IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE

Just City, Inc.,

Plaintiff,

v.

Floyd Bonner Jr., Shelby County Sheriff, *et al.*,

Defendants.

Case No. 24-cv-2540

REPLY IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION AND EXPEDITED DECLARATORY JUDGMENT

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Tennessee's unprecedented new bail law provides that "ability to pay shall not be considered" by judges who are setting bail. Defendants' enforcement of this law deprives Shelby County arrestees of a fair bail hearing and causes unconstitutional wealth-based detention. The Court should remedy these violations by declaring the law unconstitutional and enjoining its enforcement.

The State and Defendants inexplicably fail to respond to the Sixth Circuit's decision in *McNeil*, which affirmed a preliminary injunction against a sheriff based on similar claims.

I. Just City Has Standing

A. Just City Has Standing to Assert the Rights of Shelby County Arrestees

Just City has standing to assert the rights of Shelby County arrestees because (1) it has a close relationship with the arrestees and (2) there is a hindrance to the arrestees' ability to protect their own interests. *Nashville Cmty. Bail Fund v. Gentry*, 496 F. Supp. 3d 1112, 1131 (M.D. Tenn. 2020) [hereinafter *NCBF*] (holding similar bail fund had standing to vindicate arrestees' constitutional rights). The State's arguments to the contrary ignore unrebutted evidence and misrepresent the law. State's Opp'n at 6, ECF No. 40-1 [hereinafter "AG"].

First, Just City has a "close relationship" with arrestees because it is a "mission-driven charitable entity that serves and advocates for its participants as beneficiaries, not customers," and its interests are therefore "closely aligned with its participants, particularly with regard to" the claims asserted here. *NCBF*, 496 F. Supp. 3d at 1130. *See* Spickler Decl., Ex. 1 ¶¶ 3–19, 21, 28–29, ECF No. 2-3. The unrebutted evidence shows that Just City is "at least as effective a proponent" for the rights of Shelby County arrestees as the arrestees themselves. *NCBF* at 1130.

Just City need not name individual arrestees to prove a close relationship. *Id.* at 1129–1131. The State's sole citation to the contrary is a case in which the plaintiff did "not argue it has

third party standing," which does not apply here. *N.C. All. For Retired Ams. v. Hirsch*, 2024 WL 3507677, *3 (E.D.N.C. July 19, 2024). AG at 6. In any event, Just City has identified 91 arrestees it has bailed out since Defendants began enforcing HB 1719. Raines Decl., Ex. 10 ¶ 4, ECF No. 45-2.

Second, the State argues that HB 1719 "*creates* no obstacle to arrestees asserting their own rights." AG at 6 (emphasis added). This is not the standard. Just City need only show that *some* hindrance exists, and the hindrances facing a "bail fund's participants . . . are substantial." *NCBF* at 1130. These arrestees lack the resources to bring a civil lawsuit, and even if they were to file a case, their claims would likely become moot before a federal court ruled. *Id.*; Raines Decl. ¶¶ 9–10. *See Moody v. Mich. Gaming Control Bd.*, 847 F.3d 399, 402–03 (6th Cir. 2017) (holding "imminent mootness" and "systemic practical challenges" are sufficient hindrances).

B. Just City Has Article III Standing

Just City has Article III standing because the Defendants' enforcement of HB 1719 denies the benefit of the Shelby County Bail Reform Agreement, Ex. 4, ECF No. 2-6, and directly inhibits Just City's mission. No party contests that Defendants have breached the Agreement and caused Just City's contractual injury, which is sufficient for Article III standing. *Springer v. Cleveland Clinic Emp. Health Plan Total Care*, 900 F.3d 284, 287–88 (6th Cir. 2018) (following Fifth, Ninth, and Eleventh Circuit precedent upholding standing based on denial of a "specific contractual right"). This injury is "fully realized and inflicted directly by the defendants." *NCBF*, 496 F. Supp. 3d at 1127. *Cf. FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 391 (2024) [hereinafter *FDA*] (rejecting hypothetical injury by third-party patients).

Ignoring this basis for Article III standing, the State argues that interference with Just City's mission does not qualify as an injury because it is self-imposed. AG at 5. This argument misrepresents the law, which contrasts a plaintiff trying to "spend its way into standing" with

cases where the Defendant's actions "perceptibly impaired . . . [the] ability to provide services." *FDA*, 602 U.S. at 394–95 (citing *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982)). *Accord Tenn. Conf. of NAACP v. Lee*, 105 F.4th 888, 905 (6th Cir. 2024) (describing *Havens*: plaintiff "did more than engage in issue advocacy. It also operated a housing counseling service." (cleaned up)); *Ne. Ohio Coal. for the Homeless v. Husted*, 837 F.3d 612, 624 (6th Cir. 2016) (affirming standing where new ID law increased resources needed to provide voter services).

Here, Just City's bail payments are not an artificial litigation-oriented injury, as in *FDA*. Just City has operated a bail fund for years. Spickler Decl. ¶¶ 5–6. Just City has shown that HB 1719 "directly affect[s] and interfere[s] with" its longstanding mission, *FDA,* 602 U.S. at 395—bailing as many qualified people out of jail as possible. Spickler Decl. ¶¶ 6, 23–24. *Accord NCBF* at 1127 (upholding bail fund's standing based on "interference in NCBF's operations and charitable model"). Under the State's reading, no organization would have standing because its very existence is voluntary. This is not the law. *E.g., Havens Realty Corp.*, 455 U.S. at 379.

II. Younger Abstention is Impermissible

Federal courts have a "virtually unflagging" obligation to hear cases within their jurisdiction. *Sprint Commc'ns., Inc. v. Jacobs*, 571 U.S. 69, 77 (2013). *Younger* abstention excuses that obligation only in "exceptional" cases, *id.* at 73, where a plaintiff seeks to enjoin an ongoing proceeding, and that proceeding is otherwise an adequate forum to "raise *and have timely decided* . . . the federal issues involved." *Gibson v. Berryhill*, 411 U.S. 564, 577 (1973). The *Younger* criteria are not met here. Even if *Younger* abstention were applicable, the extraordinary circumstances exception requires this Court to maintain jurisdiction.

First, contrary to the State's argument, Just City is not seeking to "enjoin pending state criminal prosecutions." *Devlin v. Kalm*, 594 F.3d 893, 894 (6th Cir. 2010) (quoting *New Orleans Pub. Serv., Inc. v. Council of New Orleans,* 491 U.S. 350, 364 (1989)). Under *Gerstein v. Pugh*,

420 U.S. 103 (1975), *Younger* abstention does not apply to challenges to a proceeding that is collateral to a criminal prosecution, like a preliminary probable cause determination: such injunctions are "not directed at the state prosecutions as such, but only at . . . an issue that could not be raised in defense of the criminal prosecution . . . on the merits." 420 U.S. at 108 n. 9. Relying on *Gerstein*, five Courts of Appeals have held federal courts should not abstain from hearing constitutional challenges to pretrial detention procedures. *Walker v. City of Calhoun*, 901 F.3d 1245, 1254–55 (11th Cir. 2018); *Arevalo v. Hennessy*, 882 F.3d 763, 766 (9th Cir. 2018); *Stewart v. Abraham*, 275 F.3d 220, 225– 26 (3d Cir. 2001); *Fernandez v. Trias Monge*, 586 F.2d 848, 850–54 (1st Cir. 1978); *Campbell v. McGruder*, 580 F.2d 521, 525–26 (D.C. Cir. 1978). In addition, the Sixth Circuit has affirmed an injunction prohibiting a sheriff from detaining arrestees under unconstitutional bail orders. *McNeil v. Cmty. Prob. Servs., LLC,* 945 F.3d 991 (6th Cir. 2019). This ruling implicitly rejected *Younger*'s application, given the court's ability to consider *Younger sua sponte*. *See O'Neill v. Coughlan*, 511 F.3d 638, 642 (6th Cir. 2008).

The State cannot rely on *O'Shea v. Littleton*: *O'Shea*'s analysis turned on the fact that the plaintiffs sought a remedy more intrusive than "seek[ing] to strike down a single state statute," as Just City does here. 414 U.S. 488, 500 (1974). For similar reasons, the Court should not follow the Fifth Circuit's decision in *Daves v. Dallas County*: it is a clear outlier, it is inconsistent with *Gerstein*, it was issued by a deeply divided *en banc* court, and it turned on a fact-specific "'periodic reporting scheme'" sought by the plaintiffs that was held to run afoul of *O'Shea*. 64 F.4th 616, 630 (5th Cir. 2023) (quoting *O'Shea*, 414 U.S. at 501)).

Second, *Younger* abstention is permitted only if there is "an adequate opportunity in state proceedings to raise constitutional challenges." *Hill v. Snyder*, 878 F.3d 193, 206 (6th Cir. 2017). Here, without tailoring its argument to Shelby County criminal courts, the State cites the rule that

arrestees may move to reduce bail. AG at 10 (citing Ten. Code Ann. §§ 40-11-105, 143). This procedure is inadequate because it requires arrestees to endure unconstitutional detention before their claims are decided. *See Gibson,* 411 U.S. at, 577 & n. 16 (1973); *Rodriguez v. Providence Cmty. Corr., Inc.*, 155 F. Supp. 3d 758, 766 (M.D. Tenn. 2015) ("proceedings . . . to address constitutional harms . . . must be available *before* the harm is inflicted").

Third, in any event, this case involves irreparable harm that warrants exercising jurisdiction. Even when *Younger* abstention is otherwise appropriate, courts must exercise jurisdiction "where the danger of irreparable loss is both great and immediate," which *Younger* referred to as "extraordinary circumstances." *Younger,* 401 U.S. at 45. This exception to *Younger* applies where "[p]etitioners suffer irreparable injury for the duration of their unlawful pretrial detention." *Betshcart v. Garrett*, 103 F.4th 607, 617 (9th Cir. 2024). As Just City has demonstrated, and no party has disputed, arrestees are suffering irreparable harm that is both great and immediate when jailed under unconstitutional bail orders.

III. A Preliminary Injunction is Warranted

Just City has demonstrated that all four preliminary injunction factors weigh heavily in its favor. Though the opposition briefs attempt to question likelihood of success and ongoing irreparable harm, the unrebutted evidence shows that HB 1719 is causing unconstitutional pretrial detention in the Shelby County Jail.

A. Just City is Likely to Succeed on the Merits of Both Its Claims

1. Procedural Fairness

HB 1719 violates procedural due process by creating an extraordinarily high risk of erroneous detention—deprivation of fundamental rights—without serving any legitimate government interest. *See Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). The Defendants and

the State do not dispute this analysis or even cite the *Mathews* balancing test. Instead, they make arguments that misrepresent Just City's due process claim.

First, the Defendants argue that judges can "draw a conclusion" about ability to pay because they can consider the arrestee's financial condition. Defs.' Opp. at 6, ECF No. 37 [hereinafter "Defs."]. But HB 1719 is not a prohibition on "asking about" ability to pay, *id.*, it is an explicit prohibition on judges even "consider[ing]" ability to pay. The Defendants' reading of the statute would impermissibly render HB 1719 "superfluous." *Pulsifer v. United States*, 601 U.S. 124, 142–43 (2024) (prohibiting superfluity where a provision is "so evidently designed to serve a concrete function"). The unrebutted evidence shows that to enforce this law, Shelby County judges "stopped considering ability to pay," and the Sheriff enforces the resulting unconstitutional bail orders. Spickler Decl. ¶ 23.

Second, the Defendants and the State argue that the facial due process challenge fails because there are valid applications of HB 1719—but their arguments misleadingly apply the standard for *excessive bail*. Defs. at 6–7; AG at 12. Just City does not challenge ultimate bail amounts as excessive; Just City challenges the unfair procedure by which bail amounts are determined. *See, e.g., United States v. Giangrosso*, 763 F.2d 849, 851 (7th Cir. 1985) (holding appellant "is not complaining about excessive bail, but about the procedures used to deny bail"). Where procedures are challenged, "it is no answer to say that in [a] particular case due process of law would have led to the same result." *Fuentes v. Shevin*, 407 U.S. 67, 87 (1972) ("The right to be heard does not depend upon an advance showing that one will surely prevail at the hearing."). The permissibility of any individual bail amount is "immaterial" to the fairness of the procedures used to set bail under HB 1719, which violate due process in every application. *Id.*

Finally, the State argues that HB 1719 does not prevent meaningful hearings because arrestees can argue for lower bail based on other factors. AG at 17–19. But a judge's ability to evaluate other factors says nothing about whether evaluation of ability to pay is required. In fact, the judge's conclusion upon evaluating other factors—*e.g.*, a determination that the arrestee poses little risk—is meaningless if the judge cannot issue an order that ensures release. HB 1719 prohibits this outcome by barring the judge from intentionally setting bail the arrestee can pay.

2. Wealth-Based Detention

HB 1719 necessarily results in some degree of wealth-based detention that violates *Bearden v. Georgia,* 461 U.S. 660 (1983). Judges entering a wealth-based detention order "must inquire into" the arrestee's ability to pay, then enter "evidence and findings" to "determine" that the arrestee is able to pay, or that alternatives to detention are inadequate. *Id.* at 665, 672–74. Again, the Defendants and the State do not dispute this standard; instead, they make misleading arguments to distract from the fact that HB 1719 results in *Bearden* violations.

First, the Defendants and the State question whether any Shelby County arrestees are detained under bail amounts they are unable to pay. Defs. at 3, 9, 12; AG at 14–15. This argument is preposterous. The unrebutted evidence shows that Shelby County judges enforce HB 1719 and do not consider ability to pay, resulting in higher bail amounts that jail indigent arrestees and limit the number of people Just City can afford to bail out. Spickler Decl. ¶¶ 22–29. The Defendants and the State do not offer any rebuttal evidence. They instead argue that *Just City* must identify specific arrestees. To confirm the phenomenon, Just City has filed a declaration identifying 153 indigent arrestees whom the Defendants have jailed under unaffordable bail orders since HB 1719 was passed. Raines Decl. ¶¶ 3–7.

Second, the State rehashes its third-party standing argument by asserting that as-applied claims cannot be brought by third parties. AG at 14. That is incorrect. *See, e.g.*, *U.S. Dep't of*

Lab. v. Triplett, 494 U.S. 715, 720–21 (1990); *Caplin & Drysdale, Chartered v. United States*, 491 U.S. 617, 623 n.3, 625 (1989); *Connection Distrib. Co. v. Reno*, 154 F.3d 281, 295 (6th Cir. 1998). The State's misleading quotation to *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442 (2008), has nothing to do with third-party standing. AG at 14.

Next, the State argues that HB 1719 withstands rational-basis scrutiny (AG at 15–17), but *Bearden* requires a "heightened standard of review" for wealth-based detention, which HB 1719 fails. *Johnson v. Bredesen*, 624 F.3d 742, 748–49 (6th Cir. 2010). The State also concedes that Tennessee statutes require bail to be set "as low as the court determines necessary," AG at 17: HB 1719 renders this mandate hollow. Courts cannot meaningfully determine the lowest bail necessary without considering what an arrestee is able to pay.

Finally, the State characterizes this case as "new territory." AG at 13–14. But there is nothing new here. The Sixth Circuit has repeatedly held that courts must inquire into ability to pay before imposing wealth-based detention, and decisions from across the country have applied *Bearden* to bail determinations. Pl.'s Mem. at 12–13, ECF No. 2-1 (collecting cases).

B. The Unrebutted Evidence Shows Irreparable Harm

There is no dispute that unconstitutional detention is irreparable harm. To the extent Defendants question whether arrestees are experiencing unconstitutional detention, Just City addresses this argument *supra* pp. 1–2, 7. The bare assertion that HB 1719 does not harm Just City, AG at 19, ignores the unrebutted evidence to the contrary. Spickler Decl. ¶¶ 22–29.

C. Fair Bail Hearings Are In the Public Interest

Restoring judges' authority to consider ability to pay will protect the rights of arrestees and improve the accuracy of bail determinations. Defendants and the State misleadingly characterize the relief Just City seeks as requiring pretrial release. Defs. at 12, AG at 19. Instead, Just City seeks to restore consideration of ability to pay as a precondition for pretrial detention.

IV. An Expedited Declaratory Judgment is Warranted

A. A Declaratory Judgment is Warranted Under the *Grand Trunk* Factors

A declaratory judgment is warranted here because an "overriding policy consideration suggests the need for settlement or clarification of the legal issues presented," and each of the factors governing this court's discretion weighs in favor of a declaratory judgment. *Grand Trunk W. R.R. Co. v. Consol. Rail Corp.,* 746 F.2d 323, 326 (6th Cir. 1984). Just City need only show that, taken together, the balance of these factors weighs in favor of retaining jurisdiction. *See United Specialty Ins. Co. v. Cole's Place, Inc.,* 936 F.3d 386, 402 (6th Cir. 2019).

1. A Declaratory Judgment Would Settle the Controversy and Clarify Legal Relations at Issue

A declaratory judgment would resolve all claims against the judicial Defendants and resolve this case as a practical matter. Defendants do not raise a meaningful counterargument. Instead, they assert that judges can "draw a conclusion" about ability to pay, Defs. at 6, which, as discussed above, is belied by the text of HB 1719 and the unrebutted evidence. *Supra* p. 6. Defendants also make arguments on excessive bail, Defs. at 5, a claim Just City does not raise.

2. A Declaratory Judgment Would Protect Substantive Rights

A declaratory judgment will protect "substantive rights," and is not mere "procedural fencing." *Western World Ins. Co. v. Hoey*, 773 F.3d 755, 761 (6th Cir. 2014). Defendants are enforcing HB 1719. Contrary to the Defendants' insinuation, suing enforcers is "the appropriate way to obtain injunctive relief against an unconstitutional statute." *Nashville Cmty. Bail Fund v. Gentry*, 446 F. Supp. 3d 282, 301 (M.D. Tenn. 2020). *Accord McNeil*, 945 F.3d at 995 (holding sheriff who enforced bail orders was appropriate defendant). The State's immunity is irrelevant. *Id.* at 995 ("[I]mmunity of one [actor] does not necessarily free the other.").

3. Enforcement of HB 1719 is Actual, Not Hypothetical

As Defendants acknowledge, a declaratory judgment is appropriate when a state law is brought into "actual or threatened operation." Defs. at 8 (quoting *Poe v. Ullman,* 367 U.S. 497, 505 (1961)). Defendants repeat their argument that HB 1719 has not been enforced against identifiable arrestees, Defs. at 9, which Just City rebuts *supra* pp. 1–2, 7. Defendants also repeat their argument against excessive bail, a claim Just City does not raise. Defs. at 9–10.

4. A Declaratory Judgment is the Best, Most Effective Remedy

A declaratory judgment from this Court is the best and most effective remedy. Defendants suggest that arrestees file direct appeals in state court, a process which requires them to endure unconstitutional detention. Raines Decl. ¶¶ 7, 10. A ruling from this Court is superior because it will protect the rights of arrestees at their initial bail determinations. In any case, this factor concerns "the whole package of options available to the *federal declaratory plaintiff*." *Western World Ins. Co.*, 773 F.3d at 761 (emphasis added). Just City is not a criminal defendant who can bring a direct appeal in state court.

B. Expedited Relief is Warranted

Expedited relief is appropriate because (1) this action concerns imminent and ongoing violations of important rights; (2) the determination is largely one of law; and (3) the requested declaratory judgment would resolve the underlying controversy or narrow the issues. Pl.'s Mem. at 17–18. No party makes a meaningful counterargument. The State suggests that declaratory relief is "generally" premature at the preliminary injunction stage, AG at 20, but fails to respond to Just City's arguments that expedited declaratory relief is appropriate here.

CONCLUSION

For the foregoing reasons, the Court should issue a preliminary injunction against the Shelby County Sheriff and grant expedited declaratory relief against all Defendants.

Respectfully Submitted,

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