

**IN THE CIRCUIT COURT OF THE TWENTY-FIRST JUDICIAL  
CIRCUIT KANKAKEE COUNTY, ILLINOIS**

JAMES R. ROWE, KANKAKEE )  
COUNTY STATE’S ATTORNEY, )  
and MICHAEL DOWNEY, )  
KANKAKEE COUNTY SHERIFF, et )  
al. )

Plaintiffs, )

v. )

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

Case No. No. 22-CH-16  
Consolidated by Supreme Court  
Order Rowe v. Raoul; No.  
129016

**MEMORANDUM OF DECISION**

Now this cause having come on for decision, the court having taken plaintiffs’ and defendants’ Cross Motions for Summary Judgment under advisement after full briefing by the parties and oral arguments heard in open court on December 20, 2022, finds as follows:

**HISTORY**

The Kankakee County State’s Attorney and Sheriff have challenged the constitutionality of Public Acts 101-652, and 102-1104, known as the Safety, Accountability, Fairness and Equity-Today (hereinafter, the “Act”), as amended.

Pursuant to Supreme Court order entered October 31, 2022, Order # 129016, the lawsuits filed in 57 other counties throughout the State of Illinois were consolidated into the above case due to the commonality of issues and defendants and by agreement of all parties. An additional six (6) counties' lawsuits filed after the October 31<sup>st</sup> order was entered have also been transferred to Kankakee County pursuant to the agreement of all parties and acceptance by the Court. The parties agreed that all complaints filed, transferred, and consolidated into this matter are amended to conform to the Kankakee County's Second Amended Complaint filed December 9, 2022.

#### **POSTURE OF THE CASE**

It's the role of this court in considering the constitutionality of Public Acts 101-652 and 102-1104, not to judge the prudence of the General Assembly's decision that reform of the criminal justice system is needed. In this case, there is no doubt that the policy considerations have caused a great deal of disagreement and consternation over the Act itself. The Court recognizes that the judiciary does not and need not balance the advantages and disadvantages of reform or the attendant policy considerations. See *People v. Warren*, 173 Ill.2d 348, 219 Ill. Dec. 533, 671 N.E.2d 700 (1996); see also *Cutinello v. Whitley*, 161 Ill.2d 409, 204 Ill. Dec. 136, 641 N.E.2d 360 (1994). However, the Court must determine the meaning and effect of the Illinois Constitution in light of the challenges made to the legislation in issue. *Warren*, 173 Ill.2d at 355–56, 219 Ill. Dec. 533, 671 N.E.2d

700. The court begins its constitutional analysis with the presumption that the challenged legislation is constitutional (*People v. Shephard*, 152 Ill.2d 489, 178 Ill. Dec. 724, 605 N.E.2d 518 (1992)), and it is the plaintiff's burden to clearly establish that the challenged provisions are unconstitutional (*Bernier v. Burris*, 113 Ill.2d 219, 100 Ill. Dec. 585, 497 N.E.2d 763 (1986)). It is important to note that the Illinois Constitution is not a grant, but a limitation on legislative power. *People v. Chicago Transit Authority*, 392 Ill. 77, 64 N.E.2d 4 (1945); *Italia America Shipping Corp. v. Nelson*, 323 Ill. 427, 154 N.E. 198 (1926); *Taylorville Sanitary District v. Winslow*, 317 Ill. 25, 147 N.E. 401 (1925). If a statute is unconstitutional, this court is obligated to declare it invalid. *Wilson v. Department of Revenue*, 169 Ill.2d 306, 214 Ill. Dec. 849, 662 N.E.2d 415 (1996). This duty cannot be evaded or neglected, no matter how desirable or beneficial the legislation may appear to be. *Wilson*, 169 Ill.2d at 310, 214 Ill. Dec. 849, 662 N.E.2d 415; *Grasse v. Dealer's Transport Co.*, 412 Ill. 179, 190, 106 N.E.2d 124 (1952). See also: *Best v. Taylor Mach. Works*, 179 Ill. 2d 367, 377–78, 689 N.E.2d 1057, 1063–64 (1997)

## **COUNT I**

Plaintiffs in Count I submit that they are entitled to a Declaratory Judgment because the Act “amended multiple portions of the Illinois Constitution effecting bail, the Judiciary and victim’s rights.” (P. 2d Com, P. 9, par. 53.) Because these subject matters are also dealt with in Counts III, IV and V and the issues overlap, the court will decide the ‘failure to properly amend the Constitution’ argument along

with Counts III, IV and V after a discussion of standing.

## **COUNT II**

Count II alleges that the Public Act 101–652 violates the single subject clause found in Article 4, Section 8(d) of the Illinois Constitution. A finding that the act and the amendment, (Public Act 102-1044) violates the single subject rule would mandate a ruling that the entire act is void. There is no severability of the Act when the legislature violates this rule, notwithstanding that the Act provides for severability.

The law concerning the single subject rule has been well settled in Illinois. The Court quotes extensively from *Wirtz v. Quinn*, 2011 IL 111903, 953 N.E. 2d 899, 904-05:

The single subject rule regulates the process by which legislation is enacted, by prohibiting a legislative enactment from “clearly embracing more than one subject on its face.” *Arangold Corp. v. Zehnder*, 187 Ill.2d 341, 351, 240 Ill.Dec. 710, 718 N.E.2d 191 (1999); *People v. Olender*, 222 Ill.2d 123, 131, 305 Ill.Dec. 1, 854 N.E.2d 593 (2005). One purpose of the single subject requirement is to preclude the passage of legislation which, standing alone, would not receive the necessary votes for enactment. *Olender*, 222 Ill.2d at 132, 305 Ill.Dec. 1, 854 N.E.2d 593; *People v. Cervantes*, 189 Ill.2d 80, 83, 243 Ill.Dec. 233, 723 N.E.2d 265 (1999). This disfavored practice is known as “logrolling,” or “bundling unpopular legislation with more palatable bills, so that the well-received bills would carry the unpopular ones to passage.” *People v. Wooters*, 188 Ill.2d 500, 518, 243 Ill.Dec. 33, 722 N.E.2d 1102 (1999). Thus, the single subject rule “ensures that the legislature addresses the difficult decisions it faces directly and subject to public scrutiny, rather than passing unpopular measures on the backs of popular ones.” *Johnson v. Edgar*, 176 Ill.2d 499, 515, 224 Ill.Dec. 1, 680 N.E.2d 1372 (1997). Another reason for the single subject rule is to promote an orderly legislative process. *Wooters*, 188 Ill.2d at 518, 243 Ill.Dec. 33, 722 N.E.2d 1102. “By limiting each bill to a single subject, the issues presented by each bill can be better grasped and more intelligently discussed.” *Johnson*, 176 Ill.2d at 514–15, 224 Ill.Dec. 1, 680 N.E.2d 1372 (quoting Millard H.

Ruud, *No Law Shall Embrace More Than One Subject*, 42 Minn. L.Rev. 389, 391 (1958)).

The rule first requires a determination of what is the single subject to which the Act refers. The parties agree that the Act specifically states that it is an act concerning “criminal law”. Defendants maintain that the single subject is broader than just criminal law and more correctly is identified as an act concerning, “the criminal justice system” To support this proposition, the Defendants also cite the *Wirtz, id.* case which referred to the *Boclair* case and held, “Defendants are not limited solely to the contents of the title of an act in offering a single subject rationale. *Boclair*, 202 Ill.2d at 109–10, 273 Ill. Dec. 560, 789 N.E.2d 734.

Plaintiffs emphatically argue that under either the single subject mentioned in the Act or the subject designation espoused by defendants, that the Act alters or amends a multitude of statutes that do not logically or naturally relate to criminal law. They do not concede that the single subject is the broader category of the criminal justice system, but argue that even in the event the court determines the single subject to be the criminal justice system, that the Act still violates this single subject rule. The court finds that the “Criminal Justice System” is a legitimate single subject that Illinois Supreme Court has approved on multiple occasions. The Illinois Supreme Court has repeatedly recognized this to be a legitimate single subject within the meaning of the constitutional rule. *E.g., Boclair*, 202 Ill. 2d at 110; *Sypien*, 198 Ill. 2d at 339; *People v. Malchow*, 193 Ill. 2d 413, 428 (2000); *People v. Reedy*, 186 Ill. 2d 1, 12 (1999); *see also People Sharpe*, 321 Ill. App. 3d 994, 996–97 (3d Dist. 2001);

*People v. Jones*, 317 Ill. App. 3d 283, 287 (5th Dist. 2000); *People v. Dixon*, 308 Ill. App. 3d 1008, 1014 (4th Dist. 1999).

Because the Act involves a legitimate single subject, “the dispositive question becomes whether the individual provisions of the Act have a ‘natural and logical’ connection to that subject.” *People v. Burdunice*, 211 Ill. 2d 264, 267 (2004). It is plaintiffs’ “substantial burden” to show these provisions “bear no natural or logical connection to a single subject.” *Malchow*, 193 Ill. 2d at 429.

The Illinois Supreme Court has also held:

The requirement of singleness of subject has been frequently construed, and the applicable principles are settled. The term “subject” is comprehensive in its scope and may be as broad as the legislature chooses, so long as the matters included have a natural or logical connection. An Act may include all matters germane to a general subject, including the means reasonably necessary or appropriate to the accomplishment of legislative purpose. Nor is the constitutional provision a limitation on the comprehensiveness of the subject; rather, it prohibits the inclusion of “discordant provisions that by no fair intendment can be considered as having any legitimate relation to each other.” ’ ’ ( *People ex rel. Ogilvie v. Lewis* (1971), 49 Ill.2d 476, 487, 274 N.E.2d 87, quoting *People ex rel. Gutknecht v. City of Chicago* (1953), 414 Ill. 600, 607–08, 111 N.E.2d 626.)

The single-subject requirement is therefore construed liberally and is not intended to handicap the legislature by requiring it to make unnecessarily restrictive laws. For this reason, courts have often upheld legislation involving comprehensive subjects. *See, e.g., Advanced Systems, Inc. v. Johnson* (1989), 126 Ill.2d 484, 129 Ill. Dec. 32, 535 N.E.2d 797 (real property taxation); *People ex rel. Carey v. Board of Education* (1973), 55 Ill.2d 533, 304 N.E.2d 273 (schools); *see also In re Marriage of Thompson* (1979), 79 Ill.App.3d 310, 34 Ill. Dec. 342, 398 N.E.2d 17 (domestic relations).

*Cutinello v. Whitley*, 161 Ill. 2d 409, 423–24, 641 N.E.2d 360, 366 (1994)

The Plaintiffs point out that the Act “is over 764 pages and addresses 265

separate statutes.” (Pl.’s Ex.6,8,9.) The Illinois Supreme Court has held these factors are not determinative to a single subject challenge. *E.g.*, *Wirtz*, 2011 IL 111903, Par. 15; *Arangold*, 187 Ill. 2d at 352. The test is whether the Act’s provisions have a natural and logical connection to a single subject, not the number of pages in the legislation or the number of statutes it amends. It does stand to reason, however, that the more pages and the more statutes that are affected, the more likely the act would run afoul of the position that all of the provisions have a logical and natural connection to that single subject.

In the instant case, the plaintiffs have identified six separate subjects that they allege violates the single subject rule. These six subjects, plaintiffs argue, do not have a natural and logical connection to criminal law or the criminal justice system. Those subjects contested are: 1) Police Officer Prohibited Activities Act; 2) Expanding the Partnership for Deflection and Substance Abuse Disorder Treatment Act to include first responders other than police officers; 3) The No Representation Without Population Act 4) The granting to the Attorney General increased powers to pursue certain civil actions, some newly created; 5) The New Task Force on Constitutional Rights and Remedies Act and 6) Amendments to the Public Labor Relations Act.

1) Plaintiffs first challenge to the single subject rule concerns Section 10-135 of the Act, which amends the Public Officer Prohibited Activities Act, 50 ILCS 105, to add a new section 4.1. Plaintiffs insist this provision merely “expanded whistleblower protection.” This is true, but it is also true that Section 4.1 creates a criminal offense and penalties for retaliation against a local government employee or contractor who

reports, cooperates with an investigation into, or testifies in a proceeding arising out of “improper governmental action,” including law enforcement misconduct. 50 ILCS 105/4.1(a), (g), (i); see *People v. Jones*, 318 Ill. App. 3d 1189, 1192 (4th Dist. 2001) (provision expanding the scope of a criminal offense has a natural and logical connection to the criminal justice system). Defendants correctly point out in their pleadings that, “A court confronted with a single subject challenge does not parse legislation at an atomic level.” *Wirtz*, 2011 IL 111903, Par. 38. Its task, rather, is to determine whether any provision “stands out as being constitutionally unrelated to the single subject.” *Id.* Par. 42; see *Cutinello*, 161 Ill. 2d at 423 (“The single-subject requirement is therefore construed liberally and is not intended to handicap the legislature by requiring it to make unnecessarily restrictive laws.”).

The Court finds that when the legislation’s subject contains a provision creating a criminal offense, like new section 4.1 of the Public Officer Prohibited Activities Act, that the provision has a natural and logical relationship to the single subject in this matter.

2) With regard to Section 10-116.5 of the Act, which amends the Community-Law Enforcement Partnership for Deflection and Substance Use Disorder Treatment Act, 5 ILCS 820 (“Treatment Act”). The purpose of the Treatment Act is “to develop and implement collaborative deflection programs in Illinois that offer immediate pathways to substance use treatment and other services as an alternative to traditional case processing and involvement in the criminal justice system.” 5 ILCS 820/5. Previously, those deflection programs, which offer services to addicts whom peace



officers encounter in performing their duties, could be established only by law enforcement agencies. Pub. Act 101-652, § 10-116.5. The Act changes this by authorizing fire departments and emergency medical services providers to establish such programs too, **but only in collaboration with a municipal police department or county sheriff's office.** (emphasis added) The Act provides that “Programs established by another first responder entity shall also include a law enforcement agency.” 5 ILCS 820/10, 15(a). In other words, these provisions allow law enforcement agencies to work with additional partners to provide comprehensive treatment options to addicts as an alternative to the criminal justice system. “An act may include all matters germane to its general subject, including the means reasonably necessary or appropriate to the accomplishment of the legislative purpose.” *People ex rel. Gutknecht v. City of Chicago*, 414 Ill. 600, 607–08 (1953); *see Cutinello*, 161 Ill. 2d at 424. Here, the legislature expanded a program through which law enforcement agencies attempt to divert potential offenders from the criminal justice system. The Court finds that this amendment has a natural and logical connection to the criminal justice system.

3) Plaintiffs next alleged violation is a reference to Article 2 of the Act, which enacts the No Representation Without Population Act, codified at 730 ILCS 205 and effective January 1, 2025. Its amendment requires prisoners to be counted, for legislative redistricting purposes, as residents of their last known street address prior to incarceration, rather than as residents of the correctional facility where they are incarcerated. Pub. Act. 101-652, Par. 2-20. It has been codified in Chapter 730 of the Illinois Compiled Statutes, which is titled “Corrections.” Plaintiff argues this does

nothing as far as the prisoners themselves are concerned because they don't even have a right to vote. The court finds that it does indirectly affect the prisoners in that it determines who are their elected representatives in government. Although they could not vote for them unless and until they are released and their civil rights are restored, they are still their representatives. In view of the Illinois Supreme Court's repeated holding that legislation addressing prisoners and correctional facilities is naturally and logically related to the criminal justice system as a whole, *Boclair*, 202 Ill. 2d at 110; *Malchow*, 193 Ill. 2d at 428–29, The Court finds that plaintiffs cannot establish that the No Representation Without Population Act does not have a logical and natural connection to the criminal justice system.

4) Plaintiffs next challenge the provisions in the Act that give the Attorney General increased powers to pursue certain civil actions. However, this amendment authorizes the Attorney General to investigate and pursue civil remedies against law enforcement agencies. Section 116.7 of the Act amends the Attorney General Act, 15 ILCS 205, to add a new section 10. This provision forbids state and local governments to “engage in a pattern or practice of conduct by officers that deprives any person of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States or by the Constitution or laws of Illinois.” 15 ILCS 205/10(b). It authorizes the Attorney General to investigate suspected violations and commence a civil action “to obtain appropriate equitable and declaratory relief to eliminate the pattern or practice.” 15 ILCS 205/10(c), (d). The conduct of law enforcement officers is naturally and logically connected to the Criminal Justice System. The court finds

that the legislature does not violate the single subject rule when the provision articulates a purpose to seek to eliminate certain unlawful conduct by law enforcement officers and provides the means necessary to accomplish the legislative purpose, even if the means involves a civil proceeding. *Cutinello*, 161 Ill. 2d at 424; *see Gutknecht*, 414 Ill. at 607–08.

5) Plaintiffs also allege Article 4 of the Act, which enacted the Task Force on Constitutional Rights and Remedies Act (“Remedies Act”), formerly codified at 20 ILCS 5165 but repealed as of January 1, 2022. Pub. Act 101-652, Sec. 4-20; P. Mem. at 10, violates the single subject rule. The Remedies Act created a task force “to develop and propose policies and procedures to review and reform constitutional rights and remedies, including qualified immunity for peace officers,” Pub. Act 101-652, Par 4-5, with support from the Illinois Criminal Justice Information Authority, *id. Par 4- 10(c)*. Plaintiffs argue these constitutional rights and remedies might include some unrelated to “criminal law,” P. Mem. at 10, but the text of the statute does not bear that out. By highlighting “qualified immunity for peace officers”, a doctrine that clearly relates to the criminal justice system, the legislature indicated its intent that the constitutional rights and remedies considered by the task force should be of the same nature. *Cf. Bd. of Trs. v. Dep’t of Human Rights*, 159 Ill. 2d 206, 211 (1994) (“the class of unarticulated persons or things will be interpreted as those ‘others such like’ the named persons or things”). Additionally, with regard to the Remedies Act’s connection to criminal justice, the legislature provided “[t]he Illinois Criminal Justice Information Authority shall provide administrative and technical support to the Task Force and be

responsible for administering its operations, appointing a chairperson, and ensuring that the requirements of the Task Force are met.” Pub. Act 101-652, Par. 4-10(c). The court finds that the plaintiffs have not shown that the repealed Remedies Act did not have a logical and natural connection to the criminal justice system.

6) The court next looked at plaintiff’s allegation that Section 10-116 of the Act which amends section 14(i) of the Illinois Public Labor Relations Act to change the disputes an arbitrator may resolve in a collective bargaining impasse between a public body and its “peace officers,” does not have a logical and natural connection to the criminal justice system. The term “peace officers” is a term defined to include “any persons who have been or are hereafter appointed to a police force, department, or agency and sworn or commissioned to perform police duties.” 5 ILCS 315/3(k), 14(i). The amendments to section 14(i) address labor disputes with law enforcement officers like police officers and sheriff’s deputies. The court finds that law enforcement officers are essential components of the criminal justice system, and addressing these labor disputes is therefore critical to the system’s functioning. The court finds this amendment has a logical and natural connection to the criminal justice system.

Plaintiffs also argue that the provisions challenged in their complaint and motion are only “a few of the myriad examples demonstrating how Public Act 101-652 fails to adhere to single- subject clause.” P. Mem. at 6. It is plaintiff’s burden to show how the Act violates the Illinois Constitution, *e.g.*, *Malchow*, 193 Ill. 2d at 429, and they have not done so with respect to provisions they have not mentioned. The court finds that plaintiffs have not carried their “substantial burden” to show the Act’s

provisions lack a “natural or logical connection to” the criminal justice system.

Therefore, the court grants Summary Judgment on Count II of plaintiffs’ second amended complaint in favor of Defendants.

### **COUNTS I, III, IV, & V**

The court will now decide the Counts I, III, IV and V as they relate to the pretrial release provisions of the Act. The court must first decide the issue of standing to bring this suit in the first place as raised by the defendants. Defendants argue that plaintiffs do not have standing because they cannot show that they are “in immediate danger of sustaining a direct injury as a result of the enforcement of the challenged statute or that the injury is distinct and palpable”, quoting from *Carr v Koch*, 2012 IL 113414, par. 28. They argue further that the Act’s pretrial release provisions govern criminal defendants, not plaintiffs in their official capacity as State’s Attorney and Sheriff. Def. Memo P. 17.

It is defendants’ burden to establish lack of standing. *Lebron v. Gottlieb Mem’l Hosp.*, 237 Ill.2d 217, 252 (2010). However, as explained below, the court finds that plaintiffs have standing to bring forward these claims.

“In order to have standing to bring a constitutional challenge, a person must show himself to be within the class aggrieved by the alleged unconstitutionality.” *In re M.I.*, 2013 IL 113776, ¶ 32 (citing *People v. Morgan*, 203 Ill.2d 470 (2003)). Furthermore, a challenger to the constitutionality of a law must show that they are “directly or materially affected” by the statute or in instant danger of harm due to the enforcement of

the statute. *Id.* Plaintiffs, elected State’s Attorneys and Sheriffs, are in a unique position as the representatives of not only their offices but the citizens of their respective counties. In this way, they are uniquely qualified to challenge unconstitutional legislation in a way the average citizen cannot. Furthermore, plaintiff State’s Attorneys have taken an oath to uphold and defend the Illinois Constitution and are “...under no duty to refrain from challenging...” an unconstitutional act of the legislature. *People ex rel. Miller v. Fullenwider*, 329 Ill. 65, 75 (1928). If the court were to determine that these plaintiffs do not have standing in this factual scenario, it becomes difficult to imagine a plaintiff who would have standing to bring a declaratory action before P.A. 101-652 and 102-1144 goes into effect.

Plaintiffs Second Amended Complaint sets forth how plaintiffs are directly and materially affected by the provisions of P.A. 101-652 and 102-1104 as they relate to pretrial release. Pursuant to the versions of 725 ILCS 5/109-1(b)(4) and 725 ILCS 5/110-6.1, effective January 1, 2023, the State (which in criminal proceedings is represented by that county’s State’s Attorney) is the only entity permitted to petition the court to deny pretrial release and must abide by the requirements in those sections. The individual State’s Attorneys who have brought these actions are regulated by these provisions and have a clear interest in their constitutionality, as well as a cognizable injury should they be tasked with enforcing an unconstitutional act.

Additionally, the government has a substantial and undeniable interest in ensuring criminal defendants are available for trial. *Bell v. Wolfish*, 441 U.S. 520, 534 (1979). P.A. 101-652, although the effect was lessened somewhat by P.A. 102-1104, the

pretrial release provisions still restricts the ability of the court to detain a defendant where the court finds that the defendant will interfere with jurors or witnesses, fulfill threats, or not appear for trial. These provisions will likely lead to delays in cases, increased workloads, expenditures of additional funds, and in some cases, an inability to obtain defendant's appearance in court. The court finds that these likely injuries occasioned by the enforcement of an unconstitutional law, are cognizable injuries which provide constitutional standing to plaintiff State's Attorneys.

Plaintiff Sheriffs also are injured in sufficient measure to establish constitutional standing. Sheriffs and their deputies are obligated by law to serve and execute all orders within their counties. 55 ILCS 5/3-6019. In the place of the long-standing practice of issuing warrants when defendants fail to appear, P.A. 101-652 and P.A. 102-1104, mandates that the court first consider issuing a summons instead of a warrant. Although the Act, as amended, now provides for the issuance of a warrant as is currently the case, the amendment requires the court to first consider a summons as the appropriate response to a defendant who fails to appear for court. The increased risk and injury to the Sheriff is still present with the added requirement of consideration of a summons in the first instance. These summonses must or most likely will be served by the Sheriff's Office. Unlike arrest warrants, summonses do not authorize the use of force to gain entry into the defendant's dwelling, or even command the individual to open the door, nor authorize taking the defendant into custody. If the defendant still refuses to appear, the Plaintiff Sheriffs must expend resources and endanger their employees in an additional attempt to secure the presence of an

unwilling criminal defendant by service of a warrant now authorized by the amendment. This will undoubtedly lead to increased overtime, staffing needs, and other costs. More importantly, it puts the Sheriff's staff at increased risk. The court finds that this issue is not simply a police dispute, as defendants urge, but a clear matter of law enforcement safety. For the reasons stated above, the court finds that plaintiffs have standing to pursue this action.

### **COUNT I**

With regard to Count I, the court finds that the Legislature, through P.A. 101-652 and P.A. 102-1104 by defining "sufficient sureties to exclude, in totality, any monetary bail, has improperly attempted to amend the Constitution in contravention of Ill. Const. Art. XIV, Sec. 2. A more thorough discussion of the manner in which the Act attempts to amend the Constitution is set forth below. The court finds that had the Legislature wanted to change the provisions in the Constitution regarding eliminating monetary bail as a surety, they should have submitted the question on the ballot to the electorate at a general election and otherwise complied with the requirements of Art. XIV, Sec. 2. Therefore, the court finds that the Legislature unconstitutionally attempted to change the provisions of the Constitution and Summary Judgment on Count I is granted in favor of plaintiffs.

### **COUNT IV**

The court further finds with regard to Count IV involving the Crime Victims' Rights found in Article 1, Sec. 8.1(a)(9) that P.A. 101-652 and P.A. 102-1104 that the provision eliminating monetary bail in all situations in Illinois, prevents the court from



effectuating the constitutionally mandated safety of the victims and their families. This section of the Illinois Constitution is intended to serve “as a shield to protect the rights of victims.” *People v. Richardson*, 196 Ill.2d 225, 237 (2001), discussing Ill. Const. Art. I, § 8.1. Section 8.1(a)(9) of the Illinois Constitution explicitly provides that “the safety of the victim and the victim’s family” must be considered “in denying or fixing the amount of bail, determining whether to release the defendant, and setting conditions of release after arrest and upon conviction.” The plain reading of “fixing the amount of bail”, the court finds, clearly refers to the requirement that the court consider the victims’ rights in setting the amount of monetary bail as the court does and has done since the passage of this amendment. In eliminating monetary bail, the discretion constitutionally vested to the courts to protect victims and their families by this method is gone. The constitutional requirement of bail is meant to help ensure victims’ safety, the defendant’s compliance with the terms of release, and the defendant’s appearance in court. The Act instead leaves courts with no “amount of bail” to fix and confines the court to legislatively enacted standards for detention.

Under P.A. 102-1104, all persons charged with an offense shall be eligible for pretrial release before conviction,” and a court is prohibited from ordering monetary bail, except under certain interstate agreements. 725 ILCS 5/110-2. All of this impairs the court’s ability to ensure the safety of the victim and victim’s family between the time the defendant fails to appear in court and the rule to show cause hearing, in violation of the Crime Victim’s Bill of Rights. The court finds that setting an “amount of bail” and the accompanying discretion accorded to the judge to ensure a

defendant's appearance in court and for the protection of victims and their families has been stripped away in violation of the Illinois Constitution in violation of Article I, Section 8.1(a)(9) and the attempt by defendants in the Act is unconstitutional because it is an attempt to amend the Constitution in violation of Article XIV, Sec. 2 (d). Judgement for the plaintiff is entered on Count IV and against the defendants.

### **COUNTS III & V**

Article II, Section I of the Illinois Constitution provides: "The legislative, executive, and judicial branches are separate. No branch shall exercise powers properly belonging to another." Ill. Const. art. II, § 1. *Lebron v. Gottlieb Mem'l Hosp.*, 237 Ill.2d 217, 239 (2010).

The Illinois Supreme Court has held that if "power is judicial in character; the legislature is expressly prohibited from exercising it." *People v. Jackson*, 69 Ill.2d 252, 256 (1977). The Court has long recognized that "judicial power is that which adjudicates upon the rights of citizens and to that end construes and applies the law." *People v. Hawkinson*, 324 Ill. 285, 287 (1927). The courts have supplemented this "very general" definition by looking at the traditional role of courts historically and at common law. *People v. Brumfield*, 51 Ill.App.3d 637, 643 (3d Dist. 1977). Legislative enactments undermining the "traditional and inherent" powers of the judicial branch, particularly, those restricting judicial discretion, violate the Separation of Powers Clause. *Best v. Taylor Mach. Works*, 179 Ill 2d 367 (1997). (holding that statutory limit on compensatory damages for noneconomic injuries unconstitutionally interfered with "remitter," a court's discretionary power to reduce excessive damages).

The Supreme Court has also recognized that “matters concerning court administration” fall within the inherent power of the judiciary, and the legislature is “without power to specify how the judicial power shall be exercised under a given circumstance”:

At common law, it was recognized that the legislative branch was “without power to specify how the judicial power shall be exercised under a given circumstance” The legislature was prohibited from limiting or handicapping a judge in the performance of his duties. Thus, the concept of “judicial power” included the inherent authority to prescribe and institute rules of procedure. Clearly, this common law prohibition would include matters of how the court was to function, that is, matters concerning court administration.

The history of our judicial branch also indicates that court administration falls within the ambit of the courts’ inherent “judicial power.” The Constitution of 1870 (Ill. Const. 1870, art. VI, sec. 1 et seq.) granted to the courts all powers necessary for the complete performance of the judicial function. Our present constitution provides that the “[g]eneral administrative and supervisory authority over all courts is vested in the Supreme Court and shall be exercised in accordance with its rules.” (Ill. Const. 1970, art. VI, sec. 16.) The words “and supervisory” were added in the 1970 provision to emphasize and strengthen the concept of central supervision of the judicial system. *People v. Joseph*, 113 Ill.2d 36, 42-43 (1986) (internal citations omitted).

The Illinois Supreme Court has specifically held that bail is “administrative” in nature, and that the court has independent, inherent authority to deny or revoke bail to “preserve the orderly process of criminal procedure.” *People ex rel. Hemingway v. Elrod*, 60 Ill.2d 74, 79 (1975); *see also People v. Bailey*, 167 Ill.2d 210 (1995). In *Bailey*, a defendant appealed after having been denied bail pursuant to 725 ILCS 5/110-6.3, which allowed courts to hold a defendant charged with stalking without bail. *Bailey*, 167 Ill.2d at 218. The Supreme Court,

citing to *Elrod*, found that the court had inherent discretion to hold the defendant even though he was eligible for bail under the Illinois Constitution.

*Id.* at 239-40.

In *Elrod*, the Supreme Court expressly recognized that the court has the ultimate authority in determining the appropriateness of bail. The defendant in *Elrod* was charged with non-capital murder and held without bail, even though the Illinois Constitution at the time imparted a right to bail to “all persons...except for capital offenses.” *Elrod*, 60 Ill.2d. at 76. The Court began its analysis by stating:

In our opinion, the constitutional right to bail must be qualified by the authority of the courts, as an incident of their power to manage the conduct of the proceedings before them, to deny or revoke bail when such action is appropriate to preserve the orderly process of criminal procedure. *Elrod*, 60 Ill.2d. at 79.

The Court recognized that the denial of bail “must not be based on mere suspicion but must be supported by sufficient evidence to show that it is required,” but went on to hold that “bail may properly be denied” when “keeping an accused in custody pending trial to prevent interference with witnesses or jurors or to prevent the fulfillment of threats,” and “if a court is satisfied by the proof that an accused will not appear for trial regardless of the amount or conditions of bail.” *Id.* at 79-80. According to the Supreme Court, in light of a court’s inherent authority “to enforce its orders and to require reasonable conduct from those over whom it has jurisdiction,” the court likewise “has the authority to impose sanctions for the violation of conditions imposed upon a defendant’s release and for the commission of a felony by a

defendant while released on bail or recognizance, including the revocation of his release.” *Id.* at 83-84.

The Illinois Supreme Court has ruled further that courts have inherent authority derived from the Illinois Constitution to set monetary bail. *People ex rel. Davis v. Vazquez*, 92 Ill.2d 132 (1982). In *Davis*, the court consolidated the State’s appeal denying the transfer of two juveniles to adult court. *Id.* at 137. Under the Juvenile Court Act (JCA), a juvenile defendant must be released unless there is an “immediate and urgent” necessity for detention. *Id.* Although there was no provision in the JCA for the setting of monetary bond, the court set a monetary bond in one of the cases but later reconsidered and vacated the order. *Id.* at 138-39. In a mandamus action regarding the transfer, the Illinois Supreme Court *sua sponte* vacated the juvenile offender’s release and reinstated the previous order setting bail. *Id.* at 139. The court found that, although there was no statutory provision for bond, the defendants should have the same right to bail as adult offenders since “the Constitution does not draw a distinction based on the age of the accused.” *Id.* at 147. Citing *Elrod*, the Court pronounced: “We hold that the minors in these cases were entitled to be admitted to bail and that the juvenile court therefore had authority to set bail in an appropriate amount, to release on recognizance, and/or to impose conditions on their release.” *Id.* at 148.

Other states and at least one federal court have concluded that the power to fix bail and release from custody is a judicial power that exclusively belongs to the courts. *Gregory v. State*, 94 Ind. 384 (1884) (striking down statute permitting county clerks to fix bail because power to admit to bail demands discretion and is judicial that cannot

be delegated); *State v. Smith*, 84 Wn.2d 498 (1974) (because bail is procedural in nature, power to fix bail and release from custody is a judicial power); *United States v. Crowell*, 2006 U.S. Dist. LEXIS 88489, 2006 WL 3541736 (06-M-1095 W. D. NY Dec. 7, 2006) (bail decisions, “the quintessential exercise of judicial power,” must be “individualized”; legislature cannot prescribe “a rule of decision for courts” in these determinations “without permitting courts to exercise their judicial powers independently”).

To date, only one trial court has ruled on whether the elimination of cash bail withstands a separation of powers inquiry. *People v. Johnston*, 67 Misc.3d. 267, 121 N.Y.S.3d 386 (N.Y. City Ct. Cohoes 2020). The defendant in *Johnston* who was charged with minor traffic offenses, had a “long and incorrigible record of refusing to come back to court.” *Id.* at 270. Unable to set monetary bail pursuant to a new state statute eliminating cash bail, the court concluded that the “least restrictive set of conditions” to assure the defendant’s appearance was electronic monitoring. *Id.* at 271. Because placing the defendant on electronic monitoring for a misdemeanor offense “would be quite the intrusion on defendant’s liberty,” the court found the prohibition on cash bail unconstitutional. *Id.* at 271-77. In doing so, the court concluded that the “categorical” nature of the cash bail prohibition had eliminated court discretion. *Id.* at 274. Finding that “history counsels that bail is ultimately a judicial function,” *id.* at 275, the court surmised that bail historically “broke the way of the courts” because it was not a punishment. *Id.* at 276. Rather, its purpose was “to ensure an orderly process for the courts and that defendants answer” on the charge. *Id.* While the legislature may “alter

and regulate the proceedings in law,” the court held, it may not wrest “from courts . . . final discretion” in determining “the least onerous conditions to ensure that a defendant answers the charges.” *Id.* at 277.

Plaintiffs, in their opening brief, demonstrated the several ways in which P.A. 101-652 deviates from and contradicts the express language of the Illinois Constitution’s bail provision. Ill. Const. art. I, §9; Pl. Brief, pp. 23-29. Namely, P.A. 101-652 creates new classes of offenses exempt from bail which are not included in the Constitution; it utterly abolishes monetary bail as an option for a judge to utilize to ensure a criminal defendant’s appearance in court; and contradicts the constitutional standard regulating when a defendant may be held without bail (when the court determines that “release of the offender would pose a real and present threat to the physical safety of any person”). Ill. Const. art. I, §9.

Our State Supreme Court has “repeatedly held that the legislature cannot enact legislation that conflicts with the provisions of the constitution unless the constitution specifically grants it such authority.” *In re Pension Reform Legis.*, 2015 IL 118585, Par. 81. “It is through the Illinois Constitution that the people have decreed how their sovereign power may be exercised, by whom and under what conditions or restrictions.” *Id.* at Par.79. “Where rights have been conferred and limits on governmental action have been defined by the people through the constitution, the legislature cannot enact legislation in contravention of those rights and restrictions.” *Id.*

Defendants argue that the bail provision exists to confer a right on criminal defendants. Def. Brief, p. 21. In fact, as evidenced by the case law cited by *all* parties,

the purpose of the bail provision is much broader. Interestingly, the law review article cited by defendants recognizes this. Donald B. Verrilli, Jr., *The Eighth Amendment and the Right to Bail: Historical Perspectives*, 82 Colum. L. Rev. 328, 329–30 (1982) (“Bail acts as a reconciling mechanism to accommodate both the defendant’s interest in pretrial liberty and society’s interest in assuring the defendant’s presence at trial.”).

Bail exists, as it has for centuries, to balance a defendant’s rights with the requirements of the criminal justice system, assuring the defendant’s presence at trial, and the protection of the public. The cases cited by defendants which are binding on this Court reinforce this point. *See Stack v. Boyle*, 342 U.S. 1, 4-5 (1951) (“The right to release before trial is conditioned upon the accused’s giving adequate assurance that he will stand trial and submit to sentence if found guilty...Like the ancient practice of securing the oaths of responsible persons to stand as sureties for the accused, the modern practice of requiring a bail bond or the deposit of a sum of money subject to forfeiture serves as additional assurance of the presence of an accused.”); *People v. Purcell*, 201 Ill.2d 542, 550 (2002)(“The object of bail is to make certain the defendant’s appearance in court and bail is not allowed or refused because of his presumed guilt or innocence.”).

To the extent defendants argue that P.A. 101-652 and 102-1104 effectuates the text and purpose of the bail provision to ensure that criminal defendants can access pretrial release, defendants do not explain why the Act strips courts of the authority to ever consider monetary bail as a condition of pretrial release in every case, except a few interstate situations. P.A. 101-652 contains the following provision: “Abolition of



monetary bail. On and after January 1, 2023, the requirement of posting monetary bail is abolished, except as provided in the Uniform Criminal Extradition Act, the Driver License Compact, or the Nonresident Violator Compact which are compacts that have been entered into between this State and its sister states.” 725 ILCS 5/110-1.5 (effective 1/1/23). Further, many of the statutes amended by P.A. 101-652 and 102-1104 represent efforts to erase the word “bail” out of multitudinous Codes, criminal and otherwise. Plaintiffs are not arguing to seek to require monetary bail in every case, but the Act passed by defendants eradicates monetary bail as a judicial consideration in every Illinois case.

Plaintiffs correctly point out that, “Bail, the pretrial release of a criminal defendant after security has been taken for the defendant’s future appearance at trial, has for centuries been the answer of the Anglo-American system of criminal justice to a vexing question: what is to be done with the accused...between arrest and final adjudication.” Verrilli, Jr., *supra* at 328, 329–30.

The Illinois Constitution of 1870, largely consistent with the current Constitution, provided: “All persons shall be bailable by sufficient sureties, except for capital offenses, where the proof is evident or the presumption great; and the privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.” Ill. Const. 1870 art. II, §7. The current constitutional provision has been twice amended to expand the categories of offenders who may be denied bail based on a judge’s determination of dangerousness. Pl. Brief, p. 24.

Defendants argue that the plaintiffs had failed to show the Act's pretrial release provisions are unconstitutional under every set of facts. The parties agree that plaintiffs bring a facial challenge to the statute's constitutionality, rather than an as-applied challenge. *People v. Thompson*, 2015 IL 118151, Par. 36. "The distinction is crucial." *People ex rel. Hartrich v. 2010 Harley-Davidson*, 2018 IL 121636, Par.11. Defendants further argue, "A facial challenge to the constitutionality of a legislative enactment is the most difficult challenge to mount successfully because an enactment is facially invalid only if no set of circumstances exists under which it would be valid. The fact that the enactment could be found unconstitutional under some set of circumstances does not establish its facial invalidity." *Napleton v. Vill. of Hinsdale*, 229 Ill. 2d 296, 305–06 (2008) (citations omitted). If it is merely "possible that specific future applications may produce actual constitutional problems, it will be time enough to consider any such

problems when they arise.” *Oswald*, 2018 IL 122203, Par 43. However, plaintiffs dispute this interpretation of the law.

The court finds that plaintiffs meet their burden because a legislative prohibition of monetary bail in all instances clearly violates the constitution’s express mandate of separation of powers. Specifically, because under section 110-1.5 all judges will be categorically prohibited from even considering in their discretion a monetary component to the conditions of release, the judiciary’s inherent authority to set or deny bond will necessarily be infringed in all cases if P.A. 101-652 and P.A. 102-1104 become effective. This is true even if a judge would ultimately decide not to include a monetary component. Notably, none of the cases upon which defendants rely involved separation of powers challenges. Def. Brief, p. 30. *Thompson* and *Hartrich* both involved eighth amendment claims *Napleton* addressed a due process challenge, and *Oswald*, a property tax exemption. Although the Supreme Court in *Davis v. Brown*, 221 Ill.2d 435, 442-43 (2006) and *In re Derrico G.*, 2014 IL 114463, Par.57, stated the general rule for distinguishing facial challenges from as-applied challenges, in neither case did the court speculate or consider hypotheticals when addressing specific separation of powers challenges raised by the parties. *See Davis*, 221 Ill.2d at 448-50; *Derrico G.*, at Pars 75-85. Rather, the court in each case addressed the plain language of the statute at issue and considered how it functioned in light of the pre-existing case law regarding the particular government actors at issue. *Id.*

The Illinois Supreme Court has never engaged in the type of “as applied” analysis

proposed by defendants in cases involving a facial challenge. To the contrary, in the litany of cases in which the court has struck down legislation for violating the separation of

powers doctrine, the court analyzed the issues in precisely the same manner it did in *Davis* and *In re Derrico G.*, See e.g. *Bestv. Taylor Mach. Works*, 179 Ill.2d 367, 410-16 (1997) (striking statute placing a mandatory limit on damages for non-economic injuries in tort cases; this encroached upon long-standing and “fundamental judicial prerogative of determining whether a jury’s assessment of damages is excessive within the meaning of the law”); *id.* at 438-49 (striking same statute for mandating extensive discovery in certain personal injury cases; “[e]valuating the relevance of discovery requests and limiting such requests to prevent abuse or harassment are, we believe, uniquely judicial functions”); *People v. Warren*, 173 Ill.2d 348, 367-71 (1996) (striking statute prohibiting imposition of a civil contempt finding by a judge presiding over a domestic relations matter following a conviction for unlawful visitation interference; power to hold someone in contempt of court “inheres in the judicial branch of government” and “legislature may not restrict its use”); *Murneigh v. Gainer*, 177 Ill.2d 287, 301-07 (1997) (striking statutes requiring Illinois courts to issue orders for collection of blood from certain convicted sex offenders and to enforce them through contempt power; “legislatively prescribed contempt sanction was not consistent with the exercise of the court’s traditional and inherent power”); *People v. Joseph*, 113 Ill.2d 36, 41-45 (1986) (striking the statute requiring that post-conviction petitions be assigned to a judge other than who presided over defendant’s trial as this “encroached upon a fundamental[] judicial prerogative”; legislature lacks “power to specify how the judicial power shall be exercised under a given circumstance” and is “prohibited from limiting or handicapping a judge in the

performance of his duties”).

The court therefore finds, for the reasons stated above, that P.A. 101-652 and 102-1104, are found to be facially unconstitutional. The court finds under the Act, that “persons are no longer bailable with sufficient sureties” pursuant to the pretrial release provisions of the Act because ‘sufficient sureties’ does involve monetary bail as one of the conditions of bail which is abolished with the Act. See Article I, Sec. 9 of the Illinois Constitution. The court also finds with regard to the Separation of Powers challenge, that the passage of the Act also violates the separation of powers clause of the Illinois Constitution found at Article II, Sec. 1. Summary judgment is entered in favor of plaintiffs and against defendants as to Counts III and V only as they relate to the pretrial provisions of the Act.

### **COUNT VI**

Plaintiffs allege in Count VI of their complaint and motion for summary judgment, that the manner in which the Act was passed, violates Article IV Section 8(d) of the Illinois Constitution, which requires that bills must be read by title on three different days in each house. The three readings requirement and Article IV Section 8(d) is a procedural requirement intended to ensure legislators have adequate notice of pending legislation, *Gaja’s Café v Metro. Pier & Exposition Auth.* 153 Ill. 2d 239, 258–60 1992. This court finds that the undisputed facts of this case, and the history of how the safety act was passed in the legislature confirmed that this act was not read on three different days in each house as required by the Constitution.

House Bill 3653 passed the House on April 3, 2019 and arrived in the Senate the next day. The Senate then took a seven-page House Bill and filed two amendments and increased the bill to 760 Pages. On January 13, 2021, House Bill 3653, with the two amendments was presented to the Senate for second reading status and it was approved. On the same day, in the early morning hours a third reading was held and it also passed. See, P.'s Ex. 5. Later, in the same day, January 13, 2021, the House also passed the bill. The governor signed the bill on February 22, 2021 See P.'s Ex. 6, It became Public Act 101–652, which is also called the Safe-T Act.

Although the court has made findings of fact, The Supreme Court has held that under the Enrolled Bill Doctrine, so long as the Speaker of the House, and the Senate President certified that the procedural requirements for passage have been met, that it is conclusively presumed that all procedural requirements for passage have been met. *Gajes Café, id.* at 259. In this case, the House Speaker, and the Senate President so certified that the passage of these bills met the procedural requirements. This court must follow the precedent that the Enrolled Bill Doctrine forecloses any litigation challenging the three readings requirement. To this end, defendant's motion for summary judgment, as to count VI is allowed. Judgment for defendants is entered on Count VI.

## **COUNT VII**

Plaintiff's next claim in Count VII is that the Act is unconstitutionally vague. "A well-established element of the guarantees of due process" under both the U.S.

and Illinois Constitutions “is the requirement that the proscriptions of a criminal statute be clearly defined.” *City of Chicago v. Morales*, 177 Ill. 2d 440, 448 (1997), *aff’d*, 527 U.S. 41 (1999). Because plaintiffs are bringing a pre-enforcement challenge to the Act, their vagueness claim is “facial” rather than “as-applied.” *See Planned Parenthood of Ind. & Ky., Inc. v. Marion Cty. Prosecutor*, 7 F.4th 594, 603 (7th Cir. 2021). “Outside of the First Amendment context, such facial challenges are disfavored.” *Id.* Where, as here, the alleged vagueness in the statute does not burden free speech or any other fundamental right, plaintiffs can prevail on a facial challenge only by showing that “the enactment is impermissibly vague in all of its applications.” *Vill. of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 495 (1982).

The court finds that plaintiffs have not identified any portion of the statute that is impermissibly vague. They cite just two specific examples of alleged vagueness: the term “in police custody” in 725 ILCS 5/103-3.5, Complaint pars. 203–04, and the circumstances authorizing court appearances to be conducted by two-way audiovisual communication, *id. Par.* 205. In the first example, the concept of being in the “custody” of law enforcement is not unduly vague; on the contrary, it is a critical element of many Illinois statutes, *e.g.*, 705 ILCS 405/3-7; 720 ILCS 5/31-6(c); 725 ILCS 5/103-3.5; 730 ILCS 125/19.5; 735 ILCS 5/12-1401, and it is well-defined by numerous cases interpreting those statutes, *e.g.*, *Robinson v. Vill. of Sauk Vill.*, 2022 IL 127236, Par. 26; *People v. Hileman*, 2020 IL App (5th) 170481, Par. 31. With respect to the second example, the supposed contradiction between the



two provisions related to audiovisual communications, the court does not find a contradiction. An audiovisual appearance is allowed at a hearing to *set the conditions* of pretrial release, 725 ILCS 5/106D-1(a), but it is not permitted at a hearing to *deny* pretrial release, 725 ILCS 5/109-1(a). The court notes this distinction was not even introduced by the Act; rather, it was established by the preexisting statutes (without any apparent effect on plaintiffs' ability to enforce those laws). *See* Pub. Act 90-140; Pub. Act 95-263. Cases have held that "some uncertainty at the margins does not condemn a statute." *Trs. of Ind. Univ. v. Curry*, 918 F.3d 537, 540 (7th Cir. 2019); *see also Holder v. Humanitarian Law Project*, 561 U.S. 1, 19 (2010) ("Perfect clarity and precise guidance have never been required even of regulations that restrict expressive activity.").

Second, the court finds that plaintiffs have not shown that the Act "is impermissibly vague in all of its applications." *Hoffman Estates*, 455 U.S. at 495. The term "in police custody" does not present a genuine uncertainty about whether or when someone was taken into custody, the meaning of the term is straightforward in everyday legal parlance. "Speculation about possible vagueness in hypothetical situations not before the Court will not support a facial attack on a statute when it is surely valid 'in the vast majority of its intended applications.'" *Hill v. Colorado*, 530 U.S. 703, 733 (2000).

Third, the Court finds that the provisions the plaintiffs contend are vague do not impose criminal liability or risk the "arbitrary deprivation of liberty interests." *City of Chicago v. Morales*, 527 U.S. 41, 52 (1999). Because their vagueness claim is based

on the due process clauses of the U.S. and Illinois constitutions, plaintiffs must establish a threatened injury to their lives, liberty, or property. *See Johnson v. United States*, 576 U.S. 591, 595 (2015); *City of Chicago*, 177 Ill. 2d at 448.

Further, the court notes that even if plaintiffs could establish that select provisions of the Act are impermissibly vague that would not serve to invalidate the statute as a whole. Here, the allegedly vague statutory sections do not pervade the Act such that “the entire statute is contaminated by unconstitutional vagueness.” *People v. Bossie*, 108 Ill. 2d 236, 242 (1985); *Wilson v. Cty. of Cook*, 2012 IL 112026, ¶ 23 (“In order to succeed in a facial vagueness challenge, as opposed to an as-applied challenge, the vagueness must permeate the text of such a law.”) (internal quotation marks omitted). The Court finds that the Act is not unconstitutional due to vagueness and defendants are entitled to summary judgment on Count VII.

### **COUNT VIII**

In Count VIII, Plaintiffs are seeking a preliminary injunction against defendants to prevent the enforcement of the bail provisions in Public Act, 101–652 and Public Act 102-1104 until all of the plaintiffs’ claims in this case can be fully litigated.

In order for a plaintiff to be successful on a motion for preliminary injunction, they must show “(1) a clearly ascertainable right in need of protection, (2) irreparable injury in the absence of an injunction, (3) no adequate remedy at law, and (4) a likelihood of success on the merits of the case.” *Mohanty v St. John Heart Clinic*, 225 Ill 2d 52, 62

(2006).

The court finds that a preliminary injunction is not appropriate at this juncture of the case. A preliminary injunction is a provisional remedy granted to preserve the status quo until the case can be decided on the merits.” *Hensley Construction, LLC., The Pulte Home Corporation v. Del Webb Communications Of Illinois, Inc.*, 399 Ill. App., 3d 184, 190. We are well past the beginning stage of this suit where a preliminary injunction might be warranted. The case is being decided on the merits, by way of cross motions for summary judgment. This will result in a final appealable decision by the trial court. Therefore, the Court grants summary judgment in favor of defendants and against plaintiffs on Count VIII.

### **CONCLUSION**

Because, as the Illinois Supreme Court has determined, the administration of the justice system is an inherent power of the courts upon which the legislature may not infringe and the setting of bail falls within that administrative power, the appropriateness of bail rests with the authority of the court and may not be determined by legislative fiat. Therefore, the court finds that Public Acts 101- 652 and 102-1104 as they relate only to the pretrial release provisions do violate this separation of powers principle underlying our system of governance by depriving the courts of their inherent authority to administer and control their courtrooms and to set bail. *Elrod, supra*.

Inasmuch as Section 99-997 of P.A. 101-652 entitled “Severability” provides

that “The provisions of this Act are severable under Section 1.31 of the Statutes on Statutes and Section 97 of P.A. Act 102-1104 entitled “Severability” provides that “The provisions of this Act are severable under Section 1.31 of the Statutes on Statutes, the court is severing the provisions of the pretrial release provisions from the entire Act, as amended. The court finds that declaratory judgment is proper in this case and that plaintiffs have met their burden to show to this court that P.A. 101-652 and P.A. 102-1104, as they relate only to the pretrial release provisions are facially unconstitutional and Declaratory Summary Judgment on the pleadings is entered in favor of plaintiffs and against defendants as to Count I, III, IV and V. As previously stated above, defendants have met their burden on Counts II, VI, VII, and VIII and summary judgment on the pleadings is entered in favor of Defendants on those counts. Plaintiffs are ordered to prepare an order consistent with this opinion.

Entered this 28th day of December, 2022.

A handwritten signature in black ink that reads "Thomas W. Cunningham". The signature is written in a cursive style with a large initial 'T' and 'C'.

Thomas W. Cunningham, Circuit Judge, 21<sup>st</sup> Circuit