

STATE OF ILLINOIS)
) SS
COUNTY OF MCLEAN)

Eleventh

**IN THE CIRCUIT COURT OF THE ~~EIGHTEENTH~~ JUDICIAL CIRCUIT
MCLEAN COUNTY, ILLINOIS**

ERIKA REYNOLDS,
MCLEAN COUNTY STATE'S ATTORNEY, and
JON SANDAGE, SHERIFF OF MCLEAN
COUNTY, ILLINOIS

Plaintiffs,

v.

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

Defendants.

FILED

10/5/2022 4:20 PM

DONALD R. EVERHART, JR.
CLERK OF THE CIRCUIT COURT
MCLEAN COUNTY, ILLINOIS

No. 2022MR000158

COMPLAINT FOR DECLARATORY RELIEF AND INJUNCTION

NOW COMES Erika Reynolds, McLean County State's Attorney, on her own behalf and on behalf of McLean County Sheriff Jon Sandage and the People of the State of Illinois (hereinafter "Plaintiffs"), and for their Complaint for Declaratory Relief and Injunction against Defendants, state the following:

PARTIES

1. Plaintiff, Erika Reynolds is the duly appointed State's Attorney of McLean County, Illinois, who has the authority to prosecute this cause of action on behalf of the People of McLean County pursuant to 55 ILCS 5/3-9005(a)(1). In addition to the statutory powers afforded the

McLean County State's Attorney, she is invested with common law and constitutional authority analogous and largely coincident to the Illinois Attorney General and which includes the duty to represent the people in matters affected with a public interest.

2. Plaintiff, Jon Sandage, is the duly elected Sheriff of McLean County and among his duties is the enforcement of civil and criminal statutes, supervision, and security of the Courthouse and any and all prisoners at the McLean County Jail.

3. Defendant, Kwame Raoul is the duly elected Attorney General of the State of Illinois.

4. Defendant, Jay Robert Pritzker is the duly elected Governor of the State of Illinois.

5. Defendant, Emanuel Christopher Welch is the duly elected Speaker of the Illinois House of Representatives.

6. Defendant, Donald F. Harmon is the duly elected president of the Illinois state senate.

FACTS COMMON TO ALL COUNTS

7. House Bill 3653 (HB 3653) ("the SAFE-T Act") was introduced in the Illinois House of Representatives by Representative Curtis J. Tarver II on February 15, 2019.

8. As introduced HB 3653 consisted of seven (7) pages and sought to amend provisions of 730 ILCS 5/3-14-1. (Pls'. Ex. 1).

9. The General Assembly website synopsis indicated that it primarily focused on voter registration issues for incarcerated individuals. *Id.*

10. It received three (3) readings in the House and was passed on April 3, 2019.

(Pls'. Ex. 2).

11. HB3653 arrived in the Senate April 4, 2019.

12. In the Senate, the first reading occurred on April 12, 2019, and it was assigned to the Assignments Committee that day. (Pls'. Ex. 3).

13. Subsequently, nearly twenty-one (21) months later it was assigned to the Executive Committee on January 10, 2021, before being re-referred to Assignments Committee.

14. A second reading occurred in the Senate on January 10, 2021, during a perfunctory session, after which Senator Elgie Sims stated that he wanted the bill moved to a 3rd reading. (Pls'. Ex. 4.)

15. Senator Sims then filed Senate Floor Amendment No. 1, which totaled six hundred eleven (611) pages.

16. On or about January 13, 2021, roughly two days later, Senator Sims filed Senate Floor Amendment No.2 further increasing the bill's size by one hundred fifty-three (153) pages to seven hundred sixty-four (764) pages in total. (Pls'. Ex. 5 at 85).

17. According to the General Assembly's website the bill now dealt with various topics such as use of force, redistricting, creation of task forces, and labor relations, among many other topics. (Pls'. Ex. 6).

18. After these voluminous amendments, the bill was again referred to the Assignments Committee and approved for consideration.

19. Before the entire Senate, Senator Sims asked that HB 3653 be returned to 2nd reading status. (Pls'. Ex. 5).

20. This was approved without objection. *Id.*

21. Senator Sims then moved to adopt Floor Amendment No. 2. *Id.*
- Id.* 22. Senate President Harmon determined this amendment passed on a voice vote.
23. Another reading was held on January 13, 2021 and referred to as the 3rd Reading. *Id.*
24. The title of HB 3653 was then read, and Senate President Hannon announced that only two speakers from each side would speak after Senator Sims spoke. *Id.* at 86.
25. Highlighting the sweeping and broad nature of the scheme envisioned in those 764 pages, Senator Sims referred to HB3653 as a "big, bold, complex transformational agenda." *Id.*

26. Senator Sims continued:

"First, the criminal justice reform: There's reporting of deaths in custody; reforms relative to pregnant prisoner rights; medical treatment; alternatives to custody for those charged with three or four-Class 3 or 4 nonviolent felonies; the end to prison gerrymandering; the end to money bond and the Pretrial Fairness Act; the creation of a domestic violence pretrial working group; the creation and establishment of detainee rights; additional earned program sentencing credits; modernization of our State's mandatory supervised release program. Under violence reduction and victims' services: expanded usage of diversion courts; crime victims compensation. And under police accountability: the State's first expanded certification and decertification process; expanded use of force training; expanded crisis intervention training; the creation of the State-of a co-responder model for the State-for-for State government and policing; data collection; the creation of-of-the expansion and-and clarification of our ban on chokeholds; the creation of a duty to render aid for law-law enforcement officers; the creation of the duty to intervene from law enforcement officers; protection for whistleblowers who-who seek to make sure that the relationship between law enforcement and communities remain sound; increased body camera usage; a discussion on the certification process and decertification process for law enforcement. This is a complete and comprehensive initiative."

Id. at 86-87.

27. Several Senators voiced concerns about the manner in which HB 3653 was moved forward.

28. Senator McClure observed that, "we just got this... a very short time ago", and that he was "trying to ascertain what's in the bill". *Id.* at 87-88.

29. Senator McClure and Senator Sims had an exchange indicating that it was not entirely clear what was being presented, with Senator McClure stating he had "seen several drafts of this bill and this is now sort of new," which caused Senator Sims to reply that Senator McClure was referring to another earlier draft of the bill. *Id.* at 91.

30. Senator Barickman also noted issues with the process, stating that this bill was pushed forward during a lame-duck session (*Id.* at 99) and mentioned:

"[m]any of our constituents are going to read about legislation that consisted of more than 700 pages that was debated at 4:30 a.m., and they're going to read, watch, and listen to those news reports about this legislation and immediately cast suspicion about what's being done in the eleventh hour of this lame-duck Session, and they're going to be suspicious."

Id. at 100.

31. After further comment, President Harmon called for a vote and reported the vote as 32-23 in favor. President Harmon then declared HB 3653 as being passed. *Id.* at 108.

32. On January 13th, HB3653 arrived back in the House. (Pls'. Ex. 7 at 3).

33. That same day the Rules Committee recommended Senate Amendment No. 2 be adopted and referred the matter to the floor for a full House vote. *Id.* at 3-4.

34. On the same day, Representative Justin Slaughter spoke in favor of the motion to concur, again highlighting the vast reach of this bill:

"[In] regards to policing, House Bill 3653, Senate Amendment 2, provides a framework **composed of seven critical components.** **First, under crisis intervention and conflict de-escalation,** the Bill establishes a statewide co-responder program, revamped our search warrant policies, and enhances crisis intervention training. **Secondly, under limiting use of force,** this Bill establishes a statewide universalized standard for use of force that identifies and defines what is excessive and prohibited. Under this section, House Bill 3653, Senate Amendment 2, allows... also provides a policy for the duty to intervene and to render aid. And lastly, it enhances use of force training. **The third component is transparency.** Under this section, the Bill creates a statewide body camera program, strengthens requirements for the reporting, collecting, and retention of police data and records. And lastly, it modifies policies pertaining to police officer integrity. **The fourth component, oversight and enforcement.** In this section, the Bill establishes a significantly more robust certification and decertification program for police officers. In regard to strengthening certification. What does this mean? This means better background checks, documenting continuous training completed, and continuous review of disqualifying conduct. This program also calls for expanding decertification, increasing the list of misdemeanors that qualify for automatic decertification, and also creating a discretionary decertification process based on the state's IDFPR model. And third, this also means expanding the officer professional conduct database. This would include notifications to state's attorneys and expanded requirements for departments to notify for concurrent terminations and leaving duties under investigation. Under this component, the Bill also enhances a state level patterns and practice division within the office of Attorney General to investigate police misconduct. **Ladies and Gentlemen, moving on, Fifth component, accountability.** The Bill creates the Qualified Immunity Task Force to develop and propose policies and procedures to review and reform qualified immunity as it applies to peace officers. In regards to collective bargaining, the Bill deletes a provision of the Uniform Peace Officers' Disciplinary Act that allows collective bargaining agreements to override State Law with regard to peace officers. The effect of this change would be to prevent collective bargaining agreements from being used to shield officers from discipline, free misconduct, and use of force violations. Lastly, this section also removes the sworn affidavit requirement for police misconduct complaints. **Sixth component, detainment.** This Bill provides provisions to protect the rights of arrestees and detainees by requiring adequate access to phone calls and counsel when detained. The last component of police reform, **the seventh component, officer wellness.** These provisions establish statewide standards for officers to receive regular mental health screenings and assistance and also protections from mental illness discoveries. **It's these seven components of our reform framework for**

policing that's contained in this Bill."

We also took a look at sentencing reform." "The Bill narrows our very broad felony murder rule to bring it in line with the majority of other states. It offers alternatives to custody in that it limits time on mandatory supervisor release for lower level felonies. It modifies the definition of habitual criminal to entail and require higher level offenses, HB3653, Senate Amendment 2, offers a provision to provide for more judicial discretion for lower level, non-violent offenses. In regards to resisting arrest, the Bill requires a predicate offense to charge someone with resisting arrest." **Lastly, the Bill establishes an investigation in reporting requirements for death in custody.** In regards to prison practices, this Bill makes the following changes: It provides a provision for enhancing medical treatment practices within IDOC; the Bill ends the practice of prison gerrymandering; it modernizes our sentencing credit program; and lastly, it provides provisions to protect the rights of pregnant prisoners. Also, and most notably, House Bill 3653, Senate Amendment 2, abolishes money bond and codifies the Pretrial Fairness Act, This initiative moves our money bond system from one that is based on an individual's ability or inability to post bond to a more fair system that relies on verified risk assessment tools to determine if an individual is a threat to the community or a concern to not return for their hearing. Lastly and finally, in regards to violence reduction, the Bill improves the victims... the crime victims compensation process and expands eligibility for diversion court."

(Pls'. Ex.7 at 4-7) (Emphasis added).

35. In the House, there were additional concerns raised about the bill.

36. Representative Windhorst noted that this was really "two large criminal justice Bills, one involving certification of police officers, one involving criminal justice reforms that have been merged." *Id.* at 18-19.

37. Acting Speaker Burke then called for a vote, with a reported vote of 60-50 in favor.

38. Acting Speaker Burke then declared the bill had passed. *Id.* at 23.

39. HB 3653 was sent to Governor Pritzker on February 4, 2021, which he signed on February 22, 2021. (Pls'. Ex. 6).

40. Thus, HB 3653 became Public Act 101-652.

41. Public Act 101-652 is seven hundred sixty-four (764) pages, divided into eight (8) substantive articles, one (1) general article, and amends, adds, or repeals two hundred sixty-five (265) statutes. (Pls'. Ex. 6, 8, 9).

42. The majority of the Public Act has already taken effect, with the abolishment of cash bail becoming effective January 1, 2023, and the phased adoption of body cameras finishing January 1, 2025.

COUNT I
DECLARATORY JUDGEMENT - SINGLE SUBJECT RULE

43. Plaintiffs reallege and incorporate the allegations in Paragraphs 1-42.

44. Article IV, Section 8 of the Illinois Constitution provides in pertinent part: "Bills, except bills for appropriations and for the codification, revision or rearrangement of laws, shall be confined to one subject." Ill. Const. art. IV, § 8

45. Because the single subject rule is a substantive, rather than a procedural, requirement for the passage of bills, an alleged violation of the rule is subject to judicial review. *Johnson v. Edgar*, 176 Ill. 2d 499, 514 (1997) (citing, *People v. Dunigan*, 165 Ill.2d 235 (1995)).

46. The single subject rule ensures the structured and well-informed debate and passage of bills as "limiting each bill to a single subject, each legislator can better understand and more intelligently debate the issues presented by a bill." *People v. Cervantes*, 189 Ill. 2d 80, 83-84 (1999) (citing, *People v. Reedy*, 295 Ill. App. 3d 34(1999)).

47. "The single subject requirement, therefore, "ensures that the legislature addresses the difficult decisions it faces directly and subject to public scrutiny " *Cervantes* 189 Ill.2d at 84 (citing, *Johnson v. Edgar*, 176 Ill.2d 499 (1997)).

48. A public act that violates the single subject rule is not severable, rather the entire public act is unconstitutional and thus void. *Reedy*, 295 Ill. App at 42.

49. 735 ILCS 5/2-701 provides a method under Illinois law for declaratory relief.

50. "The essential requirements for asserting a declaratory judgment action are (1) a plaintiff with a legal tangible interest, (2) a defendant with an opposing interest, and (3) an actual controversy between the parties involving those interests." *Cahokia Unit Sch. Dist. No. 187v. Pritzker*, 2021 IL 126212 at ¶36 (citing *Beahringer v. Page*, 204 Ill.2d 363 (2003)).

51. Plaintiff Reynolds is the appointed State's Attorney of McLean County both a Constitutional and statutory officer.

52. Among her powers and duties are the authority to prosecute all civil and criminal actions within her county in which the People or the County are interested, to prosecute felony and misdemeanor charges, as well to inquire as to the source of any bond money posted by an individual with criminal charges, and to seek increase in bond amount or changes in conditions. 55 ILCS 5/3-9005; 725 ILCS 5/110-5(b-5); 725 ILCS 5/110-6(a).

53. Furthermore, she has internal control over the operations of her office. 55 ILCS 5/3-9006.

54. Defendant Raoul, as the Attorney General, must be notified of any challenge to the constitutionality of a state statute, so that he can defend the statute. Ill. S.Ct. Rule 19 (a).

55. Defendant Raoul also possesses significant new powers under the Public Act, such as the ability to conduct pattern and practice investigations of law enforcement officers, including those investigators employed by Plaintiff Sandage. 15 ILCS 205/10; 55 ILCS 5/3-9005.

56. Defendant Pritzker signed HB3653, indicating his approval of said bill.

57. "The Governor shall have the supreme executive power and shall be responsible for the faithful execution of the laws." Ill. Const. art. V, § 8

58. Absent further action by the General Assembly, provisions of Public Act 101-652 will remain in effect or continue to take effect, creating a real controversy between the Parties.

59. HB3653 and Public Act 101-652 clearly violate the single subject rule of the Illinois Constitution.

60. The bill is over 750 pages, addresses 265 separate statutes, and can be categorized as touching, at a minimum, 5 clearly distinct and divergent subjects.

61. Those subjects are: 1) Policing and Criminal Law; 2) Elections; 3) Expanding the Partnership for Deflection and Substance Abuse Disorder Treatment Act to include first responders other than police officers; 4) Granting the Attorney General increased powers to pursue certain civil actions, some newly created; and 5) Expanded Whistleblower Protection.

62. Arguably, the bill covers more topics than that, given Rep. Slaughter's comments about seven areas the bill and amendments reached in the criminal justice area, as well as Rep. Windhorst's comments about the bill really encompassing two separate law enforcement bills.

63. Plaintiff Reynolds is negatively affected by provisions related to whistleblower protection because her office is the default auditing official of all governmental offices within McLean County.

64. If the Public Act were to stand, she would be burdened with not only significant new responsibilities, but the obligation to find funding mechanisms to address these unfunded

mandates stemming from an unconstitutionally passed law. Plaintiff Reynolds has already begun preparing for the Act's implementation by budgeting and planning to hire additional assistants to handle the increased workload the bill demands.

65. As whistleblower protection and abolishing cash bail cannot accurately be said to remotely touch the same subject, a single subject violation exists, and the Public Act must be struck down.

66. Plaintiff Reynolds is further harmed by the fact that her employees (or her office itself) are now subject to pattern and practice investigations by Defendant Raoul, and thus must also devote resources to respond to these allegations whether they possess merit or not.

67. Civil administrative actions reviewing the constitutionality of peace officer's actions cannot be said to fall under the same "subject" as abolishing cash bail, whistleblower protection, or statewide voter measures.

68. A single subject violation clearly exists, and the entirety of the Public Act must fail.

WHEREFORE, Plaintiff Erika Reynolds prays this Honorable Court find Public Act 101-652 violates the single subject rule and thus is unconstitutional and requests any other relief the Court deems just and equitable under the circumstances.

COUNT II.

DECLARATORY JUDGMENT - VIOLATION OF ARTICLE I, SEC. 9 IL CONSTITUTION

69. Plaintiffs reallege and incorporate the allegations in Paragraphs 1-42.

70. Article I, Section 9 of the Illinois Constitution provides in relevant part:

"All persons shall be bailable by sufficient sureties, except for the following offenses where the proof is evident or the presumption great: capital offenses; offenses for which a

sentence of life imprisonment may be imposed as a consequence of conviction; and felony offenses for which a sentence of imprisonment, without conditional and revocable release, shall be imposed by law as a consequence of conviction, when the court, after a hearing, determines that release of the offender would pose a real and present threat to the physical safety of any person.”

IL Const. art. I, § 9. (Emphasis added). The purpose of this section is to ensure that a defendant is given some amount of liberty until he or she is convicted, while simultaneously ensuring that the defendant will appear for his or her trial. *People ex rel. Gendron v. Ingram*, 34 Ill. 2d 623, 625 (1966) (interpreting an identical provision concerning bail under the 1870 Constitution).

71. Bailable simply means “...an offense or person is eligible for bail.” Black's Law Dictionary, 9th Ed. - "bailable" defined.

72. Black's Law Dictionary defines “bail” as “a security such as cash or a bond.” Black's Law Dictionary, 9th Ed. - "bail" defined.

73. The idea that bail, by definition, embodies a monetary component is further reinforced by the fact that the Crime Victim's Rights portion of the Constitution specifically states, “[t]he right to have the safety of the victim and the victim's family considered in denying or fixing the **amount of bail**, determining whether to release the defendant, and setting conditions of release after arrest and conviction.” Ill. Const. art. I, § 8.1(a)(9). (Emphasis added).

74. Therefore, the Constitution makes monetary sureties an unambiguous and necessary feature of bail in Illinois.

75. As the law stands (before the new provisions take effect on January 1, 2023), even a release on personal recognizance involves an element of financial obligation being

pledged to ensure the defendant's appearance. 725 ILCS 5/110-2.

76. "Recognizance means an undertaking without security entered into by a person by which he binds himself to comply with such conditions as are set forth therein and which may provide for the forfeiture of a sum set by the court on failure to comply with the conditions thereof." 725 ILCS 5/102-19; 725 ILCS 5/110-2.

77. Should a defendant be released on personal recognizance and fails to appear, he or she risks the forfeiture of an amount previously set by the court.

78. Thus, it is clear the bailable requirement of the Illinois Constitution implicitly contains an element of concrete financial incentives sufficient to ensure the defendant's appearance at trial.

79. The provisions under Public Act 101-652, clearly violate this principle because individuals are either released without any bail or personal recognizance bond, and instead are presumed to be released solely upon a mere promise to appear, subject to minimal pretrial conditions. 725 ILCS 5/110-1.5; 110-2.

80. Notably, the law no longer requires that a sum be set that may be forfeited upon failure to abide by conditions of personal recognizance, but only that a "defendant may be released on his or her own recognizance upon signature." 725 ILCS 5/110-2.

81. Should a defendant fail to appear for a scheduled court appearance, he or she does not forfeit any money, rather he or she is subject to a hearing regarding the reasons behind their failure to abide by the conditions of pretrial release. 725 ILCS 5/110-3.

82. As such, defendants are no longer "bailable" in Illinois as they are either released on their signature or held for a limited period of time (90 days) without bail pending trial.

83. This is a clear violation of the bail provisions in the Illinois Constitution.

84. 735 ILCS 5/2-701 provides a method under Illinois law for declaratory relief.

85. "The essential requirements for asserting a declaratory judgment action are (1) a plaintiff with a legal tangible interest, (2) a defendant with an opposing interest, and (3) an actual controversy between the parties involving those interests." *Cahokia Unit Sch. Dist. No. 187 v. Pritzker*, 2021 IL 126212 at ¶ 36 (citing *Behringer v. Page*, 204 Ill.2d 363 (2003)).

86. Plaintiff Reynolds is directly injured by the provisions of Public Act 101-652, because as the appointed State's Attorney of McLean County she is intimately involved in the bail and bond process for defendants charged by her office.

87. Under the current system, Plaintiff Reynolds's office: provides information concerning the alleged crime and criminal history which may be used as basis for setting bail; is often asked for recommendations on bail; and has a significant role in seeking the modification of a defendant's bail, as well as conducting hearings on the source of money used to post bond. 725 ILCS 5/110-5; 725 ILCS 5/110-6.

88. If the provision of Public Act 101-652 take effect, all criminal defendants will be presumed to be entitled to release without monetary incentive on the line to ensure their continued presence in front of the court, a central tenet behind the purpose of bail.

89. This will lead to increased delays in cases handled by Plaintiff's office, not only leading to delay in administration of justice, but also increase staff workloads and costs.

90. Without the ability to secure the appearance of defendants for trial, Plaintiff will be severely hamstrung in her ability to proceed with the prosecution of cases, and the Courts will be stripped of their inherent authority to manage their courtrooms.

91. Finally, Plaintiff is harmed by the fact that Public Act 101-652 impermissibly

and unconstitutionally raises the burden of proof for detention.

92. The version of 725 ILCS 5/110-6.1 that takes effect on January 1, 2023, transforms the section from “essentially mirroring” the contents of Article I, Section 9, to referencing multiple crimes not previously non-bailable under the Constitution (such as domestic battery) which now, upon the filing of a verified petition and proper showing, would allow for the pre-trial detention without bail.

93. This new version of 725 ILCS 5/110-6.1 also impermissibly and unconstitutionally requires the State to prove, by “clear and convincing” evidence, that the person the State is seeking to deny pre-trial release “poses a real and present threat to the safety of a specific, identifiable person or persons.” 725 ILCS 5/110-6.1(d), (e)(2).

94. The Constitution **only** requires that the “offender would pose a real and present threat to the physical safety of any person.” Ill. Const. art. I, § 9.

95. As the bill’s amendments clearly contravene the constitutional right to bail, Plaintiff will likely be presented with further delays in trials and hearings as the constitutionality of bail orders are challenged.

96. Defendant Raoul, as the Attorney General, must be notified as to any challenge to the constitutionality of a state statute, so that he can defend the statute.

97. Defendant Pritzker signed HB3653, indicating his approval of said bill.

98. “The Governor shall have the supreme executive power and shall be responsible for the faithful execution of the laws.” Ill. Const. art. V, § 8.

99. Absent further action by the General Assembly, provisions of Public Act 101-652 will remain in effect or continue to take effect, creating a real controversy

between the Parties.

100. Because individuals are no longer bailable, the bail provisions of Public Act 101-652, violate Article I, Section 9 of the Illinois Constitution and must be struck down. (Pls'. Ex. 10).

WHEREFORE, Plaintiff Erika Reynolds prays this Honorable Court find Public Act 101-652 unconstitutional in part for violating the bail provision in Article I, Section 9 of the Illinois Constitution and requests any other relief the Court deems just and equitable under the circumstances.

COUNT III.

DECLARATORY JUDGMENT - VIOLATION OF ARTICLE I, SEC. 8 IL CONSTITUTION

101. Plaintiff's reallege and incorporate the allegations of paragraphs 1-42.

102. Article I, §8 of the Illinois Constitution provides:

“(a) Crime victims, as defined by law, shall have the following rights:

(1) The right to be treated with fairness and respect for their dignity and privacy and to be free from harassment intimidation, and abuse throughout the justice process...

(8) The right to be reasonably protected from the accused throughout the criminal justice process...

(9) The right to have the safety of the victim and the victim's family considered in denying or fixing the amount of bail, determining whether to release the defendant, and setting conditions of release after arrest and conviction.”

103. The enforcement of crime victims' rights enshrined in the Illinois Constitution is an administrative function that belongs to the courts.

104. Under 725 ILCS 5/110-2 and 725 ILCS 5/110-6.1 as amended by HB 3653, the Courts will be stripped of their Constitutional power to protect the rights of Illinois victims.

105. As discussed under the Act's amendments, in all non-725 ILCS 5/110-6.1 cases the court must release the defendant even if it finds that no combination of conditions will be sufficient to protect the victim from "harassment or intimidation" or other danger.

106. Plaintiff Reynolds is directly injured by the provisions of Public Act 101-652, because as the appointed State's Attorney of McLean County she is intimately involved in the bail and bond process for defendants charged by her office.

107. Under the current system, Plaintiff's office: provides the Court information concerning the alleged crime and criminal history which may be used as basis for setting bail; is often asked for recommendations on bail; and also has a significant role in seeking the modification of a defendant's bail, as well as conducting hearings on the source of money used to post bond. 725 ILCS 5/110-5; 725 ILCS 5/110-6.

108. The above sections (as amended) stand in direct opposition to Article I, §8(a)(10) of the Illinois Constitution because, again, in all non-725 ILCS 5/110-6.1 cases, the Court cannot consider the victim's safety in "denying" bail or "determining whether to release the defendant" as it no longer has such discretion. Nor can Plaintiff act to protect the safety of victims within her jurisdiction.

109. The version of 725 ILCS 5/110-6.1 that takes effect on January 1, transforms this section from essentially mirroring the contents of Article I, Section 8, to referencing multiple crimes not previously non bailable under the Constitution (such as domestic battery) which now, upon the filing of a verified petition and proper showing, would allow for the pre-trial detention without bail.

110. This new version of 725 ILCS 5/110-6.1 as amended impermissibly and unconstitutionally requires the State to prove by "clear and convincing" evidence that the

person the State is seeking to deny pre-trial release “poses a real and present threat to the safety of a specific, identifiable person or persons.” 725 ILCS 5/110-6.1(d), (e)(2).

111. The Constitution only requires that the “offender would pose a real and present threat to the physical safety of **any** person.” Ill. Const. art. I, § 9 (Emphasis added).

112. Defendant Raoul, as the Attorney General, must be notified as to any challenge to the constitutionality of a state statute, so that he can defend the statute.

113. Defendant Pritzker signed HB3653, indicating his approval of said bill.

114. "The Governor shall have the supreme executive power, and shall be responsible for the faithful execution of the laws." Ill. Const. art. V, § 8

115. Absent further action by the General Assembly, provisions of Public Act 101-652 will remain in effect or continue to take effect, creating a real controversy between the Parties.

116. That because individuals likely to pose a dangerous risk to victims of crime in Illinois are automatically bailable without hearing, the bail provisions of Public Act 101-652, violate Article I, Section 8 of the Illinois Constitution and must be struck down. (Pls'. Ex. 10.)

WHEREFORE, Plaintiff Erika Reynolds and the people of McLean County pray that this Honorable Court find Public Act 101-652 unconstitutional in part for violating the bail provision in Article 1, Section 8 of the Illinois Constitution and requests any other relief the Court deems just and equitable under the circumstances.

COUNT IV
DECLARATORY JUDGMENT - SEPARATION OF POWERS VIOLATION

117. Plaintiffs reallege and incorporate the allegations in Paragraphs 1-42.

118. Under the provisions of Public Act 101-652, all Illinois criminal defendants are now presumed to be subject to non-monetary bail, except in limited circumstance where they are held pending trial. 725 ILCS 5/110-2.

119. Instead of monetary bail, criminal defendants will be subject only to conditions they must abide by upon release and a signature with no surety. 725 ILCS 5/110-1.5; 110-2

120. The Separation of Powers clause prohibits one branch of government from exercising and/or abridging "powers properly belonging to another." Ill. Const. art. II, § 1; *Lebron v. Gottlieb Mem'l Hosp.*, 237 Ill.2d 217,239 (2010).

121. "... [T]he legislature is without authority to interfere with "a product of this court's supervisory and administrative responsibility." *People v. Joseph*, 113 Ill. 2d 36, 45 (1986) (*citing, People v. Jackson*, 69 Ill.2d 252(1977)).

122. "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 proceedings before them, to deny or revoke bail when such action is appropriate to preserve the orderly process of criminal procedure." *People ex rel. Hemingway v. Elrod*, 60 Ill.2d 74, 79 (1975).

123. The General Assembly may only enact legislation "that complement[s] the authority of the judiciary or that [has] only a peripheral effect on court administration." *Kunkel v. Walton*, 179 Ill. 2d 519, 528 (1997) (*citing, People v. Williams*, 124 Ill.2d 300 (1988)).

124. "Consequently, the separation of powers principle is violated when a legislative enactment unduly encroaches upon the inherent powers of the judiciary, or directly and irreconcilably conflicts with a rule of this court on a matter within the court's authority." *Kunkel v. Walton*, 179 Ill. 2d 519, 528 (1997).

125. Here, by eliminating the courts' ability to set bail, the General Assembly has

completely removed a tool the judiciary has as an inherent right to use towards managing the judicial process.

126. The Acts amendments to provisions on the setting of bail is not something "incidental" to the administration of the courts, nor a "supplement" of the courts' authority, but rather a "big, bold, complex transformational agenda" fundamentally altering the several courts' authority.

127. The Acts' amendments are intrusion upon one of the core components of the several courts' authority, the legislation is an unlawful intrusion into the central powers of the courts, and thus, violates the separation of powers doctrine.

128. 735 ILCS 5/2-701 provides a method under Illinois law for declaratory relief.

129. "The essential requirements for asserting a declaratory judgment action are (1) a plaintiff with a legal tangible interest, (2) a defendant with an opposing interest, and (3) an actual controversy between the parties involving those interests." *Cahokia Unit Sch. Dist. No. 187 v. Pritzker*, 2021 IL 126212 at ¶ 36 (citing *Beahringer v. Page*, 204 Ill.2d 363 (2003)).

130. Plaintiff Reynolds is directly injured by the provisions of Public Act 101-652, because, as she is the appointed State's Attorney of McLean County, she is intimately involved in the bail process for defendants charged by her office.

131. Under the current system the State's Attorney's office: provides information concerning the alleged crime and criminal history which may be used as basis for setting bail; is often asked for recommendations on bail; and also has a significant role in seeking the modification of a defendant's bail, as well as conducting hearings on the source of money used to post bond. 725 ILCS 5/110-5; 725 ILCS 5/110-6.

132. Furthermore, if the provisions of Public Act 101-652 take effect, defendants will be presumed to be entitled to release without monetary incentive on the line to ensure their continued presence in court, a central tenet behind the purpose of bail.

133. This will lead to increased delays in cases handled by Plaintiff's office, not only leading to delay in administration of justice, but also increase staff workloads and costs.

134. Without the ability to secure the appearance of defendants for trial, Plaintiff Reynolds will be severely hamstrung in her ability to proceed with the prosecution of cases. Due to the provisions in Public Act 101-652, Plaintiff Reynolds can no longer appeal to the Courts for assistance in ensuring a defendant's appearance.

135. In addition, Plaintiff Jon Sandage is also directly injured by the provisions of Public Act 101-652, because he is the elected Sheriff of McLean County and, under HB 3653's amendments to 725 ILCS 5/109, Sandage will become intimately involved in the bail process for defendants charged by the State's Attorney's office.

136. The Power to admit and fix bail or set conditions of release is a judicial function and cannot be delegated. *See e.g., State v. Smith*, 84 Wn.2d 498 (1974); *Gregory v. State*, 94 Ind. 384 (1884).

137. In cases involving Class B and Class C misdemeanors, HB 3653 amends 725 ILCS 5/109 to compel police to release arrestees with a citation unless police officers, presumably in their discretion, determine that the subject poses an obvious threat to the community or is suffering an obvious physical or mental health issue that poses a risk to themselves.

138. Moreover, in arrests for all non-§110-6.1 charges, 725 ILCS 5/109 accords police officers unfettered discretion to release an arrestee on a summons.

139. By requiring police officers to make impromptu rulings on whether a suspect should be released without the benefit of a hearing—nor the ability to impose conditions; an evaluation; or other forms of due process—HB 3653 unconstitutionally delegates authority rightly within the province of the judiciary to the Sheriff.

140. In addition, while disclosures to the accused are governed by Illinois Supreme Court Rule 412, the Public Act 101-652 unilaterally sets new guidelines for such disclosures by stating: "Prior to the hearing the State shall tender to the defendant copies of the defendant's criminal history available, any written or recorded statements, and the substance of any oral statements made by any person, if relied upon by the State in its petition, and any police reports in the State's Attorney's possession at the time of the hearing that are required to be disclosed to the defense under Illinois Supreme Court rules." 725 ILCS 5/110-6.1(f)(1).

141. In setting the new disclosure requirements above, the Public Act has rewritten the Illinois Supreme Court Rule 412 without consent of the Supreme Court.

142. That Public Act 101-652 unconstitutionally infringes upon the powers of the judiciary.

143. Defendant Raoul, as the Attorney General, must be notified as to any challenge to the constitutionality of a state statute, so that he can defend the statute.

144. Defendant Pritzker signed HB3653, indicating his approval of said bill.

145. "The Governor shall have the supreme executive power and shall be responsible for the faithful execution of the laws." Ill. Const. art. V, § 8

146. Absent further action by the General Assembly, provisions of Public Act 101-652 will remain in effect or continue to take effect, creating a real controversy between the Parties.

147. As such, the bail provisions of Public Act 101-652 must be stricken as they represent an unlawful intrusion into the power of the judiciary and thus a separation of powers violation. (Pls'. Ex. 10).

WHEREFORE, Plaintiff Erika Reynolds and Jon Sandage pray that this Honorable Court Find Public Act 101-652 is unconstitutional in part for violating the Separation of Powers doctrine with regard to bail and request any other relief the Court deems just and equitable under the circumstances.

COUNT V
DECLARATORY JUDGMENT - VIOLATION OF THREE READINGS CLAUSE

148. Plaintiffs reallege and incorporate the allegations in Paragraphs 1-42.

149. Article IV, Section 8 of the Illinois Constitution provides in pertinent part "A bill shall be read by title on three different days in each house." Ill. Const. art. IV, § 8(d).

150. The Three Readings rule applies not only to the original bill but to amendments when they represent a substantial departure from the original bill.

151. "In *Giebelhausen v. Daley*, 407 Ill. 25, 48 (1950), our supreme court held that the "complete substitution of a new bill under the original number, dealing with a subject which was not akin or closely allied to the original bill, and which was not read three times in each House, after it has been so altered, [was a] clear violation of a similar three-readings rule in the 1870 Constitution. See Ill. Const. 1870, art. IV, § 13 ("Every bill shall be read at large on three different days, in each house***.")" *Doe v. Lyft, Inc.*, 2020 IL App (1st) 191328, ¶ 53 (1st Dist. 2021).

152. As more fully laid out in Paragraphs 7-23, the two amendments made to HB 3653, represented a significant departure from the original seven (7) page bill effecting one

statute, to a behemoth bill more than one-hundred (100) times the size at seven hundred sixty-four (764) pages and affecting no less than two hundred sixty-five (265) separate statutes.

153. This constitutes a total substitution of the original HB 3653, and thus subjects the amendments to the Three Readings rule.

154. Upon information and belief, HB 3653 as amended was signed by the Senate President Harmon and Speaker Welch.

155. Plaintiff readily acknowledges that at this time a challenge to legislation under the Three Readings is foreclosed by the Enrolled Bill doctrine, assuming HB 3653 was signed by President Hannon and Speaker Welch.

156. The Enrolled Bill doctrine essentially provides that once the Speaker of the House and President of the Senate certify that the procedural requirements for passing legislation have been met, there is a conclusive presumption the procedural requirements have been met. *Lyft*, 2020 IL App (1st) at ¶54.

157. Plaintiff does not concede that this ends the inquiry, and affirmatively asserts that the Enrolled Bill doctrine must fall as it does not comply with Art. IV, Section 8.

158. To allow it to stand, would be to allow the General Assembly to skirt the Constitution by certifying, with no standards, penalty, or review, that they have in fact complied with the Constitutional requirements in Art. IV, Section 8.

159. That this doctrine has been subject to significant abuse by the General Assembly has not escaped the notice of the Supreme Court.

160. "We noted in *Geja's Cafe* and again in *Cutinello* that the legislature had shown remarkably poor self-discipline in policing itself in regard to the three-readings requirement." *Friends of Parks v. Chicago Park Dist.*, 203 Ill. 2d 312, 329 (2003).

161. "If the General Assembly continues its poor record of policing itself, we reserve the right to revisit this issue on another day to decide the continued propriety of ignoring this constitutional violation." *Geja's Cafe v. Metro. Pier & Exposition Auth.*, 153 Ill. 2d 239, 260 (1992).

162. This systematic issue was acknowledged as recently as 2020. See *Doe v. Lyft, Inc.*, 2020 IL App (1st) 191328, ¶55, appeal allowed, (No. 126605 1/27/21).

163. The passage of HB 3653/Public Act 101-652 provides the perfect example of why the courts must revisit the Enrolled Bill doctrine.

164. A simple and likely uncontroversial bill was gutted and replaced by a final product that bore no resemblance to the original material, delivered to Senators at 4:30 in the morning during a lame duck session, and read twice in one day at the Senate, and then simply passed in the House.

165. Furthermore, it appears from the record of proceedings that not only did Senate Amendment No. 2 only receive two (2) readings (both occurring on the same day) in the Senate, but upon return to the House it received no readings on the amended version and was simply called for a vote on the concurrence.

166. Given, the substantial changes made by Senate Amendment No. 1 and 2, the House was required to re-read the new document three (3) separate times, as the bill in its current form bore no resemblance to the original passed out of the House.

167. Therefore, a clear Three Readings violation occurred.

168. Given the General Assembly's demonstrated inability to police themselves on the matter, the Enrolled Bill Doctrine must be abrogated.

169. 735 ILCS 5/2-701 provides a method under Illinois law for declaratory relief.

170. "The essential requirements for asserting a declaratory judgment action are (1) a plaintiff with a legal tangible interest, (2) a defendant with an opposing interest, and (3) an actual controversy between the parties involving those interests." *Cahokia Unit Sch. Dist. No. 187 v. Pritzker*, 2021 IL 126212, ¶ 36 (citing *Beahringer v. Page*, 204 Ill.2d 363 (2003)).

171. Plaintiff Reynolds is negatively affected by provisions related to whistleblower protection, because his office is the default auditing official of all governmental offices within McLean County.

172. If the public act were to stand, Reynolds would be burdened with not only significant new responsibilities, but the obligation to find funding mechanisms to address these unfunded mandates, stemming from an unconstitutionally passed law.

173. She is further harmed by the fact that her employees (or the office itself) are now subject to pattern and practice investigations by Defendant Raoul, and thus must devote public resources to respond to these allegations whether they possess merit or not.

174. Finally, Plaintiff Reynolds will face injury under the new bail provisions as laid out in Counts II and III.

175. All these injuries are directly traceable to an unconstitutionally passed law, now known as Public Act 101-652.

176. Defendant Raoul, as the Attorney General, must be notified as to any challenge to the constitutionality of a state statute, so that he can defend the statute.

177. Defendant Pritzker signed HB3653, indicating his approval of said bill.

178. "The Governor shall have the supreme executive power and shall be responsible for the faithful execution of the laws." Ill. Const. art. V, § 8

179. Upon information and belief Defendant Welch, as the Speaker of the House indicated that all procedural requirements for the passage of HB3653 were met by signing the bill.

180. The procedural requirements were not met.

181. Upon information and belief Defendant Harmon, as Senate President indicated that all procedural requirements for the passage of HB3653 were met by signing the bill.

182. The procedural requirements were not met.

183. Absent further action by the General Assembly, provisions of Public Act 101-652 will remain in effect or continue to take effect, creating a real controversy between the Parties.

184. As HB3653 was passed without three readings on separate days, in each chamber, and since the Enrolled Bill doctrine clearly violates the Illinois Constitution, the doctrine must fall, and Public Act 101-652 must be declared unconstitutional and repealed in full.

WHEREFORE, Plaintiff Erika Reynolds prays this Honorable Court find Public Act 101-652 violates the Three Readings rule and thus is unconstitutional; find the Enrolled Bill Doctrine violates the Constitution and should be abrogated; and requests any other relief the Court deems just and equitable under the circumstances.

COUNT VI

DECLARATORY JUDGMENT – PUBLIC ACT 101-652 IS UNCONSTITUTIONALLY VAGUE

185. That the Plaintiffs reallege and incorporate the allegations in Paragraphs 1-42.

186. That a statute is unconstitutionally vague if “It is established that a law fails to meet the requirements of Due Process if it is so vague and standardless it leaves the public uncertain as

to the conduct it prohibits or leaves judges and jurors free to decide without any legally fixed standards what is prohibited and what is not in each particular case." *Giaccio v. Pennsylvania*, 382 U.S. 399, 402,403(1966)

187. That Public Act 101-652 must be ruled unconstitutional for vagueness in that "It is established that no one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as what the State commands or forbids" *Lanzetta v. New Jersey*, 306 U.S. 451, 453(1932).

188. That the provisions of Public Act 101-652 concerning pretrial release, speedy trials and other procedural rules are currently the topic of multiple committees including the Pretrial Practices Oversight Board working with the Administrative Office of Illinois Courts to determine exactly what is the meaning of these new requirements and how can they be administered consistently.

189. That despite meeting monthly since July 2021, the Pretrial Practices Oversight Board has been unable to articulate uniform guidelines to comply with this Act.

190. That Public Act 101-652 imposes new procedural requirements on peace officers, state's attorneys, and judges without articulating how these requirements may be satisfied.

191. That Public Act 101-652 imposes new procedural requirements on peace officers, state's attorneys, and judges without articulating whether the Act's application is to be prospective or retrospective, leading to a lack of uniform implementation throughout the several counties of the state.

192. That pursuant to 725 ILCS 5/103-3.5 persons being held "**in police custody**" (emphasis added) are required to receive certain rights such as the right to a phone call, the right to communicate with family members or an attorney within three hours. However, there is no

definition of what constitutes being held in police custody. The statute is too vague to inform officers or the court how to interpret and enforce.

193. That pursuant to 725 ILCS 5/103-5(a) "Every person in custody in this State for an alleged offense shall be tried by the court having jurisdiction 120 days from the date he or she was taken into custody unless delay is occasioned by the defendant". Does the custody commence at the time an individual is brought to a police station; the time they are charged with a crime; the time they are first brought before a judge? The statute is too vague to allow the police, attorneys or the court to establish when the clock begins to run.

194. That pursuant to 725 ILCS 5/106D-1(a) states "Whenever the appearance in person ... in court is required of anyone held in place of custody or confinement ... the chief judge of the circuit by rule may permit the personal appearance to be made by way two-way audio visual communication including closed circuit in the following proceedings: (1) the initial appearance before a judge on a criminal complaint at which the conditions of pretrial release will be set". Contrast this language to that of 725 ILCS 5/109-1 " ... Whenever a person arrested ... is required to be taken before a judge ... a charge may be filed ... by way of a two-way closed circuit television system except that a hearing to deny pretrial release may not be conducted by way of closed circuit television." The two provisions of the law are in conflict preventing the Sheriff, the State's Attorney and the Court from determining what procedure is required under the statute.

195. A statute is unconstitutionally vague if it lacks minimal standards to guide law enforcement officers. *Chicago v Morales*, 527 U.S. 41 (1999).

196. Public Act 101-652 is demonstrably vague, for it lacks minimal standards to guide law enforcement officers as to its implementation, as outlined above.

WHEREFORE, Plaintiff Erika Reynolds prays that this Honorable Court find that

Public Act 101- 652 is unconstitutional and void for vagueness and requests any other relief the Court deems just and equitable under the circumstances.

COUNT VII

REQUEST FOR TEMPORARY RESTRAINING ORDER AND INJUNCTIVE RELIEF

197. Plaintiffs reallege and incorporate the allegations in Paragraphs 1-42.

198. A party seeking a temporary restraining order/preliminary injunction must show "(1) a clearly ascertained 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, S.C.*, 225 Ill. 2d 52, 62 (2006).

199. HB 3653 and Public Act 101-652 impose significant new obligations on Plaintiffs, while at the same time fundamentally altering the criminal justice system in Illinois, especially with regard to the elimination of cash bail.

200. Plaintiff Reynolds is the chief law enforcement officer of McLean County and tasked with overseeing the criminal prosecution process therein. *People v. Bauer*, 402 Ill. App. 3d 1149, 1155 (5th Dist. 2010); *Ware v. Carey*, 75 Ill. App. 3d 906, 916 (1st Dist. 1979).

201. Plaintiff Reynolds, through the use of the monetary bail system, has an interest in ensuring the continued presence of defendants during criminal proceedings brought in McLean County.

202. Plaintiff Sandage, through his subordinate officers, has an interest in refraining from assuming control of constitutionally judicial powers as relates to the release of criminal defendants pre-trial.

203. Furthermore, the State enjoys an interest in expediting the administration of justice. *People v. Phillips*, 242 Ill. 2d 189, 196 (2011); *People v. Abernathy*, 399 Ill. App. 3d

420, 426 (2d Dist. 2010); *People v. Childress*, 276 Ill. App. 3d 402, 410 (1st Dist. 1995).

204. Additionally, should the bail provisions of Public Act 101-652 take effect on January 1, 2023, Plaintiffs will be irreparably harmed because all pending cases and any new cases will be immediately affected by the provisions of that Act.

205. This interest will be fundamentally harmed by the inability to ensure a defendant's presence through monetary obligation.

206. The inability to secure the presence of defendants will unquestionably lead to significant delays in prosecution of cases, both with regards to individual cases and in the overall criminal justice system.

207. The exercise of judicial discretion by police officers will contravene the Illinois Constitution and will result in increased litigation of said decisions by criminal defendants.

208. No adequate remedy at law exists, because the disruption to the criminal justice system that will occur on January 1, 2023, cannot be remedied by monetary damages. *See, Hough v. Weber*, 202 Ill. App. 3d 674, 687 (2nd Dist. 1990).

209. Finally, Plaintiffs have a significant likelihood of success on the merits of their underlying claims for declaratory relief as the provisions of HB 3653/Public Act 101-652 are clearly unconstitutional and were passed in an unconstitutional manner.

210. As such, a preliminary injunction/temporary restraining order should enter preventing the enforcement of any bail provisions in Public Act 101-652 until the other claims in the above captioned case can be fully litigated.

WHEREFORE, Plaintiffs Erika Reynolds and Jon Sandage pray that this Honorable Court find that Plaintiffs are entitled to a temporary restraining order and preliminary injunction against the provisions of Public Act 101- 652 pending the conclusion of this

litigation and request any other relief the Court deems just and equitable under the circumstances.

CONCLUSION

WHEREFORE, for the reasons stated herein, Plaintiffs Erika Reynolds and Jon Sandage pray this Honorable Court:

1. Find Public Act 101-652 violates the single subject rule and thus is unconstitutional
2. Find Public Act 101-652 violates the bail provision in Article 1, Section 9 of the Illinois Constitution and thus is unconstitutional in part;
3. Find Public Act 101-652 violates the bail provision in Article 1, Section 8 of the Illinois Constitution and thus is unconstitutional in part
4. Find Public Act 101-652 violates the Separation of Powers doctrine with regard to bail and thus is unconstitutional in part;
5. Find Public Act 101-652 violates the Three Readings Rule and Enrolled Bill Doctrine and thus is unconstitutional;
6. Find that Public Act 101-652 is void due to vagueness and is therefore unconstitutional;
7. Find Plaintiff is entitled to a preliminary injunction against the provisions of Public Act 101-652 pending the conclusion of this litigation; and
8. Order any other relief the Court deems just and equitable.

Dated: _____, 2022

Respectfully submitted,

ERIKA REYNOLDS
McLean County State's Attorney

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AFFIDAVIT

Under penalties as provided by law pursuant to section 1-109 of the Illinois Code of Civil Procedure (735 ILCS 5/1-109), I certify that the above statements are true to the best my knowledge and belief.

By: /s/Christopher J. Spanos
Christopher J. Spanos, ARDC #6230317