal experiences of clients, constituents, and members affected by the unjust, discriminatory, and ineffective systems of monetary bail in Illinois and elsewhere.

This broad coalition of *amici* represent extremely diverse communities in the State of Illinois and the nation, yet they all agree that the Pretrial Fairness Act will benefit community safety and is urgently needed. *Amici* present to the Court data, real-world consequences, and lived experiences resulting from Illinois' current monetary bail system—information crucial to the Court's assessment of the constitutionality of the Pretrial Fairness Act.

SUMMARY OF ARGUMENT

The Circuit Court's mistaken ruling that the Pretrial Fairness Act's¹ elimination of monetary bail² violates the Illinois Constitution's Crime Victims' Rights Amendment and

¹ The Pretrial Fairness Act will refer herein to the portions of the SAFE-T Act ruled unconstitutional in the order appealed from, namely Section 10-255 of Public Act 101-0652 and Section 70 of Public Act 102-1104.

² This brief adopts the definitions of "bail" and "bond" correctly used by the Illinois Supreme Court Commission on Pretrial Practices. *See* Illinois Supreme Court Commission on Pretrial Practices, *Final Report*, at 14 (Apr. 2020), <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> (defining "bail" as "[t]he process of releasing a defendant from custody with conditions set to reasonably assure public

Separation of Powers Clause rests on two incorrect factual premises: (i) that the elimination of monetary bail will impair public safety, putting victims and their families at risk; and (ii) that monetary bail is effective at promoting public safety and court appearance rates, and therefore is a necessary tool for criminal court judges. Both of these assumptions undergirding the Circuit Court’s decision are clearly refuted by robust data and social science research, as well as the extensive experiences of *amici* and their clients, constituents, and members.

Contrary to the Circuit Court’s unsupported conjectures that monetary bail is necessary to protect crime victims or the Illinois public, or to ensure that accused people return for their court dates, the relevant data presented in this brief demonstrates that Illinois’ current monetary bail system is not necessary to achieve any of those goals.

First, the Circuit Court’s unfounded presumption that the elimination of money bonds in Illinois will endanger victims specifically, or the public generally, in violation of the Crime Victims’ Rights Amendment, is wrong. Abolishing monetary bail is likely to *improve* the safety of victims as well as the public.

In jurisdictions such as Cook County, Illinois, as well as others across the country, where reliance on monetary bail has been significantly reduced, rearrests of people who are awaiting resolution of their criminal cases have not increased. Indeed, detaining people on unaffordable monetary bonds likely contributes to increased violations of the law because it destabilizes individuals, families, and communities—particularly poor communities of color. When accused people are locked up before trial due to unaffordable

safety and court appearance”); *id.* (defining “bond” as “an agreement between the defendant and the court to reasonably assure public safety and reappearance in court”).

money bonds, they often lose their jobs, housing, health care, family and social ties, and potentially custody of their children. They face increased pressure to plead guilty in order to conclude their cases, and they are more likely to receive longer sentences, compounding the harm with more time behind bars. After detained people are released—to lives that have been entirely upended—they are more likely to commit further acts of desperation that violate the law.

Further, because Black people in Illinois are disproportionately likely to be arrested and jailed in the first place, the harms of these new acts of desperation fall on the very same population. In its attempt to protect victims, the Circuit Court disregarded the distressing fact that the people most likely to suffer from consequential unlawful acts are the same people likely to be harmed by unaffordable money bonds in Illinois: poor people of color. Even when individuals or their families can scrape together money for bail, payment of more than modest sums is likely to be financially devastating. The burden falls disproportionately on Black women, in particular, who pay money to bail their relatives and partners out of jail, bleeding funds out of already-disinvested communities and increasing poverty that, in turn, increases arrest rates.

The Circuit Court also disregarded the fact that Illinois' system of wealth-based detention illogically fails to adequately protect victims because accused people whose release is conditioned on paying a money bond and who do have access to money can often simply pay their way out of jail—regardless of any danger they may pose to another person.

These facts, as explained further below, establish that Illinois' current system of monetary bail does not promote the safety of victims or their families, and therefore the

Pretrial Fairness Act's changes to that system do not violate the Victims' Rights Amendment.

Second, the Circuit Court's incorrect conclusion that the Pretrial Fairness Act violates the Separation of Powers Clause is premised on the false notion that judges in Illinois need the authority to impose money bonds to satisfy the purposes of bail. The Pretrial Fairness Act does not eliminate the consideration of safety when judges make decisions about pretrial release, detention, and conditions of release. On the contrary, the Pretrial Fairness Act *requires* that judges consider whether a person poses a threat to the safety of any individual or the community when making decisions in detention and conditions-of-release hearings. Additionally, the Pretrial Fairness Act preserves ample release conditions, including tools that are far more effective than money bonds at ensuring that a person accused of a crime returns for scheduled court dates. Indeed, research shows that the most effective way to get people to return to court is to simply send them a reminder. Social science studies establish that people are equally likely to appear in court whether or not they are ordered to pay money bonds. In jurisdictions that have reduced reliance on monetary bail, failure-to-appear rates remained essentially unchanged.

Ultimately, the statistical and experiential evidence presented in *amici's* brief is a far more reliable indicator of how the Pretrial Fairness Act will impact crime victims, the community, and the administration of Illinois criminal courts than the Circuit Court's baseless intuition, which it inappropriately relied on in reaching its constitutional holdings. Because its holdings rest on factual premises that are fundamentally incorrect, the Circuit Court's judgment should be reversed.

ARGUMENT

For decades, Illinois has recognized two purposes of bail: ensuring that people accused of crimes do not endanger any individual or the public, and ensuring that they return to court as required.³ But as the Legislature recognized when it passed the Pretrial Fairness Act, Illinois' current system of monetary bail does not accomplish those objectives. In 2021, there were 174,102 people detained in Illinois jails.⁴ Most of these presumptively innocent people were jailed not because they were determined to be dangerous to an individual or to the public, nor because they failed to return to court. They were locked up merely because they could not afford to pay a monetary bond. Studies in several jurisdictions show that 20 to 50 percent of people detained pretrial eventually have their charges dismissed or are found not guilty. Thus, were it not for our state's system of monetary bail, every year, tens of thousands of people could entirely avoid the damaging effects of incarceration. Because Illinois' system of monetary bond is *ineffective* at promoting safety for specific victims or the public at large, and is unnecessary to ensure that people return to court, the Circuit Court erred in determining that the Pretrial Fairness Act's changes to this system violate the Illinois Constitution.

³ See P.A. 86-984 §1, eff. Dec. 13, 1989 (“When from all the circumstances the court is of the opinion that the accused will appear as required either before or after conviction <<+AND THE ACCUSED WILL NOT POSE A DANGER TO ANY PERSON OR THE COMMUNITY AND THAT THE ACCUSED WILL COMPLY WITH ALL CONDITIONS OF BOND,+>> the accused may be released on his own recognizance.”).

⁴ David Olson et al., *Individuals Held in Pretrial Detention and Under Pretrial Supervision in the Community*, Loyola Univ. Chicago Ctr. for Just. Blog (June 18, 2022), <https://loyolaccj.org/pfa/blog/pfa-jail>.

I. EVIDENCE SHOWS THAT THE ELIMINATION OF MONETARY BAIL IS LIKELY TO IMPROVE PUBLIC SAFETY, UNDERMINING THE CIRCUIT COURT’S UNSUPPORTED ASSUMPTION THAT THE PRETRIAL FAIRNESS ACT THREATENS VICTIMS’ SAFETY AND THEREBY VIOLATES THE CRIME VICTIMS’ RIGHTS AMENDMENT.

The Circuit Court incorrectly held that the elimination of monetary bail violates the Illinois Constitution’s Crime Victims’ Rights Amendment, Article I, Section 8.1(a)(9), based on the erroneous premise that money bonds help protect the safety of crime victims and their families, and that the elimination of money bonds thus impairs the court’s ability offer that protection.⁵ This factual assumption is wrong. Ample social science research, as well as the extensive experience of *amici*, indicate that the Pretrial Fairness Act’s elimination of monetary bail is likely to promote public safety, making crime victims, their families, and the community at large safer.

A person’s ability to pay a monetary bail bears no relation to the safety threat a person presents.⁶ Under a monetary bail system, people who may pose a risk to the community can often secure pretrial release by paying high bond amounts while people who do not pose a risk are routinely subjected to lengthy periods of pretrial detention

⁵ Memorandum of Decision at 15 (“[T]he provision eliminating monetary bail in all situations in Illinois, prevents the court from effectuating the constitutionally mandated safety of the victims and their families.”); *id.* at 16 (“The constitutional requirement of bail is meant to help ensure victims’ safety”); *id.* (“The court finds that setting an ‘amount of bail’ . . . for the protection of victims and their families has been stripped away . . . in violation of Article I, Section 8.1(a)(9).”).

⁶ See Am. Bar Ass’n., *ABA Standards for Criminal Justice, Pretrial Release*, Std. 10-5.3(a) (commentary) at 111 (recognizing “*the absence of any relationship* between the ability of a defendant to post a financial bond and the risk that a defendant may pose to public safety”) (emphasis added); National Conference of Commissioners on Uniform State Laws, *Uniform Pretrial Release and Detention Act*, at 31 (2020), http://www.clebp.org/images/Final_Act_With_Comments.pdf (“Rationally, it is not logical to impose a financial condition for purposes of public safety.”).

merely because they lack the resources to pay even very low bond amounts. When perpetrators of violence who have access to funds can simply pay their way out of jail under Illinois' current system of monetary bail, victims and survivors can be harmed, particularly (though by no means exclusively) victims and survivors of domestic and gender-based violence.

Several jurisdictions have sharply reduced or virtually eliminated this illogical and discriminatory system in which a person's freedom is determined not by their risk but by their wealth, and these jurisdictions have not seen increases in pretrial rearrest rates. Moreover, multiple recent studies identify a likely causal effect between pretrial detention and an *increase* in rearrest, while controlling for other variables. Pretrial detention is associated with an increase in rearrests likely due to its resulting disruptions in employment, housing, health care, and family and social ties. Studies indicate that when monetary bail is eliminated—and fewer lives are destabilized by unnecessary pretrial incarceration—crime victims, their families, and communities across Illinois will benefit from the resulting improvement in public safety.

A. In Illinois and Across the Country, Reducing Reliance on Monetary Bail Has Not Resulted in Increased Rates of Rearrest.

Many jurisdictions have reduced their use of money bonds, and multiple independent studies have confirmed that removing financial conditions of bail does not increase the rate at which people are rearrested or criminally charged while awaiting trial

in the community.⁷ This has been the experience of Cook County, Illinois;⁸ Philadelphia, Pennsylvania;⁹ the State of New Jersey;¹⁰ Yakima County, Washington;¹¹ Mecklenberg County, North Carolina;¹² and Washington, DC.¹³ All of those jurisdictions significantly

⁷ See, e.g., Don Stemen & David Olson, *Dollars and Sense in Cook County, Examining the Impact of General Order 18.8A on Felony Bond Court Decisions, Pretrial Release, and Crime*, Loyola Univ. of Chicago, at 2, 10 (2020), <https://www.safetyandjusticechallenge.org/wp-content/uploads/2020/11/Report-Dollars-and-Sense-in-Cook-County.pdf>.

⁸ *Id.*

⁹ Aurélie Ouss & Megan Stevenson, *Does Cash Bail Deter Misconduct?*, at 1, 8 (Jan. 1, 2022), available for download at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3335138 (After Philadelphia reduced its reliance on secured money bonds in February 2018, this 2022 study concluded: “We find no evidence that financial collateral has a deterrent effect on . . . pretrial crime.”).

¹⁰ Glenn A. Grant, *2018 Annual Report to the Governor and the Legislature*, New Jersey Courts, at 13 (2019), <https://www.njcourts.gov/sites/default/files/2018cjrannual.pdf> (finding that after New Jersey virtually eliminated monetary bail in 2017, the state’s relatively high no-new-arrest rate remained stable at approximately 75%); Glenn A. Grant, *2021 Annual Report to the Governor and the Legislature*, New Jersey Courts, at 16-17 (2021), <https://www.njcourts.gov/sites/default/files/courts/criminal/criminal-justice-reform/cjr2021.pdf> (finding the same low rearrest rates four years after the near-elimination of monetary bonds and reporting criminal charge rates of less than one percent for serious first- and second-degree offenses and firearm offenses).

¹¹ Claire M. B. Brooker, *Yakima County, Washington Pretrial Justice System Improvements: Pre- and Post- Implementation Analysis*, Pretrial Just. Inst., at 6 (Nov. 2017), <https://justicesystempartners.org/wp-content/uploads/2018/02/2017-Yakima-Pretrial-Pre-Post-Implementation-Study.pdf> (finding no increase in rearrest rates following policy changes that reduced reliance on monetary bail and increased the pretrial release rate by 20%).

¹² Cindy Redcross et al., *Evaluation of Pretrial Justice System Reforms That Use the Public Safety Assessment*, MDRC 14, at 2, 30 (Mar. 2019), https://www.mdrc.org/sites/default/files/PSA_Mecklenburg_Brief1.pdf (finding that after 2014 changes reducing the use of secured money bail, the percent of people who remained arrest-free during pretrial release remained stable at approximately 74%).

¹³ Spurgeon Kennedy, *Freedom and Money – Bail in America*, Pretrial Services Agency for the District of Columbia (2012), <https://www.psa.gov/?q=node/97> (finding that in Washington, DC, where monetary conditions of release are prohibited, nearly 88% of people are released without financial conditions, 88% of those people are not rearrested

reduced or eliminated financial conditions of bail, and none saw any significant attendant increase in re-arrest rates.

The experience of Cook County is illustrative. In July 2017, Chief Judge Timothy C. Evans of the Circuit Court of Cook County issued General Order 18.8A (GO18.8A), which took effect in September 2017. GO18.8A created a process for more effectively implementing the requirement of then-existing state law that people who are arrested presumptively should be released without a money bond.¹⁴ It further required courts to consider people’s social and economic circumstances when setting conditions of release, thus calling for the use of lower bond amounts for those required to pay monetary bail. Researchers at Loyola University of Chicago carefully evaluated the impact of GO18.8A, and found that:

- (i) In the six months after it went into effect, GO18.8A greatly increased the use of I-Bonds (i.e., unsecured money bonds)¹⁵ from 26% to 57%, resulting in 3,559 more people receiving an I-Bond in the six months after GO18.8A than the number of people who would have received I-bonds if pre-GO18.8A rates had continued;

while in the community awaiting their trial, and 99% are not rearrested for a violent crime during the pretrial period).

¹⁴ 725 ILCS 5/110-2(e) (eff. 1991) (“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.”).

¹⁵ Secured money bail requires upfront payment to secure pretrial release. In contrast, people are released on *unsecured* money bail *without making any payment*, though they may be required to pay money later if they fail to appear in court as scheduled following release.

- (ii) For people who were required to pay monetary bail, GO18.8A dramatically decreased the amount people had to pay to secure release from an average of \$9,316 to an average of \$3,824;
- (iii) The combined increased use of I-Bonds and decreased amounts of money bonds saved accused people and their loved ones a total of \$31.4 million that would have been paid in bonds in those first six months, resulting in significantly more resources being retained by communities;
- (iv) GO18.8A changed how thousands of people were released in that far fewer people were required to pay money to secure their release, but it also increased the percentage of people released immediately from 77% to 81%, which amounted to 500 people in the six months following implementation (and likely led to the much quicker release of many more people who were not tracked by the study); and
- (v) Despite the dramatically reduced use of monetary bail and lower bail amounts, and the increase in people released pretrial, GO18.8A had *no effect* on the odds of new criminal charges against people released pretrial.¹⁶

Of the people released pretrial *both before and after* GO18.8A, 97% were not charged with a new violent offense while on pretrial release.¹⁷ Moreover, there was no statistically significant change in the level of crime reported in Chicago in the year after GO18.8A took effect.¹⁸

Accordingly, the Circuit Court incorrectly found that judges' ability to ensure the safety of victims and their families is impaired without the option to impose monetary bail.¹⁹ On the contrary, jurisdictions that have reduced their reliance on monetary bail have not experienced increased risks to public safety, and specifically have not experienced increases in the rates of rearrest for people awaiting trial.

¹⁶ Stemen & Olson, *supra* note 7, at 2, 7, 10.

¹⁷ *Id.* at 11.

¹⁸ *Id.* at 12.

¹⁹ *See* Memorandum of Decision at 16.

B. Monetary Bail Destabilizes the Lives of Detained People, Their Families, and Their Communities, Resulting in Higher Rates of Rearrest and Harm to Public Safety.

In addition to the fact that monetary bail does not improve public safety, monetary bail is actually likely to have *negative* effects on public safety because of tragic and life-altering consequences for those who are unable to pay, including loss of employment, education, housing, ability to care for dependent loved ones, and child custody, as well as the significantly increased difficulty of assisting in the defense of criminal charges.²⁰

People who lose their jobs, housing, health care, and/or family ties while jailed awaiting trial are more likely to later violate the law out of economic desperation and trauma. The severe disruptions of the lives of those incarcerated lead to serious community-safety and other social consequences.²¹ As a recent meta-analysis shows, “pretrial detention is a far greater threat to public safety than pretrial release. Not only does detention increase the risk that even low-risk individuals might reoffend (or be rearrested), but detention also initiates a series of collateral consequences downstream that are difficult for many to overcome.”²²

²⁰ See *In re Humphrey*, 11 Cal. 5th 135, 147, 482 P.3d 1008, 1015 (2021) (“Studies suggest that pretrial detention heightens the risk of losing a job, a home, and custody of a child.”); Paul Heaton et al., *The Downstream Consequences of Misdemeanor Pretrial Detention*, 69 Stan. L. Rev. 711 (2017), <https://review.law.stanford.edu/wp-content/uploads/sites/3/2017/02/69-Stan-L-Rev-711.pdf>; see *infra* Section I(C).

²¹ Christopher T. Lowenkamp, *The Hidden Costs of Pretrial Detention Revisited*, Arnold Ventures, at 6 (Mar. 21, 2022), <https://craftmediabucket.s3.amazonaws.com/uploads/HiddenCosts.pdf> (analyzing individuals arrested and jailed in Kentucky and finding that “increasing the amount of time spent in pretrial detention was consistently associated with an [sic] increased odds of rearrest”).

²² Sandra Susan Smith, *Pretrial Detention, Pretrial Release & Public Safety*, Arnold Ventures, at 3 (July 2022), https://craftmediabucket.s3.amazonaws.com/uploads/AVCJI_Report_PretrialDetentionPretrialReleasePublicSafety_Smith_v3-1.pdf.

1. **Monetary Bail Upends Lives and Destroys Families and Communities.**

Examples abound. Lavette Mayes, a Black mother of two and a business owner with no prior criminal record, at age 46 was incarcerated in Cook County Jail for fourteen months in 2015-2016 on an unaffordable money bond (initially set at \$250,000) after a domestic dispute.²³ Ms. Mayes was unable to see her daughter and son for more than a year and was in danger of losing custody.²⁴ She lost her business and her housing while in jail.²⁵ Eventually *amicus* Chicago Community Bond Fund²⁶ paid Ms. Mayes' bond, and she was released from jail on pretrial electronic monitoring. Despite believing she would be found not guilty if she went to trial, she agreed to a guilty plea with a one-day prison sentence just to end her case, have a normal relationship with her children again, and begin to rebuild her life.²⁷

Money bail needlessly increases pretrial detention, and thus its attendant harmful consequences, in two ways. First, it increases the number of people detained for long periods of time because so many cannot afford to pay the amounts required.²⁸ Second, it

²³ Matthew McLoughlin & Lavette Mayes, *I Spent 14 Months in Jail Because I Couldn't Pay My Way Out*, Truthout (June 19, 2017), <https://truthout.org/articles/i-spent-14-months-in-jail-because-i-couldn-t-pay-my-way-out/>.

²⁴ *Id.*

²⁵ ACLU, *Lavette's Choice*, YouTube (Jan. 23, 2018), <https://youtu.be/E0LFFXt5D0E>.

²⁶ Chicago Community Bond Fund is a not-for-profit community fund that pays monetary bonds for people charged with crimes in Cook County, Illinois, supporting individuals whose communities cannot afford to pay the bonds themselves and who have been impacted by structural violence. Approximately 2,383 donors contributed to Chicago Community Bond Fund in 2022, and approximately 77,000 donors have contributed more than \$10.9 million in total since November 2015.

²⁷ *Id.*

²⁸ Catherine S. Kimbrell & David B. Wilson, *Money Bond Process Experiences and Perceptions*, George Mason Univ. Dept. of Criminology, Law & Soc., at 1 (Sep. 9,

delays release and therefore extends detention for people who ultimately secure pretrial release. Under Illinois' current monetary bail system, even accused people who are ultimately ordered released on bond without payment of money or who can pay their required money bond may wait several days in jail for bail to be set. Those who can secure release on a money bond also must often wait a period of time for their family or community members to gather the funds after bail is finally set.²⁹ Under the Pretrial Fairness Act, by contrast, some categories of accused people are released immediately on their own recognizance, with any permissible and individualized conditions of release that the judge finds necessary and “the least restrictive means” to achieve the statutory purposes of bail.³⁰

Many individuals who endure lengthy periods of pretrial detention would have avoided incarceration entirely if they had been offered a viable way to secure pretrial release that is not based on wealth. Recent studies in various jurisdictions indicate that approximately 20 to 50 percent of people detained pretrial eventually have their charges dismissed or are found not guilty.³¹ For this large group of people, and likewise for many

2016), https://www.prisonpolicy.org/scans/Money_Bond_Process_Experiences_and_Perceptions_2016.pdf; Wendy Sawyer, *How Does Unaffordable Money Bail Affect Families?*, Prison Pol’y Initiative (Aug. 15, 2018), <https://www.prisonpolicy.org/blog/2018/08/15/pretrial/>.

²⁹ See Olson et al., *supra* note 4.

³⁰ 725 ILCS 5/110-5, 110-10; P.A. 102-1104, § 70, eff. Jan. 1, 2023.

³¹ Will Dobbie et al., *The Effects of Pretrial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges*, 108 Am. Econ. Rev. 201, 224 (2018), <https://pubs.aeaweb.org/doi/pdfplus/10.1257/aer.20161503>; Arpit Gupta et al., *The Heavy Costs of High Bail: Evidence from Judge Randomization*, 45(2) J. Legal Stud., at 15 (Aug. 18, 2016), available for download at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2774453; Heaton et al., *supra* note 20, at 736; Emily Leslie & Nolan G. Pope, *The Unintended Impact of Pretrial Detention on Case Outcomes: Evidence from New York City Arraignments*, 60(3) J.L. & Econ. 529,

people detained pretrial who are persuaded to plead guilty solely to secure release on time already served or to sentences in the community (such as probation), all the negative effects of incarceration are attributable to pretrial detention, which is, in most cases, due to inability to pay money bond.³² These negative impacts of incarceration are detailed below:

536 (2017), available for download at <https://www.journals.uchicago.edu/doi/abs/10.1086/695285>; Megan T. Stevenson, *Distortion of Justice: How the Inability to Pay Bail Affects Case Outcomes*, 34 J.L. Econ. & Org. 511, 522 (2018), <https://www.econ.pitt.edu/sites/default/files/Stevenson.jmp2016.pdf>; Sarah Staudt, *Waiting for Justice: An Examination of the Cook County Criminal Court Backlog in the Age of COVID-19*, Chi. Appleseed Ctr. for Fair Courts (Jan. 28, 2021), <https://www.chicagoappleseed.org/2021/01/28/long-waits-for-justice-cook-county-criminal-court-backlog>.

³² Currently, courts across Illinois set money bond for most people accused of crimes. See Jonah Stemen et al., *Estimating the Impact of the Pretrial Fairness Act: Bond Court Hearings in Cook, Lake, Winnebago, and McLean Counties* (Jul. 18, 2022), Loyola Univ. Chicago, <https://loyolaccj.org/pfa/blog/bond-court-observations> (73% in Cook County, 70% in Lake County, 63% in Winnebago County, and 58% in McClean County). The evidence shows that of the people in pretrial detention for whom a money bond is set, the vast majority (about 85-90 percent) are unable to secure their release because they cannot afford the money bond. See Kimbrell & Wilson, *supra* note 28, at 6.

- (i) **Pretrial incarceration has myriad economic consequences, such as: job loss,³³ lower wages,³⁴ decreased asset ownership,³⁵ and lower upward economic mobility.³⁶**

Studies show that detention is likely to cause job loss and economic insecurity. *See* nn. 33-36. These statistics are borne out in the experiences of numerous individuals who have been detained in Illinois due to their inability to pay money bonds. For example, Andrea, at the time a 33-year old Latina mother of three grade-school aged children, lost her job as a home health aide in Chicago after she was incarcerated on an unaffordable \$100,000 D-bond (which required her to pay \$10,000 to be released) despite having no prior convictions.³⁷ In 2022, a Black man who is referred to as Robbie (a pseudonym), lost his job with a cable company before his family paid \$2,000 to bond him out of Champaign County Jail.³⁸ And in October 2019, Shannon, who is Black, lost his job as a forklift driver as well as his music career when he was ordered to pay an unaffordable

³³ Harry J. Holzer, *Collateral Costs: Effects of Incarceration on Employment and Earnings Among Young Workers*, IZA Inst. of Labor Econ., at 27-28 (Oct. 2007), <https://docs.iza.org/dp3118.pdf>.

³⁴ Bruce Western et al., *The Labor Market Consequences of Incarceration*, 47 *Crime & Delinquency* 410, 424 (2001), available for download at <https://journals.sagepub.com/doi/10.1177/0011128701047003007>.

³⁵ Kristin Turney & Daniel Schneider, *Incarceration and Household Asset Ownership*, 53(6) *Population Ass'n of Am.*, at 2075 (Oct. 26, 2016), available for download at <https://pubmed.ncbi.nlm.nih.gov/27785712/>.

³⁶ The Pew Charitable Trusts, *Collateral Costs: Incarceration's Effect on Economic Mobility*, at 3 (2010), https://www.pewtrusts.org/~media/legacy/uploadedfiles/pcs_assets/2010/collateralcosts1.pdf.

³⁷ Chicago Cmty. Bond Fund, *Read Andrea's Story*, <https://chicagobond.org/portfolio-posts/read-andreas-story/> (last visited Jan. 21, 2023).

³⁸ Illinois Network for Pretrial Justice, *From Policy to Progress: A Roadmap for the Successful Implementation of the Pretrial Fairness Act*, at 8 (Jan. 2022), <https://endmoneybond.org/wp-content/uploads/2022/02/pfa-report-final-2.0.pdf>.

\$75,000 D-bond and instead spent 4.5 months incarcerated in Cook County Jail. He was released only when *amicus* Chicago Community Bond Fund paid the required \$7,500; he was subsequently acquitted.³⁹

The devastating economic effects of monetary bond ripple far beyond the accused people who lose their jobs. When primary wage-earners are incarcerated, they are too often unable to financially support their children, spouses, or other dependents. Even when an accused person or their family is able to pay monetary bail, the payment of hundreds, thousands or tens of thousands of dollars is likely to drain the family of its savings and assets. Often relatives use their money or assets to pay bail for a loved one. In the experience of *amici*, the result is that countless Black mothers, grandmothers, wives and girlfriends in Illinois are forced to empty their savings, sacrifice their own standards of living, and mortgage their houses to bail a young Black son, grandson, or partner out of jail.⁴⁰ For the most part, as discussed in Section II.A.2 these families never get their money back. Recently, for example, Stephen Woodley publicly shared that his family member, who had placed a lien on her house to bail him out of Cook County Jail ten years ago, is still paying back the loan.⁴¹ In Black communities that are already particularly under-

³⁹ Chicago Cmty. Bond Fund, *Guilty Until Proven Innocent: Shannon’s Experience with Pretrial Jailing and Electronic Monitoring in Cook County* (Mar. 31, 2022), <https://chicagobond.org/2022/03/31/guilty-until-proven-innocent-shannons-experience-with-pretrial-jailing-and-electronic-monitoring-in-cook-county/>.

⁴⁰ See Saneta deVuono-Powell et al., *Who Pays? The True Cost of Incarceration on Families*, Ella Baker Ctr. for Human Rights, at 9 (Sept. 2015), available for download at <https://forwardtogether.org/tools/who-pays/> (summarizing research showing that “[w]omen bear the brunt of the costs—both financial and emotional—of their loved one’s incarceration.”).

⁴¹ Coalition to End Money Bond, *Advancing Justice: Examining the Intersection Between the Pretrial Fairness Act and People with Disabilities*, at 40:00 (Oct. 19, 2022),

resourced and disinvested, the monetary bail system results in draining yet more money and assets, which in turn results in economic deprivation and suffering.

(ii) Pretrial incarceration leads to housing instability and insecurity.⁴²

When individuals lose their jobs due to pretrial incarceration, they also often lose their housing because they are unable to continue paying rent or mortgage bills. As a result, their families often lose housing as well. For example, in 2017, Miguel, a Latino father, was unable to pay a \$50,000 D-bond to be released from Cook County Jail. Miguel lost his job. As a result, Miguel's family, which included his then three-year-old daughter, lost their apartment and was forced to stay with relatives.⁴³ Timothy, a 30-year-old Black father of three children in suburban Glendale Heights, was working full time at a real estate company when he was jailed on a \$100,000 D-bond. Unable to work, Timothy could not pay the rent, and the landlord evicted his family. After Timothy's attorney won a bond reduction and he was released on condition of electronic monitoring, he and his family spent months sleeping on an air mattress in his sister's front room.⁴⁴ Gordon was a formerly-homeless, disabled Black man who had suffered five heart attacks. In May 2017, he finally got his own apartment for the first time. But a few months later, an arrest and a \$50,000 D-bond resulted in his incarceration at Cook County Jail for four months. If not

<https://www.facebook.com/endmoneybond/videos/2546519902163171/> (testimony of Stephen Woodley).

⁴² Amanda Geller & Marah A. Curtis, *A Sort of Homecoming: Incarceration and the Housing Security of Urban Men*, 40(4) Soc. Sci. Res. (Jul. 1, 2011), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3173782/>; Cody Warner, *On the Move: Incarceration, Race, and Residential Mobility*, 52 Soc. Sci. Res. 451, 461 (2015), <https://www.sciencedirect.com/science/article/abs/pii/S0049089X15000794?via%3Dihp>.

⁴³ Chicago Cmty. Bond Fund, *Miguel's Story* (Oct. 10, 2017), <https://chicagobond.org/2017/10/10/ccbf-pay-bail-for-miguel/>.

⁴⁴ *From Policy to Progress*, *supra* note 38, at 12.

for the Chicago Community Bond Fund bailing him out just in time to pay his rent, he would have been evicted and lost the only apartment he had ever had.⁴⁵

(iii) Pretrial incarceration leads to loss of child custody, fraying parent-child bonds;⁴⁶ and other forms of relationship dissolution.⁴⁷

Data from the Prison Policy Initiative shows that approximately 23,000 individuals were detained in local jails in Illinois due to inability to pay bail on any given day in 2018,⁴⁸ and more than half of those individuals were likely to be parents of minor children.⁴⁹ Children are traumatized and family relationships suffer due to these involuntary separations; the Centers for Disease Control and Prevention classifies parental incarceration as an Adverse Childhood Experience (ACE),⁵⁰ which causes childhood stress and contributes to worse health, behavioral and educational outcomes.

The experience of individuals assisted by *amici* in Illinois starkly illustrates these harms. For example, in addition to Ms. Mayes, who nearly lost custody of her two children

⁴⁵ Chicago Cmty. Bond Fund, *Gordon's Story* (Apr. 22, 2019), <https://chicagobond.org/2019/04/22/gordons-story/>.

⁴⁶ Kristin Turney & Christopher Wildeman, *Redefining Relationships Explaining the Countervailing Consequences of Paternal Incarceration for Parenting*, 78(6) *Am. Soc. Rev.* 949, 949 (2013), available for download at <https://journals.sagepub.com/doi/10.1177/0003122413505589>; Sawyer, *supra* note 28; Annie E. Casey Found., *A Shared Sentence: The Devastating Toll of Parental Incarceration on Kids, Families and Communities* (Apr. 2016), <https://assets.aecf.org/m/resourcedoc/aecf-asharedsentence-2016.pdf>.

⁴⁷ Leonard M. Lopoo & Bruce Western, *Incarceration and the Formation and Stability of Marital Unions* (Aug. 2005), 67(3) *Journal of Marriage and Family*, at 721, available for download at <https://www.jstor.org/stable/3600200>.

⁴⁸ Prison Policy Initiative, *Illinois profile*, <https://www.prisonpolicy.org/profiles/IL.html> (last visited Jan. 21, 2023).

⁴⁹ Sawyer, *supra* note 28.

⁵⁰ CDC, *Fast Facts: Preventing Adverse Childhood Experiences*, <https://www.cdc.gov/violenceprevention/aces/fastfact.html> (last updated Apr. 6, 2022).

during her fourteen-month detention, as discussed *supra* at 12, Chicago Community Bond Fund paid money bail for Andreiana, a Black 18-year-old high school senior with a preschool-aged son, who was jailed on a bond of \$15,000 after she was attacked by her partner and fought back against him in 2018.⁵¹ After a difficult four-month separation, Andreiana's young son refused to hug her when she first returned home because he feared she had abandoned him. Chicago Community Bond Fund also prioritizes paying money bond for pregnant women in Illinois jails, such as Morgan⁵² and Naomi,⁵³ who otherwise would be forced to immediately surrender custody of their newborns after delivery and miss crucial parental bonding time.

Most parents do not have access to charitable resources to help pay their bail. For example, Kam, the Black father of an 18-month-old daughter with serious health conditions, was incarcerated before trial in DuPage County in Fall 2018 on an unaffordable \$150,000 D-bond.⁵⁴ Even after the judge reduced his bond to \$75,000, he could not pay it. As a result, Kam's partner, Kaylen, was solely responsible for bringing their daughter to all of her medical appointments and hospital stays, but taking so much time off cost Kaylen her job. Kam's unaffordable money bond hindered both parents from financially

⁵¹ Chicago Cmty. Bond Fund, *Andreiana's Story* (Jan. 29, 2020), <https://chicagobond.org/2020/01/29/andreianas-story>.

⁵² Chicago Cmty. Bond Fund, *Read Morgan's Story*, <https://chicagobond.org/portfolio-posts/read-morgans-story> (last visited Jan. 21, 2023).

⁵³ Chicago Cmty. Bond Fund, *Read Naomi's Story*, <https://chicagobond.org/portfolio-posts/read-naomis-story/> (last visited Jan. 21, 2023).

⁵⁴ Coalition to End Money Bond, *Pursuing Pretrial Freedom: The Urgent Need for Bond Reform in Illinois*, at 14 (June 17, 2019), <https://endmoneybond.org/wp-content/uploads/2019/06/final-cemb-report.pdf>.

supporting their child, while also preventing Kam from supporting Kaylen and their daughter emotionally and logistically through their health care challenges.⁵⁵

(iv) Pretrial incarceration leads to loss of health insurance coverage⁵⁶ and damage to mental health.⁵⁷

Individuals who are detained while awaiting trial typically lose eligibility for public benefits, including Medicaid. *See* n. 56. The lack of continuity of health care and harsh conditions of detention often exacerbate underlying physical and mental health problems. Gordon⁵⁸ had survived five heart attacks when pretrial detention in Cook County Jail on an unaffordable D-bond resulted in an additional hospitalization for chest pains. Ulonda lost her job at a moving company and her housing, and temporarily lost custody of her three children, when she was jailed in Sangamon County, Illinois, and was unable to pay a money bond. Her dire situation and her inability to obtain support from friends and family

⁵⁵ *Id.*

⁵⁶ *See* Emily Widra, *Why States Should Change Medicaid Rules to Cover People Leaving Prison*, Prison Policy Initiative (Nov. 28, 2022), <https://www.prisonpolicy.org/blog/2022/11/28/medicaid/> (noting that federal Medicaid rules allow cancellation of coverage for incarcerated people); *see also* Illinois Dept. of Human Svcs., Cash, SNAP, and Medical Manual: § PM 03-10-01, *Prisons and Jails*, <https://www.dhs.state.il.us/page.aspx?item=14428> (last accessed Jan. 21, 2023) (those residing in a county jail in Illinois are not eligible for medical coverage except for hospitalizations).

⁵⁷ Jason Schnittker et al., *Out and Down: The Effects of Incarceration and Psychiatric Disorders and Disability*, 53(4) *J. Health & Soc. Behav.* 448 (Feb. 3, 2011), <https://paa2011.populationassociation.org/papers/110115>; Kristin Turney et al., *As Fathers and Felons: Explaining the Effects of Current and Recent Incarceration on Major Depression* (2012), 53(4) *J. Health & Soc. Behav.*, available for download at <https://journals.sagepub.com/doi/10.1177/0022146512462400>.

⁵⁸ *Gordon's Story*, *supra* note 45.

from jail, in conjunction with preexisting mental health conditions—which went untreated in the jail—led her to attempt suicide in jail.⁵⁹

2. **Because of its Financially and Socially Destabilizing Effects, Monetary Bail May Tend to Increase the Likelihood of Rearrest.**

Not only does pretrial detention due to inability to pay money bond harm the accused individuals, their families, and communities, but studies across jurisdictions find that pretrial detention may actually *increase* the likelihood of future rearrest.⁶⁰ Although the studies cannot identify the precise causation, scholars posit—and common logic indicates—that because detention can lead to job loss and housing instability, and negatively affect interpersonal relationships and physical and mental health, it may make people more inclined to commit acts of survival or desperation that violate the law.⁶¹

An extensive study published by Arnold Ventures in 2022 analyzed the cases of almost 1.5 million people who were jailed before trial in Kentucky between 2009 and 2018.⁶² It concluded that time spent in pretrial detention “is associated with a consistent and statistically significant increase in the likelihood of rearrest,” even controlling for a person’s previously-assessed risk of rearrest.⁶³ Specifically, any amount of time spent in jail over 23 hours was correlated with approximately 1.5 times the likelihood of rearrest compared to the odds of rearrest for people assessed to be at comparable risk who spent

⁵⁹ *From Policy to Progress*, *supra* note 38, at 16.

⁶⁰ *See In re Humphrey*, 482 P.3d at 1015–16 (“[W]hile correlation doesn't itself establish causation, time in jail awaiting trial may be associated with a higher likelihood of reoffending, beginning anew a vicious cycle.”).

⁶¹ Heaton et al., *supra* note 20, at 760.

⁶² Lowenkamp, *supra* note 21, at 1.

⁶³ *Id.* at 4.

0-23 hours in jail.⁶⁴ The study built on an earlier analysis, which likewise found that the additional days people were jailed before trial was associated with an increased risk of rearrest even two years *after* their cases concluded.⁶⁵ Two other studies similarly adduced evidence that persons detained pretrial were more likely to be rearrested months and years later than were comparable people who were released pretrial.⁶⁶

Illinois' monetary bail system contributes to delays in pretrial release because an accused person can often wait more than 24 hours to have bail set, and it can then take several days or weeks for accused people and their families and community members to gather the necessary funds. As the above studies indicate, these delays may correlate with an increased risk of rearrest. Consequently, rather than increasing public safety, monetary bail is in fact likely to have a detrimental effect on public safety in both the short and long term.⁶⁷ At the same time, there is no evidence that pretrial detention due to monetary bail somehow makes specific crime victims safer in the short or long term.

⁶⁴ *Id.* at 5.

⁶⁵ Christopher T. Lowenkamp et al., *The Hidden Costs of Pretrial Detention*, Arnold Found., at 20 (Nov. 2013), https://craftmediabucket.s3.amazonaws.com/uploads/PDFs/LJAF_Report_hidden-costs_FNL.pdf.

⁶⁶ Heaton et al., *supra* note 20, at 718; Gupta et al., *supra* note 31, at 3, 39.

⁶⁷ In addition to the myriad harms to accused people and their families and the negative impact on public safety, the increased rate of detention that money bail causes comes at enormous cost to taxpayers. Across Illinois, detention in county jail costs on average \$111 *per day* per person. Illinois Sentencing Policy Advisory Council, *2021 Update: Dynamic Marginal Costs in Fiscal Impact Analyses*, at 1 (Feb. 2020), <https://spac.icjia-api.cloud/uploads/DMC%202021%20Update%20-%20IDOC%20and%20Jail%20costs-20210217T21163662.pdf>. The average length of pretrial detention in Illinois from 2020 to 2021 was 34 days. Olson et al., *supra* note 4. Last year 174,102 people were admitted to jail and detained pretrial across Illinois. *Id.* With these data points in mind, pretrial detention in Illinois would appear to cost north of \$650 million per year. Monetary bail also hurts Illinois businesses because when employees cannot pay a money bond, their continued detention and absence from work interrupts business operations and increases

Perhaps even more troubling, the statistical tendency for incarceration to correlate with increased future arrests is not limited to the detained people themselves. Researchers find that even short-term parental incarceration (less than 3 months) is associated with a higher probability of a child's future criminal conviction and criminal legal system contact, even when differences in family background characteristics are taken into account.⁶⁸ In other words, the likely public safety harm caused by pretrial incarceration due to monetary bail can produce a devastating domino effect because such incarceration is correlated with not only increased rearrest rates respecting the persons detained but also with potential legal system contact by future generations.

3. **The Public Safety Consequences of Monetary Bail Disproportionately Harm Black and Brown People and Communities.**

Monetary bail greatly exacerbates already troubling racial imbalances. People and communities of color most frequently suffer monetary bail's harsh consequences because people of color are both disproportionately detained pretrial on unaffordable money bonds and disproportionately victimized by the overall negative impact on community safety caused by such needless detention.

turnover, which in turn implicates additional recruiting costs and impedes businesses' ability to maintain a skilled workforce vital for their success.

⁶⁸ Lars H. Andersen, *How Children's Educational Outcomes and Criminality Vary by Duration and Frequency of Paternal Incarceration*, 665(1) *Annals Am. Acad. Pol. & Soc. Sci.*, at 162 (May 2016), available for download at <https://www.jstor.org/stable/24756096>; see also Megan Cox, *The Relationships Between Episodes of Parental Incarceration and Students' Psycho-Social and Educational Outcomes: An Analysis of Risk Factors*, Temple Univ., at 4 (May 2009), https://scholarshare.temple.edu/bitstream/handle/20.500.12613/1018/Cox_temple_0225E_10157.pdf?sequence=1 (reporting on literature pointing to a positive correlation between parental incarceration and children's likelihood of incarceration when they reach adulthood).

Black people in the United States are four times more likely to be jailed pretrial than white people, according to a 2015 study.⁶⁹ While data regarding pretrial detention rates for Latino people are difficult to interpret because people who identify as Latino often are undercounted, some studies indicate that Latino people are also more likely to be detained pretrial than white people in the United States.⁷⁰

Of those detained statewide in Illinois' jails in 2019, 50% were Black and 33% were white.⁷¹ In contrast, Illinois' total population is 14.7% Black and 60% White.⁷² Likely contributing to this disparity is the fact that, due to the longstanding racial wealth gap, people of color are less likely to be able to afford monetary bonds.⁷³ Indeed, poverty rates for Black people in Illinois (26%) are significantly higher than for white people (9%).⁷⁴

⁶⁹ Ram Subramanian et al., *Incarceration's Front Door: The Misuse of Jails in America*, Vera Inst. for Just., at 11 (Feb. 2015, updated July 29, 2015), https://www.vera.org/downloads/publications/incarcerations-front-door-report_02.pdf.

⁷⁰ Stephen Demuth & Darrell Steffensmeier, *The Impact of Gender and Race-Ethnicity in the Pretrial Release Process*, 51(2) Oxford Univ. Press, at 237-38 (May 2004), available for download at <https://www.jstor.org/stable/10.1525/sp.2004.51.2.222>; Traci Schlesinger, *Racial and Ethnic Disparity in Pretrial Criminal Processing*, 22 Justice Quarterly 170, 181-183 (June 2005), available for download at <https://www.tandfonline.com/doi/abs/10.1080/07418820500088929>.

⁷¹ Olson et al., *supra* note 4.

⁷² U.S. Census Bureau, *QuickFacts: Illinois*, <https://www.census.gov/quickfacts/fact/table/IL/RHI225221> (last visited Jan. 21, 2023).

⁷³ A Pew Research Center study of federal data found that the median wealth of white households was 13 times the median wealth of black households in 2013. See Rakesh Kochhar & Richard Fry, *Wealth Inequality Has Widened Along Racial, Ethnic Lines Since End of Great Recession*, Pew Res. Center (Dec. 12, 2014) <https://www.pewresearch.org/fact-tank/2014/12/12/racial-wealth-gaps-great-recession/>.

⁷⁴ PovertyUSA, U.S. Conf. of Cath. Bishops, *Maps & Data: Illinois 2019*, <https://www.povertyusa.org/data/2019/IL> (last visited Jan. 21, 2023).

These racially disproportionate detention rates also harm the communities of color where previously-detained individuals usually return after release. Statewide in Illinois, Black and Latino people are 26% more likely to be victimized by violence than white people.⁷⁵ In Chicago, data from 2022 show that the same Black and Latino community areas with the highest arrest rates are also the same community areas with the highest homicide rates, and 95% of homicide victims were Black, Latino, or both.⁷⁶ It is the experience of *amici* in Cook County and throughout the State of Illinois that people from the very same communities who are most frequently victimized are also more likely to be arrested and jailed on unaffordable money bonds. While the societal, inter-personal and personal factors that lead to the overlap in these circles are complex and inter-related, it is undoubtedly true that similar factors that place a person at risk of violating the law (lack of educational and economic opportunities, experiences of racism and other forms of discrimination, political disempowerment, trauma, addiction, housing instability, lack of physical and mental health care, and many others), also place the same person and their family and community at risk of being victimized.

Thus, contrary to the Circuit Court's unspoken and simplistic factual assumption that crime victims are an entirely separate class of people in need of protection under Art. I §8.1(a)(9),⁷⁷ data show that the people likely to be victimized are the same people likely

⁷⁵ Alliance for Safety & Just., *Illinois Crime Victims' Voices*, at 5 (Dec. 2016), https://allianceforsafetyandjustice.org/wp-content/uploads/2016/12/ASJ-Illinois-Crime_survivors-FINAL-online.pdf.

⁷⁶ See Kori Rumore, *Chicago Homicides in 2022*, Chi. Trib. (Jan. 3, 2023), <https://www.chicagotribune.com/news/breaking/ct-chicago-homicides-data-tracker-20220426-iedehzuq5jdofbhwt3v2w6cjoy-story.html>.

⁷⁷ See Memorandum of Decision at 15-16.

to be harmed by unaffordable monetary bonds in Illinois: those who are Black, Latino and poor.

C. **Pretrial Detention Results in More Convictions and Harsher Sentences Regardless of Guilt or Innocence, Which in Turn Harms Community Safety.**

As with Ms. Mayes, the Black mother in Chicago who pleaded guilty rather than contest the charges against her so she could finally be released and parent her children, *supra* at 12, pretrial incarceration often causes people to not defend against their charges for reasons that have nothing to do with their guilt or innocence. This can result in harsher punishments and worse case outcomes for individuals who are detained,⁷⁸ as reflected by nationwide data. Studies show that detained people are more likely to plead guilty and more likely to receive longer sentences,⁷⁹ which in turn hampers their ability to make positive social contributions and support themselves after they are released. These negative effects on case disposition harm not only the person detained but also community safety. Neither the public in general nor crime victims in particular are better protected by an innocent person pleading guilty as a means to finally secure their release from jail—

⁷⁸ Other anecdotal evidence from around Illinois shows that pretrial detention often results in worse outcomes, including the temptation to plead guilty even if a person is innocent. For example, in 2017, George (a client of *amicus* Chicago Community Bond Fund) was acquitted of a charge of aggravated unlawful use of a weapon, but he had considered accepting a guilty plea just to get out of jail. A judge had imposed an unaffordable \$50,000 D-bond, despite George’s lack of a prior record and his status as a 19-year-old high school student and soon-to-be father. George was incarcerated for eight months before being bailed out by Chicago Community Bond Fund and ultimately being found not guilty. Chicago Cmty. Bond Fund, *Read George’s Story*, <https://chicagobond.org/portfolio-posts/george/> (last visited Jan. 21, 2023).

⁷⁹ Lowenkamp, *supra* note 21, at 5 (finding that “those released pretrial were about one-half to three-quarters as likely to receive a sentence to prison or jail compared to detained counterparts” and “when those released pretrial were sentenced to incarceration, they were sentenced to shorter periods of incarceration than were those that were detained”).

burdening them with all the future consequences of a criminal conviction and attendant social and economic disadvantages—while in many circumstances the actual perpetrator of the offense for which they stand accused remains free. And, as discussed above, longer periods of incarceration increase the risk of rearrest, which is also detrimental to community safety and victims alike.

Since judges differ greatly in their bail decisions, some recent studies have utilized the near random assignment of judges in arraignment hearings to measure the effects of pretrial detention on case outcomes. These studies have consistently found that, among people who would have been able to secure release before a different judge, pretrial detention and the assignment of money bonds increase the likelihood of conviction primarily through an increase in guilty pleas—likely as the result of their weaker bargaining power during plea negotiations relative to individuals released before trial.⁸⁰ Studies also indicate that pretrial detention increases both the likelihood of a jail sentence and the length of the sentences people receive.⁸¹ The fact that an accused person's

⁸⁰ Dobbie et al., *supra* note 31, at 201; Gupta et al., *supra* note 31, at 1; Leslie & Pope, *supra* note 31, at 529; Stevenson, *supra* note 31, at 1; *see also* Heaton et al., *supra* note 20, at 711, 753 (showing that pretrial detention increases guilty plea rates by comparing groups of individuals whose bail hearings took place on a Tuesday to those whose bail hearings took place on a Thursday—the latter of which was more likely to pay money bond and be released, likely because family and friends had an easier time assisting with paying bond over the weekend).

⁸¹ Heaton et al., *supra* note 20, at 711; Christopher T. Lowenkamp et al., *Investigating the Impact of Pretrial Detention on Sentencing Outcomes*, Arnold Found., at 3 (Nov. 2013), https://craftmediabucket.s3.amazonaws.com/uploads/PDFs/LJAF_Report_state-sentencing_FNL.pdf (individuals detained for the full pretrial period are more likely to be sentenced to jail or prison and for longer periods of time); Christopher M. Campbell & Ryan M. Labrecque, *Effect of Pretrial Detention in Oregon: Testimony to the Senate and House Judiciary Committees*, Portland State Univ., at 8 (Mar. 29, 2019), https://pdxscholar.library.pdx.edu/cgi/viewcontent.cgi?article=1068&context=ccj_fac (individuals detained pretrial are more likely to receive a sentence of incarceration); J.C. Oleson et al., *The Effect of Pretrial Detention on Sentencing in Two Federal Districts*, 33

conditions of pretrial release—and likelihood of detention—are so significantly impacted by the “luck of the draw” on judicial assignment magnifies the other aspects of unfairness and irrationality surrounding monetary bail.

Given that pretrial detention correlates with increased convictions and guilty pleas as well as longer sentences, the race gap in pretrial detention caused by money bail also translates into greater racial disparities in case outcomes. In New York City, for example, researchers concluded that racial disparities in pretrial detention rates explain 40% of the gap in the likelihood between Black people and white people being sentenced to prison, and 28% of the gap in the likelihood between Latino people and white people being sentenced to prison.⁸²

These findings also are consistent with the experience of *amici* Illinois Association of Criminal Defense Lawyers and Law Office of the Cook County Public Defender, who find that their clients who are unable to pay bond—the majority of whom are Black and Latino—are more likely to be convicted and more likely to be sentenced to longer terms of incarceration.

Justice Q. 1103, 1104 (2014), available for download at <https://www.tandfonline.com/doi/full/10.1080/07418825.2014.959035> (pretrial detention is associated with increased prison sentences); Meghan Sacks & Alissa R. Ackerman, *Bail and Sentencing: Does Pretrial Detention Lead to Harsher Punishment?*, 25(1) *Criminal Justice Policy Review*, at 59 (Oct. 19, 2012), available for download at <https://journals.sagepub.com/doi/abs/10.1177/0887403412461501> (pretrial detention significantly and negatively affects the length of sentences); Mary T. Phillips, *A Decade of Bail Research in New York City*, NYC Criminal Justice Agency, at 127 (Aug. 2012), <https://www.prisonpolicy.org/scans/DecadeBailResearch12.pdf> (people detained pretrial are more likely to be sentenced to incarceration and for longer periods); Marian R. Williams, *The Effect of Pretrial Detention on Imprisonment Decisions*, 28(2) *Criminal Justice Review*, at 299 (Sept. 16, 2016), available for download at <https://journals.sagepub.com/doi/10.1177/073401680302800206> (people subject to pretrial detention were more likely to be incarcerated and receive longer sentences).

⁸² Leslie & Pope, *supra* note 31, at 529.

In sum, researchers and *amici* find that people detained pretrial are more likely to be found guilty and to receive harsher sentences than similar individuals who are not incarcerated prior to trial—consequences that multiply the harmful effects discussed above on accused people, victims, and entire communities.

D. Illinois’ Existing System of Monetary Bail Harms Victims and Survivors.

As discussed above, a system of monetary bail does not promote public safety, and moreover, it fails to protect individual victims of violence as well. In the experience of *amici* categorized in this brief as Organizations Working Against Gender-Based Violence and to Support Victims and Survivors, when wealth and economic access determine whether an accused person is released before trial, people charged with domestic or sexual violence can often secure their release irrespective of their risk to victim or public safety, allowing for pretrial witness intimidation, coercion, or further incidents of victimization.

On the other hand, and equally harmful to victims of gender-based violence, the monetary bail system often detains abuse victims who fight to defend themselves against their abusers. This happened to Andreiana, mentioned above, who was jailed on an unaffordable money bond in Cook County (until Chicago Community Bond Fund paid her bail) after she fought back against physical abuse from a domestic partner.⁸³ In these situations, monetary bonds impede rather than advance the safety of survivors, and of the general public.

In place of this illogical and unsafe system of wealth-based detention, the Pretrial Fairness Act ensures that pretrial incarceration decisions are based on comprehensive

⁸³ *Andreiana’s Story*, *supra* note 51.

release hearings complete with case analysis, assessments, victim participation, prepared arguments, and an explanation on the record of the judge's decision whether to detain or release a person, and on what conditions. Victims of domestic and sexual violence are therefore better protected from the unsafe release of a charged person and from unjust detention due to their own safety needs or misguided criminalization.⁸⁴

For these reasons, the Circuit Court's finding that the Pretrial Fairness Act's elimination of monetary bail would be likely to endanger victims has no basis in fact.

II. MONETARY BAIL IS NOT AN EFFECTIVE TOOL FOR ACCOMPLISHING ANY LEGITIMATE OBJECTIVE OF THE BAIL SYSTEM, AND THEREFORE THE ELIMINATION OF MONETARY BAIL DOES NOT UNDULY INFRINGE ON JUDICIAL AUTHORITY AND DOES NOT VIOLATE THE CONSTITUTIONAL SEPARATION OF POWERS.

The Circuit Court also incorrectly held that the Pretrial Fairness Act's abolition of monetary bail would impermissibly infringe on the court's inherent authority to make bail determinations and thereby violate the Separation of Powers Clause in Article II, Section 1 of the Illinois Constitution.⁸⁵ Yet evidence shows that monetary bail does not actually promote legitimate judicial ends. It does not increase court attendance or avoidance of rearrest, which are the very purposes of bail. *See supra* n. 3. Simply put, restrictions on the judiciary's ability to impose a *wholly ineffective* pretrial condition cannot unduly infringe on judicial authority. Moreover, under the Pretrial Fairness Act, courts continue

⁸⁴ See The Network, *Gender-Based Violence Survivor Protections in the Pretrial Fairness Act* (Feb. 2022), <https://the-network.org/wp-content/uploads/2022/02/PFA-HANDOUT.pdf>.

⁸⁵ See Memorandum of Decision at 32.

to have an extensive menu of options for managing pretrial release to ensure accused people return to court.⁸⁶

A. **Requiring Accused People to Pay Money Bond to Secure their Pretrial Release Does Not Promote Public Safety or Court Appearance Rates.**

As detailed in Section I, monetary bail does not promote public safety during the pretrial period and in fact may worsen public safety because pretrial detention increases the likelihood of rearrest and future criminal charges. *See supra* at 6-30. Money bond is equally *ineffective* at promoting bail's other purpose: ensuring that people released pretrial continue to appear in court as required through the disposition of their case.

1. **Experience in Illinois Proves that Appearance Rates Remain Stable Despite Decreasing Reliance on Monetary Bail.**

After Cook County increased the use of I-Bonds and the number of people released pretrial through GO18.8A, the percentage of people attending all court appearances remained above 80% (83.3% before GO18.8A and 80.2% after GO18.8A).⁸⁷ The high, and stable, percentage of people who returned to court proves that monetary bonds are not necessary to ensure court appearances. This evidence is bolstered by the experience of *amicus* Chicago Community Bond Fund, which utilizes donated funds to pay bail for

⁸⁶ The Circuit Court's erroneous assumption that money bonds accomplish the purposes of bail also apparently factored into its conclusory finding that the General Assembly's elimination of money bonds amends the Sufficient Sureties Clause of the Illinois Constitution. Memorandum of Decision at 27. *Amici* point this Court to its opinion in *People ex rel. Gendron v. Ingram*, 34 Ill. 2d 623, 626 (1966), in which the Court rejected petitioner's claim that the General Assembly's *de facto* elimination of professional sureties (without change to the constitution) violated his purported constitutional right to "sufficient sureties." The Court found that "sufficient sureties" in no way required professional sureties because "sufficient" meant "sufficient to accomplish the purpose of bail" and "a professional surety does not accomplish the purpose of bail." *Id.*

⁸⁷ Stemen & Olson, *supra* note 7, at 10.

individuals who cannot afford to do so in Cook County or surrounding counties in Illinois. Out of the 935 clients who Chicago Community Bond Fund has assisted to date, over 91% have not forfeited their bonds for any failure to appear in court. Each of the people for whom Chicago Community Bond Fund made a payment otherwise would have been detained pretrial because of their inability to pay. The fact that these people returned to court at such high rates shows that accused people generally are incentivized to appear in court regardless of whether they have the money to pay a bond.

2. **In Illinois, Monetary Bond Is An Illusory Incentive to Return to Court Because Most Bond Money is Applied To Other Court Costs.**

Under Illinois' current pretrial system, paying a monetary bond is largely a false incentive for reappearances because statutes permit courts to apply money bonds at the conclusion of a criminal case to fines, fees, assessments, court costs, restitution, and attorneys' fees,⁸⁸ and in *amici's* experience this mechanism often sidesteps any indigency waiver that might otherwise apply. Between 2016 and 2020, approximately 80% of bond money paid statewide was applied to various court expenses, and only 20% was refunded to the person who paid the money or to the attorney who represented the accused person.⁸⁹ Since most bond money is not returned, the reason many people in Illinois are returning to court following pretrial release probably is not because they expect to get their bond money back. Further, if imposing monetary bail as a pretrial release condition were truly necessary

⁸⁸ Civic Fed'n, *Elimination of Cash Bail in Illinois: Financial Impact Analysis*, at 9 (Aug. 2022)
https://www.civicfed.org/sites/default/files/financial_impact_of_eliminating_cash_bail_report_revised_august_2022.pdf.

⁸⁹ *Id.* at 10.

to incentivize people to return to court, the system would not be structured to apply the majority of money bonds to fines and to assessments that otherwise might have been waived.

3. Data from Other Jurisdictions Establishes Equivalent Appearance Rates Without Monetary Bonds.

The studies examining experiences in other jurisdictions further establish that people are equally likely to appear in court even as use of monetary bonds decreases. When reliance on monetary bond significantly decreased in Philadelphia,⁹⁰ New Jersey,⁹¹ Yakima County, Washington,⁹² and Mecklenburg County, North Carolina,⁹³ court reappearance rates were stable in each jurisdiction.

The results of a 2013 study examining court appearance rates for nearly 2,000 accused people in Colorado further illustrate the needlessness of money bonds. The Colorado study compared people who were assessed to pose comparable non-appearance and public safety risk in two groups: (i) those released on secured money bail and (ii) those who were released on unsecured recognizance.⁹⁴ Researchers found that releasing a person

⁹⁰ Ouss & Stevenson, *supra* note 9, at 13, 17 (finding that despite the significant increase in the percentage of people released on non-monetary conditions in Philadelphia (22%), there was no change in the overall failure-to-appear rates).

⁹¹ Grant, *2018 Annual Report to the Governor and the Legislature*, *supra* note 10, at 5 (finding that the court appearance rate remained high at 89 percent when New Jersey virtually eliminated money bail, compared to 93 percent before implementation).

⁹² Brooker, *supra* note 11, at 6 (finding that 73% of accused people attended all court appearances before and 72% of accused people attended all court appearances after Yakima County reduced reliance on monetary bonds).

⁹³ Redcross et al., *supra* note 12, at 28 (finding that even though secured money bail was used significantly less often and fewer people were detained pretrial, the percentage of released people who made all of their court appearances remained stable at approximately 82% in Mecklenburg County).

⁹⁴ Michael Jones, *Unsecured Bonds: The As Effective and Most Efficient Pretrial Release Option*, Pretrial Just. Inst., at 9 (Oct. 2013), <https://www.nmcourts.gov/wp->

on an unsecured bond is *as effective as* a secured money bond at achieving court appearance while in the community pretrial.⁹⁵ Moreover, the use of secured money bond did not increase the likelihood that a person who missed court would be more quickly located and returned to custody: people released on secured and unsecured bonds were at-large on failure-to-appear warrants at equal rates.⁹⁶

A study that compared pretrial outcomes for accused people before judges who more frequently authorized release on unsecured bond conditions versus judges who more frequently required a secured money bond for release reached the same conclusion: that requiring people to pay monetary bail does not promote court appearance more effectively than release on unsecured conditions.⁹⁷

Given that requiring accused people to pay money to secure their release does not protect, and is likely detrimental, to public safety and also yields no benefits in terms of court appearance rates, it is not surprising that courts in other jurisdictions have found that systems of monetary bail that result in detention solely for inability to pay violate principles of due process and equal protection. These courts have found that proponents of monetary bail failed to provide a legitimate justification for courts to treat people accused of similar offenses differently solely based on their ability or inability to pay money bond, and that

[content/uploads/2020/11/Unsecured Bonds The As Effective and Most Efficient Pretrial Release Option Jones 2013.pdf](#).

⁹⁵ *Id.* at 11.

⁹⁶ *Id.* at 16.

⁹⁷ Claire M. B. Brooker et al., *The Jefferson County Bail Project: Impact Study Found Better Cost Effectiveness for Unsecured Recognizance Bonds Over Cash and Surety Bonds*, Pretrial Just. Inst., at 5, 7 (June 2014), http://www.clebp.org/images/Jefferson_County_Bail_Project-Impact_Study_-_PJI_2014.pdf.

people are constitutionally entitled to individualized determinations about whether monetary conditions are necessary to ensure public safety and court appearance.⁹⁸

⁹⁸ See *Walker v. City of Calhoun, GA*, 901 F.3d 1245, 1272 (11th Cir. 2018) (holding that district court could properly enjoin a municipality’s policy of requiring money bond for release on misdemeanor charges without a prompt opportunity for a bail hearing, but vacating preliminary injunction that required a bail hearing within 24 hours rather than constitutionally-mandated 48 hours); *Hernandez v. Sessions*, 872 F.3d 976, 991 (9th Cir. 2017) (affirming preliminary injunction requiring federal immigration authorities to consider non-citizens’ ability to pay when setting conditions of release pending removal proceedings, because a “bond determination process that does not include consideration of financial circumstances and alternative release conditions is unlikely to result in a bond amount that is reasonably related to the government’s legitimate interests” in ensuring released people appear for future court dates); *Pugh v. Rainwater*, 572 F.2d 1053, 1057 (5th Cir. 1978) (en banc) (“The incarceration of those who cannot [afford an automatically-set amount of bail], without meaningful consideration of other possible alternatives, infringes on both due process and equal protection requirements.”); *Welchen v. Bonta*, No. 2:16-CV-00185-TLN-DB, 2022 WL 4387794, at *5 (E.D. Cal. Sept. 22, 2022) (holding Sacramento’s bail schedule violates substantive due process because it is not narrowly tailored to ensure public safety or to minimize flight risk); *Buffin v. City & Cnty. of San Francisco*, No. 15-CV-04959-YGR, 2019 WL 1017537, at *23 (N.D. Cal. Mar. 4, 2019) (holding that San Francisco’s bail schedule fails strict scrutiny in that it “merely provides a ‘Get Out of Jail’ card for anyone with sufficient means to afford it” and “bears no relation to the government’s interests in enhancing public safety and ensuring court appearance”); *Caliste v. Cantrell*, 329 F. Supp. 3d 296, 312 (E.D. La. 2018), *aff’d on other grounds*, 937 F.3d 525 (5th Cir. 2019) (holding that Orleans Parish Criminal District Court had no legitimate interest in detaining people without an individualized determination of their ability to pay bonds); *In re Humphrey*, 482 P.3d at 1012 (2021) (holding that “the common practice of conditioning freedom solely on whether an arrestee can afford bail is unconstitutional,” and remanding for a new bail hearing determining ability to pay); *Valdez-Jimenez v. Eighth Jud. Dist. Ct. in & for Cnty. of Clark*, 136 Nev. 155, 162, 460 P.3d 976, 984 (2020) (“[F]or bail to be reasonable, it must relate to one of these two purposes—to ensure the appearance of the accused at all stages of the proceedings or to protect the safety of the victim and the community. Otherwise, it will necessarily be excessive in violation of the Nevada Constitution’s bail provisions.”); *Brangan v. Commonwealth*, 477 Mass. 691, 699, 80 N.E.3d 949, 959 (2017) (“Each eligible defendant’s right to an individualized bail determination that takes his or her financial resources into account is further supported by the constitutional principles of due process and equal protection.”).

B. Under the Pretrial Fairness Act, Courts Have Ample Tools Available to Promote Court Attendance and Public Safety.

Although the Pretrial Fairness Act eliminates one previously available pretrial condition—the payment of money—it allows judges to set the other conditions “necessary to ensure the defendant’s appearance in court, ensure the defendant does not commit any criminal offense, ensure that the defendant complies with conditions of pretrial release, prevent the defendant’s unlawful interference with the orderly administration of justice, or ensure compliance with the rules and procedures of problem solving courts.”⁹⁹

Often, however, the best way to get people to show up to court is to simply remind them when they have to be there. Studies have shown that court date reminders—which can be delivered through letters, postcards, live calls, robocalls, text messages, email, or other means—reduce failure to appear rates by approximately 25 to 50 percent.¹⁰⁰

⁹⁹ 725 ILCS 5/110-10(b); P.A. 102-1104, § 70, eff. Jan. 1, 2023.

¹⁰⁰ See Marie VanNostrand & Kimberly Welbrecht, *State of The Science of Pretrial Release Recommendations and Supervision*, Pretrial Just. Inst., at 15-20 (June 2011), https://www.ncsc.org/_data/assets/pdf_file/0015/1653/state-of-the-science-pretrial-recommendations-and-supervision-pji-2011.ashx.pdf; Brice Cooke et al., *Using Behavioral Science to Improve Criminal Justice Outcomes: Preventing Failures to Appear in Court*, U. Chicago Crime Lab, at 4 (Jan. 2018), <https://www.ideas42.org/wp-content/uploads/2018/03/Using-Behavioral-Science-to-Improve-Criminal-Justice-Outcomes.pdf>; Brian H. Bornstein et al., *Reducing Courts’ Failure-To-Appear Rate by Written Reminders*, 19 Psych. Pub. Pol’y & L. 70, 73-74 (2012), <https://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1601&context=psychfacpub>; David I. Rosenbaum et al., *Court Date Reminder Postcards: A Benefit-Cost Analysis of Using Reminder Cards to Reduce Failure to Appear Rates*, 95(4) *Judicature* 177, 179-180 (2012), https://ppc.unl.edu/sites/default/files/resource-files/judicature-article-rosenbaum_1.pdf; Timothy R. Schnacke et al., *Increasing Court-Appearance Rates and Other Benefits of Live-Caller Telephone Court-Date Reminders: The Jefferson County, Colorado, FTA Pilot Project and Resulting Court Date Notification Program*, 48(3) *Ct. Rev.* 86, 89, 92 (2012), <https://digitalcommons.unl.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1396&context=ajacourtreview>.

The Pretrial Fairness Act also leaves intact courts' ability to impose numerous non-monetary pretrial conditions, including, among others: (i) reporting to Pretrial Services; (ii) refraining from possession of a firearm or other dangerous weapon; (iii) not departing the State of Illinois absent leave of court; (iv) avoiding contact with certain individuals; (v) refraining from going to specific geographic areas or premises; (vi) requiring use of vehicle ignition interlock devices for individuals charged with operating under the influence; (vii) electronic monitoring; (viii) undergoing a drug or alcohol evaluation; (ix) undergoing a mental health evaluation; and (x) observing a curfew.¹⁰¹ And under the Pretrial Fairness Act, courts continue to have authority to enforce orders of protection issued for specific victims.

In short, the elimination of monetary bail does not unduly infringe on judicial authority, because requiring people to pay money bail achieves no legitimate judicial aims. Monetary bail promotes neither public safety nor court appearance. The Pretrial Fairness Act allows judges to use other, more effective, tools to achieve those ends.

CONCLUSION

As demonstrated above, the Circuit Court's rulings that the Pretrial Fairness Act's elimination of money bond violates the Illinois Constitution's Crime Victim's Rights Amendment and Separation of Powers Clause were premised on incorrect and unsupported factual assumptions. The undersigned *amici curiae* urge this Court to reverse the Circuit Court's fundamentally flawed decision and enter judgment for the Defendants-Appellants in this matter.

¹⁰¹ 725 ILCS 5/110-10(b); P.A. 102-1104, § 70, eff. Jan. 1, 2023.

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Respectfully submitted,

/s/ Matthew J. Piers

Matthew J. Piers (ARDC No. 2206161)

Kate Schwartz (ARDC No. 6310130)

Margaret E. Truesdale (ARDC No.
6327706)

Hughes Socol Piers Resnick & Dym, Ltd.

70 West Madison Street, Suite 4000

Chicago, Illinois 60602

312-580-0100

mpiers@hsplegal.com

kschwartz@hsplegal.com

mtruesdale@hsplegal.com

Alexandra K. Block (ARDC No. 6285766)

Roger Baldwin Foundation of ACLU, Inc.

150 N. Michigan Ave. #600

Chicago, IL 60601

312-201-9740

ABlock@aclu-il.org

Attorneys for Amici Curiae

RULE 341(c) CERTIFICATE OF COMPLIANCE

I, Margaret E. Truesdale, certify that this brief conforms to the requirements of the Supreme Court Rules 341(a) and (b). The length of this brief, excluding pages containing the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, and the Rule 341(c) certificate of compliance is 37 pages.

/s/ Margaret E. Truesdale _____
Margaret E. Truesdale
One of the Attorneys for *Amici Curiae*