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

Just City, Inc.,

Plaintiff,

v.

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

Defendants.

Case No. 2:24-cv-02540

Judge Parker
Magistrate Judge Pham

JUST CITY'S OPPOSITION TO
DEFENDANTS' MOTION TO DISMISS

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This lawsuit challenges Tennessee's unprecedented new bail law, HB 1719, which prohibits judges from considering an arrestee's ability to pay when setting bail. HB 1719 violates due process and results in unconstitutional wealth-based detention. Defendants concede that this law's constitutionality is "unclear." Mot. at 2, ECF No. 44. Their motion to dismiss ignores Just City's well-pleaded factual allegations and settled precedent. It should be denied.

First, Just City has standing. Defendants' enforcement of HB 1719 has deprived Just City of the benefit of its Agreement with the Defendants and directly interfered with Just City's long-standing mission and core activities. Just City is closely aligned with the Shelby County arrestees it assists, and the arrestees face hindrances in asserting their claims directly. Just City can assert the rights of Shelby County arrestees to bail proceedings that comply with the Constitution.

Second, *Younger* abstention is impermissible. This case does not seek to enjoin state court prosecutions. In addition, the state courts do not provide an adequate forum to resolve a constitutional challenge to HB 1719 *before* arrestees are detained. And, in any event, unconstitutional pretrial detention is an immediate and irreparable harm that requires an exception to *Younger* abstention.

Finally, there is no basis to dismiss Just City's claim against the individual Defendants and substitute Shelby County as the sole defendant. Just City, as Plaintiff, is the master of the complaint. Defendants do not dispute that the complaint adequately alleges official-capacity claims against individuals who are enforcing the unconstitutional bail law.

BACKGROUND

Plaintiff Just City is a mission-driven nonprofit organization dedicated to fighting inequities in Shelby County criminal proceedings. Compl. ¶ 9, ECF No. 1. Just City has run a community bail fund since 2017 with the goal of paying bail for as many eligible arrestees as possible. *Id.* ¶¶ 9, 34. In 2022, Just City entered into an Agreement with Defendants and other

officials to prevent them from setting bail and detaining arrestees without consideration of an arrestee's ability to pay. *Id*. ¶¶ 19–20. Shelby County judges followed the Agreement and began considering an arrestee's ability to pay when setting the amount of bail for pretrial release. *Id.* ¶ 22. In response, the State of Tennessee passed HB 1719, mandating that "ability to pay shall not be considered" when setting bail. *Id.* ¶¶ 23–24. Since HB 1719 became effective, Defendants have enforced HB 1719, stopped considering an arrestee's ability to pay when setting bail, and unconstitutionally detained arrestees in the Shelby County Jail pursuant to bail orders issued without consideration of ability to pay. *Id.* ¶¶ 30–33.

Just City has asserted claims on behalf of Shelby County arrestees under 42 U.S.C. § 1983 and seeks an injunction against the Sheriff and declaratory relief against all Defendants. *Id.* ¶¶ 39–49. Just City's motion for a preliminary injunction and expedited declaratory relief has been fully briefed and is scheduled for a hearing on October 21, 2024.

ARGUMENT

I. Just City Has Standing

Defendants' one-paragraph standing argument does not challenge any of Just City's factual allegations, let alone show that they are insufficient to support jurisdiction. Mot. at 7, ECF No. 44. Their motion is thus a "facial attack," which is merely "a challenge to the sufficiency of the pleading itself," *Changizi v. Dep't of Health & Hum. Servs.*, 602 F. Supp. 3d 1031, 1039 (S.D. Ohio 2022). Accordingly, the Court "must accept" Just City's standing allegations as true. *Crawford v. Lawrence*, 2024 WL 169110, at *3 (S.D. Ohio Jan. 17, 2024); *Changizi*, 602 F. Supp. 3d at 1039 (same).

Defendants' only standing argument concerns injury in fact, and falsely asserts that Just City "fails to make any allegation that Just City, itself, has suffered any harm." Mot. at 7. Just City has alleged two distinct Article III injuries: Defendants' enforcement of HB 1719 breaches their

Agreement with Just City, and directly inhibits Just City's long-standing mission and core activities.

First, Defendants' enforcement of HB 1719 has breached their Agreement and deprived Just City of the benefit of its bargain. Compl. ¶¶ 30–38. This specific, concrete injury to Just City is sufficient for Article III standing. *See Costello v. Mt. Laurel Assur. Co.*, 2024 WL 239849, at *13 (E.D. Tenn. Jan. 22, 2024) ("The Sixth Circuit has held that the denial of the benefit of the bargain is sufficient to establish an injury for purposes of Article III standing.") (citing *Springer v. Cleveland Clinic Emp. Health Plan Total Care*, 900 F.3d 284, 287 (6th Cir. 2018)). This injury is "fully realized and inflicted directly by the defendants." *Nashville Cmty. Bail Fund v. Gentry*, 496 F. Supp. 3d 1112, 1127 (M.D. Tenn. 2020) [hereinafter *NCBF*]; *cf. FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 391 (2024) [hereinafter *FDA*] (rejecting hypothetical injury by third-party patients).

Second, Just City is harmed because HB 1719 "directly affect[]s and interfere[s] with" its long-standing mission and core activity of providing bail to as many qualified individuals as possible. *FDA*, 602 U.S. at 395; *see* Compl. ¶ 19. Just City has operated a bail fund since 2017, approximately seven years before HB 1719 was enacted and Just City filed this lawsuit. Just City's bail payments are not an artificial litigation-oriented injury, as in *FDA.* Just City has more than an "abstract social interest" in bail reform, but rather has suffered "a demonstrable injury to" its pre-existing core activities. *See Am. Canoe Ass'n v. City of Louisa Water & Sewer Comm'n*, 389 F.3d 536, 547 (6th Cir. 2004) (holding violations of Clean Water Act hampered environmental groups' ability to achieve their goals). The Complaint sufficiently alleges that Defendants' actions are impairing its "ability to provide services" to individual arrestees. *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); *NCBF*, 496 F. Supp. 3d at 1127 (upholding bail fund's standing based on "interference in NCBF's operations and charitable model").

Beyond their false assertion that Just City has not alleged an Article III injury, Defendants further argue that Just City has not alleged that a single arrestee remained "in detention due to an excessively high bail." Mot. at 7. But 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 Defendants' insinuation that HB 1719 has not harmed any individual arrestees ignores the allegations that Shelby County judges have stopped considering ability to pay when setting bail, and the Sheriff is detaining arrestees under the resulting bail orders. Compl. ¶¶ 33, 36–38.[1] Defendants do not dispute Just City's standing to litigate these constitutional violations on behalf of third-party arrestees it serves. *See NCBF*, 496 F. Supp. 3d at 1129. In fact, in an extremely similar case, the Middle District of Tennessee held that a mission-driven charitable bail fund has standing to assert due process and wealth-based detention challenges to pretrial detention

[1] The sole case cited by Defendants, *Doe v. Byrd*, 2020 WL 1285428 (M.D. Tenn. Mar. 18, 2020), denied a motion to dismiss after finding that the individual plaintiff had sufficiently alleged an injury in fact. The case did not involve third-party standing or organizational standing.

procedures on behalf of the arrestees it serves. *Id.* As in *NCBF*, Just City's allegations meet the standard for third-party standing by showing both a "a close relationship" with arrestees and a "hindrance" to arrestees' ability to protect their own interests. *Id.* Just City's allegations demonstrate it has a "close relationship" with Shelby County arrestees because Just City's mission to fight discriminatory wealth-based detention, including through a bail fund for arrestees who cannot pay their bail, makes it "at least as effective a proponent" for these rights as the arrestees themselves. *Id*. *See* Compl. ¶¶ 9, 34–35. The law does not require plaintiffs to name individual third parties in the Complaint to prove a close relationship. *See NCBF* at 1130. Further, as in *NCBF*, arrestees are hindered from asserting their own rights by their lack of resources to bring a civil lawsuit, and by the likelihood that their claims would become moot before a federal court ruled. *See id*.; *see also 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 to support third-party standing).

II. *Younger* Abstention is Impermissible

This Court has a "virtually unflagging" obligation to hear cases within its jurisdiction. *Sprint Communs., Inc. v. Jacobs*, 571 U.S. 69, 77 (2013); *see also, e.g., FBI v. Fikre*, 601 U.S. 234, 240 (2024). *Younger* abstention excuses that obligation only in "exceptional circumstances," which do not exist here. *Sprint*, 571 U.S. at 73.

The Court cannot abstain for three reasons. First, Just City is not seeking to enjoin any ongoing state court prosecutions. Second, the state court proceedings do not provide an adequate forum to "raise and have timely decided" the federal claims asserted here. Third, Just City's claims allege a "great and immediate" irreparable injury of unconstitutional detention that federal courts must adjudicate.

A. *Younger* Abstention Does Not Apply to Collateral Bail Proceedings

Just City is not seeking to enjoin any state court criminal prosecutions, contrary to Defendants' argument. *See, e.g., Dupuis v. City of Highland*, 2021 WL 384711, at *3 (E.D. Mich. Aug. 27, 2021) (declining to abstain under *Younger* because the federal action "does not involve an attempt by plaintiff to enjoin or hinder the actions of" the state courts). Under *Gerstein v. Pugh*, 420 U.S. 103 (1975), *Younger* abstention does not apply to challenges to a collateral criminal proceeding which do not seek to enjoin a criminal prosecution itself. In *Gerstein,* the Supreme Court upheld an injunction requiring a preliminary probable cause hearing for those arrested and charged on an information because the injunction "was 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. *Id.*at 108 n.9. Relying on *Gerstein*, five Courts of Appeals have refused to abstain from 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, 851–54 (1st Cir. 1978); *Campbell v. McGruder*, 580 F.2d 521, 525–26 (D.C. Cir. 1978). In addition, while not directly addressing abstention, the Sixth Circuit has affirmed an injunction prohibiting a sheriff from detaining arrestees based unconstitutional pretrial bail procedures—without raising any concerns of improper interference with state court prosecutions. *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).[2]

[2] *See also Rodriguez v. Providence Cmty. Corr., Inc.*, 155 F. Supp. 3d 758, 766 (M.D. Tenn. 2015) (stating that constitutional infirmities to probation procedures "could be remedied without affecting the underlying state court judgments," making "*Younger* abstention inappropriate.").

The Eleventh Circuit's decision in *Walker* is instructive. In *Walker*, the Eleventh Circuit held that *Younger* abstention did not apply to a challenge to the constitutionality of a municipality's bail procedures. Citing *Gerstein*, the Eleventh Circuit emphasized that the plaintiffs, like Just City, were not seeking to enjoin any state prosecutions. 901 F.3d at 1255. The Eleventh Circuit held that plaintiffs were seeking "a prompt pretrial determination of a distinct issue, which will not interfere with subsequent prosecution." 901 F.3d at 1255. So too here. The requested injunction and declaratory judgment will only require consideration of an arrestee's ability to pay bail and will not interfere with any actual prosecutions. *See also Frazier v. Prince George's Cnty.*, 2023 WL 375177, at *8 (D. Md. Jan. 24, 2023) (holding *Younger* did not apply to bail challenge because "the issue of pretrial release is entirely collateral to the question of an individual's criminal guilt or innocence"); *Glendering ex rel. G.W. v. Howard*, 707 F. Supp. 3d 1089, 1100 (D. Kansas 2023) ("*Younger* does not apply when an injunction concerns an issue that could not prejudice the conduct of the trial on the merits"); *Holland v. Rosen*, 277 F. Supp. 3d 707, 737 (D.N.J. 2017) (declining to abstain under *Younger* and stating "Plaintiffs, here, do not seek to enjoin the state prosecution against Holland; instead, they challenge the procedure by which the conditions of pre-trial release during that prosecution was decided and seek an injunction ordering a different procedure.").[3]

This Court should not follow the Fifth Circuit's decision in *Daves v. Dallas Cnty.*, 64 F. 4th 616 (5th Cir. 2023). The Fifth Circuit's decision is a clear outlier that is inconsistent with the

[3] While not cited by Defendants, the Eleventh Circuit also distinguished *O'Shea v. Littleton*, 414 U.S. 488, 498 (1974), on grounds that apply equally here. In *O'Shea*, the Supreme Court found *Younger* abstention was appropriate because the plaintiffs did "not seek to strike down a single state statute," but rather sought an injunction amounted to "an ongoing federal audit of state criminal proceedings." 414 U.S. at 500. Here, Just City seeks to strike down a single state statute, HB 1719, without any ongoing federal audit of state criminal proceedings.

Supreme Court's decision in *Gerstein* as well as subsequent decisions of the First, Third, Ninth, Eleventh, and D.C. Circuits. *See supra* p. 6. The *Daves* court incorrectly extended *Younger* beyond its established bounds, which the Supreme Court cautioned would be improper in *Sprint*. 571 U.S. at 81. The decision was also issued by a deeply divided *en banc* court, and most importantly, it turned on the plaintiffs' request for a specific "'periodic reporting scheme'" sought by the plaintiffs that was held to run afoul of *O'Shea*. 64 F.4th at 630 (5th Cir. 2023) (quoting *O'Shea v. Littleton*, 414 U.S. 488, 501 (1974)). Even in the Fifth Circuit, courts do not abstain where plaintiffs seek a "simple, nondiscretionary safeguard" as Just City does in this case. *Tarter v. Hury*, 646 F.2d 1010, 1013–14 (5th Cir. 1981) (distinguishing *O'Shea* and holding the addition of a "nondiscretionary procedural safeguard" is a minimal "federal interference in state processes"). Just City does not seek to systematically overhaul Tennessee's criminal processes. Just City seeks simple, nondiscretionary relief that will allow Tennessee state judges to consider ability to pay when setting bail without interference from the federal courts.

B. State Courts Do Not Provide an Adequate Forum to Raise a Constitutional Challenge to HB 1719

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). For a state remedy to be adequate, the "opportunity to address constitutional harms" must "be available *before* the harm is inflicted." *Rodriguez v. Providence Cmty. Corrs. Inc.*, 155 F. Supp. 3d 758, 766 (M.D. Tenn. 2015). Defendants' only suggestion of an adequate state court proceeding is not tailored to the reality of Shelby County criminal proceedings, and instead cites only the statute providing for *appellate* review of bail orders. Mot. at 7 (citing Tenn. Code Ann. § 40-11-144).

If left solely to state court appellate remedies, arrestees would be required to endure unconstitutional detention before their federal claims are decided. That appellate remedy is not "timely." *Gibson v. Berryhill*, 411 U.S. 564, 577 & n. 16 (1973). By the time a state court could consider their federal claims, arrestees will "have already suffered a liberty deprivation and been forced to remain in jail due to their inability to post bond." *Rodriguez*, 155 F. Supp. 3d at 766; *see also id.* (when judges "fail to make an inquiry into probationers' ability to pay before jailing them," "a liberty deprivation absent an inquiry into indigence has already occurred"). There are no state court remedies that could justify *Younger* abstention: the constitutional violation occurs immediately, when an unconstitutional bail proceeding is held and a determination is made, and an arrestee is unconstitutionally detained in the Shelby County Jail. *See id*; *Frazier*, 2023 WL 375177, at *7 ("Plaintiff's criminal trials are not an adequate forum for *Younger* purposes because Plaintiffs cannot raise issues of pretrial release as part of their criminal defense.").

C. The Unconstitutional Bail Proceedings Threaten an Immediate and Irreparable Constitutional Injury

Even if the *Younger* criteria were met (and they are not), this Court should still not abstain because an unconstitutional pretrial detention is an immediate and irreparable injury. *See, e.g.*, *Pethtel v. Dep't of Children Servs.*, 2011 WL 5592853, at *3 (E.D. Tenn. Nov. 16, 2011). To be irreparable, "the threat to the plaintiff's federally protected rights must be one that cannot be eliminated by the plaintiff's defense against a single criminal prosecution." *Formosa v. Lee*, 2024 WL 113788, at *3 (6th Cir. Jan. 10, 2024) (quoting *Younger*, 401 U.S. at 54).

Here, unconstitutional pretrial detention is a "great and immediate" irreparable injury. *See Miller v. Stovall*, 641 F. Supp. 2d 657, 669 (E.D. Mich. 2009) ("Sixth Circuit courts hold that continued imprisonment in violation of the United States Constitution constitutes irreparable harm."). Arrestees who are held in custody under unconstitutional bail orders "suffer irreparable

injury for the duration of their unlawful pretrial detention." *Betschart v. Garrett*, 103 F.4th 607, 617 (9th Cir. 2024). This harm cannot be cured through a defense against the criminal prosecution. *Formosa*, 2024 WL 113788, at *3. Accordingly, Just City's claim that Shelby County pretrial detention procedures under HB 1719 violate due process "fits squarely within the irreparable harm exception" to *Younger* abstention. *Page v. King*, 932 F.3d 898, 904 (9th Cir. 2019); *see also Arevalo v. Hennessy*, 882 F.3d 763, 767 (9th Cir. 2018) ("Here, the petitioner has been incarcerated for over six months without a constitutionally adequate bail hearing. His case easily falls within the irreparable harm exception to *Younger*.").

III. There Is No Basis For Dismissing Individual Defendants

On Defendants' motion to dismiss for failure to state a claim, the Court "must construe the complaint in the light most favorable to the plaintiff and accept all allegations as true." *Elec. Merch. Sys. LLC v. Gaal*, 58 F.4th 877, 882 (6th Cir. 2023). Defendants argue, without any supporting authority, that the "official capacity claims" against the individual defendants "should be dismissed and the case should be restyled against only Shelby County Government." Mot. at 8. That is not a basis for dismissal.

Just City has more than satisfied Rule 8's requirement to plead a "short and plain statement" of its claims. Defendants do not claim otherwise or present any valid reason for dismissal under Rule 12(b)(6). The facts alleged in the Complaint show that the Sheriff and Judicial Defendants are enforcing an unconstitutional bail law. They are depriving Shelby County arrestees of their rights through fundamentally unfair bail hearings, resulting in their unconstitutional detention in the Shelby County Jail. *See NCBF*, 496 F. Supp. at 1136–37 (holding bail policy which did not consider ability to pay "imping[ed] on a right as important as physical freedom from detention"). Notably, Defendants have no response to the Sixth Circuit's decision in *McNeil v. Cmty. Prob. Servs., LLC*, which affirmed an injunction prohibiting a sheriff from detaining

arrestees under unconstitutional bail orders. 945 F.3d 991 (6th Cir. 2019), *aff'g* 2019 WL 633012 (M.D. Tenn. Feb. 14, 2019). The Sixth Circuit specifically rejected an argument by the sheriff that he was improperly named as a defendant and the case should have proceeded against the county. 945 F.3d at 995–96 ("There are plenty of cases allowing injunction actions like this one.").

The Defendants' stated preference that Shelby County be substituted in their place as the sole defendant is irrelevant as a matter of law. "A plaintiff is the master of her complaint – she decides who to sue, where to sue, how to sue, and what to sue about." *Rodgers v. Webstaurant Store, Inc.*, 774 F. App'x 278, 282 (6th Cir. 2019); *see also McNeil*, 945 F.3d at 996 ("The [plaintiffs] are free to structure their complaint as they wish."). Defendants do not, and cannot, claim that they have any immunity from official-capacity claims alleging ongoing constitutional violations and seeking prospective declaratory and injunctive relief. Neither the Eleventh Amendment nor any other doctrine precludes these claims. *See, e.g., Verizon Md. Inc. v. PSC*, 535 U.S. 635, 645 (2002); *Ernst v. Rising*, 427 F.3d 351, 358 (6th Cir. 2005) (en banc). None of the cases cited by Defendants requires dismissal of individuals named in their official capacities.[4] Defendants' argument that "Plaintiffs can show no reason why these sixteen individuals. . . should be treated as parties to this lawsuit" is as improper as it is unsupported. Mot. at 8. Just City has stated a claim. That is the required "reason why" the claims should proceed. *See, e.g., Elec. Merch. Sys.*, 58 F.4th at 882.[5]

[4] In *Alkire v. Irving*, 330 F.3d 802, 810 (6th Cir. 2003), the Sixth Circuit held that an Ohio county and county court were the "true defendant[s]" for monetary damages resulting from a municipal policy implemented by an Ohio sheriff and county judge. This case does not concern damages resulting from a municipal policy; Just City seeks to enjoin enforcement of a Tennessee state law. In any case, even *Alkire* did not require dismissal or substitution of any defendants.

[5] The Court also "is not required or obligated to conduct legal research and construct arguments" on behalf of Defendants. *See, e.g.*, *Grover v. BMW of N. Am., LLC*, 581 F. Supp. 3d 930, 938 n.16 (N.D. Ohio 2022).

CONCLUSION

For the foregoing reasons, Just City respectfully requests that the Court deny Defendants' Motion to Dismiss (ECF No. 44) in its entirety.

Respectfully submitted,

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