

SUPREME COURT OF LOUISIANA

DOCKET NO. 2025-C-00695

JEROME MORGAN, *Plaintiff-Applicant*

Versus

BLAIR'S BAIL BONDS, LLC, ET AL., *Defendants-Respondents*

On Application for Writ of Certiorari from the May 5, 2025 Decision of
the Fourth Circuit Court of Appeal, Docket No. 2024-CA-0714,
Daniel L. Dysart, Joy Cossich Lobrano, and Karen K. Herman, Judges

A CIVIL PROCEEDING

BRIEF OF *AMICUS CURIAE*
INNOCENCE PROJECT NEW ORLEANS
IN SUPPORT OF JEROME MORGAN'S APPLICATION FOR WRIT OF CERTIORARI

Eric A. Foley
La. Bar No. 34199
Roderick & Solange MacArthur Justice Center
4400 S. Carrollton Ave
New Orleans LA 70019
(504) 620-2259 (ph)
(504) 208-3133 (f)
Eric.Foley@macarthurjustice.org

Counsel for Amicus Curiae Innocence Project New Orleans

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INTRODUCTION

This case concerns the unconscionable overcharging by Defendants Blair’s Bail Bonds, L.L.C. and Bankers Insurance Company, Inc. (“Defendants”) of Plaintiff Jerome Morgan and tens of thousands of other New Orleanians and their families. They turned to Defendants to help secure their freedom or the freedom of their loved ones who had been charged, but not convicted, of any crime and who were deemed by a court to be releasable on bond. Although Defendants were required under Louisiana law to charge as a premium no more than “twelve percent of the face amount of the bond,”¹ they routinely charged their customers thirteen percent—an illegal one percent premium—over a fourteen-year period.

After learning of Defendants’ overcharges, the Commissioner of Insurance issued Directive 214, ordering Defendants to repay Mr. Morgan and the tens of thousands of other families who were overcharged for a bail bond.² Rather than complying with the Commissioner’s Directive, Defendants lobbied the legislature to grant Defendants retroactive immunity for their unlawful conduct. The legislature obliged, passing 2019 La. Act 54 (“Act 54”), which provides that “[i]n any parish having a population of more than three hundred thousand and fewer than four hundred thousand persons...[,] to the extent an additional one percent [premium] has been collected . . . , no repayment . . . shall be required.”

Act 54 violates the Louisiana Constitution, particularly Article III, § 12(A)’s prohibition on “local” and “special” laws. A shared concern that the framers of the Louisiana and U.S.

¹ La. R.S. § 22:1443.

² La. Dep’t of Ins., Directive 214 (Feb. 20, 2019).

constitutions had about retroactive lawmaking is that it allowed the legislature to improperly bestow special benefits and immunities to the politically well-connected at the expense of those with less political power.³

Act 54 had precisely this deleterious effect on Mr. Morgan and the putative Class who have far less political power and connections than the New Orleans bail bond industry. While Act 54 insulated Defendants from any liability for overcharging consumers, it deprived Mr. Morgan and the putative Class of any financial remedy for being overcharged.

For charges in criminal district court, the median bail amount in 2015 was \$10,000, which would equate to a median overcharge of \$100.⁴ Before Act 54's passage, Mr. Morgan himself would have been entitled to a \$250 refund under the Directive after being charged an unlawful 13 percent premium for his \$25,000 bail bond. The putative Class would likely have been entitled to hundreds of thousands of dollars—if not millions—more in refunds.⁵ In 2015 alone, the total amount of the overcharge in Orleans Parish would have been about \$475,300.⁶

³ See *La. High Sch. Athletics Ass'n, Inc. v. State*, 12-1471 (La. 1/29/13), 107 So. 3d 583, 601 (Louisiana's prohibition against special laws "represents an important safeguard against the abuse of legislative power on behalf of special interests.") (internal citations and quotation marks omitted); *Landgraf v. USI Film Prods.*, 511 U.S. 244, 267 n.20 (1994) (retroactive lawmaking offers "special opportunities for the powerful to obtain special and improper legislative benefits").

⁴ See Mathilde Laisne et al., *Past Due: Examining the Costs and Consequences of Charging for Justice in New Orleans* 18 (Vera Institute of Justice 2017).

⁵ *Petition* at ¶46, 2019-08430 (Aug. 12, 2019) (defining the putative class as "all individuals between June 30, 2005 and July 31, 2019 who were charged by Blair's Bail Bonds, Inc. in Orleans Parish more than a 12 percent premium on the face value of any criminal bond.").

⁶ Christian Henrichson et al., *The Costs and Consequences of Bail. Fines and Fees in New Orleans* 23 (Vera Institute of Justice 2017), <https://vera-institute.files.svdcdn.com/production/downloads/publications/past-due-costs-consequences-charging-for-justice-new-orleans-technical-report.pdf>. The report found that \$6.4 million in bond premiums and fees were paid in Orleans Parish in 2015. After

Thus, over the fourteen years in which this unlawful practice persisted, potentially millions of dollars were overcharged to the putative class.

The legislature's decision to retroactively deprive Mr. Morgan and the putative Class of this financial remedy has devastating consequences for low-income New Orleanians who were overcharged for a bail bond.

Nearly a quarter of New Orleans residents live below the federal poverty guidelines, which in 2019 was \$25,750 for a family of four.⁷ A study of Bureau of Justice Statistics data suggests that the median income for people in pretrial detention is significantly lower than the poverty line, at about \$15,000 in 2015 dollars.⁸ In a Vera Institute survey of 52 people who had recently been assessed either a money bail or post-conviction fines and fees in Orleans Parish, 80% had household incomes below \$25,000 and 36% had household incomes of \$15,000 or less.⁹

Defendants' actions in overcharging people not only harmed the putative Class financially but may have impacted the outcome of their cases or other aspects of their lives. The premium overcharge could delay or prevent an arrestee from buying their release, which in turn may result in higher rates of conviction, longer sentences, lost jobs, evictions, food insecurity, and other cascading harms for pretrial detainees and their families. Defendants' actions served to

excluding the \$44 statutory fee paid on every bail, the total amount of bond premiums paid was \$6,179,000. Multiplying this figure by 1/13th yields the unlawful overcharge: \$475,307.

⁷ Annual Update of the HHS Poverty Guidelines, 84 Fed. Reg. 1167, 1168 (Feb. 1, 2019), <https://www.govinfo.gov/content/pkg/FR-2019-02-01/pdf/2019-00621.pdf>

⁸ Bernadette Rabuy & Daniel Kopf, *Detaining the Poor*, Prison Policy Initiative (May 10, 2016), <https://www.prisonpolicy.org/reports/incomejails.html>.

⁹ Henrichson, et al., *supra* note 6 at 35–36.

further harm and impoverish New Orleans' most vulnerable citizens. Unsurprisingly, Black New Orleanians bore the brunt of this exploitation.

The legislature's retroactive blessing of Defendants' illegal conduct violated multiple Louisiana constitutional provisions that safeguard the rule of law, validated behavior that made it more likely for the putative class members to be convicted and face longer sentences, caused other long-term harms like loss of income and housing, and siphoned resources from the City's most vulnerable citizens.

INTERESTS OF *AMICUS CURIAE*

Amicus Innocence Project New Orleans ("IPNO"), a non-profit law firm and founding member of the Innocence Project Network, frees innocent people sentenced to life in prison and those serving unjust sentences. IPNO has freed and/or exonerated 46 innocent prisoners in Louisiana and Mississippi, including Plaintiff Jerome Morgan. Since 2019, IPNO's Unjust Punishment Project has fought to free 29 people whose sentences were shockingly disproportionate to the crimes for which they were imprisoned.

In the majority opinion, the Fourth Circuit concluded that Mr. Morgan is not sufficiently impacted by Act 54 to challenge its constitutionality. IPNO has an interest in seeing the Fourth Circuit majority decision overturned because IPNO represented Mr. Morgan for more than a decade, including when Mr. Morgan was overcharged for a bail bond and requested a refund from Defendants after the Commissioner issued the Directive. IPNO therefore knows firsthand how Act 54 impacted Mr. Morgan and his family and why he would challenge its constitutionality: Act 54 unconstitutionally deprived Mr. Morgan of the refund that he was entitled to receive under the Directive and which IPNO requested on his behalf.

IPNO first represented Plaintiff Morgan in overturning his wrongful conviction beginning in 2011. At age 17, Mr. Morgan had been falsely arrested and later convicted for a murder he did not commit, ultimately spending nearly 20 years imprisoned. In post-conviction proceedings, IPNO revealed that Mr. Morgan had been convicted on the basis of witness testimony coerced by NOPD officers—and later recanted by the witnesses—and that prosecutors had withheld exculpatory evidence.

IPNO also represented Mr. Morgan when Defendants overcharged him for his bail bond. After Mr. Morgan’s conviction was overturned in 2014, Mr. Morgan had to post a bond while the Orleans Parish District Attorney decided whether to retry him for a crime that he did not commit. Specifically, Mr. Morgan purchased a bail bond from Defendants in 2014, paying an unlawful 13% premium on a \$25,000 bond. Mr. Morgan could not afford this bond, and he spent an additional 18 days in jail until he could come up with enough money to pay the \$3,250 premium.¹⁰ On May 27, 2016, through IPNO’s advocacy, all charges against Mr. Morgan were dismissed and a judge found him “factually innocent” of the charges.

IPNO again represented Mr. Morgan when the Commissioner issued the Directive ordering Defendants to refund Mr. Morgan and other consumers that were charged a 13% premium for a bail bond. In the Directive, the Commissioner stated that any consumer could contact Defendants with evidence that they were charged a 13 percent premium for a bail bond. If a consumer presented evidence to Defendants that they were overcharged, the Directive ordered Defendants “to refund the overcharge to said consumer within thirty (30) days.” In accordance with the Commissioner of Insurance’s issuance of Directive 214, IPNO sent a letter

¹⁰ *Petition* at ¶¶ 13–14, 2019-08430 (Aug. 12, 2019).

on Mr. Morgan's behalf to Defendants on March 15, 2019, requesting refund of the additional one percent premium that had been illegally charged to him. Defendants never issued that refund.

More generally, IPNO is interested in shedding light on the ways in which Defendants' actions in overcharging people for a bail bond disproportionately hurts the most vulnerable New Orleanians. Because this case concerns the egregious targeting and exploitation of impoverished Louisianans (and their loved ones) through first overcharging them for a bail bond and then taking away the remedy that the Commissioner of Insurance ordered them to receive, it raises matters of great public import that merit review by this Court. IPNO urges this Court to grant review.

Given that the outcome of this appeal impacts tens of thousands of the most vulnerable New Orleans families who paid more for bail bond services than legally authorized by the Louisiana State Legislature, this case is relevant to IPNO's mission and IPNO has a substantial interest in its outcome.

ARGUMENT

I. The Legislature violated the Louisiana Constitution when it passed Act 54 to deprive Mr. Morgan and the putative Class of the refunds that they were entitled to under the Directive.

Act 54 undermines a fundamental organizing principle of society: the rule of law, as enshrined in Louisiana's Constitution. In at least two respects, the Framers of the Louisiana and U.S. Constitutions recognized that laws like Act 54 are antithetical to good governance and the rule of law. First, the Framers denounced retroactive lawmaking like that at issue here. Second, they condemned laws like Act 54 that serve only to benefit special interests.

First, by foreclosing the possibility of damages for Defendants’ violation of La. R.S. § 22:1443, the legislature engaged in the sort of retroactive lawmaking that has long been understood as anathema to good government.¹¹ At least three U.S. Constitutional provisions and six Louisiana Constitutional provisions denounce retroactive lawmaking.¹² In the Federalist Papers, James Madison referred to retroactive laws and “laws impairing the obligation of contracts” as “contrary to the first principles of the social compact, and to every principle of sound legislation.”¹³ In *Ogden v. Saunders*, Chief Justice Marshall wrote that the Framers were concerned about government “changing the relative situation of debtor and creditor, [and] interfering with contracts” after the fact.¹⁴ He noted that a government retroactively divesting the victim of an illegal contract of a remedy, as Act 54 did in this case, could “destroy all confidence between man and man.”¹⁵ Other scholars have gone further, declaring that “a retroactive law is truly a monstrosity. . . . To speak of governing or directing conduct today by rules that will be enacted tomorrow is to talk in blank prose.”¹⁶ Act 54 does precisely what these thinkers worried about: After fourteen years during which Defendants operated in breach of the rules, they are now insulated “by rules that will be enacted tomorrow.”

¹¹ See *Bourgeois v. A.P. Green Indus., Inc.*, 2000-1528 (La. 4/3/01), 783 So. 2d 1251 (“*Bourgeois II*”) (holding a statute violates due process when it divests persons “of their vested rights in their causes of action which accrued prior to the effective date of the Act”).

¹² See *Retroactivity of Legislation—A Brief Overview*, 20 La. Civ. L. Treatise, Legis. Law & Proc. § 6:4 (2020 ed.).

¹³ The Federalist No. 44 (James Madison).

¹⁴ 25 U.S. (12 Wheat.) 213, 354–55 (1827).

¹⁵ *Id.*

¹⁶ Lon L. Fuller, *The Morality of Law* 53 (rev. ed. 1969).

Second, by narrowly targeting Act 54 to immunize only the actions of Defendants, the legislature enacted a “local” and “special law,” in plain violation of La. Const. Art. III, § 12(A).¹⁷ A “special law” is one that serves no purpose besides bestowing favors on special interests. As this Court explained in *Louisiana High School Athletics Association v. State*, the prohibition against special or local laws “represent[s] an important safeguard against the abuse of legislative power on behalf of special interests . . . [by barring laws] directed to secure some private advantage or advancement for the benefit of private persons.”¹⁸ This prohibition “can be found as early as the Constitution of 1879, in Art. 46, and has been included in every Louisiana Constitution since then.”¹⁹

These protections in the Louisiana Constitution are designed to ensure the integrity of lawmaking. There is good reason why the Louisiana Constitution generally requires lawmakers to confine themselves to enacting *prospective* (rather than retroactive) and *general* (rather than special or local) laws. Both are understood as essential bulwarks against the use of public power for private ends. First and most simply, retroactive lawmaking makes it impossible for any citizen to rely on today’s laws for protection from wrongdoing. Second—as made clear by this case—both retroactive and special lawmaking allow the “powerful elements of society [to] gain control of the government and use it to advance their own private interests at the expense of the

¹⁷ See *Kimball v. Allstate Ins. Co.*, 97-2885 (La. 4/14/98), 712 So. 2d 46.

¹⁸ *Louisiana High Sch. Athletics Ass’n, Inc. v. State*, 2012-1471 (La. 1/29/13), 107 So. 3d 583, 601 (internal citations omitted).

¹⁹ *Kimball*, 712 So. 2d at 52.

weaker.”²⁰ The concern for unfair advantages to be handed to the powerful at the expense of the weak is the heart of what it means to govern well in the republican tradition.²¹ As a law retroactively impairing a vested interest *and* a favor bestowed upon a special interest group, Act 54 is precisely the sort of abuse of legislative power that most concerned the Framers and that continues to be understood as toxic to just governance.²²

II. By overcharging people for bail bonds, Defendants took advantage of Mr. Morgan and the putative Class, who were desperate to avoid the harms that flow from pretrial detention.

Mr. Morgan and the putative Class agreed to pay unlawful bail bond premiums during the most vulnerable moments in their lives: when they faced pretrial detention and were desperate to return to their spouses, children, and communities. Defendants took advantage of this desperation when they overcharged Mr. Morgan and the putative Class for their bail bonds.

²⁰ See Melissa L. Saunders, *Equal Protection, Class Legislation, and Colorblindness*, 96 Mich. L. Rev. 245, 252–55 (1997) (explaining that special laws were offensive to early U.S. courts and lawmakers because the “decision to bestow a special favor upon one group” corrupts the republican political process); *see also* The Federalist No. 44 (James Madison) (“[Retroactive] legislative interferences . . . become jobs in the hands of enterprising and influential speculators, and snares to the more-industrious and less informed part of the community.”).

²¹ *See generally*, Philip Pettit, *Republicanism: A Theory of Freedom and Government* 52–55 (1997).

²² Moreover, for the criminal legal system to achieve its own aims of reducing crime, the judiciary must ensure that it operates in a fair and just way. When those expectations are not met, when people are treated unfairly, it generates a deep “legal cynicism”—or, a cultural orientation that agents of the law are “illegitimate, unresponsive, and ill equipped to ensure public safety.” *See* Monica C. Bell, *Police Reform and the Dismantling of Legal Estrangement*, 126 Yale L.J. 2054, 2066 (2017). This consequence in turn has been shown to reduce compliance with the law and increase crime, as people are less likely to comply with a system that they view as illegitimate. Richard A. Oppel Jr. & Jugal K. Patel, *One Lawyer, 194 Felony Cases, and No Time*, N.Y. Times (Jan. 31, 2019), <https://www.nytimes.com/interactive/2019/01/31/us/public-defender-case-loads.html>. In short, everyone benefits when the government treats all groups equally and fairly. The Legislature’s grant of special favors to influential beneficiaries of the criminal legal system through Act 54 thus undermines the well-being of all Louisianans.

Commercial bail bonds are the primary way that pretrial detainees in New Orleans secure release.²³ As recently as 2015, 97% of people arrested for a felony charge and 69% arrested for a misdemeanor in Orleans Parish who paid bail did so by purchasing a commercial bail bond.²⁴ Instead of paying the bail amount in full, commercial bail bonds allow defendants to pay only a percentage of the total bail amount as a premium.²⁵ But unlike cash bail, these premiums—which the legislature has capped at 12% for over 30 years²⁶—are non-refundable, no matter how the case is resolved.²⁷

People turn to these for-profit companies because they are desperate to avoid the “negative implications for court appearance, conviction, sentencing, and future involvement with the justice system” that come with pretrial incarceration.²⁸ That is precisely what happened here. Mr. Morgan and the putative Class turned to Defendants at the most vulnerable moment in their lives. Defendants took advantage of Mr. Morgan and the putative Class by overcharging them for their bail bonds when they would have agreed to do anything to avoid the significant deleterious impacts of pretrial detention.

²³ Laisne et al., *supra* note 4 at 18.

²⁴ See Laisne et al., *supra* note 4 at 5–6.

²⁵ *Id.*

²⁶ 1993 La. Acts No. 834 (enacting the 12% premium at La. R.S. § 22:1406(E), later recodified at La. R.S. § 22:1443).

²⁷ Laisne et al., *supra* note 4 at 5–6.

²⁸ Léon Digard, et al., *Justice Denied: The Harmful and Lasting Effects of Pretrial Detention* 3 (2019).

a. Defendants financially harmed Mr. Morgan and the putative Class when they overcharged them for a bail bond.

Defendants' actions had a concrete, financial impact on Mr. Morgan and the putative Class. As noted above, Defendants' unlawful practices deprived Mr. Morgan of \$250. And in 2015 alone, about \$475,000 in unlawful premiums were taken from detainees in Orleans Parish.²⁹ At the time, Mr. Morgan was indigent and had been wrongfully incarcerated for nearly two decades.

Many putative class members likely experienced similar financial stress in satisfying Defendants' unlawful overcharge. A 2019 Federal Reserve report found that thirty-seven percent of adults do not have even \$400 in savings to use in times of emergency.³⁰ That percentage is likely even higher in Louisiana, which has the nation's third highest poverty rate, including nearly a quarter of New Orleanians living below the poverty line.³¹ Defendants in 85% of cases in Orleans Criminal District Court are too poor to hire a lawyer,³² and given that people in jail

²⁹ Henrichson et al., *supra* note 6.

³⁰ Board of Governors of the Federal Reserve System, *Report on the Economic Well-Being of U.S. Households in 2019, Featuring Supplemental Data from April 2020* at 21 (May 2020), <https://www.federalreserve.gov/publications/files/2019-report-economic-well-being-us-households-202005.pdf>.

³¹ U.S. Census Bureau, *2018 Median Household Income in the United States* (Sept. 26, 2019), <https://www.census.gov/library/visualizations/interactive/2018-median-household-income.html>; U.S. Census Bureau, *QuickFacts, New Orleans City, Louisiana*, <https://www.census.gov/quickfacts/fact/table/neworleanscitylouisiana/INC110219> (last visited July 7, 2021).

³² Orleans Public Defenders, *New Orleans' Continued Commitment to Equity and Fairness: 2025 Budget Presentation to the New Orleans City Council*, October 15, 2024, https://cityofno.granicus.com/MetaViewer.php?view_id=&event_id=24221&meta_id=709132 (noting that the Orleans Public Defenders are appointed to represent 85% of criminal defendants in Orleans Criminal District Court).

have a median income of less than half the median non-incarcerated person's income (\$15,598 versus \$39,600 for men and \$11,071 versus \$22,704 for women),³³ a \$100 median overcharge is especially burdensome for the impacted population.³⁴

Thus, even when an arrested person or their family raises the funds necessary to pay a bail bond company, that person and their family sacrifice money that would otherwise go toward paying rent, taking care of children, or meeting other pressing needs.³⁵ In a 2015 survey of thousands of New Orleanians involved in the criminal legal system, two-thirds of people reported that it was “difficult” or “very difficult” to raise the money required to post bail.³⁶ More than two-thirds of New Orleans residents surveyed said bail and other out-of-pocket costs associated with their arrest “had a major impact on the financial stability of their families.”³⁷ Too often, “mothers and grandmothers are forced to choose between paying bail for someone they love and paying rent or utilities.”³⁸ Several reported that their mothers even took out mortgages or otherwise “risked losing” their homes to pay the bail bond.³⁹ Talking about the cost of bail, one person recalled, “My momma said she put up about, I want to say about \$1,500. . . she didn’t

³³ Rabuy & Kopf, *supra* note 8; *see also* Laisne et al., *supra* note 4, at 16 (finding that more than a third of previously arrested New Orleanians surveyed reported an annual income of less than \$15,000); Henrichson et al., *supra* note 6 at 35–36 (noting that in a survey of people who had recently been subject to a money bail order or post-conviction fines and fees in Orleans Parish, 80% had household incomes of \$25,000 or less, and 36% had incomes of \$15,000 or less.);

³⁴ *See* Laisne et al., *supra* note 4 at 18 (stating that the median bail amount in Orleans Parish in 2015 was \$10,000, which would then yield an unlawful additional 1% premium of \$100).

³⁵ Laisne et al., *supra* note 4, at 5–6.

³⁶ *Id.*

³⁷ *Id.* at 16.

³⁸ *Id.* at ii.

³⁹ *Id.* at 1, 8–9.

pay her light bill a couple times. She didn't pay her rent a couple times.”⁴⁰ Others recounted that “their children had to do without school supplies.”⁴¹ One interviewee explained that the burden of the debt for bail took over his life: “Wake up in the morning, that’s all you think about What can I do?”⁴² For the people targeted and exploited by Defendants, every dollar spent to secure freedom requires a sacrifice elsewhere.

By overcharging tens of thousands of New Orleanians for bail bonds over a fourteen-year period—in direct violation of the state legislature’s command—Defendants flouted the law and exploited the most vulnerable people in the city.

b. Mr. Morgan and the putative Class agreed to pay illegal bail bond premiums because they were desperate to avoid the negative impact of pretrial detention on convictions, pleas, and sentencing.

Defendants had significant leverage when contracting with Mr. Morgan and the putative Class to pay unlawful premiums: the negative impact that pretrial detention has on case outcomes. These harms are well documented in numerous empirical studies.

For example, in a study of hundreds of thousands of misdemeanor cases in Harris County, Texas, researchers found that defendants who were detained pretrial were significantly more likely to be convicted, even after controlling for a wide range of factors like severity of charges, wealth, race, criminal history, and type of defense attorney.⁴³ Pretrial detainees who

⁴⁰ *Id.* at ii.

⁴¹ *Id.* at 19.

⁴² *Id.* at 22.

⁴³ Paul Heaton et al., *The Downstream Consequences of Misdemeanor Pretrial Detention*, 69 Stan. L. Rev. 711, 742–46 (2017).

were convicted were 43% more likely to receive a jail sentence than those defendants who had been released pretrial.⁴⁴ Furthermore, the jail sentences that those pretrial detainees received were longer jail sentences than those received by defendants who were sentenced to incarceration after being released pretrial.⁴⁵

Similarly, a 2018 study of pretrial detention in Philadelphia found that detainees were 13% more likely to be convicted and 18% more likely to plead guilty than those defendants who had been released.⁴⁶ The study found that those who remained detained prior to trial could expect a 42% increase in the number of days' incarceration to which they would be sentenced if convicted or pleading guilty.⁴⁷

A 2017 study of pretrial detention in New York City from 2009–13 found that felony defendants who were detained prior to trial were 13% more likely to be convicted.⁴⁸ A 2022 study of nearly 1.5 million people arrested in Kentucky from 2009–18 concluded that people who were detained pretrial were “about one-half to three-quarters as likely to receive a sentence to prison or jail compared to detained counterparts. . . . Further, when those released pretrial

⁴⁴ *Id.* at 747, 748 tbl. 3.

⁴⁵ *Id.*

⁴⁶ Megan T. Stevenson, *Distortion of Justice: How the Inability to Pay Bail Affects Case Outcomes*, 34 J.L. Econ. & Org. 511, 512–13, 532 (2018).

⁴⁷ *Id.* at 513, 520.

⁴⁸ Emily Leslie et al., *The Unintended Impact of Pretrial Detention on Case Outcomes: Evidence from New York City Arraignment*, 60 J.L. & Econ. 529, 530 (2017); *see also id.* at 554 (“[O]ur results indicate a strong causal relationship between pretrial detention and case outcomes. Across specifications and subgroups, we see consistent evidence that detainees plead guilty more often to more serious offenses and some evidence that they serve longer sentences.”)

were sentenced to incarceration, they were sentenced to shorter periods of incarceration than were those that were detained.”⁴⁹

The scholarship cited above supports what many criminal defendants know to be true: pretrial detention results in worse outcomes for detainees in the form of both higher conviction rates and longer sentence lengths. Defendants’ unlawful overcharging for bail premiums therefore took advantage of Mr. Morgan and the putative class’s justifiable fears that they would suffer irreparable harm if they remained in pretrial detention.

c. Mr. Morgan and the putative Class were further compelled to pay the unlawful bond premium by the far-reaching impacts of pretrial detention beyond the criminal case.

If they had chosen not to use a commercial surety and remain detained while awaiting trial, Mr. Morgan and the putative class members would have risked even more harms accruing outside of the disposition of their criminal charges. Pretrial incarceration can also result in violence, illness, job loss, and other escalating consequences.⁵⁰

One study found that, even after controlling for individual characteristics, people detained for just two to three days had higher long-term recidivism rates than those detained for only one day.⁵¹ And the consequences of spending a month or more in jail are even more

⁴⁹ Christopher T. Lowenkamp, *The Hidden Costs of Pretrial Detention Revisited* (2022), available at https://www.researchgate.net/publication/359797731_THE_HIDDEN_COSTS_OF_PRETRIAL_DETENTION_REVISITED

⁵⁰ John Mathews II & Felipe Curiel, *Criminal Justice Debt Problems*, American Bar Association (Nov. 30, 2019), https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/economic-justice/criminal-justice-debt-problems/.

⁵¹ Christopher T. Lowenkamp et al., *The Hidden Costs of Pretrial Detention*, The Arnold Fund (2013), https://craftmediabucket.s3.amazonaws.com/uploads/PDFs/LJAF_Report_hidden-costs_FNL.pdf.

grave.⁵² Close to eighty percent of people surveyed as part of one study reported that pretrial incarceration “had negative effect on employment later on.”⁵³ Jail also exposes people to an increased risk of violence.⁵⁴ And people behind bars are more susceptible to illness—a fact that came into tragic focus during the COVID-19 pandemic, when incarcerated people were infected by the coronavirus at a rate more than five times higher than the nation’s general population.⁵⁵ Compounding the problem, medical care in jails is notoriously inadequate, resulting in needless suffering and even death.⁵⁶ Those who have loved ones awaiting trial in jail are acutely aware of these realities.

These consequences have a cost not just for the incarcerated individual but also for his or her family. The impact of a parent’s incarceration on a child’s psyche and well-being has been thoroughly studied. For example, one study found that children of people who experienced even short detentions are more likely to experience unemployment in adulthood than those whose

⁵² See Jason Szep et al., *Dying Inside: The Hidden Crisis in America’s Jails*, Reuters (Oct. 16, 2020) <https://www.reuters.com/investigates/special-report/usa-jails-deaths/>.

⁵³ Laisne et al., *supra* note 4 at 17.

⁵⁴ During the years in which Defendants charged their unlawful premium, violence was prevalent in the Orleans Parish Prison and later the Orleans Justice Center. See, e.g., Report No. 11 of the Independent Monitors, Jan. 19, 2020, *Jones v. Gusman*, No. 2:12-cv-00859, ECF No. 1259 at 26 (“The level of violence, an average of 36 inmate on inmate assaults/altercations per month and almost 10 assaults on staff per month, are indicative that OPSO has not substantially complied with the requirement that the facility be reasonably safe for staff and inmates.”); see also Emily Widra, *No escape: The trauma of witnessing violence in prison*, Prison Policy Initiative (Dec. 2, 2020), <https://www.prisonpolicy.org/blog/2020/12/02/witnessing-prison-violence/>.

⁵⁵ Equal Justice Initiative, *Covid-19’s Impact on People in Prison* (April 16, 2021), <https://eji.org/news/covid-19s-impact-on-people-in-prison/>.

⁵⁶ See Szep et al., *supra* note 52 (examining 7,571 deaths in more than 500 U.S. jails from 2008 to 2019, an increase of thirty-five percent in death rate over a decade, and noting that at least two-thirds those who died were never convicted of the charges on which they were being held).

parents were never incarcerated.⁵⁷ And even short terms of incarceration of one month or less are disruptive to marital and cohabitating relationships.⁵⁸

It is no wonder, then, that families paid thirteen percent instead of the legal twelve percent to secure release for their loved ones without questioning the percentage charged by Defendants. Fear of the potential harms outlined above allows some bail bond companies to prey on people in their most desperate moments, often offering to set up installment plans and charging interest if the accused cannot afford the bondsman's fee up front.⁵⁹

Considering the potential detriments to Mr. Morgan and the putative class members if they remained in pretrial custody, Defendants had significant leverage in imposing their unlawful premium on the Plaintiffs. This inherent power imbalance makes it all the more egregious that the legislature would immunize, ex post facto, the Defendants' unlawful behavior and deny Mr. Morgan and the class members the refunds to which they are entitled.

⁵⁷ See Milena Nikolova & Boris Nikolaev, *How Having Unemployed Parents Affects Children's Future Well-Being*, Brookings (July 13, 2018), <https://www.brookings.edu/articles/how-having-unemployed-parents-affects-childrens-future-well-being/>; Milena Nikolova & Boris N. Nikolaev, *Family Matters: Involuntary Parents Unemployment During Childhood and Subjective Well-Being Later in Life*, 212 GLO Discussion Paper Series 1 (2018).

⁵⁸ Robert Apel, *The Effects of Jail and Prison Confinement on Cohabitation and Marriage*, 665 Annals Am. Acad. Pol. & Soc. Sci. 103 (2016).

⁵⁹ Bryce Covert, *America is Waking Up to the Injustice of Cash Bail*, The Nation (Oct. 19, 2017), <https://www.thenation.com/article/archive/america-is-waking-up-to-the-injustice-of-cash-bail/>. These payment plans give immense power to the bail bonding industry, allowing bondsmen to maintain "almost unlimited control over the lives of people they bond out" long after their case has ended. Justice Policy Institute, *For Better or For Profit: How the Bail Bonding Industry Stands in the Way of Fair and Effective Pretrial Justice* 11 (2012).

III. Defendants' Actions in Overcharging People for a Bail Bond Disproportionately Impact Black New Orleanians.

Defendants' overcharging for bail bonds disproportionately impacted Black New Orleanians, in part, because Black people are disproportionately represented at every stage of the city's criminal justice system. In New Orleans, Black people are arrested at two and a half times the rate of white people.⁶⁰ Once arrested, Black people are more than twice as likely to be sent to jail.⁶¹

While Black residents are most likely to be incarcerated pretrial, they are also the population least likely to be able to pay the price set for their freedom. Black families are disproportionately poor, with six times as many Black households in New Orleans living in income poverty than white households.⁶² The median income among Black households is a mere \$26,819—fifty-seven percent lower than the median income of white households in New Orleans.⁶³ Black workers are also three times more likely to be unemployed than white workers, and a full seventy-one percent of Black households lack the savings necessary to live above the poverty level for just three months if they lose a job, face a medical crisis, or suffer another income disruption.⁶⁴ With Black residents having so little financial resources, a bail order for a

⁶⁰ Flozell Daniels, Jr. et al., *From Bondage to Bail Bonds: Putting a Price on Freedom in New Orleans* 1 (DataResearch.org, May 14, 2018), https://www.datacenterresearch.org/reports_analysis/from-bondage-to-bail-bonds-putting-a-price-on-freedom-in-new-orleans/

⁶¹ See ACLU of Louisiana, *Justice Can't Wait: An Indictment of Louisiana's Pretrial System* 8 (2020), https://www.laaclu.org/sites/default/files/field_documents/aclu_la_justicecantwaitreport_02102020_online.pdf

⁶² Prosperity Now, *The Racial Wealth Divide in New Orleans* 1 (2016).

⁶³ Laisne et al., *supra* note 4, at 2.

⁶⁴ Prosperity Now, *supra* note 62, at 1.

Black defendant is often “a de facto detention order.”⁶⁵ In New Orleans, eight out of ten felony defendants who spend more than two days in jail simply because they cannot pay bail are Black.⁶⁶

Black people are also the biggest customers for bail bond companies. Black residents of New Orleans pay eighty-four percent of the bond premiums and associated government fees each year.⁶⁷ As a result, these mounting costs “siphon off millions of dollars a year” from Black communities that are “already hardest hit by mass incarceration,” ensuring that the racial wealth gap in New Orleans only continues to grow.⁶⁸

Many Black New Orleanians sold their belongings or went into debt to pay money that they were overcharged for a bail bond.⁶⁹ This systematic—and unlawful—transfer of wealth from the poorest residents to some of the wealthiest and most politically connected elites had a concrete impact on Mr. Morgan and the putative Class who were not only overcharged for a bail bond but were deprived of the remedy that the Commissioner of Insurance ordered when Defendants violated the Insurance Code. As Judge Lobrano explained in her dissent, “Mr.

⁶⁵ Sandra G. Mayson, *Detention by any Other Name*, 69 Duke L.J. 1643, 1646 (2020).

⁶⁶ Laisne et al., *supra* note 4, at 35.

⁶⁷ *Id.* at 18.

⁶⁸ See Press Release, New York City Comptroller, *Broad Coalition of Elected Officials, Legal Aid Organizations, and Labor and Faith Leaders Hail Stringer-Benjamin-Blake Proposal to Ban Commercial Bail in New York State* (Apr. 20, 2018), <https://comptroller.nyc.gov/newsroom/broad-coalition-of-elected-officials-legal-aid-organizations-and-labor-and-faith-leaders-hail-stringer-benjamin-blake-proposal-to-ban-commercial-bail-in-new-york-state/>.

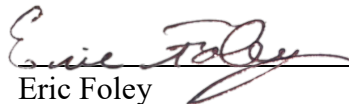
⁶⁹ See generally ACLU Campaign for Smart Justice, *Selling Off Our Freedom: How Insurance Corporations Have Taken Over Our Bail System* (2017).

Morgan's claims are not speculative grievances but present concrete injuries that raise legitimate constitutional questions."⁷⁰

CONCLUSION

This case presents issues of great public importance. Amici respectfully urge this Court to grant review in this case, rule that Mr. Morgan's claims are justiciable, and remand to the district court so that it may resolve the important constitutional questions that this case raises. Having abused their power advantage over the vulnerable families and loved ones of arrested individuals, Defendants must not be insulated by special interest legislation to prevent the restitution that the families and loved ones of arrested persons in New Orleans deserve.

Respectfully submitted,



Eric Foley
La. Bar No. 34199
Roderick & Solange MacArthur Justice Center
4400 S. Carrollton Ave
New Orleans LA 70019
(504) 620-2259 (ph)
(504) 208-3133 (f)
eric.foley@macarthurjustice.org

Attorney for Innocence Project New Orleans

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⁷⁰ *Morgan v. Blair's Bail Bonds, Inc.*, 2024-0714 (La. App. 4 Cir. 5/5/25), --- So. 3d ---, 2025 WL 1291524, at *8 (Lobrano, J., dissenting).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing brief has been served upon the following via email this 4th day of June 2025, as specified below:

Jon McGill
LAW OFFICES OF JON S. MCGILL, LLC
235 Derbigny Street, Ste. 100
Gretna, LA 70053
jon@jonsmccgilllaw.com

Counsel for Blair's Bail Bonds, Inc.

Stephen D. Marx
CHEHARDY SHERMAN ELLIS
One Galleria Blvd., Ste. 1100
Metairie, LA 70001-0931
sdm@chehardy.com

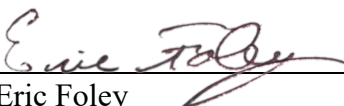
Ethan J. Loeb
E. Colin Thompson
SMOLKER, BARTLETT, LOEB, HINDS
& THOMPSON, P.A.
100 N. Tampa Street, Suite 2050
Tampa, Florida 33602
EthanL@sblfirm.com
colinT@sblfirm.com

Counsel for the Bankers Entities

Micah West
Anjana Joshi
Miriam Gutman
SOUTHERN POVERTY LAW CENTER
201 St. Charles Avenue, Suite 2000
New Orleans, LA 70170
micah.west@splcenter.org
Anjana.joshi@splcenter.org
Miriam.gutman@splcenter.org

William Patrick Quigley
Loyola New Orleans College of Law
7214 St. Charles Ave.
New Orleans, LA 70118
Quigley77@gmail.com

Counsel for Jerome Morgan


Eric Foley