

**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.

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 Mazingo,

**Shelby County Judicial
Commissioners,**

in their official capacities,

Defendants.

Case No. 2:24-cv-2540-TLP-tmp

REPLY IN SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

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PRELIMINARY STATEMENT

The Court should grant Plaintiffs’ motion for summary judgment and hold that HB 1719 is unconstitutional. The Defendants’ and the State’s attempts to salvage HB 1719 fail.

First, this Court has subject matter jurisdiction. There is no dispute that Mr. Barnes, Mr. Towns and the certified class have standing because they were detained under unconstitutional bail orders. Just City also has organizational standing because HB 1719 has directly affected its core mission of posting bail for indigent clients. The undisputed record confirms that HB 1719 has led to higher bail amounts imposed on more arrestees and has caused an injury to Just City. And Plaintiffs are sufficiently adverse to the judicial Defendants for Article III purposes because they are challenging a statute related to the judicial process. Plaintiffs also properly named the Sheriff, who is enforcing unconstitutional bail orders.

Second, HB 1719 is void for vagueness. As an initial matter, *Beckles v. United States* does not immunize incoherent statutes like HB 1719 from review. 580 U.S. 256 (2017). *Beckles* involved a challenge to the advisory Sentencing Guidelines and only discussed how the vagueness doctrine applies to penal statutes. Contrary to the State’s claim, *Beckles* did not limit the doctrine to just two types of penal laws. After *Beckles*, the Supreme Court held a civil deportation statute void for vagueness. *Sessions v. Dimaya*, 584 U.S. 148 (2018). *Beckles* does not apply to HB 1719 because it is not a penal statute and it imposes a mandatory restriction on judicial officers setting bail. And HB 1719 is so vague that Defendants and the State cannot agree on its meaning.

Defendants concede that HB 1719 imposes two inconsistent requirements by requiring judicial officers to consider a defendant’s “financial condition” while prohibiting them from considering a defendant’s “ability to pay.” Defendants agree that these two terms overlap and that there is no reasoned basis for a judicial officer to distinguish between them. Instead, Defendants

argue that HB 1719 should be deemed constitutional because judicial officers can consider an arrestee's ability to pay so long as no one uses the magic words "ability to pay." Defendants thus seek to save HB 1719 by improperly nullifying its plain text and legislative intent. While the State offers a contrived distinction between "financial condition" and "ability to pay," it cannot escape the fact that "financial condition" is part of the same "ability to pay" inquiry. This invites arbitrary and discriminatory enforcement that violates due process.

Third, HB 1719 is also fundamentally unfair and violates the due process principles in *Mathews*. The *Mathews* standard applies here—not the *Medina* doctrine—because HB 1719 does not concern the admissibility of evidence or the burden of proof in criminal cases. The undisputed record shows that all four *Mathews* factors weigh in favor of Plaintiffs. Defendants do not even attempt to argue that HB 1719 satisfies the *Mathews* test. The State tries but fails to present any compelling counterarguments. Instead, the State constructs and tears down a strawman argument about whether there is a right to affordable bail, which Plaintiffs do not assert here. The State also offers unsupported and speculative arguments about the cause of rising bail amounts following HB 1719 and the sunk costs of implementing the Shelby County settlement and the Standing Bail Order (including a courtroom renovation), which are not at issue. The State has no answer to the undisputed record establishing that every other state that uses cash bail allows consideration of ability to pay, there is no financial or administrative burden in allowing judicial officers to do so, and consideration of ability to pay advances Tennessee's statutory mandate to set bail at the lowest amount necessary to ensure the state's interests in appearance and public safety.

Finally, HB 1719 violates *Bearden*. Both Defendants and the State agree that *Bearden* applies in the context of pretrial detention. Defendants argue that the statute is constitutional because financial condition and ability to pay are interchangeable metrics for the "economic

analysis” *Bearden* requires. But Defendants’ otherwise confounding equivocation implicitly concedes that *Bearden* requires consideration of ability to pay. The State relies on inapposite cases where arrestees received the opportunity to present evidence regarding ability to pay within a few days. Here, arrestees never get the opportunity to submit evidence as to whether they can afford bail at any point in the process and are therefore subject to an absolute denial of pretrial liberty. HB 1719 thus results in detention solely based on access to wealth that is not justified by state interests and violates *Bearden*.

ARGUMENT

I. THE COURT HAS SUBJECT MATTER JURISDICTION

A. Plaintiffs Have Standing

The Defendants do not dispute that Mr. Barnes, Mr. Towns and the certified class have standing. Just City has organizational standing because HB 1719 has “directly affected and interfered with [its] core business activities.” *FDA v. All. For Hippocratic Med.*, 602 U.S. 367, 395 (2024). In *FDA*, the Supreme Court made clear that an organization has standing when its ability to provide client services is “perceptibly impaired.” *Id.* (“Critically, [the *Havens* plaintiff] not only was an issue-advocacy organization, but also operated a housing counseling service”) (discussing *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982)). Circuit courts applying *FDA* find organizational standing when the challenged action forces the plaintiff to expend resources to “continue carrying out its core activities and longstanding mission.” *Immigrant Defs. Law Center v. Noem*, 145 F.4th 972, 988 (9th Cir. 2025); see also *Republican Nat’l Committee v. N.C. State Bd. of Elections*, 120 F.4th 390, 396-97 (4th Cir. 2024).

As in *Havens*, Just City engages in more than just issue advocacy. Its core activities include posting bail for clients who cannot afford bail. Spickler Decl. ¶ 5 (Pl. Mot. Ex. 16). The undisputed record shows that Just City suffered a concrete and particularized injury because HB

1719 directly increases client demand and the costs for Just City's bail fund to serve the same pool of clients as before. *Id.* ¶¶ 9-18; Carroll R. ¶¶ 61, 75-89 (Pl. Mot. Ex. 14). Just City does not assert standing based on voluntarily using resources to oppose or respond to HB 1719; rather, it asserts standing because it is forced to incur costs to maintain the bail fund it has operated since 2017—long before HB 1719 passed. Spickler Decl. ¶¶ 6, 10-11, 15, 20-23 (Pl. Mot. Ex. 16).

The causal link between HB 1719 and increased bail amounts for arrestees whose circumstances indicate they previously would have obtained lower bail amounts or release is undisputed. *Id.* ¶¶ 9-11, 16; Carroll R. ¶¶ 75-89 (Pl. Mot. Ex. 14). The undisputed record shows that the impact of HB 1719 cannot be explained by anything other than the change in the law. Carroll R. ¶¶ 39-40, 61 (Pl. Mot. Ex. 14) (applying standard statistical analysis to conclude that impact cannot be explained by changes in risk levels as measured by charge levels, past convictions, and failure-to-appear histories); Greer Dep. at 93:1-4 (Pl. Mot. Ex. 5). By examining risk levels, Carroll's expert analysis refutes the State's suggestion that the change in outcomes can be attributed to Tennessee's amendment prioritizing public safety. State Opp. at 20. Neither the State nor Defendants dispute Carroll's analysis or offer competing analysis. An injunction prohibiting the enforcement of HB 1719 would result in judicial officers considering ability to pay, which would then lower bail amounts and redress Just City's injury.

Defendants misapply *Tenn. Conf. of the NAACP v. Lee*, 139 F.4th 557 (6th Cir. 2025). Defs. Opp. at 10-12. That decision held only that conclusory allegations without specific facts were insufficient to establish organizational standing. *Id.* at 566. The plaintiff organization, when challenging a law impacting voters with felony records, relied solely on unsupported allegations that it previously used its resources to help those voters. *Id.* at 567. The Defendants are wrong that the court made a finding that the plaintiff voluntarily shifted resources, Defs. Opp. at 11; it

merely indicated that it lacked the necessary facts to make that finding. 139 F.4th at 566. The court recognized that the organization could support standing if the challenged action “could be said to increase the costs of the NAACP’s preexisting efforts,” *id.*, and remanded for the district court to decide whether to permit the plaintiff to supplement the record, *id.* at 569.

Here, the undisputed record establishes that Just City has long served the pool of arrestees impacted by HB 1719. Just City has posted bail for more than 2,000 indigent clients since 2017 and more than 400 indigent clients since HB 1719. Spickler Decl. ¶¶ 6, 16 (Pl. Mot. Ex. 16). Unlike in *NAACP*, the Spickler Declaration provides several examples of clients detained on unaffordable bail for charges relating to food insecurity and theft of household essentials. *Id.* ¶¶ 10-11. The relief Plaintiffs seek against Defendants would apply only to Just City’s client pool: Shelby County arrestees detained on bail orders. Am. Compl. (ECF 75-2) at 14-17; Spickler Decl. ¶ 5 (Pl. Mot. Ex. 16). Defendants’ suggestion that there is no redressability because Just City seeks injunctive relief that applies to arrestees it does not serve is irrelevant. Defs. Opp. at 11-12.

Finally, Just City has third-party standing. Just City’s standing is evaluated at the time it filed its initial complaint, when it was the only plaintiff. *Patton v. Fitzhugh*, 131 F.4th 383, 391-92 (6th Cir. 2025).) This Court previously found Just City satisfied the elements of third-party standing but must show injury in fact and causation sufficient for organizational standing. *Just City, Inc. v. Bonner*, 758 F. Supp. 3d 785, 808, 818 (W.D. Tenn. 2024). Just City has now established those elements and therefore has third-party standing. Subsequent events, such as the joinder of additional plaintiffs, do not impact Just City’s standing. *Patton*, 131 F.4th at 391-92.

B. The Judicial Defendants Are Proper Parties To This Action

The judicial Defendants are proper parties here because this suit challenges “statutes related to the judicial process.” *Lindke v. Tomilson*, 31 F.4th 487, 493 (6th Cir. 2022). Plaintiffs

claim that the judicial procedures mandated by HB 1719 violate the Fourteenth Amendment. Accordingly, there is sufficient adversity between Plaintiffs and Defendants under Article III.

In *Lindke*, the plaintiff sued a state court judge who found he had violated a personal protective order, claiming the protective order statute was unconstitutional. *Id.* at 489. While the Sixth Circuit held there was no adversity between the plaintiff and the judge, because the judge was acting in an adjudicatory capacity when finding plaintiff had violated the order, the Court recognized an important exception that applies here. *Id.* at 493-494. “Where a suit challenges ‘statutes related to the judicial process’ . . . judges are proper parties.” *Id.* at 493 (quoting *Georgevich v. Strauss*, 772 F.2d 1078, 1088 (3rd Cir. 1985)).

Georgevich is instructive. There, the plaintiff class claimed that certain parole procedures violated their due process rights. 772 F.2d at 1083. The court rejected the judicial defendants’ argument that they “[had] no personal interest in the outcome of [the] litigation that is sufficiently adverse to plaintiff’s position.” *Id.* at 1087. Instead, the Court concluded that “judges are proper parties” where “a suit challenges statutes related to the judicial process.” *Id.* at 1088. The Third Circuit explained that “[t]his is not a case in which judges are sued in their judicial capacity as neutral adjudicators of disputes . . . Rather, the judges are sued as enforcers of the statutes, in other words as administrators of the parole power.” *Id.* at 1087. In such instances, plaintiffs can properly sue judges “as the vehicle to enforce their procedural due process rights.” *Id.* at 1088. *Georgevich* cited *Gerstein v. Pugh*, where the Supreme Court did not question that subject matter jurisdiction existed over plaintiffs’ claims against judges that plaintiffs had a constitutional right to a judicial hearing on probable cause before being detained pretrial. 420 U.S. 103, 106-07 (1975).¹

¹The Sixth Circuit has previously assumed that jurisdiction existed over state court judges in a due process challenge to civil contempt proceedings. *Parker v. Turner*, 626 F.2d 1, 2, 10 (6th Cir.

Like in *Georgevich* and *Gerstein*, Plaintiffs challenge “due process procedures in state judicial proceedings.” *Georgevich*, 772 F.2d at 1088 (discussing *Gerstein*). Plaintiffs do not challenge a statute that proscribes personal behavior or a statute like that at issue in *Lindke* which allows a judge to proscribe certain behavior. Instead, Plaintiffs challenge a law that governs the process utilized by judges when setting bail, like the plaintiffs’ challenge to a law governing parole procedures in *Georgevich* or the plaintiffs’ claim in *Gerstein* that they were entitled to a probable cause hearing. Therefore, the Plaintiffs and judicial Defendants are sufficiently adverse.

C. The Sheriff Is A Proper Party To This Action

The Defendants’ challenge to the claims against the Sheriff is precluded by the Sixth Circuit’s decision in *McNeil v. Cmty. Probation Servs.* 945 F.3d 991 (6th Cir 2019). That case involved the same constitutional violation as this case: detention on bail amounts set without due process. Plaintiffs sought to enjoin the same challenged actions: detention by the Sheriff under those improper “judge-set bail amounts.” *Id.* at 995-996. Thus, just as in *McNeil*, “plaintiffs can sue the sheriff.” *Id.* at 994. In addition, in *Lindke*, the Sixth Circuit also never questioned that a sheriff defendant was a proper party. 31 F.4th at 489, 495-97.

Defendants cannot escape *McNeil*. They suggest that the sheriff was a proper party because he accepted that the bail orders were unconstitutional and then speculate that the Sixth Circuit would not have issued an injunction without that concession. Defs. Opp. at 25-26. But courts consider subject matter jurisdiction *before* reaching the merits. *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 94 (1998). The Sheriff’s concession had no impact on whether he was a proper party.

1980); *see also Fernandez v. Trias Monge*, 586 F.2d 848 (1st Cir. 1978) (assuming adversity exists between plaintiffs and judicial defendants in due process challenge to bail procedures).

II. HB 1719 IS UNCONSTITUTIONALLY VAGUE

A. The Vagueness Doctrine Applies to HB 1719

HB 1719 is unconstitutionally vague because its lack of “explicit standards” leads to “arbitrary and discriminatory enforcement” and it fails to put arrestees on notice of what evidence they can present at bail hearings. *See Ass’n of Cleveland Fire Fighters v. City of Cleveland*, 502 F.3d 545, 551 (6th Cir. 2007). The State drastically overreads the impact of *Beckles* in arguing that the Court should not reach the merits of Plaintiffs’ vagueness challenge. State Opp. at 27. The Court in *Beckles* explained that “the void-for-vagueness doctrine requires that a *penal* statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement.” *Beckles*, 580 U.S. at 262 (emphasis added). The Court explained that vagueness challenges appropriately apply to penal statutes “that define criminal offenses and laws that fix the permissible sentences for criminal offenses.” *Id.*

Beckles is inapplicable here because HB 1719 is not a “penal statute.” Under *United States v. Salerno*, “pretrial detention . . . is regulatory, not penal.” 481 U.S. 739, 746 (1987).) Importantly, *Beckles* did not hold that the vagueness doctrine only applies to penal statutes. *See Giaccio v. Pennsylvania*, 382 U.S. 399, 402 (1966) (holding that a statute “must meet the challenge that it is unconstitutionally vague,” whether or not it is labeled “penal.”). In fact, in the very next Supreme Court term, the Court held that a civil deportation provision in the Immigration and Nationality Act was void for vagueness. *Dimaya*, 584 U.S. at 174-75. The State ignores *Dimaya*, which directly refutes its suggestion that the Court narrowly limited the vagueness doctrine in *Beckles*. *See Progeny v. City of Wichita*, 2022 U.S. Dist. LEXIS 4677, at *30 (D. Kan. Jan. 10, 2022) (recognizing the *Beckles* Court “did not say these are the *only* two kinds of laws that could be invalidated under the [vagueness] doctrine”). Moreover, as the court in *United States v. Cruz*

found, the vagueness doctrine applies in the pretrial detention context, even though pretrial detention does not constitute a criminal punishment. 2024 U.S. Dist. LEXIS 136553, at *8-9 (S.D.N.Y. Aug. 1, 2024).

In addition, *Beckles* only considered the U.S. Sentencing Guidelines, which are purely advisory and “merely guide the exercise of a court’s discretion in choosing an appropriate sentence within the statutory range.” 580 U.S. at 263. By contrast, HB 1719 is a mandatory, not advisory, directive to judges that they “shall not” consider ability to pay. Unlike the advisory Sentencing Guidelines, HB 1719 is enforced when judicial officers set bail.

The Supreme Court’s decision in *Johnson v. United States*, that a provision of the Armed Career Criminal Act was void for vagueness, is more analogous. 576 U.S. 591 (2015). That Act did not merely guide a court’s discretion; rather, a judge was required to increase a defendant’s sentence if certain conditions were met. *Id.* at 593. So too here—HB 1719 does not guide a court’s discretion; instead, it prohibits judicial officers from considering ability to pay.

United States v. Watkins, cited by the State, does not require a different result. 940 F.3d 152 (2d Cir. 2019). While the Second Circuit erroneously applied *Beckles* in the bail context, the result in that case “turned on the fact that the consequence of applying the residual clause to a defendant . . . was a hearing” and not pretrial detention. *Cruz*, 2024 U.S. Dist. LEXIS 136553, at *7 (discussing *Watkins*). Plaintiffs’ case is analogous to *United States v. Brooke*, where a defendant challenged his detention pending sentencing. 2026 U.S. Dist. LEXIS 8474 (E.D.N.Y. Jan. 15, 2026). The court observed that unlike the residual clause at issue in *Watkins*, the clause at issue in *Brooke* directly causes a loss of liberty. *Id.* at *6; *see also Cruz*, 2024 Dist. LEXIS 136553, at *4.

Finally, in *United States v. Haley*, the court found that *Beckles* and *Watkins* were not “dispositive of the void-for-vagueness question” in the context of the Bail Reform Act. 2024 U.S. Dist. LEXIS 216142 (W.D. Tenn. Nov. 27, 2024). The court noted that those cases stand for the proposition that “void-of-vagueness concerns are triggered only when the context in which the clause is applied fairly raises due process concerns.” *Id.* at *16. It is undisputed that due process concerns are raised in connection with judicial orders that deprive arrestees of their liberty.

B. HB 1719 Is Unconstitutionally Vague

HB 1719 violates the Fourteenth Amendment because it invites arbitrary enforcement and fails to put arrestees on notice of the kinds of evidence that they can present at bail hearings. 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 do not try to reconcile the two terms—instead, they *agree* with Plaintiffs that the “analysis of an individual’s ‘financial condition’ and ‘ability to pay’ involves the same inquiry.” Defs. Opp. at 29. According to Defendants, “Plaintiffs are quite right.” *Id.*

Defendants instead attempt to salvage HB 1719 by arguing that detainees “can put on whatever economic proof they wish” as long as they avoid “the three (3) words ‘ability to pay.’” Defs. Opp. at 29. This interpretation of HB 1719 improperly seeks to read the challenged language out of the statutory text. There is no basis in the law, the record, or common sense to find that a statute is constitutional based on the assumption that judges will simply work around its plain meaning and intent with a wink and a nod. *See, e.g., Springfield Armory v. City of Columbus*, 29 F.3d 250, 251-53 (6th Cir. 1994) (striking down ordinance banning certain weapons because there was “no reasoned basis” to determine which weapons were banned). Indeed, it is undisputed that the Judicial Commissioners stopped considering an arrestee’s ability to pay bail in response to HB 1719. *See* Defs.’ Add. Facts (ECF 126-1) ¶14; Marshall Dep. at 57:15-21 (Pl. Mot. Ex. 4).

The State suggests a different interpretation of “financial condition” and “ability to pay” and argues that there is a distinction between the two terms. According to the State, financial condition is a “wholistic [sic] view of a defendant’s finances, including the defendant’s status as indigent,” while “ability to pay” refers “not only to the specific amount of money available to the defendant at a moment in time to pay bail, but also to the defendant’s ‘physical, mental, or legal power to access’ that money.” State Opp. at 31-32. The State’s interpretation is unsupported by any evidence in the record. To the contrary, there is no dispute that the supposed “holistic view of a defendant’s finances” is directly relevant to the amount of money available to a defendant to pay a bail. In Defendants’ words, “an analysis of an individual’s ‘financial condition’ and ‘ability to pay’ involves the same inquiry.” Defs. Opp. at 29. As one example, an arrestee could acquire a bail bond by putting his house up as collateral. See Tenn. Code Ann. § 40-11-122. Home ownership is clearly included in the State’s “holistic view of a defendant’s finances.” Under the State’s interpretation, therefore, HB 1719 *requires* the judge to consider home ownership as a part of “financial condition,” but *prohibits* judges from considering whether a defendant can access funds to pay their bail by using their home as collateral. There is no reasoned basis to apply the State’s invented distinction in practice.²

Finally, the State and Defendants’ starkly divergent interpretations of HB 1719 further illustrate that the statute is void for vagueness. Not only is the application of HB 1719 an “individual decision” for each judicial officer, Marshall Dep. at 87:13-20 (Pl. Mot. Ex. 4), but the parties defending HB 1719 are also unable to agree on the statute’s meaning. HB 1719 is therefore

² *In re Sanford & Sons Bail Bonds*, 96 S.W.3d. 199 (Tenn. Crim. App. 2002), relied on by the State, is inapposite. The court’s finding that “[t]he right to bail . . . does not ensure a criminal defendant’s ability to pay the amount of bail set” did not identify a distinction between the terms “ability to pay” and “financial condition.” *Id.* at 202.

void for vagueness. *See, e.g., Cunney v. Bd. of Trs. Of Grand View*, 660 F.3d 612, 621-22 (2d Cir. 2011) (“Defendants various interpretations of [the ordinance’s] requirements serve only to reinforce our view that the ordinance’s vagueness authorizes arbitrary enforcement.”).

III. HB 1719 PREVENTS ARRESTEES FROM RECEIVING A ‘MEANINGFUL’ OPPORTUNITY TO BE HEARD UNDER *MATHEWS V. ELDRIDGE*

A. *Mathews*, Not *Medina v. California*, Applies

In analyzing Plaintiffs’ due process claims, *Mathews v. Eldridge*, 424 U.S. 319 (1976), and not *Medina v. California*, 505 U.S. 437 (1992), supplies the appropriate test. Courts apply the *Mathews* test generally to claims that implicate procedural due process. *Medina*, on the other hand, applies to criminal rules such as those that “concern . . . the allocation of burdens of proof and the type of evidence qualifying as admissible.” *Nelson v. Colorado*, 581 U.S. 128, 134-35 (2017). Plaintiffs challenge an inherently regulatory civil law that is not penal and does not implicate the determination of culpability and is therefore distinct from the rules to which *Medina* has been applied. *See Salerno*, 481 U.S. at 746; *White v. Hesse*, 2024 U.S. Dist. LEXIS 231724, at *35 n. 14 (W.D. Ok. Dec. 23, 2024) (applying *Mathews* to challenge to implementation of administrative bail order because the challenge “does not implicate the criminal trial itself or the central issue of guilt or innocence”); *Schultz v. State*, 42 F.4th 1298, 1332 (11th Cir. 2022) (applying *Mathews* in pretrial detention context); *O’Donnell v. Harris Cty.*, 892 F.3d 147, 158-59 (5th Cir. 2018) (same); *Faulkner v. Gusman*, 2014 U.S. Dist. LEXIS 64369, at *13-18 (E.D. La. May 9, 2014) (same).

The conclusion that *Mathews* applies aligns with the Court’s ruling on *Younger* abstention. The Court found that *Younger* abstention did not apply to Just City’s claims because its procedural challenges were “collateral to the principal state proceedings,” which are criminal prosecutions. *Just City*, 758 F.Supp. 3d at 799-801. The same reasoning compels the conclusion here that *Mathews*, not *Medina*, supplies the appropriate test to analyze Plaintiffs’ claims. The pretrial

detention procedures at issue here are fundamentally separate from, and collateral to, the core criminal procedures that would warrant application of *Medina*.³

B. HB 1719 Is Unconstitutional Under *Mathews*

HB 1719 is unconstitutional under *Mathews v. Eldridge* because all four *Mathews* factors favor Plaintiffs. For the first factor, the nature and number of the private interests at stake favor Plaintiffs. Pl. Mot. 23-24. The State argues that Plaintiffs do not have a right to affordable bail. State Opp. at 15-16. This strawman is irrelevant, as Plaintiffs do not claim such a right. The State then confuses the inquiry into the rights at stake with the claims that Plaintiffs bring. *Id.* at 16-17. The rights at stake are the rights to physical and pretrial liberty, the rights against wealth-based detention and excessive bail, the right to petition the court, and the right to bail under the Tennessee constitution. Pl. Mot. 23-24. While Plaintiffs have not brought these specific claims, they need not assert these claims to show the private rights at stake are significant for due process purposes.

For the second factor, the undisputed record shows the risk of erroneous deprivations inherent in current procedures. Pl. Mot. 24-27. The State's argument that "the *Mathews* test is concerned with procedures, not outcomes," is misleading because the *Mathews* inquiry examines whether the current procedures risk erroneous outcomes. State Opp. at 17. The undisputed record shows that risk is present here because HB 1719 deprives judicial officers of "the information they need to adequately assess" the lowest bail amount necessary under the statute. Kennedy R. ¶ 13 (Pl. Mot. Ex. 11). Expert testimony shows increased detention untethered from the State's interests in public safety and court appearance. Carroll R. ¶¶ 47-53 (Pl. Mot. Ex. 14). It also shows an increased risk of excessive bail because, across all charge levels and criminal histories,

³ In its briefing on Plaintiffs' preliminary injunction motion, the State argued that *Medina*, rather than *Mathews* applies. See State Mot. to Dismiss (ECF 52) at 18-19. However, in its decision, the Court referenced only *Mathews*. *Just City*, 758 F.Supp 3d at 813.

arrestees received higher bail amounts after HB 1719, *id.* ¶¶ 75-89, and increased wealth-based detention, Section IV, *infra*.

Moreover, HB 1719’s inherently vague statutory demand also demonstrates the significant risk of erroneous deprivation. HB 1719 invites arbitrary enforcement by judicial officers who are faced with the impossible task of considering an arrestee’s financial condition without considering their ability to pay. Where, as here, each judicial officer is left with “an individual decision” with respect to how to apply HB 1719, there is an inherent risk of erroneous deprivation of individuals’ rights. Marshall Dep. at 77:15-23 (Pl. Mot. Ex. 4).

For the third factor, the value of considering ability to pay is clear from the resounding national consensus on the issue—every other state relying on money bail recognizes this value. Kennedy R. ¶ 8 (Pl. Mot. Ex. 11). The State’s assertions about Plaintiffs’ evidence are baseless. The State argues that “bail costs have decreased over the most recent months of reported data” to pre- HB 1719 levels. State Opp. at 20. The State may be referencing the average bail Just City paid per client, which reflects a mere subset of all bail orders in Shelby County, and is irrelevant to the risk of erroneous detention. Similarly, the State’s speculation that Tennessee’s amendment prioritizing public safety may have led to higher bail amounts is unsupported by evidence and countered by Plaintiffs’ expert analysis accounting for risk levels. Section I.A., *infra*.

The final *Mathews* factor—the government interest—weighs decisively against HB 1719. Indeed, HB 1719 *undermines* the government’s interest by making it impossible to fulfill Tennessee’s statutory mandate to set the lowest bail that reasonably assures the arrestee’s court appearance and public safety, which cannot be done without considering the detainee’s ability to pay the amount set. *See* Kennedy R. ¶ 13 (Pl. Mot. Ex. 11); Tenn. Code Ann. § 40-11-118(a)(2).

The State’s arguments concerning the expense of considering ability to pay do not withstand scrutiny. The State’s assertions about the cost of the SBO are irrelevant, as Plaintiffs’ claims concern the cost of considering ability to pay, not the sunk costs of implementing the broader Shelby County settlement and the SBO (including courtroom renovations). County Resolution at 3, 12-15. (Pl. Mot. Ex. 15). The undisputed record establishes that obtaining ability to pay information and implementing the affordable bail calculator was not costly. Greer Dep. at 29:6-9, 81:15-18 (Pl. Mot. Ex. 5). Setting aside the affordable bail calculator, Plaintiffs’ expert is not aware of “any jurisdiction in which the consideration of ability to pay has led to an increase in administrative or fiscal burden.” Kennedy R. ¶ 7 (Pl. Mot. Ex. 11).

C. HB 1719 Is Unconstitutional Under *Medina*

HB 1719 violates due process even under *Medina*’s higher standard. Under *Medina*, a practice violates the Fourteenth Amendment if it “offends some principle of justice so rooted in the traditions and conscience of our people as to be marked as fundamental.” 505 U.S. at 446. HB 1719 meets that standard. The “principles of justice” at stake here include the right to physical liberty— “the core of the liberty protected by the Due Process Clause from arbitrary governmental action”—and the principle that individuals should not be subject to unnecessary detention. *Youngberg v. Romeo*, 457 U.S. 307, 316 (1982).

The record demonstrates that HB 1719 violates these principles. Without information on an arrestee’s ability to pay, there is a risk that judges will set bail amounts that are higher than necessary to meet the purposes of bail, resulting in “erroneous detention of people who are too poor to afford the amount of bail set.” Kennedy R. ¶ 13-14 (Pl. Mot. Ex. 11). These effects have already been observed in Shelby County. Carroll R. ¶¶ 37-53 (Pl. Mot. Ex. 14); Section I.A *infra*.

In arguing that the procedures under HB 1719 are not “fundamental,” the State asserts that requiring consideration of ability to pay is a recent phenomenon, and that Tennessee is restoring

the traditional balance in bail proceedings by elevating public safety over the need to set an affordable bail. State Opp. at 12-15. But the undisputed record shows that “[i]t is standard practice for judges to consider an individual’s ability to pay or financial resources when setting bail in all other states that rely on money bail.” Kennedy R. ¶ 6 (Pl. Mot. Ex. 11). Tennessee is the only state in the country that prohibits judges from considering ability to pay. *Id.* HB 1719 represents a stark departure from this norm.

IV. HB 1719 Violates *Bearden*

Both the State and the Defendants agree that *Bearden*’s mandate applies to pre-trial bail proceedings. Defs. Opp. at 18 (“The *Bearden* Court’s analysis applies to cases (such as the case here)”); State Opp. at 21-23 (stating that Plaintiffs “bringing a *Bearden*-style claim” must comply with *Walker*, which applied *Bearden* to pre-trial bail proceedings). However, their arguments for why HB 1719 is constitutional under *Bearden* fail.

According to Defendants, bail proceedings under HB 1719 are adequate under *Bearden* because courts may consider an arrestee’s financial condition and there is no “practical, legal, or constitutional difference between ability to pay and financial condition.” Defs. Opp. at 17, 23. But the Defendants’ argument conflicts with its premise.

Defendants begin by misstating Plaintiffs’ claim. Plaintiffs do not propose that *Bearden* requires bail proceedings that include “the exact words ‘ability to pay.’” *Id.* at 19. Plaintiffs assert that HB 1719 violates *Bearden* because it prevents judicial officers from assessing the amount of bail an arrestee can afford, thereby resulting in precisely what *Bearden* prohibits: individuals being detained solely because of their access to wealth. Pl. Mot. at 30. The assessment need not include any exact words or the affordable bail calculator so long as courts are inquiring into the amount of bail a person can afford. *Id.*; see Kennedy R. ¶¶ 7, 15-16 (Pl. Mot. Ex. 11) (explaining that jurisdictions use different processes to assess the amount of bail a person can afford, such as an

indigency affidavit or interview). Indeed, courts do not have to set an affordable bail, if they determine that detention based on an unaffordable bail is necessary because less restrictive conditions are inadequate. Tenn. Code Ann. § 40-11-118.

Defendants argue next that courts can comply with HB 1719 by asking the question: “Can a detainee pay the amount of bail the court intends to order based on his financial condition?” Defs. Opp. at 19. Defendants thus concede that consideration of whether an arrestee can pay the bail amount is required under *Bearden* yet overlook the fact that their proposed inquiry is exactly what HB 1719 prohibits. HB 1719 forecloses a court from asking “can a detainee pay the amount of bail” because it prohibits considering an arrestee’s “ability to pay.”

Defendants’ contradictory construction cannot salvage HB 1719. *Bearden* is a constitutional mandate requiring an opportunity to be heard regarding “ability to pay” and “factual findings concerning the person’s ability to pay.” *McNeil v. Cmty. Prob. Servs., LLC*, 2019 WL 633012, at *13 (M.D. Tenn. Feb. 14, 2019). An inquiry by another name must achieve that central purpose, and HB 1719 denies that purpose.

Defendants also do not claim that HB 1719 “serves a ‘compelling governmental interest.’” Defs. Opp. at 22. Instead, Defendants contest Plaintiffs’ reliance on *McNeil* because judges’ consideration of financial information was not the evidence that the court used to find that the bail system did not serve any compelling interest. *Id.* at 21-22. That is true but beside the point. The court found that the bail system led to wealth-based detention in large part because judges did not inquire into, nor make findings related to, an arrestee’s ability to pay bail. *McNeil*, 2019 WL 633012, at *13. The court then held that this wealth-based detention violates *Bearden* because the bail system does not further the state’s interests in ensuring public safety and court appearance. *Id.* at *14-15. The fact that judges considered other factors, including financial information, *id.* at

*3, did not alter this holding, because failing to assess ability to pay still caused arbitrary, wealth-based discrimination. *Id.* at *13-14.

McNeil is instructive here because judicial officers are expressly prohibited from considering ability to pay. Here, as there, the fact that judicial officers consider other factors when determining bail is of no constitutional significance if judicial officers do not inquire into the amount of bail an arrestee can pay before detaining them.

The State’s argument fares no better. The State claims that “any differences in release outcomes” are the result of judicial officers setting bail at the lowest amount necessary to serve state interests. State Opp. at 22. This argument assumes that the “monetary amount set is the lowest amount necessary” to serve state interests, State Opp. at 24, which gets it backwards. By prohibiting consideration of ability to pay, HB 1719 prevents judicial officers from knowing the lowest amount necessary to serve state interests. Pl. Mot. at 31-22.

The State never confronts *McNeil*, the most analogous case challenging a bail system where judges do not consider ability to pay, when discussing equal protection. Instead, it disregards *McNeil*’s holding as “faulty logic” in an earlier section of its brief. State Opp. at 17 (denying that “bail that results in detention of indigent arrestees that would not result in detention of a wealthy arrestee in similar circumstances is an unconstitutional deprivation of the indigent’s rights”).

The State’s reliance on *Schultz* and *Walker* is misplaced. State Opp. at 23-24. The State is correct that these cases affirm that *Bearden* applies only when the plaintiff is absolutely deprived of their pretrial liberty solely due to their inability to afford bail. *Id.* at 22-23. But both cases are inapposite because the plaintiffs in those cases did not experience absolute denials of pretrial liberty. *Schultz v. Alabama*, 42 F.4th 1298, 1306 (11th Cir. 2022); *Walker v. City of Calhoun*, 901 F.3d 1245, 1252-53 (11th Cir. 2018). Rather, those cases dealt with bail systems where plaintiffs

received unaffordable bail orders immediately after arrest but could present evidence regarding their inability to post bail at an initial appearance within 48 to 72 hours of arrest. *Id.* Accordingly, those cases applied rational review because plaintiffs received the opportunity to be heard regarding ability to pay within a few days. *Schultz*, 42 F.4th at 1324; *Walker*, 901 F.3d at 1261, 1266. Whether a failure to consider ability to pay led to arbitrary wealth-based detention was simply not at issue in either case. *Schultz*, 42 F.4th at 1327-33; *Walker*, 901 F.3d at 1266. To the contrary, *Schultz*, in holding the bail system constitutional, emphasized that indigent arrestees are guaranteed a bail hearing where judges must assess both indigency, 42 F.4th at 1324, and “all relevant factors” when setting the lowest bail necessary to assure public safety and court appearance, *id.* at 1331. *See also Walker*, 901 F.3d at 1265-66.

Here, HB 1719 expressly prohibits judicial officers from assessing ability to pay. Contrary to the State’s contention that HB 1719 only results in unaffordable bail when it is the least amount necessary to serve the state’s interests, State Opp. at 22, *Bearden*, logic, and the record demonstrate that courts must consider ability to pay to ensure these ends. Pl. Mot. at 30-32. When courts fail to assess ability to pay, indigent arrestees cannot stand on equal footing with non-indigent arrestees. Take, for example, the case where a judicial officer sets a \$100 bail order intending to release a person who in reality cannot afford that bail amount. A non-indigent arrestee can buy their freedom. An indigent arrestee, like the one arrested for asking for food at the Wendy’s drive-through, Spickler Decl. ¶ 10 (Pl. Mot. Ex. 16), cannot. Yet, HB 1719 prohibits the court from allowing the indigent arrestee the “opportunity to make a statement regarding his . . . ability to post the bond currently set,” *cf. Schultz*, 42 F.4th at 1333, at a bail hearing, on appeal, or at any other time. Heightened scrutiny applies because arrestees experience absolute denials of pretrial liberty. The difference in treatment is solely based on access to wealth and is not justified by state interests.

The State argues that considering all other relevant statutory factors except ability to pay enables judicial officers to set the lowest amount of bail necessary to comply with the statute. State Opp. at 25. This argument disregards undisputed expert testimony that this information is required for compliance, Kennedy R. ¶ 13 (Pl. Mot. Ex. 11), and Defendants’ own testimony. Commissioner Marshall testified that the affordable bail calculator enabled him to exercise his discretion to release an arrestee on affordable bail, Marshall Dep. at 70:16-71:10 (Pl. Mot. Ex. 4), and, without that information, he cannot always assess whether a bail is unaffordable and will function as a detention order, *id.* at 67:7-12. Far from ensuring that judicial officers consider all other statutory factors, HB 1719 has sown confusion about how judicial officers can evaluate those factors without considering ability to pay. *See id.* at 77:2-14, 85:20-86:17, 87:13-21, 89:10-14; Greer Dep. at 53:3-6 (Pl. Mot. Ex. 5). Even accepting the State’s proposed definition of “ability to pay” as current access to cash only emphasizes the statute’s constitutional deficiency: prohibiting consideration of access to cash would similarly prevent judicial officers from setting the lowest amount of bail necessary to serve the state’s interests.

This argument also disregards undisputed expert analysis that HB 1719 results in bail amounts exceeding the amount necessary to ensure court appearance. Carroll R. ¶¶ 39-40, 56-57 (Pl. Mot. Ex. 14) (showing an increase in bail amounts but a decrease in average risk levels). Just City’s experiences illustrate the same. Spickler Decl. ¶¶ 9-11 (Pl. Mot. Ex. 16). This distinguishes this case from *Torres v. Collins*, 2023 WL 6166523, at *6 (E.D. Tenn. Sept. 21, 2023), and is sufficient to show a *Bearden* violation, *McNeil*, 2019 WL 633012, at *8.

CONCLUSION

The Court should grant Plaintiffs’ motion for summary judgment.

Dated: March 12, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, David Elbaum, certify that on March 12, 2026, I caused a true and correct copy of the foregoing document to be filed electronically via the ECF system.

Respectfully submitted,

/s/ David Elbaum
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