

No. S26A0410

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In the  
**Supreme Court of Georgia**

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Sierrah Coronell and Diane Holsey, et al.,  
*Plaintiffs-Appellants,*  
v.

State of Georgia,  
*Defendant-Appellee.*

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On Appeal from the Superior Court of Fulton County  
Superior Court Case No. 2025-cv-005987

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**APPELLANTS' OPENING BRIEF**

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## **INTRODUCTION AND SUMMARY OF ARGUMENT**

Under Section 3 of Senate Bill 63 (“S.B. 63”), all presumptively innocent people charged with one of its thirty bail-restricted offenses<sup>1</sup> are categorically denied pretrial release unless and until they pay a secured bond—i.e., a sum of money or collateral. The law’s mandate that judges impose secured bond—one of the most restrictive conditions of release—prevents judges from considering whether less restrictive alternatives would satisfy the State’s presumed interests in future court appearance and public safety. The law predictably leads to widespread pretrial detention of individuals like Appellants who cannot afford to pay money upfront to effectuate their release. Because S.B. 63 infringes on individuals’ constitutionally protected rights to liberty and against excessive bail without individualized consideration of appropriate release conditions, it violates procedural due process. And because the law is not tailored to the State’s interests, S.B. 63 violates substantive due process. There is simply no rationale for forbidding judges from even

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<sup>1</sup> S.B. 63 added ten pure misdemeanor offenses, twelve pure felony offenses, and eight other offenses that can be either a felony or misdemeanor, depending on the severity of the offense (i.e., first degree, second degree, etc.) and/or an individual’s conviction history for that same offense to the bail-restricted offenses list. 2024 Ga. Laws 507, § 3, at 506–08 (codified at O.C.G.A. § 17-6-12 (2024)).

considering unsecured release conditions merely because an individual is accused of an S.B. 63 offense.

This appeal arises from the Order of the Superior Court of Fulton County (“Superior Court”) granting Appellee State of Georgia’s Motion to Dismiss. V2-373–80. In granting the State’s motion, the Superior Court erroneously held that (1) Appellants’ claims were moot because they were released from jail, V2-378–79; (2) Appellants’ motion for class certification was moot, V2-373–74; (3) Appellants failed to state a facial procedural due process claim because the law is constitutional for those who eventually post the required bail, V2-375–76; and (4) Appellants failed to state a facial substantive due process claim because there is no fundamental right to pretrial release under Georgia law, V2-376–77. Each of these holdings was reversible error and should be overturned by this Court.

First, Appellants’ eventual release did not moot their claims. They maintain an ongoing stake in this action because they remain subject to unsecured bond orders that were set without the requisite due process. And the constitutional violations Appellants allege are capable of repetition yet evade review; thus, they are excepted from mootness. *See Bondsman, Inc. v. Taylor*, 367 Ga. App. 213, 217 (2023) (“[T]he term ‘moot’ must be narrowly construed to exclude from mootness those matters in which there is intrinsically insufficient time to obtain judicial relief for a claim common to an existing class

of sufferers,’ and a case that ‘contains an issue that is capable of repetition yet evades review’ is not moot.”) (quoting *Collins v. Lombard Corp.*, 270 Ga. 120, 121–22 (1998)). As such, Appellants remain eligible class representatives and their motion for class certification should not have been dismissed as moot.

Second, whether someone eventually posts a bond is irrelevant to the facial due process inquiry. By categorically foreclosing consideration of unsecured release conditions, the law arbitrarily mandates incarceration for Appellants and putative class members unless they have immediate access to money or real property. S.B. 63 therefore violates due process by infringing on Appellants’ and putative class members’ fundamental rights to pretrial liberty and against excessive bail without adequate process. V1-74, ¶ 38; Ga. Const., art. I, § I, para. I.

Additionally, the Superior Court improperly narrowed Appellants’ due process claims to facial challenges only. Especially when construed with any doubts in Appellants’ favor, as is required under the motion to dismiss standard, the complaint asserts both facial and as-applied due process claims. Appellants allege both that S.B. 63 violates their individual rights based on their specific circumstances, and that its lack of process and broad money-payment mandate violates the Constitution, generally.

Finally, the rights to liberty and against excessive bail are fundamental rights under Georgia law. S.B. 63’s automatic infringement on those rights

must therefore satisfy heightened scrutiny under substantive due process: the law must be narrowly tailored to the State's compelling interests. S.B. 63 plainly fails this test. Prohibiting judges from considering less-restrictive release conditions, and instead requiring everyone who is merely charged with an S.B. 63 offense to remain in jail unless and until they can post a secured bond, is untethered to the State's interests.

This Court should reverse and remand for adjudication of Appellants' claims on the merits.

#### **ENUMERATION OF ERRORS AND STATEMENT OF JURISDICTION**

The Superior Court Superior entered its final order ("Order") granting the State's Motion to Dismiss on August 28, 2025. The Order erroneously held:

- (1) Appellants' claims were moot;
- (2) Appellants failed to state a procedural due process claim;
- (3) Appellants failed to state a substantive due process claim;
- (4) Appellants' claims were purely facial, instead of also as-applied; and
- (5) Appellants' motion for class certification was moot.

The Superior Court's Order was immediately appealable under O.C.G.A. § 5-6-34(a)(1), and Appellants timely filed a notice of appeal on September 26,

2025.<sup>2</sup> This Court has jurisdiction pursuant to Article VI, Section VI, Paragraph II of the Georgia Constitution because this appeal places the constitutionality of a state statute at issue. Ga. Const., art. VI, § VI, para. II.

### **STATEMENT OF THE CASE AND PROCEDURAL HISTORY**

On May 1, 2025, Appellants filed a class-action complaint under O.C.G.A. § 9-4-2, seeking declaratory and injunctive relief on behalf of themselves and others similarly situated. *See* V1-64, 84–76, ¶¶ 1–2, 73–87. The complaint alleged that S.B. 63’s categorical requirement of secured bonds violated procedural and substantive due process under the Georgia Constitution. The following day, Appellants moved for class certification.

On July 2, 2025, the State filed its opposition to Appellants’ Motion for Class Certification, V1-230–68, and moved to dismiss Appellants’ complaint under O.C.G.A. § 9-11-12(b)(1) and (6), arguing Appellants: (1) lacked standing to challenge S.B. 63; (2) failed to state a procedural due process claim because their facial challenge to S.B. 63 is improper; and (3) failed to state a substantive due process claim because their claims can only be analyzed under procedural due process. *See* V1-168.

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<sup>2</sup> Appellants filed an Amended Notice of Appeal on October 6, 2025, which included a revised Certificate of Service with the names of counsel of record for the State.

At the August 25, 2025, hearing on the Motion, the State reiterated these arguments and contended, without any support whatsoever, that “a majority of people who are charged with these offenses can pay the bond and get out.” V1-19, 6:3-4. The Superior Court accepted that flawed reasoning, and after a 20-minute hearing, granted the Motion. Three days later, it dismissed the case, adopting the State’s proposed order with only minor, non-substantive changes.<sup>3</sup> See V2-373–380. This appeal follows.

### **STATEMENT OF FACTS**

In 2024, the State passed S.B. 63, which, as is relevant here, added thirty offenses to Georgia’s existing bail-restricted list. V1-64–65, ¶ 3, n.3. The law also took the unprecedented step of redefining the term “bail” to mean secured, financial conditions of release only.<sup>4</sup> The legislation, however, did not purport to change the definition of bail in the Excessive Bail Clause of the Georgia Constitution, Ga. Const., art. I, § I, para. XVII, which refers more broadly to

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<sup>3</sup> See *Smith v. State*, No. S25A0548, 2025 WL 2918738, at \*8, n.7 (Ga. Oct. 15, 2025) (explaining that trial courts are permitted to adopt proposed orders written by the State but encouraging them to proceed with caution and not adopt them uncritically).

<sup>4</sup> Historically, in Georgia and across the United States, bail did not involve any upfront cash deposit or other transfer of collateral. Rather, the accused or someone acting as surety pledged that, if the accused did not appear for court, the sum would be paid.

the mechanism by which an individual accused of a crime is conditionally released from state custody and is not limited to secured conditions.

S.B. 63 precludes judges from considering whether unsecured judicial release would be appropriate in a particular case, instead mandating some amount of secured bond in every instance. *See* O.C.G.A. § 17-6-12(d) (2024) (“No person charged with a bail restricted offense shall be eligible for release by any judge on an unsecured judicial release.”). Thus, individuals charged with a qualifying offense will remain in jail until trial except “by [using] a secured bond (‘cash bond’), professional bondsmen (‘bondsmen’), or property (collectively, ‘secured conditions of release’).” V1-65, ¶ 4, n.4 (citing O.C.G.A. § 17-6-12(d) as amended by S.B. 63). Secured release from jail is “one of the *most* restrictive conditions of release that a judge may impose because it requires people to have cash or assets readily available.” *Id.* ¶ 5. Indeed, “[a]ny difficulty a person has in raising the cash delays their release or prevents it altogether.” *Id.*

Appellants Coronell and Holsey, both Georgia residents, were charged with bail-restricted offenses in the Fulton County Magistrate Court on February 19, 2025, and April 21, 2025, respectively. V1-67–68, ¶¶ 14, 15.

Appellant Coronell was arrested for allegedly committing the offense of Loiter Prowl, O.C.G.A. § 16-11-36 (2024), and the bail-restricted offenses of Possession of Tools for Commission of a Crime, O.C.G.A. § 16-7-20 (2024),

Misdemeanor Willful Obstruction of Law Enforcement Officers, O.C.G.A. § 16-10-24 (2024), and Possession of Schedule II Controlled Substance, O.C.G.A. § 16-13-30 (2024). V1-72, ¶ 29. Appellant Coronell's bond was set at \$3,000, i.e., \$1,000 for each of the bail-restricted offenses she was charged with. V1-72–73, ¶ 30.

Appellant Holsey was arrested for allegedly committing the bail-restricted offenses of Misdemeanor Battery, O.C.G.A. § 16-5-23.1 (2024), and Abuse, Neglect, or Exploitation of Disabled or Elderly Person, O.C.G.A. § 16-5-102(a) (2024). V1-73, ¶ 34. Appellant Holsey's bond was set at \$4,000, i.e., \$2,000 for each of the bail-restricted offenses she was charged with. V1-74, ¶ 35.

In both cases, S.B. 63 prohibited the judge from considering releasing Appellants immediately via unsecured bonds. Instead, both Appellants were detained in the Fulton County Jail under secured bond orders—Appellant Coronell for seventy-one days, Appellant Holsey for eleven. V1-72–73, 74, ¶¶ 30, 35. At the time the complaint was filed, both Appellants remained incarcerated because they were unable to afford their mandatorily-imposed cash bond. V1-73–74, ¶¶ 32, 36. As a result, Appellants were isolated from their families and suffered other significant hardships in addition to their loss of liberty. *Id.* ¶¶ 33, 37. Appellants' experiences mirror those of putative class

members across Georgia who are charged with bail-restricted offenses under S.B. 63. *Id.* ¶ 38.

### STANDARD OF REVIEW

On appeal, “a trial court’s ruling on a motion to dismiss for failure to state a claim for which relief may be granted is reviewed *de novo*[,]” *Northway v. Allen*, 291 Ga. 227, 229 (2012). The same standard governs review of a dismissal for lack of subject-matter jurisdiction. *Stillwell v. Topa Ins. Co.*, 363 Ga. App. 126, 127 (2022). Questions of law also are subject to *de novo* review. *Gonzalez v. Miller*, 320 Ga. 170, 170 (2024). Appellate courts conducting a *de novo* review must “construe the pleadings in a light most favorable to the plaintiff, with any doubts resolved in the plaintiff’s favor.” *Atlanta Dev. Auth. v. Clark Atlanta Univ., Inc.*, 298 Ga. 575, 578 (2016).

### ARGUMENT

#### **I. The Superior Court Erred in Holding Appellants’ Claims Were Moot.**

Contrary to the Superior Court’s holding, Appellants’ release from jail after filing this lawsuit did not moot their individual claims. A claim becomes moot when “intervening events have rendered the relief sought impossible or pointless.” *Miller v. Hodge*, 319 Ga. 543, 548 (2024); *see also McAlister v. Clifton*, 313 Ga. 737, 738 (2022) (“When the resolution of a case would be tantamount to the determination of an abstract question not arising upon

existing facts or rights, then that case is moot.”) (quoting *In the Interest of M. F.*, 305 Ga. 820, 820 (2019)); *Jayko v. State*, 335 Ga. App. 684, 685 (2016) (“When the remedy sought in litigation no longer benefits the party seeking it, the case is moot[.]”). Those circumstances do not exist here. Not only did the Superior Court fail to explain how Appellants’ release from jail made it “impossible for a court to grant [them] any effectual relief,” *Cook v. Bennett*, 792 F.3d 1294, 1299 (11th Cir. 2015), the Court also failed to address the exceptions to mootness that apply here.

Appellants’ due process claims are not moot for three reasons. First, Appellants maintain an ongoing stake in this action. They were detained without consideration of whether unsecured bond was appropriate in their cases, and they continue to be subject to those unconstitutional secured bond orders. *See Jayko*, 335 Ga. App. at 686 (analyzing a challenge to a sentence condition and explaining that it was necessary for the appellant to remain “subject to that condition” to save her claim from mootness). The Superior Court therefore may still grant Appellants effectual relief: if S.B. 63 is declared unconstitutional and vacated, Appellants may seek bail reconsideration hearings where they would be assessed for unsecured release, and recover any money they posted under their previous bail orders.

Second, the violations at issue are ones that are “capable of repetition yet evade[] review.” *Citizens for Ethical Gov’t, Inc. v. Gwinnett Place Associates*,

*L.P.*, 260 Ga. 245, 245 (1990). Pretrial detention is often for a duration shorter than the time taken to litigate a case. *See White v. Raines*, 331 Ga. App. 853, 854 (2015) (“[G]iven the short duration of stalking protective orders, as well as the time constraints of appellate courts, it is likely to evade review.”). Georgia courts recognize a need to adjudicate such claims, even if they are technically moot. *See, e.g., United Food & Commercial Workers Union v. Amberjack Ltd.*, 253 Ga. 438, 438 (1984) (this Court “proceed[ing] to decide the issue recognizing that it is capable of repetition yet evades review” in a case challenging the imposition of a temporary restraining order that had been since superseded by an injunction).

Third, as a putative class action, the inherently transitory exception to mootness—an iteration of the capable of repetition yet evading review exception<sup>5</sup>—squarely applies to Appellants’ claims. The Superior Court failed to address this exception. V2-378–79. It is well established that, if the claims of a class representative are mooted after a class certification motion is filed

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<sup>5</sup> *Sos v. State Farm Mut. Auto. Ins. Co.*, No. 21-11769, 2023 WL 5608014, at \*10 (11th Cir. Aug. 30, 2023) (“This ‘inherently transitory’ exception to class action mootness derives from the traditional mootness exception for controversies that are ‘capable of repetition, yet evading review.’ When the named plaintiff’s claims are capable of repetition, yet evading review—i.e., are inherently transitory—the relation back doctrine applies to preserve the merits of the case for judicial review.”) (cleaned up); *see also Mulling v. Wilson*, 245 Ga. 773, 774–75 (1980).

but before a court certifies a class, the class claims may proceed if they are inherently transitory. *See Gerstein v. Pugh*, 420 U.S. 103, 110 n.11 (1975). To apply, “[t]he injury must be so transitory that it would likely evade review by becoming moot before the [] court can rule on class certification.” *J.M. by & through Lewis v. Crittenden*, 337 F.R.D. 434, 452 (N.D. Ga. 2019) (cleaned up). Second, it must be “certain [that] other class members are suffering the injury.” *Id.* (cleaned up). Both conditions are met here.

On the first prong, many putative class members are being held in jail pretrial, V1-127, 140, and pretrial detention is, by its very nature, transitory. *See Gerstein*, 420 U.S. at 110 n.11. Whenever putative class members eventually raise funds to pay for their release or their case is resolved, their pretrial detention will end. As to the second prong, class members will continue to be injured by the claimed violations, ensuring “the constant existence of a class of persons suffering the deprivation is certain.” *Id.* Because both prongs of the inherently transitory standard are met, the Superior Court should have “relate[d] back” certification of the class to the date when the complaint was filed. *Genesis Healthcare Corp. v. Symczyk*, 569 U.S. 66, 71 n.2 (2013) (internal citation omitted); *cf. Bickerstaff v. Suntrust Bank*, 299 Ga. 459, 469 (2016) (“Any member of the certified class who remains and does not opt out of the class will be deemed to have brought suit at the same time [the] complaint was filed[.]”). Thus, even if this Court agrees that the Superior Court was correct

in determining that Appellants Coronell and Holsey's individual claims are moot, it should find that it erred by preventing the putative class action from continuing. *See U.S. Parole Comm'n v. Geraghty*, 445 U.S. 388, 407 (1980) (holding that plaintiffs with moot claims may adequately represent a class).

Finally, the Superior Court erred by dismissing the case without first deciding the class certification motion. "When a court determines the propriety of a class action, the first issue to be resolved is not whether the plaintiffs have stated a cause of action or may ultimately prevail on the merits but whether the requirements of O.C.G.A. § 9-11-23 have been met." *Peck v. Lanier Golf Club, Inc.*, 298 Ga. App. 555, 556 (2009) (internal citation omitted). "Any assertion that the named plaintiff cannot prevail on [his] claims does not comprise an appropriate basis for denying class certification." *Id.* (internal citation omitted). But the Superior Court ignored the question of class certification, jumping to the merits and erroneously presuming mootness of Appellants' claims.

## **II. The Superior Court Erred in Holding Appellants Failed to State a Procedural Due Process Claim.**

Appellants Coronell and Holsey have alleged viable due process claims. Like every individual charged with a bail-restricted offense under S.B. 63, they suffered an infringement on their liberty when they were detained until they could purchase their release. And this infringement was inflicted without any

individualized judicial consideration of whether unsecured conditions of release would reasonably ensure their appearance in court and the safety of the community. V1-67, ¶ 9. Appellants and putative class members are therefore denied due process in their bail proceedings regardless of whether they *eventually* post bond and are released from jail.

**A. The Superior Court Erred by Failing to Construe Appellants’ Procedural Due Process Claim as Both Facial and As-Applied.**

The Superior Court made two fundamental errors in dismissing the procedural due process claim. First, it misconstrued Appellants’ procedural due process challenge to S.B. 63 as purely facial, even though the claims raised are both facial and as-applied. Second, it erroneously concluded that S.B. 63 is necessarily constitutional for individuals who ultimately post a secured bond. *See* V2-375–76.

The Superior Court did not provide any reasoning for why it construed Appellants’ procedural due process claim as facial only. Indeed, Appellants only used the word “facially” twice in their complaint. In the first instance, Appellants included in their class allegations a question that is common to the proposed class: “whether S.B. 63 as written *facially* violates the due process rights of the proposed class under Article I, Section I, Paragraph[] I of the Georgia Constitution.” V1-83, ¶ 69 (emphasis added). In the second, Appellants’ complaint requests that the Superior Court “[d]eclare that Georgia

Senate Chapter 6 of Title 17 of the Georgia Code, as amended by Georgia Senate Bill 63, *facially* violates due process under Article I, Section I, Paragraph I of the Georgia Constitution.” V1-87, ¶ B (emphasis added).

Beyond these isolated references, the complaint clearly asserts both a facial and an as-applied procedural due process challenge to S.B. 63. This Court has previously held “that a facial attack on a statute will be upheld if the statute operates unconstitutionally in a large fraction of the cases in which it applies.” *State v. Jackson*, 269 Ga. 308, 311–12 (1998). Likewise, this Court has held that an as-applied challenge must show that the statute is unconstitutional on the facts of a particular case or as applied to a particular party. *See Jones v. State*, 307 Ga. 505, 509 (2019) (cleaned up). Appellants meet both standards.

Appellants Coronell and Holsey included numerous allegations in their complaint asserting that, because they were detained for prolonged periods of time on secured bonds ordered without consideration of whether they could have been released immediately on unsecured bond, S.B. 63 violated procedural due process rights as applied to their respective cases. Construing all doubts in favor of the plaintiff—as the Superior Court was obligated but failed to do—these allegations reasonably set forth an as-applied challenge. *See, e.g.*, V1-67–68, ¶ 14 (“Ms. Coronell is detained in Fulton County Jail under a secured bond order issued pursuant to O.C.G.A. § 17-6-12, as amended by

S.B. 63. The secured bond of Ms. Coronell was imposed without consideration of whether any less restrictive release conditions would reasonably assure her appearance in court and the safety of the public.”); V1-68, ¶ 15 (“Ms. Holsey is detained in Fulton County Jail under a secured bond order issued pursuant to O.C.G.A. § 17-6-12, as amended by S.B. 63. The secured bond of Ms. Holsey was imposed without consideration of whether any less restrictive release conditions would reasonably assure her appearance in court and the safety of the public.”); *see also* V1-72–74, ¶¶ 28–38.

Appellants also sufficiently allege that S.B 63 is facially unconstitutional because the State of Georgia has no authority to mandate “that secured conditions be imposed in *every* case involving a bail-restricted offense” and force judges to *always* deny release to those accused of these offenses without any “inquiry into whether such conditions are warranted.” V1-69–70, ¶ 20; *see also* V1-74, ¶ 38. The Superior Court’s rejection of Appellants’ facial challenge and complete disregard of their as-applied challenge was erroneous and warrants reversal.

### **B. Appellants Plausibly Alleged a Procedural Due Process Claim.**

Appellants sufficiently alleged that S.B. 63 violates procedural due process under the *Mathews v. Eldridge* test, which weighs “(1) the private interest affected; (2) the possibility of erroneous deprivation using the

established procedure and the probable value of additional procedural safeguards; and (3) the government’s interest in the procedure or the burden of providing greater procedural protections.” *Gregory v. Sexual Offender Registration Rev. Bd.*, 298 Ga. 675, 686 (2016) (referencing *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)) (internal citation omitted).<sup>6</sup> Appellants allege that (1) the private interests affected by S.B. 63 are substantial; (2) the risk of erroneous deprivation of liberty under S.B. 63 is impermissibly high and individualized consideration of release conditions would greatly reduce that risk; and (3) the State’s interests in imposing mandatory secured bail do not outweigh the gravity of the Appellants’ and putative class members’ liberty interests, and implementing procedural protections would impose minimal burdens.

Although the Superior Court recognized that due process requirements under *Mathews* apply to bail determinations, V2-376,<sup>7</sup> the Court did not apply the test to the facts of this case. Instead, the Superior Court concluded that “sufficient procedural safeguards exist in Georgia’s pre-detention bail system”

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<sup>6</sup> “[W]e have addressed [procedural] due process claims raised under [the United States and Georgia] Constitution[s] in the same way.” *Carr v. State*, 303 Ga. 853, 857 n.8 (2018). Thus, the federal cases cited throughout this brief that apply the *Mathews* analysis should be highly persuasive.

<sup>7</sup> See *Gregory*, 298 Ga. at 685; *Zachos v. Huiet*, 195 Ga. 780, 786 (1943) (principles of due process “extend to every proceeding which may deprive a person of life, liberty, or property”).

because “S.B. 63 does not affect criminal defendants’ liberty interests.” V2-376.

That conclusion was in error.

1. *The Private Interest Affected by S.B. 63 Carries Substantial Weight.*

The first *Mathews* factor considers the weight of the private interest. *Gregory*, 298 Ga. at 687. The liberty interests affected by S.B. 63 are substantial. As the United States Supreme Court has recognized, freedom from detention “has always been at the core of the liberty protected by the Due Process Clause[.]” *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). Further, the Georgia Constitution guarantees a right against excessive bail, Ga. Const., art. I, § I, para. XVII, which prohibits setting a type or amount of bail that is more restrictive than what is reasonably necessary to secure court appearance or protect public safety. *See Mullinax v. State*, 271 Ga. 112, 112 (1999) (“Excessive bail is prohibited by the Georgia Constitution.... When fixing bail in Georgia, a trial judge's foremost consideration is the probability that the accused, if freed, will appear at trial and to a lesser extent the accused's ability to pay, the seriousness of the offense, and the accused's character and reputation.”) (cleaned up). S.B. 63 infringes on these core liberty interests by requiring judges to set a price for an individual’s release, without exception. V1-67–68 ¶¶ 4, 5.

The impacts of S.B. 63's inflexible mandate on Appellants' and putative class members' liberty interests are profound. Even for those who ultimately pay their bond, their pretrial release is often delayed hours or even days by the effort to either raise the secured bond amount or enlist a bond agent. *See* V1-72, 84–85, ¶¶ 27, 76, 79. Those less able or unable to secure the requisite funds can be deprived of their liberty weeks or months or more, often forcing them to remain in pretrial detention until their cases are resolved. *See* V1-65, ¶ 5 (“For [indigent people], any amount of cash bond is often a de facto detention order.”). The deprivation of liberty can result in an array of adverse consequences beyond the loss of liberty itself, such as separation from loved ones and loss of employment and housing. V1-66, 75–76, ¶¶ 6, 42. Thus, the first *Mathews* factor weighs heavily in favor of Appellants. *See id.*; *see also* V1-11–12, 15, ¶¶ 33, 37, 47.

2. *S.B. 63 Creates a High Risk of Erroneous Deprivation of Liberty and Individualized Consideration Would Add Significant Value.*

The second *Mathews* factor examines the risk of an erroneous deprivation of the private interests through the procedure used and the probable value of additional procedural safeguards. *Gregory*, 298 Ga. at 687.

S.B. 63 creates an impermissibly high risk of erroneous deprivations of liberty, which would be remedied by consideration of unsecured release.

Judges must generally evaluate the appropriate types of release conditions in each case to guard against the risk of needlessly depriving people of their liberty. See *Mullinax v. State*, 271 Ga. at 112; *Hernandez v. Sessions*, 872 F.3d 976, 993 (9th Cir. 2017) (“When the government determines what bond to set without considering a detainee’s financial circumstances, or the availability of alternative conditions of release, there is a significant risk that the individual will be needlessly deprived of the fundamental right to liberty.”); see also *United States v. Torres*, 566 F. Supp. 2d 591, 598 (W.D. Tex. 2008) (“[W]ithout a judicial determination of the necessary conditions of release based upon the arrestee’s particular circumstances, there is no means of knowing whether the deprivation is erroneous or warranted.”). S.B. 63 generates a high risk of an erroneous deprivation of liberty for all accused people by automatically conditioning release on paying a secured bond, irrespective of whether holding an individual in pretrial detention until they purchase their release is necessary to ensure court appearance or protect public safety. The likelihood of erroneous liberty deprivations under S.B. 63 is heightened “[f]or the indigent, [where] the risk of pretrial liberty deprivation because of the inability to pay secured money bail is certain.” *O'Donnell v. Harris Cnty., Texas*, 251 F. Supp. 3d 1052, 1144 (S.D. Tex. 2017), *aff'd as*

*modified sub nom. ODonnell v. Harris Cnty.*, 892 F.3d 147 (5th Cir. 2018); see V1-72, ¶ 27.

Prolonged detention without adequate process is precisely what Appellants and putative class member Kelon Lewis experienced. At the time the complaint was filed, Appellant Coronell had been detained for seventy-one days; Appellant Holsey for eleven days; and putative class member Kelon Lewis for twenty-eight days, which included three days after his bond had been reduced from \$2,000 to just \$1. V1-72–74, 77, ¶¶ 30–33, 34–37, 47. Each of them was deprived of their liberty solely because they could not afford cash bonds that were “imposed without consideration of whether any less restrictive release conditions would reasonably ensure their appearance in court and the safety of the public.” V1-74, ¶ 38. See *Schultz v. Alabama*, 42 F.4th 1298, 1309 (11th Cir. 2022) (concluding bail scheme satisfied due process because it required judges to consider all relevant factors and “impose the least onerous condition [of release] that will assure the purposes of bail are satisfied”).

Judicial consideration of all appropriate release conditions would not only bring state law in line with established precedent requiring individualized review, but it would also significantly alleviate the defects inherent in S.B. 63. By mandating secured bond based solely on the alleged offense, S.B. 63 provides *no* process for individuals charged with any of its thirty offenses to contest the necessity of a secured bond. See *United States v. Smedley*, 611 F.

Supp. 2d 971, 975 (E.D. Mo. 2009) (noting that with a mandatory condition of certain pretrial release conditions, “[t]he procedural due process afforded . . . is not only inadequate, it is non-existent”) (cleaned up). Considering unsecured bond would allow judges to properly tailor conditions of release—ordering secured bond where it is warranted, and ordering unsecured bond where it is not—thus greatly mitigating the risk of erroneous liberty deprivations and overly restrictive conditions. Therefore, the second *Mathews* factor also weighs heavily in Appellants’ favor.

3. *The State’s Interests in S.B. 63 Are Outweighed by Appellants’ Substantial Rights to Pretrial Liberty and Against Excessive Bail, and the Burden of Providing Additional Procedures Is Minimal.*

The third *Mathews* factor analyzes the government’s interest in the procedure used and the burden of providing greater procedural protections. *Gregory*, 298 Ga. at 686.

As an initial matter, the State has not offered *any* interests that are served by S.B. 63 and the Superior Court did not recognize any in its order.<sup>8</sup> The Superior Court instead recognized a general interest in ensuring court appearance. That is consistent with Georgia law, which recognizes that

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<sup>8</sup> The Order references a generalized State interest in ensuring court attendance, V2-378, but points to no specific State interest in categorically preventing people accused of any one of S.B. 63’s thirty bail-restricted offenses from being released pretrial unless and until they pay a secured bond.

“monetary bond ensures the defendant’s presence at trial, while [nonmonetary] conditions protect victim/witness safety.” *See, e.g., Clarke v. State*, 228 Ga. App. 219, 221 (1997). But to the extent that interest is relevant here, the State also has a concurrent interest in avoiding unnecessary detention and excessive release conditions, Ga. Const., art. I, § I, para. XVII (“[e]xcessive bail shall not be required”), which prejudice individual case outcomes, punish individuals before their trial, and strain government resources through increased jail costs. As described in detail above and in the complaint, S.B. 63 severely undermines that interest by precluding judges from considering unsecured release in any qualifying case, no matter the individual circumstances.

Moreover, as the complaint alleges, S.B. 63’s mandatory imposition of secured bond is the least effective means of achieving the State’s interest in court appearance. As a threshold matter, secured bond cannot provide an incentive for individuals to return to court until the money is actually posted. If individuals cannot post the money needed to effectuate their release, their secured bond functions not as a release condition but instead, as a de facto pretrial detention order. But arbitrarily mandating secured bond in every case is also ineffective for those individuals who eventually pay. As the complaint alleges, individuals released on unsecured bond return to court at similar—or even higher—rates as individuals released on secured bond. V1-80, ¶ 57, n.21. At a minimum, this means courts should only impose secured bond when the

particular needs of an individual case demand it, rather than automatically requiring secured bond based solely on the charged offense.

S.B. 63 also fails as a means of protecting public safety. As the complaint explains, and Georgia law recognizes, secured conditions of release do not effectively address public safety. V1-80, ¶ 57, n.22; *Clarke*, 228 Ga. App. at 221. To the contrary, “a robust body of data on the impact of pretrial detention has shown that [the use of] secured money bond to incapacitate the accused . . . may actually increase crime . . . because detention destabilizes communities.” V1-81, ¶ 59, n.24. Consequently, “there is no plausible justification for mandating secured conditions of release for all people charged with bail-restricted offenses under S.B. 63.” *Id.* ¶ 60.

Any burden imposed by reauthorizing judges to consider *all* conditions of release for those charged with S.B. 63 offenses would be minimal and cannot outweigh the gravity of Appellants’ and putative class members’ rights to pretrial liberty and against excessive bail. Invalidating S.B. 63 would merely return state courts to Georgia’s historical bail-setting practices. *See* V1-70, ¶ 21. Indeed, courts must continue to follow this historical practice for non-bail-restricted offenses. Thus, the third *Mathews* factor leans decisively in favor of Appellants.

Appellants sufficiently allege that S.B. 63 violates procedural due process. S.B. 63’s blanket prohibition on considering unsecured release denies

the due process required under the Georgia Constitution.<sup>9</sup> Accordingly, this Court should reverse the Superior Court.

### **III. The Superior Court Erred in Holding Appellants Failed to State a Substantive Due Process Claim.**

The Georgia Constitution guarantees the fundamental right to pretrial liberty, which protect Georgians from arbitrary conditions on pretrial release. Ga. Const., art. I, § I, para. I. And “[w]hen a fundamental right is allegedly infringed by government action, substantive due process requires that the infringement be narrowly tailored to serve a compelling state interest.” *State v. Old S. Amusements, Inc.*, 275 Ga. 274, 277 (2002) (quoting *Old S. Duck Tours v. Mayor & Alderman of City of Savannah*, 272 Ga. 869, 872 (2000)). S.B. 63 infringes on the rights to liberty without any tailoring; it instead mandates secured release without respect to individual circumstances. The Superior Court misconstrued the rights at issue, and consequently, erroneously dismissed the claim.

#### **A. The Superior Court Misconstrued the Rights at Issue.**

The Superior Court found that “Plaintiffs’ substantive due process claim fails because there is no fundamental right to pretrial *release* under Georgia

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<sup>9</sup> Even if the Court were to find that S.B. 63 has some possible constitutional application, that possibility does not warrant dismissal of Appellants’ facial claims. *Jackson*, 269 Ga. at 311–12 (declaring that a Georgia statute facially violated substantive and procedural due process even though the statute was not unconstitutional in all its applications).

law.” V2-378 (emphasis added). In reaching this holding, the Superior Court relied on the Eleventh Circuit’s opinion in *Schultz*, which held that “[p]retrial detainees have no absolute [*sic*] fundamental right to pretrial release.” See V2-377 (misquoting *Schultz*, 42 F.4th at 1332, by adding “absolute” without explanation). The *Schultz* court reasoned that if there were such a right, then “bail itself would be unconstitutional.” *Id.*

First, this reasoning is flawed because it assumes that a fundamental right must be absolute. But fundamental rights are not absolute; rather, infringements of fundamental rights are subject to strict scrutiny. See *Ambles v. State*, 259 Ga. 406, 407 (1989) (“[A] statute is tested under a standard of strict judicial scrutiny if it . . . interferes with the exercise of a fundamental right.”). Likewise, the right to liberty is fundamental, and it is infringed by unnecessary conditions on pretrial release. Recognizing this limitation on the legislature’s authority does not make bail unconstitutional. Instead, it requires S.B. 63 to satisfy heightened scrutiny.

Second, the United States Supreme Court case that *Schultz* primarily relies upon, *United States v. Salerno*, makes clear that pretrial liberty is indeed a fundamental right. 481 U.S. 739, 750 (1987). The Court’s opinion expressly recognized “the individual’s strong interest in liberty” and took pains to “not minimize the importance and *fundamental* nature of this right.” *Id.* (emphasis added); see also *Lopez-Valenzuela v. Arpaio*, 770 F.3d 772, 780–81 (9th Cir.

2014) (en banc) (“If there was any doubt about the level of scrutiny applied in *Salerno*, it has been resolved in subsequent Supreme Court decisions, which have confirmed that *Salerno* involved a fundamental liberty interest and applied heightened scrutiny.”). Though the right is fundamental, *Salerno* also recognized that right to pretrial liberty can be infringed “in circumstances where the government’s interest is sufficiently weighty[.]” *Id.* at 750–51.

Third, the Fifth Circuit Court of Appeals’ decision in *Pugh v. Rainwater* does not support the conclusion that pretrial liberty is not a fundamental right, as the Superior Court suggests. 572 F.2d 1053 (5th Cir. 1978). *See* V2-376–77. Instead, *Pugh* supports the exact opposite conclusion, as the Court held that requiring secured bond for release of an indigent person “whose appearance at trial could reasonably be assured by one of the alternate forms of release . . . would constitute imposition of an excessive restraint.” 572 F.2d at 1058.

Fourth, *Schultz* and *Pugh* are federal cases interpreting the federal Constitution; by contrast, Appellants’ claim is rooted in the Georgia Constitution. *See Powell v. State*, 270 Ga. 327, 331 n.3 (1998) (“It is a well-recognized principle that a state court is free to interpret its state constitution in any way that does not violate principles of federal law, and thereby grant individuals more rights than those provided by the U.S. Constitution.”).

Appellants plausibly alleged that S.B. 63 unconstitutionally infringes on the fundamental right to pretrial liberty by mandating secured bond without

narrowly tailoring this infringement to protect a compelling government interest. V1-64–65, 71–72, ¶¶ 3–4, 25–27. For people charged with S.B. 63 offenses who do not have immediate access to sufficient cash, this requirement delays release and constitutes an ongoing deprivation of liberty. V1-65, ¶ 5. The Superior Court’s contrary finding requires reversal.

**B. The Georgia Constitution Protects the Right to Pretrial Liberty.**

All Georgians have a fundamental right to pretrial liberty enshrined in the due process clause of the Georgia Constitution. Ga. Const., art. I, § 1, para. I. S.B. 63 infringes this right by causing Appellants and all putative class members to be held in jail unless and until they can post secured bond. V1-65, ¶ 4. For people who cannot immediately afford secured bond, S.B. 63 causes significant delays or outright denials of pretrial release, leading to their detention in jail for days or weeks or months merely for inability to pay. V1-65–66, ¶¶ 5. The right to pretrial liberty under the Georgia Constitution may be even more expansive than its federal counterpart. *See Powell*, 270 Ga. at 331 n.3 (locating the fundamental right of privacy in the Georgia Constitution’s due process clause and recognizing that it is broader than the analogous federal right).

To determine whether a right is fundamental, Georgia courts look to the history and tradition of the State of Georgia, the United States of America, and

the common law. *Id.* For example, the Georgia Supreme Court has applied this analysis to determine that “the ‘right to be let alone’ guaranteed by the Georgia Constitution is far more extensive than the right of privacy protected by the U.S. Constitution,” which protects only fundamental rights that are “deeply rooted in this Nation’s history and tradition or which are implicit in the concept of ordered liberty[.]” *Id.* at 330–31 (cleaned up).

The Georgia Supreme Court has long recognized the fundamental import of the right to physical liberty—sometimes also described as the right to be free from physical constraints—and has carefully scrutinized infringements of this right. *See, e.g., Simmons v. Georgia Iron & Coal Co.*, 43 S.E. 780, 781 (Ga. 1903) (“Questions growing out of an alleged illegal restraint of a person’s liberty are always questions of much delicacy and importance.”). In fact, the Court has recognized the right to liberty as being broad, and “embrac[ing] far more than freedom from physical restraint.” *Pavesich v. New England Life Ins. Co.*, 50 S.E. 68, 70 (Ga. 1905).

Similarly, federal courts have also recognized the fundamental importance of the right to liberty. The Supreme Court has emphasized the “importance and fundamental nature” of the right to liberty. *Salerno*, 481 U.S. at 750; *see also Stack v. Boyle*, 342 U.S. 1, 4 (1951) (“This traditional right to freedom before conviction permits the unhampered preparation of a defense, and serves to prevent the infliction of punishment prior to conviction.”). The

fundamental nature of the right is evident in the Supreme Court’s heightened scrutiny of infringements on pretrial liberty. *See Salerno*, 481 U.S. at 750–51; *see also Lopez-Valenzuela* 770 F.3d at 780–81 (recognizing that in subsequent decisions, the Supreme Court has “confirmed that *Salerno* involved a fundamental liberty interest and applied heightened scrutiny”). In *Salerno*, the Court only authorized preventive detention under the federal Bail Reform Act because of “Congress’ careful delineation of the circumstances under which detention will be permitted[.]” 481 U.S. at 751. The Court confirmed that *Salerno* applied heightened scrutiny to infringements on pretrial liberty by holding that detaining people who had been acquitted of criminal charges on grounds of insanity violated substantive due process. *Foucha v. Louisiana*, 504 U.S. 71, 80–81 (1992). In *Foucha*, the Court reasoned that such detention was unconstitutional because “unlike the sharply focused scheme at issue in *Salerno*, the Louisiana scheme of confinement [was] not carefully limited.” *Id.* “Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action.” *Id.*; *see also Holland v. Rosen*, 895 F.3d 272, 293 (3rd Cir. 2018) (“[S]ubstantive due process protects freedom from government custody, detention, or other forms of physical restraint prior to any determination of guilt.”) (cleaned up).

Finally, the fundamental importance of the ancient right to liberty has long been recognized by the common law. The right was incorporated into the

bail law of the Founding era, which fiercely protected pretrial liberty. The common law tradition understood protection of “the personal liberty of individuals” as a core purpose of society. 1 WILLIAM BLACKSTONE, COMMENTARIES \*134. The right to pretrial liberty could never be abridged by the laws of England “without sufficient cause.” *Id.* The most comprehensive scholarly analysis of Founding-era bail law undertaken to date found that “the blackletter law of bail in the Founding era was highly protective of pretrial liberty.” Kellen R. Funk & Sandra G. Mayson, *Bail at the Founding*, 137 HARV. L. REV. 1816, 1822 (2024).<sup>10</sup> This “uniquely American framework for bail guaranteed release for nearly all accused persons.” *Id.* Further, this study found that “[t]he clearest implication of the Founding-era law and practice of bail is that there is no ancient tradition of cash bail.” *Id.* at 1889. This personal liberty described by Blackstone, which was not absolute but could only be abridged with sufficient cause, and which was enshrined in Founding era bail laws, is precisely the liberty that is infringed by S.B. 63.

The right to physical liberty, particularly prior to trial, is fundamental to the history and tradition of the State of Georgia.

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<sup>10</sup> This research focused on the capital of the early republic, Philadelphia. The authors note that “research suggests that bail practice in Philadelphia was fairly representative of practice in other states, including Massachusetts, New York, Georgia, and South Carolina.” *Id.*

### **C. S.B. 63 Is Not Narrowly Tailored to the State's Compelling Interests.**

S.B. 63 unconstitutionally infringes on the fundamental right to pretrial liberty by wholesale requiring payment of secured bond before anyone charged with a S.B. 63 offense can be released. That requirement is not narrowly tailored to whatever interests the State may have in secured bond. V1-64–67, ¶¶ 2–9. Appellants have therefore stated a claim that S.B. 63 is an unconstitutional violation of substantive due process, and the Superior Court erred in finding otherwise.

“When a fundamental right is allegedly infringed by government action, substantive due process requires that the infringement be narrowly tailored to serve a compelling state interest.” *Old S. Duck Tours*, 272 Ga. at 872. The State does not assert that it has any interests, let alone compelling ones, in mandating secured bond for all persons charged with an S.B. 63 offense. Assuming general state interests like preventing flight and public safety, S.B. 63 fails to narrowly tailor its infringements on Appellants’ fundamental rights to these goals.

Laws that apply blanket rules, without regard to individual circumstances, generally are not narrowly tailored. *Jackson*, 269 Ga. at 310–11. *Jackson* examined a law that prohibited alleged child abusers from compelling testimony of a child under the age of fourteen in all cases, thus

infringing on the fundamental right to confront witnesses. *Id.* The Court held that while the State has a compelling interest in the welfare of children, a blanket prohibition on the testimony of children under the age of fourteen, without any exceptions for the particular circumstances of individual cases, was impermissibly broad and failed the narrow tailoring requirement. *Id.*

S.B. 63's bail-restricted offenses provisions similarly fail the narrow tailoring requirement. While the State has asserted no specific interests served by S.B. 63's blanket imposition of monetary bail, Georgia law recognizes that secured bond may be appropriate in certain cases to address flight risk and public safety. *But see Clarke*, 228 Ga. App. at 221 (stating that in practice, secured bond may help to assure the accused's presence at trial but does not actually operate to protect the public); V1-80, ¶ 57 n.22.

Even assuming that court appearance and public safety are compelling state interests at issue here, S.B. 63 is overinclusive with respect to those interests.<sup>11</sup> S.B. 63 forces judges to impose secured bond on *all* individuals

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<sup>11</sup> S.B. 63 is also underinclusive with respect to the State's interests. Consider a situation where a judge determines that an individual charged with a bail-restricted offense will likely return to court without incident and should be released immediately. Because the individual presents a low risk of failing to appear and has few financial resources, the judge determines that a \$500 *unsecured* bond, rather than a \$500 *secured* bond, is the best means to reasonably assure the individual's speedy release and return to court. However, S.B. 63 forecloses this option. This may lead the judge to impose secured bond in a nominal amount that the individual can immediately afford that prevents unnecessary detention, but may not provide an adequate

charged with *any* one of its thirty bail-restricted offenses, even if they pose no or minimal risk of flight or threat to public safety. This necessarily leads to many people being held on secured bond who would not otherwise have been. V1-72–77, ¶¶ 28–48. By contrast, the traditional, pre-S.B. 63 process allowed judges to impose secured bond when required by the specific circumstances of a particular case. Imposing secured bond on every person charged with an S.B. 63 offense fails the narrow tailoring requirement. Appellants have therefore stated a claim that S.B. 63 cannot survive heightened scrutiny.

**D. S.B. 63 Is Not Rationally Related to a Government Interest.**

S.B. 63’s bail restricted offense provisions violate substantive due process even if this Court concludes that the right to pretrial liberty is not fundamental. When “it is not a fundamental right that is infringed . . . the government action is examined under the rational basis test[.]” *Old S. Duck Tours*, 272 Ga. at 872 (citing *City of Lilburn v. Sanchez*, 268 Ga. 520, 522 (1997)). The rational basis test examines whether a law “realistically serves a legitimate public purpose, and [whether] it employs means that are reasonably necessary to achieve that purpose without unduly oppressing the individuals

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incentive for future court appearances, thus frustrating the interest that, according to the State, would justify restricting a person’s liberty through bond conditions.

regulated[.]” *Id.* By conditioning release on posting a secured bond for everyone charged with a bail restricted offense without any consideration of whether secured bond advances the State’s interests in individual cases, S.B. 63 infringes Appellants’ right to pretrial liberty without “realistically serv[ing] a legitimate public purpose.”

Appellants adequately allege that the State’s interests—whatever they may be—are not served by S.B. 63’s mandatory imposition of secured bond. By imposing secured bond on every person charged with a restricted bail offense and barring judicial consideration of the individualized circumstances in each case, the State has removed the mechanism for determining whether secured bond is rationally related to the government’s interests in any particular case.

As the complaint alleges, many people accused of S.B. 63 offenses will pose no or minimal flight or public safety risk and should appropriately be released without secured bond. V1-72–74, ¶ 28–38. Identifying these individuals requires judicial examination of the unique circumstances presented by each case, which S.B. 63 prohibits. Imposing secured bond on all people for no reason beyond the mere existence of a criminal accusation is not “reasonably necessary to achieve” the government’s legitimate purposes in secured bond, nor does it pursue these goals “without unduly oppressing the individuals regulated.” *Old S. Duck Tours*, 272 Ga. at 872. Thus, there is no rational relationship between S.B. 63’s inflexible mandate of secured bond and

the State's legitimate purposes in the pretrial process. This Court should reverse.

**CONCLUSION**

For the foregoing reasons, this Court should reverse each of the Superior Court's holdings and remand for adjudication of Appellants' claims on the merits.

Respectfully submitted this 17<sup>th</sup> day of November, 2025.

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**CERTIFICATE OF COMPLIANCE WITH WORD LIMIT**

This submission does not exceed the word-count limit imposed by Rule 20. Excluding the parts of the document exempted under Rule 20(1), this brief contains 8,899 words as shown by Microsoft Word.

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**CERTIFICATE OF SERVICE**

I hereby certify that I have this day caused a true and correct copy of the foregoing Plaintiff-Appellant's Brief to be served on all parties by email.

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