

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

Just City, Inc., and class representatives
Deangelo Towns and
Marshawn Barnes,
on behalf of themselves and all others
similarly situated,

Plaintiffs,

v.

Case No. 24-cv-2540

Floyd Bonner Jr.,
Shelby County Sheriff;

Lee Wilson,
**Presiding Shelby County General
Sessions Criminal Court Judge;** and

John Marshall, Robert Barber, Rhonda
Harris, Kevin Reed, Christopher Ingram,
Shayla Purifoy, Ross Sampson, Serena Gray,
Terita Hewlett, Mischelle Best, Kenya Smith,
Zayid Saleem, Kathy Kirk Johnson, Leslie
Mozingo,
**Shelby County Judicial
Commissioners,**

in their official capacities,

Defendants.

**DEFENDANTS' RESPONSE IN OPPOSITION TO
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

Defendants, Floyd Bonner Jr., Shelby County Sheriff, Lee Wilson, Presiding Shelby
County General Sessions Criminal Court Judge, and John Marshall, Robert Barber, Rhonda Harris,
Kevin Reed, Christopher Ingram, Shayla Purifoy, Ross Sampson, Serena Gray, Terita Hewlett,
Mischelle Best, Kenya Smith, Zayid Saleem, Kathy Kirk Johnson, Leslie Mozingo, Shelby County

Judicial Commissioner, by and through counsel, pursuant to Rule 56 of the Federal Rules of Civil Procedure, and responds as follows to the Motion for Summary Judgment (ECF No. 119) filed by Plaintiffs.

STANDARD OF REVIEW

“[T]he plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial.” *Celotex Corp. v. Catrett*, 477, U.S. 317, 322 (1986). Summary judgment is necessary if, after viewing record in the light most favorable to the non-movant, a court finds that the moving party has shown that no genuine dispute of material fact exists between the parties. *Loyd v. St. Joseph Mercy Oakland*, 766 F.3d 580, 588 (6th Cir. 2014) (citing Fed. R. Civ. P. 56(a)).

In response, the non-moving party must set forth specific facts showing that there is a genuine dispute for trial. *See* Fed. R. Civ. P. 56(c). The non-moving party must “do more than simply show that there is some metaphysical doubt as to the material facts.” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). Courts recognize that the facts presented by the party opposing summary judgment must be “more than a scintilla of evidence and must meet the standard of whether a reasonable juror could find . . . the nonmoving party is entitled to a verdict.” *Collins v. Dodson*, 2020 WL 3513247, at *1 (W.D.T.N. June 29, 2020). Instead, the non-moving party “must adduce concrete evidence on which a reasonable juror could return a verdict in his favor.” *Stalbosky v. Belew*, 205 F.3d 890, 895 (6th Cir. 2000).

ARGUMENT

I. THE COURT SHOULD DENY PLAINTIFFS’ MOTION FOR SUMMARY JUDGMENT—AND DISMISS PLAINTIFFS’ CASE, OUTFRIGHT—DUE TO UNDERLYING PROCEDURAL DEFECTS IN PLAINTIFFS’ CASE.

“Under Article III of the United States Constitution, federal courts have the power to adjudicate *only* Cases and Controversies.” *California Palms Addiction Recovery Campus, Inc. v. United States*, 158 F.4th 726, 729 (6th Cir. 2025) (emphasis added) (internal quotation marks and citations omitted). “Part of what Article III requires is that there be a *live* case or controversy—when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome, a case becomes moot.” *Id.* (emphasis in original) (quotation marks omitted). “When the case-and-controversy requirement is not satisfied, federal courts lack subject-matter jurisdiction.” *Id.* Similarly, “[s]tanding to sue is an indispensable component of federal court jurisdiction.” *Cosajay v. Mortgage Electronic Registration Systems, Inc.*, 980 F.Supp.2d 238, 241 (6th Cir. 2013) (citing *Osediacz v. Cranston*, 414 F.3d 136, 139 (1st Cir.2005)). The lack of subject matter jurisdiction—due to either lack of a controversy or lack of standing—is fatal to a plaintiff’s case because “the Federal Rules of Civil Procedure *require* that if a court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action *sua sponte*.” *California Palms*, 158 F.4th at 729 (emphasis added).

Thus, the Court does not need to reach the substance of Plaintiffs’ Motion for Summary Judgment for the simple fact that Plaintiffs’ underlying case is so procedurally defective as to warrant dismissal of the Amended Complaint altogether. Specifically, Plaintiffs’ claims fail because of the Court’s lack of subject matter jurisdiction of the claims and Plaintiffs’ (or, at the very least, Plaintiff Just City’s) lack of standing to bring the claims laid out in the Amended

Complaint. Either of the aforementioned defects would warrant not just denial of Plaintiffs' Motion for Summary Judgment, but dismissal of the entire case.

1. There is no controversy between the Plaintiffs and the Judicial Defendants that could meet the standard for subject matter jurisdiction.

The Plaintiffs cannot maintain a case for declaratory relief against Defendant Judge Wilson or the Defendant Judicial Commissioners (hereinafter "Judicial Defendants") because these Defendants are not adverse to the Plaintiffs. Courts "may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought." *Larry E. Parrish P.C. v. Bennett*, 989 F.3d 452, 456 (6th Cir. 2021). A party seeking such a declaratory judgment "must demonstrate that the facts alleged, under all the circumstances, show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment." *Id.* (internal quotation marks and citations omitted) (emphasis added). In order to show that the "**adverse** legal interests" are sufficiently immediate and real, "a plaintiff must demonstrate an actual injury traceable to the defendant [that is] likely to be redressed by a favorable judicial decision" to obtain declaratory relief. *Id.* (internal quotation marks and citations omitted, emphasis added).

The necessity of adverse interests between parties in an action for declaratory relief follows the foundational proposition that federal courts only have jurisdiction to hear actual controversies. The Sixth Circuit recognizes that "Article III of the Constitution affords federal courts the power to resolve only actual controversies arising between **adverse** litigants." *Lindke v. Tomilson*, 31 F.4th 487, 491 (6th Cir. 2022) (internal quotation marks and citations omitted, emphasis added). "Where there is no real, substantial controversy between parties having **adverse** legal interests, there is no case or controversy in the constitutional sense" and the case should be dismissed *Id.* (emphasis added).

Plaintiffs are unable to make a case for declaratory relief as to the Judicial Defendants because these Judicial Defendants have no “adverse legal interests” with respect to the Plaintiffs. In a case such as the one at bar where a plaintiff sues a judge for allegedly applying an unconstitutional statute in their court, the “threshold consideration is whether the judge is acting, under the statute at issue, in an adjudicatory capacity or as an enforcer or administrator.” *Id.* This is because Sixth Circuit has definitively stated that “no case or controversy exists between a state-court judge who has acted in an adjudicatory capacity under a state statute and a litigant who is attacking the constitutionality of that statute.” *Id.* at 492-93.

“In the Sixth Circuit, courts have found that the presence of a live controversy is determined by the role a judge played in the proceedings being challenged.” *Harris v. Tennessee*, 2022 WL 20662026 at *4 (W.D. Tenn. September 27, 2022). “If a judge acted as the enforcer or administrator of a statute, they may be a proper defendant in an action for declaratory relief.” *Id.* (citing *Lindke*, 31 F.4th at 493). “However, if a judge acted as a disinterested judicial adjudicator, they are not amenable to suit for declaratory relief under § 1983.” *Id.* (internal quotation marks and citations omitted).

The Sixth Circuit’s decision in *Lindke* illustrates why the Judicial Defendants are “disinterested judicial adjudicators” who are not amenable to suit for declaratory relief. In *Lindke*, the Sixth Circuit had to determine whether a state-court judge was a proper defendant in a declaratory action when the defendant judge “did not initiate the action [under the allegedly unconstitutional statute], could not administer the statute, and had not promulgated the statutory standards to which the plaintiffs had objected.” *Lindke*, 31 F.4th at 492. The judge in question faced an accusation that he had violated the plaintiff’s civil rights when applying a Michigan statute allowing personal protective orders (“PPOs”) between parties in domestic relations cases.

Id. at 493. The *Lidke* judge received a petition for a PPO from the plaintiff's ex-girlfriend. *Id.* at 489. Michigan law instructed the judge to hold a hearing to determine if there was "reasonable cause to believe that the individual to be restrained or enjoined may commit 1 or more" of the twelve (12) forms of prohibited activity set out in the statute. *Id.* at 493. If so, the Michigan statute stated that the judge "shall issue a personal protection order." *Id.*

The state-court judge in *Lidke* found that the plaintiff had been harassing his ex-girlfriend and entered a PPO prohibiting the plaintiff from contacting her. *Id.* 489. The *Lidke* plaintiff brought a lawsuit in federal court against the state-court judge who issued the PPO, along with the local sheriff who was to enforce the PPO, claiming that the Michigan statute that allowed the PPO violated the First and Fourteenth Amendments. *Id.* The plaintiff sought to have the federal district court "issue declaratory relief and enjoin [the state-court judge] and [the sheriff] from enforcing the statute against him." *Id.* The Michigan district court found that "there [was] no Article III subject matter jurisdiction to hear [the] case" and dismissed the lawsuit. *Id.*

The *Lidke* court began its analysis by asking "what role [did] the Michigan domestic PPO statute confer upon [the state-court judge]?" *Id.* at 493. The state-court judge did not *initiate* the PPO case against the *Lidke* plaintiff; it was the plaintiff's ex-girlfriend who was the one to petition the state court for a PPO. *Id.* Instead, the Sixth Circuit found that the Michigan PPO statute required the state-court judge to "evaluate the petitioner's request for a PPO." *Id.* The Michigan PPO statute went on to state that "[the state-court judge] must then determine if 'reasonable cause' exists to grant the PPO, and if so, the judge must issue the PPO." *Id.* The Sixth Circuit determined that all the state-court judge's actions under the Michigan statute (evaluating the request for a PPO to determine if the PPO was warranted) were "purely adjudicative grounds—the judge simply decide[d] the questions at issue." *Id.* The Sixth Circuit's conclusion, therefore, was that there was

no controversy between the plaintiff and the state-court judge and that the case should be dismissed. *Id.* at 494.

The Court should follow the Sixth Circuit's example in *Lidke* and find there is no controversy between Plaintiffs and the Judicial Defendants. Just as in *Lidke*, Plaintiffs' case is 1) a challenge to a state statute under § 1983; 2) against judicial officers making determinations in the state court system; and 3) the judicial officers in question merely acted in an adjudicatory capacity to apply the statute being challenged. The judicial defendants here do not initiate bail proceedings any more than the state-court judge in *Lidke* initiated a PPO proceeding. Rather, Tennessee criminal statutes state the bail process begins "[w]hen the defendant has been arrested or held to answer for any bailable offense." Tenn. Code Ann. § 40-11-105(a)(1). Tennessee law goes on to state that judicial officers "**shall** consider" nine (9) factors "[i]n determining the amount of bail necessary to reasonably assure the appearance of the defendant while at the same time protecting the safety of the public." Tenn Code Ann. § 40-11-118(b)(1)-(9) (emphasis added). The statutory command for Tennessee judges to consider the nine (9) bail factors mirrors the Michigan statute's twelve (12) PPO factors. It stands to reason, then, that a Tennessee judicial officer's determination based upon the bail factors would be just as much of "neutral adjudication" as the state-court judge's application of the PPO factors was *Lidke*.

The Judicial Defendants' neutral adjudication of the New Bail Statute here puts them in substantially the same position as the state-court judge in *Lidke*. Indeed, Tennessee law limits the Judicial Commissioners' power in the bail process as "[t]he setting of bonds and recognizances in accordance with the procedures outlined in" Tennessee criminal statutes. Tenn. Code Ann. § 40-5-201(b)(2). The Judicial Commissioners here—just like the Michigan judge in *Lidke*—"could not administer the statute and had not promulgated the statutory standards to which the plaintiffs had

objected.” *Lidke*, 31 F.4th at 492. Simply put, the Judicial Commissioners have no relevance to Plaintiffs’ case except for the fact that they adjudicate the New Bail Statute. Such “purely adjudicative grounds” are not sufficient to create a controversy warranting declaratory relief against judges like the Judicial Defendants. *Id.* at 494.

The County submits that *Lidke* is dispositive on the issue of whether the alleged unconstitutionality of the New Bail Statute creates a controversy over which the Court could have subject matter jurisdiction. The *Lidke* court did not simply find that the plaintiff had failed to meet the standard for declaratory relief. Rather, the Sixth Circuit instead made it clear that their ruling foreclosed a court’s subject matter jurisdiction over cases like the one at bar, altogether. *Lidke*, 31 F. 4th at 495. The *Lidke* court stated that they were “not interpreting a statute” in making their ruling, but rather they were “determining the threshold constitutional issue of whether we have subject-matter jurisdiction to hear the case” altogether. *Lidke*, 31 F.4th at 495. Thus, the Sixth Circuit held “that a federal court lacks subject-matter jurisdiction over a challenge to a state statute brought under § 1983 against a state-court judge when, in the underlying action, the judge merely acted in an adjudicatory capacity to construe and apply the statute.” *Id.* Such a determination is critical because “[w]ithout jurisdiction the court cannot proceed at all in any cause; it may not assume jurisdiction for the purpose of deciding the merits of the case.” *Id.* at 494.

The significance of the *Lidke* ruling to the case at bar is clear: The Court should find as a matter of law that not only should the Plaintiff’s Motion for Summary Judgment be denied, but that the Plaintiffs’ case for a declaratory judgment against the Judicial Defendants should be dismissed for lack of subject matter jurisdiction. The Court should follow the *Lidke* court’s example in “not interpreting a statute” like the New Bail Statute in a case where the primary allegations are against the adjudicators—not promulgators—of the statute. *Id.* at 495. Instead, the

Court should find that it lacks subject matter jurisdiction over this action and “not assume jurisdiction for the purpose of deciding the merits of the case.” *Id.* at 494. Such a ruling would comport with the Sixth Circuit’s precedent in *Lidke*, as well as the general proposition that “the court must dismiss the action *sua sponte*” when there is no subject matter jurisdiction of the claim. *California Palms*, 158 F.4th at 729 (emphasis added).

2. Plaintiff Just City lacks standing to bring a claim premised on the enactment of the New Bail Statute.

The Court previously recognized that Just City attempts to base its standing to bring this suit on (3) separate grounds:

First, Just City claims that it has organizational standing to bring the action on its own behalf because HB 1719 interferes with the Agreement between Just City and Shelby County. (ECF No. 45 at PageID 418.) Second, Just City argues that it has organizational standing because the modification to the bail statute has led to increased bail amounts which, in turn, hinders Just City’s ability to post bail for qualified detainees. (*Id.* at PageID 423.) Third, Just City contends it has third-party standing to sue on behalf of the detainees 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.” (*Id.* at PageID 417.)

(Order Denying Preliminary Injunction and Motions to Dismiss, ECF No. 64, PageID 674).

The Court correctly disposed of the first, contractual bases for standing stating “Just City’s claims do not deal with a private contract, or even with a contract claim.” (*Id.* at PageID 676). The Court went on to conclude that reference to violations of the previous bail agreement did not “create[] Article III standing for an Equal Protection or Due Process challenge to a state statute that arguably impacts the County’s performance under the Agreement.” (*Id.* at PageID 676-77). The only viable paths for Just City to show standing to maintain their suit, therefore, are through either organizational standing based upon increased bail amounts and third-party standing to protect the rights of the detainees who receive Just City’s services.

Just City lacks organizational standing to bring the claims set out in Amended Complaint. Organizational standing “requires the plaintiff to show an injury attributable to the defendant's conduct and redressable by the requested relief.” *Tenn. Conf. of Nat’l. Assoc. for the Advancement of Colored People v. Lee*, 139 F.4th 557, 562 (6th Cir. 2025) (hereinafter “*NAACP II*”) (citing *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 380 (2024)). Here, Just City has not suffered any injury that is attributable to the Defendants’ conduct or that could be redressed by a ruling against the Defendants.

Just City complains that “judicial officers set higher bail amounts and fewer release orders for individuals whose circumstances indicate that they would have received lower bail amounts or release before HB 1719.” (Declaration of Josh Spickler in Support of Plaintiffs’ Motion for Summary Judgment (“Spickler Declaration”), ECF No. 119-19, PageID 1651, ¶9). Just City’s leadership goes on to state that “[h]igher bail amounts and lower release rates post HB 1719 directly increase the costs of posting bail for similarly situated clients compared to before HB 1719. (*Id.* at PageID 1652, ¶15). Further, Just City claims that they “must post bail at higher amounts and for more people to serve the same pool of individuals it was able to serve before HB 1719.” (*Id.*) It is clear, then, that Just City attempts to establish organizational standing based upon the diversion-of-resources theory (“diversion theory”). *See NAACP II*, 139 F.4th at 563 (Our cases allowed an entity to sue a defendant over an action that the defendant took against a third party if the entity voluntarily spent ‘resources’ to challenge that action).

The Sixth Circuit has recently called the diversion theory of standing into question. *See, Id.* (“As we have since recognized, though, the Supreme Court in *Alliance for Hippocratic Medicine* disavowed our diversion-of-resources theory”) (citing *FDA*, 455 U.S. at 393-96). In *NAACP II*, the NAACP attempted to show they had sufficient organizational standing to obtain

summary judgment in a lawsuit challenging the unconstitutionality of a recently enacted voter registration statute in Tennessee. *Id.* at 559-61. The NAACP attempted to show they had suffered harm based upon the new voter registration statute—and, therefore, had standing to sue—because the more stringent registration requirements of the new voter registration law forced the NAACP to spend more time and money registering prospective voters than before the statute came into effect. *Id.*

The Sixth Circuit took a dim view of the NAACP’s attempt to use the diversion theory to meet the injury requirement of the standing analysis because “the NAACP *voluntarily* decided to shift resources to help applicants” affected by the new law. *Id.* at 566. (emphasis in original). The Sixth Circuit recognized that economic strain brought on by NAACP’s diversion of resources to new voter registration could be seen as a “self-inflicted” cost brought on by the NAACP’s on strategic decision on the allocation of their resources. *Id.* (citing *FDA*, 946 F.3d at 866). The Sixth Circuit noted that, if courts allowed parties to use such self-inflicted costs to establish the injury requirement for standing, then the organizational standing analysis would “impose a mere paper standing barrier” on organizational plaintiffs. *Id.*

The Sixth Circuit went on to question whether a court could truly offer redress to the NAACP based upon their alleged injury. *Id.* at 567. The NAACP (much like *Just City* here) cited the diversion of resources brought on by the enactment of the new Tennessee voting law as the cause of *their own* economic harm. *Id.* at 567-68. The NAACP, however, sought a permanent injunction of the voting statute preventing enforcement against *anyone* in Tennessee. *Id.* at 568. The Sixth Circuit that an injunction “barring Tennessee from enforcing [the new voting law] against anyone—including those whom the NAACP did not plan to help,” raised the question of “whether courts have the constitutional power to award relief to nonparties” and “further show[ed]

the need for indirectly harmed plaintiffs to identify the directly harmed parties from whom their injuries will flow.” *Id.* at 568.

The Sixth Circuit ended their analysis in *NAACP II* with a note of caution to courts analyzing organizational standing: “An Article III injury must not just be concrete, particularized, and imminent, but also an invasion of a **legally protected** interest.” *Id.* (emphasis in original) (internal quotation marks omitted). Just City’s attempt to assert organizational standing in this case is a clear illustration of the need for the Sixth Circuit’s warning. Just City is attempting to turn their own internal decisions about how to allocate their funds into an injunction that would affect every individual who has a bail hearing in Shelby County, regardless of whether Just City has any contact with said individuals. Whatever level of standing Just City may be able to articulate based upon their reallocation of resources in light of the New Bail Statute, Just City does not have a **legally protected interest** in bail hearings for detainees who have no connection to their organization. Thus, the injury that Just City alleges does not align with the redress they seek, indicating that they do not have sufficient standing to maintain their case.

Further, Just City cannot establish third-party standing to vindicate the rights of detainees. “A plaintiff may raise a constitutional claim on behalf of a third party if he can prove (1) injury-in-fact to the plaintiff, (2) a close relationship between the plaintiff and the third party whose rights he asserts, and (3) a hindrance preventing the third party from raising his own claim.” *Moody v. Michigan Gaming Control Bd.*, 847 F.3d 399, 402 (6th Cir. 2017). Court’s look to “the likelihood and ability of the third parties ... to assert their own rights” when determining whether entities such as Just City may bring claims on the third-party’s behalf. *Id.* “Courts have found the following to constitute a hindrance that keeps a third party from protecting his or her own rights: deterrence

from filing suit due to privacy concerns, imminent mootness of a case, or systemic practical challenges to pursuing one's own rights.” *Id.*

Just City cannot make a colorable argument at this stage in the litigation that third parties are in any way hindered in bringing claims challenging the New Bail Statute for the simple fact that the third parties *have in fact brought their claims*. Indeed, the Sixth Circuit has recognized outright that “[n]o practical barriers exist if the third party actually asserts his own rights.” *Id.* at 403 (internal quotation marks and citation omitted). Here, Plaintiffs obtained certification of a class defined as “[a]ll people in the custody of the Shelby County Sheriff who are detained under bail orders issued by Shelby County judges pursuant to Tenn. Code Ann. § 40-11- 118(b), as amended by HB 1719, without consideration of their ability to pay.” (Order Granting Class Certification, ECF No. 111113, PageID 1187). The class is broad enough to encompass anyone who could conceivably benefit from Just City’s third-party challenge to the New Bail Statute. Just City, therefore, cannot articulate any hinderance to the third parties’ ability to bring their claims through the class action. Put differently, Just City cannot meet the third factor of the third-party standing test.

“Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the case.” *Loren v. Blue Cross & Blue Shield of Mich.*, 505 F.3d 598, 607 (6th Cir. 2007). All Plaintiffs’ claims against the Judicial Defendants fail based on a lack of controversy between the parties, and Plaintiff Just City’s specific claims are further defective due to a lack of standing. The Defendants, therefore, request the Court deny Plaintiff’s Motion for Summary Judgment and dismiss any claims brought without subject matter jurisdiction.

II. EVEN IF THE COURT DECIDES TO ANALYZE PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT ON ITS MERITS, PLAINTIFFS HAVE NOT MADE A SUFFICIENT CASE FOR A JUDGMENT AS A MATTER OF LAW

Even if the Court decides to analyze the merits of Plaintiffs' claims as to the unconstitutionality of the New Bail Statute, summary judgment in the Plaintiffs' favor is still inappropriate because Tennessee courts can apply the New Bail Statute without violating the Constitution.¹ Plaintiffs' Amended Complaint is, at base, a facial challenge to the constitutionality of the New Bail Statute. The basis of a facial challenge to any statute is that there is no way for courts to apply the statute without violating the constitutional rights of parties subject to the law. *See U.S. v. Salerno*, 481 U.S. 739, 746 (1987) (stating a party challenging a statute's constitutionality on its face "must establish that no set of circumstances exists under which the [statute] would be valid").

Plaintiffs' specific constitutional challenge is that no detainee can ever have a constitutionally adequate bail hearing under the New Bail Statute's prohibition on consideration of a detainee's ability to pay bail. (See, e.g. Amended Complaint, ECF No. 75-2, PageID 742, ¶1) ("[t]he [New Bail Statute] mandates arbitrariness by requiring judges to ignore the consequences of their bail orders and disregard whether arrestees will be released or detained"). But Plaintiffs' claim as to the facial unconstitutionality of the New Bail Statute fails for a very simple reason: Courts applying the New Bail Statute can comply with due process requirements when setting bail

¹ To be clear, it should not fall to the Shelby County Defendants to defend this State of Tennessee statute at all. For reasons that are clear to only the Plaintiffs, the Plaintiffs chose to sue employees and elected officials of Shelby County for doing nothing more than complying with a State law, rather than bringing suit against the State which passed the law. However, in order to thoroughly show why the claims against these Defendants fail, these Defendants briefly address the constitutionality of the statute itself.

by considering a detainee’s financial condition, even if those courts do not consider the detainee’s “ability to pay” bail.

1. Plaintiffs’ case against Defendants is a facial challenge to the New Bail Statute.

At the outset, it is critical to acknowledge that Plaintiffs’ case against the Defendants is in fact a facial challenge to the constitutionality of the New Bail Statute. The importance of recognizing Plaintiffs’ case a facial challenge stems from the fact that, “[a]s the Supreme Court recently noted, a facial challenge ‘is the ‘most difficult challenge to mount successfully,’ because it requires a defendant to ‘establish that no set of circumstances exists under which the [statute] would be valid.’” *Grayer v. United States*, 2025 WL 1223108 at *4 (W.D. Tenn., April 28, 2025) (quoting *United States v. Rahimi*, 602 U.S. 680 (2024)). Further, the Sixth Circuit has cautioned courts analyzing facial challenges, stating:

[F]ederal courts do not lightly uphold facial challenges. Many of the concerns that underlie the ripeness doctrine—that the operation of the statute will be better grasped when viewed in light of a particular application and that the proper exercise of the judicial function avoids deciding abstract and speculative questions,—underlie, and are indeed echoed by, the courts’ reluctance to grant relief in the face of facial, as opposed to as-applied, attacks on statutes. When determining whether a law is facially invalid, as when determining whether a case is ripe, we must be careful not to speculate about ‘hypothetical’ or ‘imaginary’ cases or to prematurely interpret statutes on the basis of factually barebones records. Exercising judicial restraint in a facial challenge frees the Court not only from unnecessary pronouncement on constitutional issues, but also from premature interpretations of statutes in areas where their constitutional application might be cloudy.

Warshark v. U.S., 532 F.3d 521, 528-29 (6th Cir. 2008) (internal punctuation and citations omitted).

The Court should read the entirety of Plaintiffs’ Amended Complaint as a facial challenge to the New Bail Statue even though Plaintiffs do not use the words “facial challenge” in their Amended Complaint. Plaintiffs leave no room for the possibility that the Judicial Defendants could apply the statute in a constitutional manner, stating “[b]ecause of the new law, Shelby County

officials abandoned their constitutional obligations.” (Amended Complaint, ECF No. 75-2, PageID 743, ¶5). Plaintiffs further demonstrate their intent to make a facial challenge against the New Bail Statute by identifying their putative class as “all people in the custody of the Shelby County Sheriff who are detained under bail orders issued by Shelby County judges pursuant to [the New Bail Statute], without consideration of their ability to pay.” (*Id.* at PageID 753-54, ¶41) (emphasis added). The designation of a class “all people” subject to bail set by the Judicial Defendants shows that Plaintiffs do not believe that anyone can have a constitutionally acceptable hearing under the New Bail Statute.

Plaintiffs’ arguments throughout the course of this litigation further bolster the conclusion that their case is a facial challenge to the New Bail Statute. For example, Plaintiffs argued for class certification in order to “challenge a uniform bail-setting procedure that violates due process and equal protection,” and that the “individual circumstances [of the class members]—including ability to pay, criminal charges, and time spent in detention—are irrelevant to determining” whether the New Bail Statute is unconstitutional. (Memorandum in Support of Plaintiffs’ Motion for Class Certification, ECF No. 76-1, PageID 774). Plaintiffs went on to argue that their case does “not challenge any individual bail determinations,” but is instead a “challenge [to] the constitutionality of [the New Bail Statute], which subjects *all class members to the same* bail-setting procedures.” (Reply in Support of Plaintiffs Motion to Certify Class, ECF No. 86, PageID 909) (emphasis added). Plaintiffs’ disavowal of challenging individual bail determinations in favor of overturning the entire New Bail Statute shows that Plaintiffs’ ultimate claim is that there is no set of circumstances under which a court could constitutionally apply the statute. Thus, Plaintiffs’ claims are a *de facto* facial challenge of the New Bail Statute, and the Court should treat it as such. *See*

Grayer, 2025 WL 1223108 at *4 (stating that a facial challenge seeks to “establish that no set of circumstances exists under which the [statute] would be valid”).

2. Plaintiffs have not met the standard for succeeding on a facial challenge to the constitutionality of the New Bail Statute.

A facial challenge to the constitutionality of a statute “is the ‘most difficult challenge to mount successfully,’ because it requires [the challenger] to ‘establish that no set of circumstances exists under which the [statute] would be valid.’” *Id.* (quoting *United States v. Rahimi*, 602 U.S. 680 (2024)). Conversely, the party defending against a facial challenge “need only demonstrate the [the statute] is constitutional in some of its applications.” *Id.* (emphasis added). The Defendants can demonstrate the existence of constitutional application of the New Bail Statute (and, thereby, negate Plaintiffs claims) with one simple fact: The New Bail Statute allows courts to consider a detainee’s financial condition.

Plaintiffs bring their facial challenge to the New Bail Statute under the premise that “[t]he statutory prohibition on consideration of an arrestee’s ability to pay when setting bail violates the Due Process Clause of the Fourteenth Amendment.” (Amended Complaint, ECF 75-2, PageID 755, ¶54). In contrast, the U.S. Constitution “addresses pretrial release by providing merely that ‘[e]xcessive bail shall not be required.’” *Salerno*, 481 U.S. at 752 (quoting U.S. Const. amend. VIII). The plain text of constitutional prohibition against excessive bail, however, does not contain any constitutional mandate that courts specifically analyze a detainee’s “ability to pay” bail. Plaintiffs, therefore, cannot make out a case that the New Bail Statute violates the Constitution on its face simply because the law specifically prohibits courts from considering a detainee’s ability to pay bail.

The Supreme Court in *Bearden v. Georgia*, 461 U.S. 660 (1983) laid out a helpful framework for determining what inquiry courts should make into a party’s finances when the

party's liberty requires them to make some type of payment. The *Bearden* Court's analysis applies to cases (such as the case here) where parties have alleged both due process and equal protection violations based upon a court's detention of a party for failing to pay a sum of money. See *Id.* at 665 (stating that "[d]ue process and equal protection principles converge in the Court's analysis" of cases involving fairness issues between the state and a criminal defendant).

In *Bearden*, the Court undertook an analysis to "determine whether, and under what circumstances, a defendant's indigent status may be considered in the decision" to imprison the defendant for failing to make a court-ordered payment. *Id.* at 666. The *Bearden* Court considered the situation of a probationer who violated the terms of his release by failing to pay court-ordered fines and restitution. *Id.* at 660. The sentencing court revoked the probationer's parole due to the lack of payment and sentenced him to serve the remainder of his probationary period in prison. *Id.* at 663. The sentencing court did not make any inquiry into whether the probationer could make the payments in reaching its decision. *Id.*

The sentencing court's failure to determine why the probationer could not make the payments proved fatal to their decision. The *Bearden* Court determined that the extent of the sentencing court's analysis was that the probationer "had disobeyed a prior court order to pay the fine, and for that reason must be imprisoned." *Id.* at 674. The Court went on to reason that by "sentencing [the probationer] to imprisonment simply because he could not pay the fine, without considering the reasons for the inability to pay...the court automatically turned a fine into a prison sentence." *Id.*

The *Bearden* Court concluded that, if a court decides to detain someone because they cannot pay a sum of money, the "court must inquire into the reasons for the failure to pay." *Id.* at 672. Detention for nonpayment is permissible when the detainee "willfully refused to pay or failed

to make sufficient bona fide efforts legally to acquire the resources to pay.” *Id.* However, if the detainee “could not pay despite sufficient bona fide efforts to acquire the resources to do so, the court must consider alternate measures” to detention. *Id.*

Plaintiffs propose that the courts undertaking the *Bearden* analysis laid out above can, apparently, only effectively carry out the analysis by allowing the detainee to put on proof that includes the exact words “ability to pay.” (*See, e.g.* Plaintiff’s Memorandum, ECF No. 119-1, PageID 1241-45). The State is likely of the opinion that allowing a detainee to put on any proof that goes to show their “financial condition” meets constitutional muster. Neither the U.S. Constitution contain the exact phrases “ability to pay” or “financial condition” in their text. The Defendants, therefore, will eschew both phrases and show that what is required by the Constitution and *Bearden*—and what is provided in the New Bail Statute—is that detainees can present an “economic analysis” to the court setting bail.

Courts applying the New Bail Statute can conduct an adequate *Bearden* economic analysis—and meet the constitutional minimums for due process and equal protection—by considering a party’s financial condition. The *Bearden* economic analysis discussed supra can be restated in the context of the New Bail Statute as follows: Can a detainee pay the amount of bail the court intends to order based on his financial condition? If the answer to the foregoing question is “no”, then the *Bearden* economic analysis indicates that the court setting bail should consider “alternative measures”. *Bearden*, 461 U.S. at. at 674. Such measures would presumably be a lower bail amount. Parties can present—and courts can conduct—the entirety of the *Bearden* economic analysis while complying with the New Bail Statute.

By way of analogy, Defendants offer the following hypothetical to further illustrate how considering a party’s a “financial condition”—but not their “ability to pay”— when setting bail

meets constitutional muster: Suppose there is a constitutional prohibition against a court depriving a party of any liberty interest unless the court first considers how the party's height affects their day-to-day life. The state courts follow the general practice in the United States of analyzing height using the Imperial System of feet and inches. Then the state legislature passes a new law stating courts may continue to consider a party's height as measured in the Metric System of meters and centimeters, but courts can no longer consider the party's height in feet or inches. A party challenges the law as unconstitutional on its face, claiming the prohibition against presenting his height to a court in the Imperial System violates his constitutional right to have the court take his height into account before any deprivation.

The new law would be facially constitutional, however, because the baseline constitutional requirement is that courts consider a party's height, not that the court consider the party's height in any specific measurement system. See *Grayer*, 2025 WL 1223108 at *4 (stating that the party defending a facial challenge to a statute only needs to demonstrate the statute is constitutional in some of its applications to prevail). Put differently, the constitutional prohibition against depriving a party of a liberty interest without considering their height does not equate to a constitutional mandate that the party be able to present their height to a court using the Imperial System. The new law does alter how a court analyzes height (in meters and centimeters rather than feet and inches), but the law does not change the fact that courts can consider the constitutionally necessary subject of a party's height (albeit only in meters or centimeters).

To complete the analogy, the constitutionally required consideration of a party's height in the hypothetical is like the *Bearden* economic analysis. See *Bearden*, 461 U.S. at 672 (stating a "court must inquire into the reasons for the failure to pay" before detaining a party for nonpayment court-ordered sums). A Tennessee court's analysis of a party's "ability to pay" when setting bail

is like the hypothetical court's analysis of a party's height using the Imperial System. A court's consideration of a party's "financial condition" is like the use of the Metric System in the hypothetical. Although the New Bail Statute changes how a court might conduct a *Bearden* economic analysis by removing consideration of a party's "ability to pay", the fact remains that a court can perform a constitutionally sound analysis by considering a party's "financial condition".

Plaintiffs attempt to use *McNeil v. Community Probation Services, LLC*, 2019 WL 633012, at *7 (M.D. Tenn. Feb. 14, 2019), *aff'd*, 945 F.3d 991 (6th Cir. 2019), to rebut the idea that consideration of "financial condition" is an acceptable means of conducting the *Bearden* economic analysis. (See Plaintiffs' Memorandum, ECF No. 119-1, PageID 1243). Plaintiffs state that "judges [in *McNeil*] sometimes considered 'materials and financial information available in the probationer's case file' when setting bail." (*Id.*) (citing *McNeil*, 2019 WL 633012, at *3). Plaintiffs went on to state that, "[t]he *McNeil* court nonetheless found that the bail system did not serve 'any compelling governmental interest' because, by failing to consider ability to pay, it perpetuated arbitrary wealth-based discrimination, namely, effectuating the release of wealthy defendants while detaining indigent defendants, all without any connection to court appearance or public safety." (*Id.*) (citing *McNeil*, 2019 WL 633012, at *13-14). Plaintiffs concluded from this that "while other factors are certainly relevant to assessing appropriate release conditions, assessing ability to pay is necessary to protect against arbitrary discrimination based on wealth. (*Id.*) Plaintiffs both misstate the *McNeil* court's analysis and misapply the *McNeil* court's reasoning.

First and foremost, Plaintiffs misstate the *McNeil* decision by implying that the district court's acknowledgement that that the bail analysis at issue sometimes included "materials and financial information available in the probationer's case file" had anything at all to do with the court's finding that the bail system did not serve any compelling governmental interest. (*Id.*)

(citations omitted). The district court in *McNeil* instead recognized that the defendants did “not made any significant arguments that the bail system described in the stipulated facts serves any compelling governmental interest” and that “[e]ven if the Court assume[d] Defendants have a legitimate interest in” perpetuating their bail system, “Defendants have presented no proof to suggest the current bail system furthers those interests.” *McNeil*, 2019 WL 633012, at *13. The district court, therefore concluded that “[g]iven the complete absence of evidence supporting the bail system... Defendants have failed to show the current bail system rationally furthers a legitimate governmental interest.” *Id.* at 15. The district court’s determination in *McNeil* that the bail system did not serve a compelling governmental interest had nothing to do with defendants’ consideration of “materials and financial information available in the probationer’s case file,” or “other factors relevant to setting bail...such as financial circumstances,” or a detainee’s ability to pay bail. (Plaintiffs Memorandum, ECF No. 119-1, PageID 1243).

Plaintiffs’ more pervasive (and more puzzling) error in their use *McNeil* is that they discuss in reference to the *Bearden* economic analysis, *at all*. Plaintiffs open their *McNeil* discussion by stating that “[f]ailing to assess ability to pay violates *Bearden* even if judges evaluate other factors relevant to setting bail under Tennessee law, such as financial circumstances” and that “*McNeil* is again instructive.” *Id.* It is puzzling, then, that Plaintiffs do not cite *anything* from the *McNeil* decision that would indicate the district court took any position on the viability of using “other factors” such as “financial circumstances” to the exclusion of considering a probationer’s “ability to pay” bail. Plaintiffs focused instead on whether the bail system in *McNeil* served a “compelling governmental interest.” *Id.* But the Defendants have not ever claimed—and do not claim now—that Plaintiffs’ case should fail because the New Bail Statute serves a “compelling governmental interest.” Instead, the Defendants have consistently made the case that Plaintiffs claims fail

because there is no practical, legal, or constitutional difference between an economic analysis based on a detainee’s “ability to pay bail” versus an analysis based on the detainee’s “financial condition.”

The Defendants respectfully submit that the Plaintiffs are overly fixated on the phrase “ability to pay” in attempting to make their case. The phrase “ability to pay” does not appear in the prohibition against excessive bail in Eighth Amendment. See U.S. Const. amend VII. The *Bearden* Court did not use the phrase “ability to pay” in the entirety of their opinion. It is unclear, then, how Plaintiffs can maintain that the New Bail Statute “mandates arbitrariness by requiring judges to ignore the consequences of their bail orders and disregard whether arrestees will be released or detained” simply because the statute disallows the use of the phrase “ability to pay”. Nevertheless, the fact remains that courts can comply with both the Constitution and the New Bail Statute by conducting a *Bearden* economic analysis based upon a party’s financial condition when setting bail. The Court, therefore, should deny Plaintiffs’ Motion for Summary Judgment. See *Grayer*, 2025 WL 1223108 at *4 (stating that the party defending a facial challenge to a statute need only demonstrate the statute is constitutional in some of its applications to prevail).

3. Plaintiffs are not entitled to a summary judgment granting injunctive relief against the Shelby County Sheriff.

The Court should also deny the Plaintiffs’ specific request for injunctive relief against the Shelby County Sheriff. Plaintiffs’ claim for injunctive relief is premised on the fact that “[t]he Shelby County Sheriff is enforcing bail orders issued” pursuant to the New Bail Order. (Amended Complaint, ECF No. 75-2, PageID 746, ¶15). Plaintiffs’ allegation is essentially that the Sheriff is following orders handed down by neutral adjudicators such as the Judicial Defendants. Plaintiffs cannot, as a matter of law, make out a case that would entitle them to any form of relief based upon such an allegation.

The office of the Shelby County Sheriff—as with all sheriffs in Tennessee—is a creation of the Tennessee Constitution. Tenn. Const. Art. VII § 1 (“[t]he qualified voters of each county shall elect for terms of four years...a Sheriff”). Tennessee statutes set out the duties and powers of sheriffs in Tennessee. See, generally Tenn. Code Ann. § 8-8-201. Most relevant of this case is a sheriff’s duty to “[e]xecute and return, according to law, the process and orders of the courts of record” combined with the duty to “[t]ake charge and custody of the jail of the sheriff’s county, and of the prisoners therein; receive those lawfully committed, and keep them personally, or by deputies or jailer, until discharged by law.” Tenn. Code Ann. § 8-8-201(a)(1), (3). The Shelby County Sheriff should not face declaratory or injunctive liability simply for complying with these statutory duties.

The Sixth Circuit’s decision *McNeil v. Cmty. Probation Servs.*, 945 F.3d 991, 993 (6th Cir. 2019)² illustrates why the Shelby County Sheriff should not face any form of liability in this case. The facts of *McNeil* bear a great resemblance to the facts of the instant case: The plaintiffs in *McNeil* alleged that their local sheriff “violated their substantive right against wealth-based detention by detaining them after arrest until they pay bail” and that the local judges “set the bail amount without reference to the person’s ability to pay.” *Id.* (internal quotation marks omitted). The district court in *McNeil* initially agreed with the plaintiffs that the local bail-setting process potentially violated detainees’ constitutional rights and entered a preliminary injunction prohibiting the sheriff from “detaining any person on misdemeanor probation ... based on a secured financial condition of release.” *Id.* (internal quotation marks omitted). The sheriff appealed the

² For clarity *McNeil v. Cmty. Probation Servs.*, 945 F.3d 991, 993 (6th Cir. 2019) is the appeal of the District Court for the Middle District of Tennessee’s ruling in *McNeil v. Community Probation Services, LLC*, 2019 WL 633012, at *7 (M.D. Tenn. Feb. 14, 2019).

preliminary injunction on the grounds that “his detention of the probationers is not the real violation” and that “[t]he true problem [was] the way the judges set bail amounts.” *Id.* at 995.

The Sixth Circuit rejected the McNeil sheriff’s argument against the preliminary injunction. *Id.* at 995-96. The *McNeil* court reasoned that the plaintiffs’ “alleged constitutional violation [was] detention on an improperly determined bail amount,” and that the sheriff “act[ed] for the State when he takes the challenged action, detaining probationers under judge-set bail amounts.” *Id.* The Sixth Circuit, therefore, concluded that “plaintiffs can sue the sheriff, and it makes no difference whether he acts for the State or the county.” *Id.* at 995.

On its face, *McNeil* seems to support Plaintiffs’ claim against the Sheriff for summary judgment. There is, however, a monumental difference between the procedural posture of the case against the Sheriff in *McNeil* and the case at bar: The district court in *McNeil* granted the plaintiffs’ request for a preliminary injunction whereas the Court denied Plaintiffs’ request for a preliminary injunction in this case. The Sixth Circuit recognized that the *McNeil* sheriff “[a]ccept[ed] the preliminary constitutional ruling” that the bail orders he enforced were unlawful for the purposes of his appeal. *Id.* at 993. The *McNeil* sheriff “argue[d] only that the district court permitted the plaintiffs to sue the wrong party and thus imposed the wrong remedy.” *Id.* Put differently, the *McNeil* sheriff had accepted that the bail orders he was enforcing were unconstitutional—and, therefore, unlawful—for the purpose of making his appeal. *Id.*

The *McNeil* sheriff’s acknowledgement that he was enforcing unlawful orders is crucial to understanding why the Court should grant summary judgment in the Shelby County Sheriff’s favor in this case. Tennessee law requires that sheriffs “obey the lawful orders and directions of the court.” Tenn. Code Ann. § 8-8-201(a)(2)(A) (emphasis added). But there is nothing in Tennessee law that requires sheriffs to obey or enforce unlawful orders. The *McNeil* court recognized that the

sheriff's obedience of the bail orders—which he had admitted, at least for the purposes of his appeal, were unlawful—created an independent cause of action against the sheriff, stating:

Consider the alleged violation to be two actions. Action one: A judge determines a bail amount without considering ability to pay or adequacy of alternatives. Action two: [the sheriff] detains the probationer until she pays the bail amount. The alleged constitutional violation is detention on an improperly determined bail amount.

McNeil, 945 F.3d at 995-96.

Thus, the *McNeil* court reasoned it was proper for the plaintiffs to seek an injunction against the sheriff to prevent him from perpetuating the harm of the unconstitutional bail orders by detaining the plaintiffs pursuant to said orders. *Id.* at 996. One can logically infer that, if the *McNeil* sheriff did not admit the unconstitutionality of the bail orders in “action one” for the purposes of his appeal, then Sixth Circuit would likely have determined the defendants should not have been subject to an injunction preventing the enforcement of the bail orders in “action two”.

The Shelby County Sheriff has absolutely not admitted the unconstitutionality of any bail orders in this case. There is, therefore, no “action one” in this case to create a constitutional harm that the that the Shelby County Sheriff could be enjoined from perpetuating. Instead, the Shelby County Sheriff is left with facially lawful bail orders that he has a statutory duty to enforce. *See Konvalinka v. Chattanooga-Hamilton Cnty. Hosp. Authority*, 249 S.W.3d 346, 355 (Tenn. 2008) (“[a] lawful order is one issued by a court with jurisdiction over both the subject matter of the case and the parties”). Plaintiffs have certainly alleged all bail orders under the New Bail Statute are unconstitutional, but Plaintiffs’ allegations alone do not rise to the level of the *McNeil* sheriff’s admission that the bail orders he was enforcing were unconstitutional. *See Id.* (“[a]n order is not rendered void or unlawful simply because it is erroneous or subject to reversal on appeal”).

All of the foregoing leads to the conclusion that it is impossible as a matter of law for Plaintiffs to make out a case for injunctive relief against the Shelby County Sheriff. Plaintiffs must

show “actual present harm or a significant possibility of future harm” to obtain injunctive relief against the Shelby County Sheriff. *Ohio v. City of Xenia*, 780 Fed.Appx. 331, 338 (6th Cir. 2019) (internal quotation marks and citations omitted). Unlike the plaintiffs in *McNeil*, Plaintiffs here cannot rely upon an admission as to the unconstitutionality of the bail orders to establish that the Shelby County Sheriff is engaged in harmful, unconstitutional conduct that the Court enjoin. Moreover, Plaintiffs cannot have the Court determine whether the bail orders the Shelby County Sheriff enforces are unconstitutional because—as shown supra—the Court lacks subject matter jurisdiction to determine the lawfulness of orders handed down by neutral adjudicators. See Lidke, 31 F. 4th at 495 (“a federal court lacks subject-matter jurisdiction over a challenge to a state statute...against a state-court judge when, in the underlying action, the judge merely acted in an adjudicatory capacity to construe and apply the statute”). Thus, it is impossible for Plaintiffs to make out the central element of their claim (i.e. some form of unconstitutional harm that could be restrained by an injunction) and the Court should deny Plaintiffs’ Motion for Summary Judgment.

4. The New Bail Statute is not unconstitutionally vague.

Plaintiffs’ final claim is that the New Bail Statute is unconstitutionally vague because it “mandates that judicial officers ‘shall’ consider a defendant’s ‘financial condition’ but then states that the defendant’s ‘ability to pay shall not be considered.’” (Amended Complaint, ECF No. 75-2, PageID 756, ¶59). Plaintiffs complain that neither the phrase “ability to pay” nor “financial condition” is defined in the New Bail Statute. *Id.* This, Plaintiffs contend, means that “arrestees do not have fair notice of what evidence they can present to a judicial officer in connection with a bail setting proceeding.” *Id.* at ¶60. What the lack of definition for the phrase “ability to pay” in the New Bail Statute *actually* means is that detainees can introduce as much economic proof as they desire under the ambit of showing their financial condition—without running afoul of the non-

existent bar to any substantive economic topic prohibited by the similarly non-existent definition of “ability to pay”—so long as the detainees do not actually use the words “ability to pay”.

Courts recognize that “a statute will be struck down as facially vague only if the plaintiff has demonstrated that the law is impermissibly vague in all of its applications.” *Green Party of Tenn. v. Hargett*, 700 F.3d 816, 825 (6th Cir. 2012) (internal punctuation omitted) (emphasis added). A statute is unconstitutionally vague if people “of common intelligence must necessarily guess at its meaning and differ as to its application.” *Jones v. Caruso*, 569 F.3d 258, 276 (6th Cir. 2009). Courts analyzing a statute for vagueness must endeavor to “not [] convert into a constitutional dilemma the practical difficulties of crafting a law that is general enough to take into account a variety of human conduct yet specific enough to provide fair warning.” *Green Party of Tenn.*, 700 F.3d at 825. (internal quotation marks and citations omitted). “Moreover, federal courts must construe challenged state statutes, whenever possible, so as to avoid constitutional difficulty.” *Id.* When determining if a statute is unconstitutionally vague “[e]very reasonable construction must be resorted to, in order to save a statute from unconstitutionality.” *Id.* (quoting *Chapman v. United States*, 500 U.S. 453, 464, (1991)).

The crux of Plaintiffs’ vagueness claim is that New Bail Statute is “unconstitutionally vague because there is no reasoned basis for judicial officers to apply a statute that simultaneously requires them to consider an arrestee’s financial condition and prohibits them from considering the arrestee’s ability to pay bail.” Defendants would offer again the analogy to offering proof of a party’s height in Metric, instead of Imperial, units laid out *supra* to show that courts can apply the New Bail Statute without the undefined phrases “ability to pay” and “financial condition” rendering the statute unconstitutionally vague.

Plaintiffs have challenged Defendants' comparison of the New Bail Statute to a fictional measurement-based statute in other contexts. Plaintiffs state:

This analogy to different units of the same measurement demonstrates the impossibility of applying HB 1719. Defendants' proposed reading makes no sense and has no basis in the statutory text, the legislative history or the factual record of how the statute is being applied in practice. Just as an individual's height is the same whether measured in inches and centimeters, an analysis of an individual's "financial condition" and "ability to pay" involves the same inquiry. Merely converting a measurement from inches to centimeters, or more aptly from dollars to euros, changes nothing of substance or meaning under the statute. The statutory text and undisputed record confirm that judicial officers have no reasoned basis to distinguish between the information they *must* consider related to financial condition and the information they *must not* consider related to ability to pay. HB 1719 is therefore void for vagueness.

(Plaintiffs Memorandum, ECF No. 119-1, PageID 1235-36)

Defendants will concede that Plaintiff may not be able to make sense of Defendants' analogy, but this does not mean that Defendants' analogy makes no sense. Indeed, Defendants' analogy makes more sense than Plaintiffs' continued insistence that the phrase "ability to pay" (or lack thereof) in a bail ruling somehow carries an indispensable constitutional weight. Plaintiffs point out that "an analysis of an individual's 'financial condition' and 'ability to pay' involves the same inquiry." (*Id.*) Well, yes, Plaintiffs are quite right. Plaintiffs seem to miss the point, however, that by simply avoiding the three (3) words "ability to pay" detainees can put on whatever economic proof they wish (provided said proof complies with other relevant Tennessee court rules and statutes) while "changing nothing of substance" of their argument as to what their bail should be.

Defendants suggest the Court view the New Bail Statute through the lens of the rule against leading questions in direct examinations to interpret the difference between "ability to pay" and "financial condition". Rule 611 of the Tennessee Rules of Evidence states "[l]eading questions should not be used on direct examination of a witness except as may be necessary to develop the

witness's testimony.” Tenn. R. Evid. 611(c)(1). “A leading question has been defined as one which ‘suggests a specific answer desired.’” *Shoun v. Southeast Industries, Inc.*, 2000 WL 295601 at *3 (Tenn. 2000) (quoting Cohen, Sheppard, Paine, Tennessee Law of Evidence, § 611.6).

For example, a party trying to illustrate the nature of an employee’s injury in a workers’ compensation case could ask an impermissible leading question such as “[d]id you observe [the employee] in any way favoring any part of her body?” *Shoun*, 2000 WL 295601 at *3. The question suggests the answer the examining attorney wanted the witness to give (that the employee was favoring a part of her body) and is therefore inappropriate on direct examination. *Id.* The examining attorney could elicit the desired testimony from the witness by simply asking the open-ended question “what, if anything, did you observe?” Such question would allow the witness to state that she saw the employee favoring part of her body without drawing an objection for leading.

The rule against leading questions bars a party from eliciting testimony through a leading question that they otherwise could obtain through an open-ended question. The critical point for the Court to consider here is that the rule against leading questions does not prohibit the *type* of information the examining attorney can put on the record but, instead, restricts *how* the examining attorney puts information on the record. Applying the foregoing principle here, the New Bail Statute does not prohibit a party from presenting any type of evidence relative to the *Bearden* economic analysis. Instead, the text of the New Bail Statute should be read to control how a party presents such evidence.

The plain text of the New Bail Statute controls how a party presents evidence in a bail hearing by prohibiting detainees from using the exact three (3) words “ability to pay” in their presentation. This is an extremely literal interpretation of the statute that allows a detainee to submit—and a court to consider—proof necessary for the *Bearden* economic analysis so long as

such proof is offer only as evidence of his “financial condition.” But, as Plaintiff repeatedly points out, there are no definitions within the New Bail Statute that would prevent any detainee from using such a literal interpretation of the statutory text. Simply put, the New Bail Statute prohibits courts and detainees from using the three (3) words “ability to pay”, nothing more and nothing less.

Such a reading also obviates the vagueness issues Plaintiffs raise in their application of *Springfield Armory, Inc. v. City of Columbus*, 29 F.3d 250, 253 (6th Cir. 1994) The vagueness inquiry in *Springfield Armory* centered on an ordinance that banned “assault weapons” produced by specific gun manufacturers, as well as “other models by the same manufacturer with the same action design that have slight modifications or enhancements of firearms listed.” *Id.* at 252. The Sixth Circuit reasoned that prohibiting weapons with “slight modifications” was an unconstitutionally vague restriction as “[p]laintiffs, gun manufacturers and dealers, say that they are unable to comprehend the meaning of the ‘slight modifications’ provision or the purpose of the ordinance and hence cannot know in advance which sales the ordinance purports to prohibit.

It is unclear why the Tennessee legislature has such an aversion to the phrase “ability to pay”, just as it is unclear why the Plaintiffs feel the use of that specific phrase is necessary to the bail process. Regardless, Defendants’ reading of the New Bail Statute allows the Court to avoid any questions of unconstitutional vagueness. Such avoidance is important because “state statutes which have not been authoritatively construed by state courts should be interpreted by federal courts so as to avoid constitutional questions.” *Berger v. Sup. Ct. of Ohio*, 861 F.2d 719 (6th Cir. 1988) (internal quotation marks and citations omitted). The Court itself has noted that it is advisable to “avoid constitutional questions [even] when the reading that preserves the statute is ‘plainly not the best’ one if it ‘is at least a possible one.’” (Order Denying Preliminary Injunctions

and Motions to Dismiss, ECF No. 64, PageID 694) (quoting *Bevan & Assocs., LPA v. Yost*, 929 F.3d 366, 376-77 (6th Cir. 2019)).

Defendants’ proposed reading of the New Bail Statute may not be the best one. But, as the Sixth Circuit has stated, “[e]very reasonable construction must be resorted to, in order to save a statute from unconstitutionality.” *Green Party of Tenn.*, 700 F.3d at 825 (citations omitted). Defendants’ reading of the New Bail Statute is grounded in the principles of one of the Tennessee Rules of Evidence. The proposed reading gives effect to both the phrases “ability to pay” and “financial condition” without rendering either one superfluous. It is a reasonable construction of the New Bail Statute the Court can resort to in order to avoid unnecessary constitutional determinations. The Court should find, therefore, that Defendants’ reading of the New Bail Statute is a possible one and deny Plaintiffs’ Motion for Summary Judgment regarding their vagueness claim.

CONCLUSION

For the foregoing reasons, the Defendants request that the Court deny Plaintiffs’ Motion for Summary Judgment, dismiss Plaintiffs claims for lack of subject matter jurisdiction as appropriate, and render any further relief—either general or specific—that the Court deems appropriate.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that the foregoing is being filed via the Court's ECF system this 19th day of February, 2026 for service on all persons registered in connection with this case, including:

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