

No. S26A0410

In the
Supreme Court of Georgia

Sierrah Coronell, et al.,
Appellants,

v.

State of Georgia,
Appellee.

On Appeal from the Superior Court of Fulton County,
Superior Court Case No. 25CV005987

BRIEF OF APPELLEE

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INTRODUCTION

This case presents the question whether the General Assembly has the constitutional authority to require defendants charged with certain serious criminal offenses—including sex trafficking, voluntary manslaughter, and domestic terrorism—to pay at least \$1.00 to secure pretrial release and assure their appearance at trial. It does.

Georgia, like many states, has established a comprehensive framework for determining which defendants are entitled to pretrial release and under what conditions. For instance, no defendant “charged with a misdemeanor [may] be refused bail.” O.C.G.A. § 17-6-1(b)(1). Conversely, defendants who present a significant flight risk or a danger to the community may not be granted bail. *See id.* § 17-6-1(e)(1). And those charged with “serious violent felon[ies]” who have “already been convicted of a serious violent felony” are rebuttably presumed to be unable to assure their presence at trial though any “condition or combination of conditions.” *Id.* § 17-6-1(e)(3). None of these provisions are unusual—numerous states have enacted similar provisions in their own bail codes.

Also not unusual is the General Assembly’s decision to require certain defendants—those charged with a “bail restricted offense”—to post bail through secured means. *See id.* § 17-6-12. These defendants are ineligible for unsecured release, defined in Georgia as release on one’s personal recognizance or through a pretrial diversion program. *Id.* § 17-6-12(a)(1), (2). Several other states have enacted similar

provisions for various classes of defendants, including those who are currently on bail for another offense, have previously failed to appear, or (as in Georgia) have been charged with certain serious or violent offenses. *See id.* § 17-6-12(a)(1); *see infra* at 35–36 & n.7.

In S.B. 63, the General Assembly added 32 offenses to that list. *See* S.B. 63, 157th Gen. Assemb., Reg. Sess. (Ga. 2024); O.C.G.A. § 17-6-12(d). But S.B. 63’s secured-bail requirement does not prevent defendants from availing themselves of the extensive procedural safeguards that accompany bail determinations, including a hearing. It does not dictate the amount of bail defendants must pay, nor does it deprive them of a “meaningful opportunity to obtain pretrial release.” *See Schultz v. Alabama*, 42 F.4th 1298, 1324 (11th Cir. 2022). Instead, S.B. 63 merely encodes a legislative preference for one *form* of release (secured) over another (unsecured) for certain offenses. Georgia courts retain wide discretion in granting, denying, and setting bail.

Against that backdrop, Appellants Sierrah Coronell and Diane Holsey cannot state claims that S.B. 63 facially deprives defendants of procedural or substantive due process under the Georgia Constitution. To start, their claims are moot, because neither Coronell nor Holsey remains in pretrial detention: Georgia’s bail statutes, even with S.B. 63 in place, facilitated their release after 71 and 11 days, respectively. V1-307. And Coronell and Holsey cannot adjudicate the constitutionality of S.B. 63 on behalf of *other* pretrial detainees. *See, e.g., Wasserman v. Franklin Cnty.*, 320 Ga. 624, 644 (2025).

Regardless, Coronell and Holsey’s claims fail on the merits. Their *procedural* due process claim is fatally flawed because, at bottom, they assert a right to a particular outcome (unsecured release) rather than additional procedural protections. But even accepting Coronell and Holsey’s procedural framing, Georgia’s bail system provides adequate procedural safeguards. Meanwhile, Coronell and Holsey’s *substantive* due process claim fails because nothing in S.B. 63 irrationally dictates the “nature [or] duration” of pretrial detention. *See Carr v. State*, 303 Ga. 853, 859 (2018) (emphasis removed). Moreover, Coronell and Holsey’s theory that every statute that could operate to extend pretrial detention is subject to—and flunks—strict scrutiny finds no support in Georgia (or federal) law.

In short, allowing either of these misbegotten challenges to survive the pleading stage would needlessly cast constitutional doubt on numerous provisions of Georgia’s bail statutes. Rather than take that radical step, this Court should affirm the superior court.

JURISDICTION

The order of the Superior Court of Fulton County was entered on August 28, 2025. V2-373–80. Coronell and Holsey’s notice of appeal was filed on Sep. 26, 2025. V1-32–33. This Court has exclusive appellate jurisdiction because the case calls into question the constitutionality of a statute. *See* Ga. Const., art. VI, § VI, ¶ II.

STATEMENT

A. Legal Background

Georgia law provides defendants with extensive procedural safeguards in determinations related to bail and pretrial release. First, O.C.G.A. § 17-6-15(b) guarantees a reasonable opportunity to post bail. Within 72 hours of detention, the defendant must be provided notice of his bail hearing and summarily brought before a duly authorized judicial officer. *Id.* § 17-4-26. Moreover, this hearing must take place before “the most convenient and accessible judicial officer authorized to hear the case.” *Id.* § 17-4-21.

Four factors determine whether the court grants or denies bail: (1) the danger the person poses to the community, and the risk they will (2) flee, (3) commit an additional felony, or (4) obstruct justice. *Id.* § 17-6-1(e)(1). Judges must also consider a defendant’s criminal history when issuing an unsecured release. *Id.* § 17-6-12(f). Except in narrow circumstances involving appeal bonds, no person charged with a misdemeanor may be refused bail. *Id.* § 17-6-1(b)(1), (g). When setting bail, a court must consider the defendant’s financial resources, income, and obligations; the purpose of bail; and “any other factor the court deems appropriate.” *Id.* § 17-6-1(e)(2). Any of these determinations can be challenged as an abuse of discretion or through a claim under the Georgia Constitution’s Excessive Bail Clause. *See, e.g., Jones v. Grimes*, 219 Ga. 585 (1964). Review is available via certificate of

immediate review or a writ of habeas corpus. *See id.*; *Colemon v. State*, 361 Ga. App. 901, 901 (2021).

Defendants charged with bail-restricted offenses are not eligible for an “unsecured judicial release,” defined as release on one’s own recognizance or for the purpose of entering a pretrial diversion program. O.C.G.A. § 17-6-12(a)(2). To be released, such persons must post bail through professional bondsmen, cash payments, or property. *Id.* § 17-6-12(d). An individual may contest his ineligibility for unsecured release on grounds that his criminal record is inaccurate, incomplete, or misleading; if he does so, the prosecuting attorney bears the burden of establishing ineligibility. *Id.* § 17-6-12(b)(2).

In 2024, the General Assembly passed, and Governor Kemp signed, S.B. 63. *See* Ga. S.B. 63; O.C.G.A. § 17-6-12(d). This statute added 32 bail-restricted offenses for which defendants are ineligible for unsecured judicial release, including voluntary manslaughter, sex trafficking, domestic terrorism, exploitation and intimidation of disabled or elderly persons, and racketeering. *See id.* at § 17-6-12(a). The statute also amended the definition of “bail” to exclude unsecured judicial release. *Id.* at § 17-6-12(d).

B. Factual Background

Sierrah Coronell and Diane Holsey were charged in early 2025 with bail-restricted offenses and detained in Fulton County Jail. V1-67–68. Ms. Coronell was charged with loiter prowl, misdemeanor willful obstruction of law enforcement officers, and possession of a

schedule II controlled substance; Ms. Holsey was charged with battery and with abuse, neglect or exploitation of a disabled or elderly person. *Id.* at 72–73. Coronell and Holsey each received a hearing before a judicial officer on the same day of their arrest. *Id.* at 73–74. In both cases, the judicial officer found them ineligible for unsecured release. *Id.* Initially, Ms. Coronell was required to pay \$3,000—\$1,000 for each bail-restricted offense she was charged with. *Id.* at 72. Her bond was later reduced to \$600 pursuant to a consent agreement with the prosecution. *Id.* at 73. Ms. Holsey was required to pay \$4,000—\$2,000 for each bail-restricted offense. *Id.* at 74. Coronell and Holsey were unable to immediately post bail or secure payment from a professional bondsman. *Id.* at 73–74. As a result, Coronell and Holsey remained in jail for 71 and 11 days, respectively, but have since obtained the necessary funds, posted bail, and been released. *Id.* at 307 (“Plaintiffs were released from jail after filing this action.”).

C. Proceedings Below

In May 2025, Coronell and Holsey filed this suit against the State on behalf of themselves and “all people ... charged with any bail-restricted offense added [by S.B. 63]” who “have been or will be denied consideration of release on unsecured bond and unsecured judicial release[.]” *Id.* at 82. They alleged that S.B. 63 violated procedural and substantive due process and asked the superior court to “declare that [S.B. 63] facially violates due process.” *Id.* at 84, 85, 87.

Coronell and Holsey sought a permanent injunction against S.B. 63's enforcement by any person acting "on behalf of ... the State." *Id.* at 87.

The State filed motions to dismiss the complaint and the accompanying motion for class certification. *Id.* at 160–229, 230–68. Among other things, the State argued that Coronell and Holsey's procedural due process claim should be dismissed because S.B. 63 is not unconstitutional in all applications, as required by this Court's standard for facial challenges. *Id.* at 182. In response, Coronell and Holsey did not characterize their suit as an as-applied challenge, and instead argued that their complaint stated a "proper facial procedural due process claim." *Id.* at 303.

The superior court granted the State's motion to dismiss. V2-373–80. The court determined that Coronell and Holsey's facial procedural due process claim failed because "the challenged provisions implicate no ... due process issues with respect to" individuals charged with S.B. 63 bail-restricted offenses who "obtain[] pre-trial release" through "secured means." *Id.* at 375. Moreover, "the mere absence of a means of *unsecured* release" did not implicate due process; but even if it did, the risk of any erroneous deprivation of liberty under Georgia's procedural safeguards was "minimal[,] if not non-existent." *Id.* at 376. On substantive due process, the court held that S.B. 63 raised no constitutional "concern," and that S.B. 63 survived review in any event. *Id.* at 377. Given Coronell and Holsey's concession that their suit raised *only* facial challenges, the court did not address any as-applied

claim. *See id.* Alternatively, the superior court held that Coronell and Holsey’s claims became moot with their release from pretrial detention. *Id.* at 378. Finally, the court dismissed their class-certification motion as moot. *Id.* at 378–79.

STANDARD OF REVIEW

“On appeal, a trial court’s ruling on a motion to dismiss for failure to state a claim ... is reviewed de novo.” *Abramyan v. State*, 301 Ga. 308, 309–10 (2017) (citation omitted). This Court presumes that statutes are constitutional. *Ga. Dep’t of Human Serv. v. Steiner*, 303 Ga. 890, 894 (2018). “[B]efore an Act ... can be declared unconstitutional, the conflict between it and the fundamental law must be clear and palpable and this Court must be clearly satisfied of its unconstitutionality.” *Id.* (quotation omitted). The burden to show unconstitutionality rests with the challenger. *Id.* at 895. To carry that burden in a facial challenge, the plaintiff must establish “that no set of circumstances exists under which the statute would be valid, *i.e.*, that the law is unconstitutional in all of its applications.” *Bello v. State*, 300 Ga. 682, 686 (2017) (citation omitted).

SUMMARY OF ARGUMENT

I. This case is moot. Shortly after filing this action, Coronell and Holsey were “released from jail.” V1-307. Thus, there is no prospect that their requested remedy—an injunction barring the enforcement of S.B. 63—would benefit them. *See* V1-87. Coronell and Holsey attempt

to evade mootness by arguing that (1) S.B. 63 prevents them from challenging their secured bond orders, (2) the “capable of repetition yet evading review” doctrine applies; and (3) their class-action claims are “inherently transitory” and thus fit a federal-law mootness exception. *See* Opening.Br.10–11. None of these arguments prevail.

First, Coronell and Holsey have never asserted an injury resulting from their secured bond orders, nor have they shown that an injunction against S.B. 63 would entitle them to relief on that score. Second, their claims do not “evad[e] review” because they are not “intrinsically” too short-lived for pretrial defendants to obtain judicial relief. *See Collins v. Lombard Corp.*, 270 Ga. 120, 121 (1998). Coronell and Holsey have also failed to allege that they are personally likely to encounter S.B. 63 again. But as this court recently clarified, plaintiffs cannot assert the claims of third parties. *See Wasserman*, 320 Ga. at 644. Finally, the mootness exception for “inherently transitory” class claims sometimes recognized in federal court is irreconcilable with *Wasserman* and this Court’s mootness precedents. In any event, Coronell and Holsey’s claims are not “inherently transitory.”

II. S.B. 63 does not facially deprive defendants of procedural due process, and Coronell and Holsey’s claim to the contrary fails. First, it is not a “procedural” claim at all: Rather than contesting the adequacy of Georgia’s procedural safeguards in bail determinations, Coronell and Holsey attack the General Assembly’s decision to bar one *substantive outcome*—unsecured release—for certain defendants. Characterizing

that as a procedural claim would flip due process analysis “on its head.” *Shango v. Jurich*, 681 F.2d 1091, 1101 (7th Cir. 1982).

Second, had Coronell and Holsey asserted a proper procedural due process claim, S.B. 63 would easily survive a facial attack because it is not unconstitutional in “all of its applications.” *Bello*, 300 Ga. at 685–86. In most circumstances, S.B. 63 does not create any risk of an “erroneous deprivation,” *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), given the extensive procedural safeguards in bail determinations. Even after being charged with a bail-restricted offense, every defendant has a meaningful opportunity to argue for low or even nominal bail, and the court must consider the defendant’s financial resources and other circumstances when setting bail. *See* O.C.G.A. § 17-6-1(e)(2). And a defendant has multiple pathways to challenge the results of that process. Thus, there is little to be gained from requiring an individualized determination about whether to grant *unsecured* release in every case.

III. Nor does S.B. 63 facially deny substantive due process. Neither this Court nor the U.S. Supreme Court has ever applied strict scrutiny in such a challenge to a bail statute. Instead, this Court has asked whether “the nature and duration of [detention] bear[s] some reasonable relation to the purpose for which the individual is committed.” *Carr*, 303 Ga. at 859 (quotation and emphasis omitted). Embracing Coronell and Holsey’s arguments that S.B. 63 receives strict scrutiny because it makes *immediate* pretrial release less likely—and

fails scrutiny because it is “overinclusive”—would transform Georgia’s bail code overnight. But under the standard this Court applied in *Carr*, S.B. 63 does not dictate the nature or duration of any defendant’s detention, and its effects are not facially unreasonable in relation to the purposes of bail. *See Carr*, 303 Ga. at 859.

IV. The superior court correctly dismissed Coronell and Holsey’s class-certification motion as moot after dismissing their constitutional claims on the merits.

This Court should affirm.

ARGUMENT

I. The superior court correctly dismissed this case as moot.

This Court need not reach the merits because, as the court below correctly concluded, this case is moot. “[M]ootness is an issue of jurisdiction and thus must be determined before a court addresses the merits of a claim.” *Shelley v. Town of Tyrone*, 302 Ga. 297, 308 (2017). A case is moot when its “resolution would amount to the determination of an abstract question not arising upon existing facts or rights.” *Collins*, 270 Ga. at 122. Because mootness is jurisdictional, “dismissal of moot cases is mandatory.” *Id.* at 121.

Coronell and Holsey were “released from jail after filing this action.” V1-307. Thus, their requested “remedy”—a injunction against S.B. 63’s prospective enforcement—would “no longer benefit[] the part[ies] seeking it.” *Jayko v. State*, 335 Ga. App. 684, 685 (2016). In

short, because reversing the judgment below would not result in Coronell or Holsey's release or otherwise remedy their asserted injuries, "the[ir] case is moot and must be dismissed." *Id.* (cleaned up). Coronell and Holsey's arguments to the contrary are unavailing.

1. To keep this case alive, Coronell and Holsey argue that they remain "subject to ... unconstitutional secured bond orders," and that reversal would allow them to "seek bail reconsideration hearings where they would be assessed for unsecured release, and recover any money they posted under [the] bail orders." Opening.Br.10. But Coronell and Holsey did not assert post-release injuries caused by their secured bond orders. *See id.* at 18–19. They complained of being "forc[ed] ... to remain in pretrial detention until their cases are resolved" or they posted bail, and other "adverse consequences" caused by this "deprivation of liberty." *Id.* at 19. Enjoining S.B. 63 cannot remedy those harms.

Regardless, Coronell and Holsey identify no law that would entitle them to unsecured release or the recoupment of bond were S.B. 63 enjoined. Instead, whether to require payment of a bail bond would remain within the trial court's "inherent discretion." *See Clarke v. State*, 228 Ga. App. 219, 220 (1997). Mere speculation that the court *might* decide to grant unsecured release is not enough—a "court is not required to retain a moot case and decide it because a party might possibly derive some future benefit." *Scarborough Grp. v. Worley*, 290 Ga. 234, 236 (2011) (citation omitted). Here, that possibility is belied

by the nature of the charges and the court’s decision to set bail at \$3,000 for Coronell and \$4,000 for Holsey. Opening.Br.8; *compare* V1-76–77 (\$1.00 bond for indigent defendant charged with a bail-restricted offense). In sum, there is no indication that the court will vitiate Coronell and Holsey’s secured bond orders should they prevail.

2. Next, Coronell and Holsey assert that their claims are “capable of repetition yet evade[] review” because “pretrial detention is *often* for a duration shorter than the time taken to litigate.” Opening.Br.10–11 (emphasis added). But the “narrow” evading-review doctrine applies only in “exceptional situations.” *Dow Jones & Co. v. Kaye*, 256 F.3d 1251, 1256 (11th Cir. 2001) (citation omitted). To begin with, it reaches only “those matters in which there is intrinsically insufficient time to obtain judicial relief.” *Collins*, 270 Ga. at 122 (quotation omitted). That an issue will “often” evade review is “too speculative”—it must “necessarily” do so. *Id.*; *see also In Interest of I.B.*, 219 Ga. App. 268, 276 (1995) (issue must “eternally evade review”).¹

But here, Coronell and Holsey insist—and Georgia precedent confirms—that pretrial detention is *not* “intrinsically” or “necessarily” too short for judicial review. *See* Opening.Br.19 (“Those less able or

¹ In *Gerstein v. Pugh*, the U.S. Supreme Court observed in a footnote that pretrial detention without a probable-cause hearing presented an issue capable of repetition yet evading review because pretrial detainees are “unlikely” to have their claims decided before release or conviction. 420 U.S. 103, 110 n.11 (1975). But as noted, Georgia law imposes a more demanding standard. *See Collins*, 270 Ga. at 122; *In Interest of I.B.*, 219 Ga. App. at 275.

unable [to post bail] can be deprived of their liberty weeks or months or more”); *see also, e.g., Brewington v. State*, 288 Ga. 520, 523, n.3 (2011) (nearly four-year-long detention); *Boseman v. State*, 263 Ga. 730, 733 (1994) (27 months), *overruled on other grounds by Sosniak v. State*, 292 Ga. 35, 40 (2012); *Johnson v. State*, 313 Ga. App. 895, 899 (2012) (approximately 35 months). It is also possible that some defendants may simply choose not to pay their secured bond orders.

Coronell and Holsey have also failed to satisfy the second prong of the test: a “reasonable expectation that the *same complaining party* [will] be subjected to the same action again.” *Weinstein v. Bradford*, 423 U.S. 147, 149 (1975) (emphasis added). That showing requires more than a “mere physical or theoretical possibility of recurrence,” *Bourgeois v. Peters*, 387 F.3d 1303, 1309 (11th Cir. 2004) (quotation omitted), but Coronell and Holsey allege nothing of the sort. That S.B. 63 will apply to *other* criminal defendants is irrelevant, because a plaintiff cannot rely on the violation of a third party’s rights to invoke the jurisdiction of Georgia courts. *See Wasserman*, 320 Ga. at 644.

3. Hoping to evade that rule, Coronell and Holsey point out that this suit is a putative class action and invoke a federal mootness exception for “inherently transitory” class claims. *See* Opening.Br.11. To start, this Court has never embraced that doctrine—and it should not do so now. Class plaintiffs have no special power to force this Court to decide “abstract question[s].” *Collins*, 270 Ga. at 122. Holding otherwise would blow a class-action sized hole in this Court’s recent

admonition that Georgia courts lack the “power to adjudicate a plaintiff’s claim asserting *only* the rights of parties not before the Court.” *Wasserman*, 320 Ga. at 644 (emphasis added). It would also flatly contradict this Court’s precedent that there are no “exceptions” to mootness and flout its prohibition of advisory opinions. *See Collins*, 270 Ga. at 121–22. In any event, Coronell and Holsey’s claims are not “inherently transitory”; as explained above, some pretrial detainees *can* obtain judicial relief before being released. *See supra* at 13–14.

II. S.B. 63 does not facially deny procedural due process.

The Georgia Constitution provides that “[n]o person shall be deprived of life, liberty, or property except by due process of law.” Ga. Const. art. I, § 1, para. 1. Because this language is virtually identical to that of the federal Constitution, this Court has consistently “addressed due process claims raised under either Constitution in the same way.” *Carr*, 303 Ga. at 857 n.8.² Procedural due process analysis has two steps. *See Steiner*, 303 Ga. at 890. The court first asks whether the plaintiff has identified a “constitutionally protectable liberty or property interest”; if so, the court “determine[s] the nature and extent of the procedural protections required.” *Id.* The latter inquiry turns on “the private interest affected by the state action; the risk of an erroneous deprivation of the interest under the existing scheme along with the probable value, if any, of additional or substitute

² Coronell and Holsey do not assert or rely on any purported difference between federal and state law.

procedural safeguards; and finally, the interest of the government.”

Id.; see also *Mathews*, 424 U.S. at 335.

Coronell and Holsey’s procedural due process claim fails for two independent reasons. *First*, it is not really a “procedural” claim at all. Coronell and Holsey do not attack the bail statutes’ procedural safeguards as inadequate. Instead, they attack the General Assembly’s decision to prohibit a particular outcome—unsecured release—for those charged with certain offenses. No matter how much *process* a defendant charged with voluntary manslaughter receives, Georgia law forbids his release without bond. So, unless there is a *substantive* right to unsecured release (*but see* Part III, *infra*) there is nothing “erroneous” about a deprivation of pretrial liberty that results from a legislative prohibition on unsecured release.

Second, had Coronell and Holsey asserted a proper procedural claim, it would fail on its own terms because S.B. 63 does not create *any* risk of “erroneous deprivation,” see *Mathews*, 424 U.S. at 335, in a vast swath of applications. So even if the *Mathews* balancing test applies, Georgia’s bail statute easily survives it. Even with S.B. 63 in place, every defendant has a meaningful opportunity to argue for low or even nominal bail, and the court must consider the defendant’s financial resources—along with “[a]ny other factor the court deems appropriate”—when setting a defendant’s bail. O.C.G.A. § 17-6-1(e)(2). And if the defendant is unsatisfied with the result of that process, pathways to judicial review are available.

A. Coronell and Holsey do not have a “procedural” right to a substantive outcome.

1. The essence of a procedural due process claim is an allegation that the procedure used to determine whether to deprive an individual of his protected interest provides inadequate “safeguards” against an “erroneous deprivation.” *Steiner*, 303 Ga. at 890. Courts faced with such claims must test “the fairness and reliability of ... procedures” to determine whether “the decisionmaking process” is adequately accessible to, and protective of, the individual whose liberty or property is at stake. *See Mathews*, 424 U.S. at 343–44.

Here, however, Coronell and Holsey do not challenge the State’s *process* for determining which defendants should be detained pending trial and which should not. Instead, they attack the General Assembly’s decision to impose certain *conditions* on release for those charged with bail-restricted offenses, *regardless* of process. In other words, they do not assert a right to further “procedural protections,” *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972), but to a particular outcome—unsecured release—that the law forecloses. Procedure aside, the denial of unsecured release to such defendants cannot be “erroneous”—it is mandatory. *See Mathews*, 424 U.S. at 335.

To be sure, criminal defendants are presumed innocent and thus have an “interest in being free from physical detention by [their] own government.” *Carr*, 303 Ga. at 858 (quotation omitted). Accordingly, a defendant is entitled to a hearing on pretrial detention “within a reasonable time after arrest.” *Hood v. Carsten*, 267 Ga. 579, 582

(1997). But this Court has never recognized a protected liberty interest in *unconditional* pretrial release and has rejected due-process challenges to release conditions. *See, e.g., Camphor v. State*, 272 Ga. 408, 410–11 (2000); *Edvalson v. State*, 298 Ga. 626, 629 (2016).

Two federal decisions illustrate the distinction. In *United States v. Stephens*, the Eighth Circuit upheld a statute that mandates “curfew and electronic monitoring” conditions on the release of any defendant charged with child-pornography offenses. 594 F.3d 1033, 1035 (8th Cir. 2010) (citing 18 U.S.C. § 3142(c)(1)(B)). Stephens claimed these mandatory conditions “violated accused child pornographers’ rights to procedural due process insofar as they ‘are not afforded any individualized judicial consideration’” of “risk of flight and danger to the community.” *Id.* at 1036. Rejecting that facial challenge, the court explained that the statute “does not deprive ... defendants of a detention hearing or an individualized determination whether detention or release is appropriate.” *Id.* at 1039. Nor did it foreclose “an individualized determination as to the extent of any mandatory conditions of release.” *Id.* All it did was “require *a* curfew and *some* electronic monitoring.” *Id.* (emphasis in original). And because there are certainly *some* “child pornography defendants for whom a curfew or electronic monitoring is appropriate,” Stephens’ facial challenge failed. *Id.* at 1038.

Similarly, the Sixth Circuit rejected a procedural due process challenge to a Tennessee county’s policy of detaining “all persons

arrested for domestic violence” for 12 hours after arrest, “regardless of the individual circumstances.” *Fields v. Henry Cnty.*, 701 F.3d 180, 183 (6th Cir. 2012). “While Tennessee [law] grants criminal defendants a general ‘right to bail pending trial,’” the court explained, defendants have no liberty interest in “post[ing] bail within a particular timeframe,” or in receiving “release on personal recognizance.” *Id.* at 182 n.1, 187. In other words, a defendant’s entitlement to a bail *hearing* did not entitle him to a “specific outcome.” *Id.* at 186–87.

At bottom, Coronell and Holsey’s procedural due process claim fails because they have identified no procedural barrier to release: Defendants charged with S.B. 63 offenses receive the same bail process as other defendants. Instead, the barrier to release for such defendants is substantive: Process notwithstanding, a trial court determining whether (and under what conditions) to release an S.B. 63 defendant pending trial simply cannot order unsecured release.

2. Sensing the tension between their “procedural” framing and their substantive goal of ensuring that defendants can obtain the outcome of unsecured release, Coronell and Holsey attempt two workarounds. Neither succeeds.

a. Coronell and Holsey first backtrack from their complaint and brief below by arguing—for the first time in this litigation—that S.B. 63 is unconstitutional “as applied” to themselves and other indigent defendants. Opening.Br.3 (arguing that S.B. 63 “arbitrarily mandates incarceration for Appellants and putative class members unless they

have immediate access to money or real property”), 14–16 (asserting an as-applied challenge), 20–22 (grounding the risk of “erroneous deprivations” to defendants’ inability to “afford cash bonds”).

That appellate about-face fails. From the start, Coronell and Holsey have attacked S.B. 63 as *facially* unconstitutional, and they have expressly waived any argument that indigency is the source of “erroneous deprivations” of pretrial liberty under S.B. 63. Start with the complaint, which never uses the term “as applied” or asserts an entitlement to relief based on facts specific to Coronell or Holsey’s individual cases. *See* V1-63–87. Instead, Coronell and Holsey asked the court to “[d]eclare” that S.B. 63 “facially violates due process” and to permanently enjoin “anyone ... acting on behalf of” the State from enforcing it. *Id.* at 87; *see also id.* at 67. Coronell and Holsey note that their complaint “only used the word ‘facially’ twice,” Opening.Br.14, but their requested facial relief made the point clear.

In its motion to dismiss, the State repeatedly took the position that Coronell and Holsey had asserted *only* facial challenges. *See* V1-164, 165 n.3, 167 n.6, 183. In their response, Coronell and Holsey did not dispute that straightforward reading of the complaint—they embraced it. *See id.* at 301–02, 303 (“Plaintiffs bring a proper facial procedural due process claim.”), 303 n.2 (referencing only facial claims, then positing that “the Court *can construe* Plaintiffs’ claims to be as applied, if it deems that appropriate” (emphasis added)), 309 (“Plaintiffs ... bring a proper facial challenge.”), 315 n.13.

In a similar vein, Coronell and Holsey insisted below that “their constitutional claims are *not rooted in indigency*.” V1-301–02 (emphasis added). Rather, they argued, S.B. 63 denies “procedural ... due process, irrespective of wealth.” *Id.* Thus, Coronell and Holsey affirmatively waived reliance on indigency as a plaintiff-specific reason for S.B. 63’s unconstitutionality in application. *See id.*

Given the complaint’s allegations and Coronell and Holsey’s litigation choices, no as-applied challenge is properly before the Court. *See, e.g., Cheddersingh v. State*, 290 Ga. 680, 684 (2012) (“forfeiture is the failure to make the timely assertion of a right”). Instead, this Court must assess the claim Coronell and Holsey *actually* pleaded and pressed below—namely, that *every* defendant, no matter his financial resources, has a right to the possibility of unsecured release. And as discussed, that is not a valid procedural claim.

To be clear, however, any as-applied challenge would fail as a matter of law because Georgia’s bail procedures are constitutionally adequate. *See* Part II.B, *infra*. Nor would Coronell and Holsey’s late-breaking focus on indigency alter the fundamental problem with their claim: The only potential barrier to pretrial release imposed by S.B. 63 on any defendant—indigent or otherwise—is a substantive prohibition on unsecured release, not the denial of additional procedures

b. Coronell and Holsey next offer a procedural gloss on their claim by arguing that S.B. 63, by taking unsecured release off the table as an *outcome*, effectively “provides *no* process for individuals charged

with any of its ... offenses to contest the necessity of a secured bond.” Opening.Br.21 (emphasis in original). But that logic proves far too much: It would convert every substantive claim (*i.e.*, “the constitution guarantees X”) into a procedural one (*i.e.*, “the constitution guarantees a procedure to determine eligibility for X”) subject to a *Mathews*-style balancing test. And it would effectively recognize an independent liberty interest in procedure *itself*—a result that would “stand [the] due process analysis on its head.” *Shango*, 681 F.2d at 1101. “If a right to a hearing is a liberty interest, and if due process accords the right to a hearing, then ... the state may not deprive a person of a hearing without providing him with a hearing. *Reductio ad absurdum.*” *Id.* (emphasis added); *see also Fields*, 701 F.3d at 186.

In short, if the Due Process Clause does not entitle every criminal defendant to the possibility of unsecured release *itself*, it cannot somehow entitle every defendant to a *hearing* on that possibility. And Coronell and Holsey cannot escape the reality that secured release is plainly appropriate for many defendants charged with S.B. 63 offenses. *See Stephens*, 594 F.3d at 1038–39 (applying standard for facial challenges).

B. Assuming Coronell and Holsey have asserted a proper procedural claim, S.B. 63 provides sufficient process.

Had Coronell and Holsey raised a cognizable procedural claim, that claim would fail on its merits, because Georgia’s bail system—even with S.B. 63 in place—provides adequate procedural protections. To

prevail in this facial challenge, Coronell and Holsey must show that S.B. 63 flunks *Mathews* balancing in all its applications—across each bail-restricted offense and category of defendant. *See Bello*, 300 Ga. at 685–86. But they cannot show that S.B. 63’s restrictions are unconstitutional as applied to their own cases, and they do not even *attempt* that showing for non-indigent defendants. In any event, Georgia’s procedural safeguards are adequate across the board: Every defendant has an opportunity to convince the court to release him on affordable terms, and the court must consider indigency in setting bail.

1. When a plaintiff asserts a facial challenge, this Court must consider the plaintiff’s own circumstances “before analyzing other hypothetical applications of the law.” *Raber v. State*, 285 Ga. 251, 252 (2009). A plaintiff whose own rights were not denied cannot “challenge a law because it may conceivably be applied unconstitutionally to others.” *Id.* Coronell and Holsey’s challenge fails at the outset because Georgia’s bail system provided them with sufficient process—indeed, with release. Again, the court imposed a \$3,000 bond in Coronell’s case and a \$4,000 bond in Holsey’s. Opening.Br.8. Those amounts, the court concluded, were necessary to secure Coronell and Holsey’s appearances at trial. *See Ayala v. State*, 262 Ga. 704, 705 (1993). Thus, additional process on granting unsecured release was unnecessary. And the process Coronell and Holsey *did* receive provided ample opportunity to argue for less onerous (perhaps even nominal)

bail terms. *See infra* at 26–30. Because Coronell and Holsey’s rights were not denied, this Court can stop there. *See Raber*, 285 Ga. at 252.

Regardless, this Court must uphold S.B. 63 if it can identify *any* constitutional application. *Bello*, 300 Ga. at 685–86; *United States v. Salerno*, 481 U.S. 739, 745 (1987) (“[T]he challenger must establish that no set of circumstances exists under which the Act would be valid.”).³ And S.B. 63 is obviously capable of constitutional application. To start, setting aside Coronell and Holsey’s express waiver of all indigency-based arguments, *see supra* at 21, they present no coherent theory of how any *non-indigent* defendant could be erroneously deprived of pretrial liberty due to S.B. 63—and no such risk exists where a defendant immediately posts bail. Even for indigent defendants, a trial court can set a low or nominal bond (with or without

³ Coronell and Holsey argue for the “large fraction” standard applied in *State v. Jackson*, 269 Ga. 308, 311 (1998). Opening.Br.15, 25 n.9. But *Jackson* relied on language from *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 895 (1992), which the U.S. Supreme Court later overruled and criticized for “dilut[ing] the strict standard for facial constitutional challenges,” *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 286 (2022). Moreover, this Court has cabined the *Jackson* test to statutes which “unconstitutionally impact a fundamental right,” *Jackson*, 269 Ga. at 311—and S.B. 63 does not, *see Part III.A, infra*. Moreover, aside from *Jackson* itself, this Court has never applied a “large fraction” test beyond First Amendment “vagueness” challenges. *See Catoosa Cnty. v. R.N. Talley Props., LLC*, 282 Ga. 373, 375 (2007); *JIG Real Est., LLC v. Countrywide Home Loans, Inc.*, 289 Ga. 488, 491 (2011). By contrast, the *Salerno* Court applied the more stringent all-applications standard in this precise context. *See* 481 U.S. at 745.

other conditions). Coronell and Holsey admit as much by repeatedly referencing a case in which Kelon Lewis, a homeless person charged with an S.B. 63 offense, was released on nominal bond. V1-76–77; Opening.Br.21. While a court originally set Mr. Lewis’ bond at \$2,000, Coronell and Holsey allege that amount was ultimately reduced to \$1.00 on indigence grounds. *See* V1-76–77. Mr. Lewis’ case shows that S.B. 63 does not mandate detention or otherwise short-circuit the procedural protections of Georgia’s bail statutes.

2. As these examples confirm, S.B. 63 is not facially invalid simply because it presents a risk that some defendants will be detained based on inability to pay.⁴ Rather than zeroing in on ability to pay, courts addressing due process challenges to bail statutes consider whether defendants receive “adequate notice of the importance of the ability to pay” in bail determinations; a “fair opportunity to present, and to dispute, relevant information, and court findings,” *Turner v. Rogers*, 564 U.S. 431, 448 (2011); and “meaningful consideration of other possible alternatives” to unaffordable bail, *Pugh v. Rainwater*, 572 F.2d 1053, 1057 (5th Cir. 1978) (en banc). Again, the relevant question is

⁴ The federal and State constitutions address bail primarily through their respective Excessive Bail Clauses, under which bail is generally not considered constitutionally excessive merely because a defendant cannot pay it. *See Chafin v. Jones*, 243 Ga. 267, 268 (1979) (“We are aware of no decision holding that an indigent defendant is entitled to have bail set which he can meet”); *United States v. McConnell*, 842 F.2d 105, 107 (5th Cir. 1988) (collecting cases).

whether defendants receive adequate process—not whether some defendant, somewhere, will be unable to pay at the *end* of that process.

Coronell and Holsey argue that S.B. 63 deprives them and others of procedural due process by preventing them from being “released *immediately*.” Opening.Br.13, 15 (emphasis added). Of course, if the *denial* of pretrial release on indigency grounds cannot support a facial procedural challenge, neither can *delayed* release.⁵ Concerns about unconstitutionally lengthy detention are primarily addressed through *substantive* due process. *See* Part III, *infra*; *Carr*, 303 Ga. at 859. The federal and state Speedy Trial Clauses provide additional protection. *See* U.S. Const. amend. VI; Ga. Const., art. I, § 1, para. 11. But to state a *procedural* due process claim, Coronell and Holsey must show that S.B. 63 results in the “absolute deprivation of a meaningful opportunity to obtain pretrial release.” *Schultz*, 42 F.4th at 1324.

They cannot. Most important, Coronell and Holsey point to nothing in S.B. 63 that requires a court to set bail above a defendant’s immediate ability to pay. Requiring *some* bail is not the same as *setting* bail, and the latter is governed by provisions that Coronell and Holsey do not challenge. *See* O.C.G.A. § 17-6-1(e)(2) (requiring courts

⁵ The time it took Coronell and Holsey to pay bail—71 and 11 days, respectively—does not change the analysis. Courts have upheld far lengthier pretrial detention. *See, e.g., United States v. El-Hage*, 213 F.3d 74, 79 (2d Cir. 2000) (reviewing cases and upholding pretrial detention expected to last 30-33 months); *United States v. Torres*, 995 F.3d 695, 709 (9th Cir. 2021) (upholding 21-month pretrial detention).

to make an individualized determination when setting bail). Under Georgia law, defendants must receive notice and a hearing within 72 hours. *Id.* § 17-4-26. At that hearing, defendants may be represented by counsel, and they must be given a “reasonable time ... for the preparation of the case.” *Id.* § 17-7-24. Defendants can call witnesses, testify, and present evidence. *Id.* §§ 17-7-25, 28. In setting bail, a court must consider a defendant’s financial resources, income, and obligations; the purpose of bail; and “any other factor [it] deems appropriate.” *Id.* § 17-6-1(e)(2). A court must “explain [its] reasons” for denying bail, *Ayala*, 262 Ga. at 705, and its reasoning and analysis in setting bail are typically entered on the record, *see, e.g., Coleman*, 361 Ga. App. at 901 n.1 (“the trial court cited to its reasoning and analyses which were entered on the record as part of its previous denial orders”); *Pullin v. Dorsey*, 271 Ga. 882, 882 (2000) (discussing the trial court’s stated reasons for increasing bail).

A defendant can then file “subsequent motions to reduce bond,” *see Coleman*, 361 Ga. App. at 901, appeal an unfavorable result by obtaining a certificate of immediate review, *Mullinax v. State*, 271 Ga. 112, 112 (1999) (clarifying the procedures “required to obtain review of an order denying or setting pre-trial bond”), or file a writ of habeas corpus, *see Jones*, 219 Ga. at 585–86. *See also* O.C.G.A. § 5-6-34(b) (allowing trial courts to certify appeals of orders that are “of such importance to the case that immediate review should be had”). And if a defendant argues that he is eligible for unsecured release, the

prosecution has the burden of establishing ineligibility. *See id.* § 17-6-12(b)(2).

These procedural safeguards resemble those upheld by other courts in due process challenges. In *Salerno*, for example, two detainees challenged a provision in the Bail Reform Act requiring a federal court to deny bail if it found a detainee was “likely to commit future crimes.” 481 U.S. at 744. Upholding the provision, the Supreme Court emphasized its “extensive safeguards.” *Id.* at 751–52. Defendants detained under the Act had the right to counsel and could testify, present information, and cross-examine witnesses. *Id.* Judges were “guided by statutorily enumerated factors,” and had to “include written findings of fact and a written statement of reasons” for their decision. *Id.* The government had to prove its case by clear and convincing evidence, and the Act provided appellate review. *Id.* The *Salerno* Court deemed these standards were “more exacting than those” it had found sufficient in other contexts. *Id.* Georgia law provides analogous procedural protections. *See supra* at 26–27.⁶

Similarly, in *Schultz*, an arrestee who remained detained because he could not afford bail challenged an Alabama county’s bail system on

⁶ The sole exception—unmentioned by Coronell and Holsey—concerns the government’s burden of proof. *See Ayala*, 262 Ga. at 704 (preponderance of the evidence); *but see, e.g., United States v. Orta*, 760 F.2d 887, 891–92 (8th Cir. 1985) (applying this burden in the flight-risk context); *McConnell*, 842 F.2d at 110; *cf.* 18 U.S.C. § 3142(e) (defendant has burden to show that a “condition or combination of conditions will reasonably assure” his presence).

procedural due process grounds. 42 F.4th at 1310. The Eleventh Circuit held that the system “satisfie[d]” procedural due process because it provided defendants with notice and a hearing; “the judge’s bail determination may be modified upon a showing of good cause”; the judge’s analysis was guided by statutory factors; and the judge “must make written findings of fact specifying which factors he considered in setting the amount of bail.” *Id.* at 1335. Once again, Georgia law offers similar procedures.

3. Against that backdrop, the “probable value, if any, of additional or substitute procedural safeguards” would be minimal. *Steiner*, 303 Ga. at 890. Coronell and Holsey assert a right to “individualized review” of the possibility of *unsecured* release for every defendant. *See* Opening.Br.19–21. But for S.B. 63 to cause an “erroneous” denial of pretrial liberty (on their theory) all of the following must be true: (1) the defendant is charged with a bail-restricted offense added by S.B. 63; (2) based on the defendant’s minimal risks, the judge *would have* granted unsecured judicial release absent S.B. 63; (3) after a hearing at which the defendant may argue for low bail, and after considering the defendant’s financial resources, the judge sets unaffordable bail. These contingencies are not fodder for a successful facial challenge.

Moreover, given a defendant’s ability to challenge a judge’s bail determination, there is no reason to deem an additional hearing on unsecured release a constitutional necessity. Again, a defendant can file a motion to reduce the bond amount. *See, e.g., Colemon*, 361 Ga.

App. at 901, 904 (reviewing order on motion to reduce bond); *Jones*, 219 Ga. at 588. That gives a defendant the opportunity “to show through other means [than paying bail] that they [will] appear at trial.”

Schultz, 42 F.4th at 1324. A defendant can appeal the court’s decision for abuse of discretion, including on grounds that the court failed to consider financial circumstances under O.C.G.A. § 17-6-1(1)(e). *See, e.g., Coleman*, 361 Ga. App. at 901–02. And he can argue that bond is “higher than that reasonably calculated to secure his appearance” and thus statutorily or constitutionally excessive. *Jones*, 219 Ga. at 587.

4. Finally, while criminal defendants undoubtedly possess an important interest in pretrial liberty *in general*, the State’s interests outweigh an S.B. 63 defendant’s interest in eligibility for unsecured release *in particular*. *See Steiner*, 303 Ga. at 890 (requiring consideration of both “the private interest affected by the state action” and “the interest of the government”).

To start, the State has “a compelling interest in assuring the presence at trial of persons charged with crime.” *Schultz*, 42 F.4th at 1323. “Like the ancient practice of securing the oaths of responsible persons to stand as sureties for the accused, the modern practice of requiring a bail bond or the deposit of a sum of money subject to forfeiture serves as additional assurance of the presence of an accused.” *Stack v. Boyle*, 342 U.S. 1, 3 (1951). Indeed, “failure to appear and fugitive rates are lower for defendants released through [secured] bond compared to other forms of pretrial release.” Thomas H. Cohen,

Commercial Surety Bail and the Problem of Missed Court Appearances and Pretrial Detention, 3 Annual Conference on Empirical Legal Studies Papers 331, 352 (2008).

The State also has a “legitimate and compelling” interest in community safety. *Salerno*, 481 U.S. at 749. Evidence shows that “[i]n addition to preventing violent crimes, pretrial detention may also prevent crimes associated with the obstruction of justice, such as intimidating potential witnesses or jurors.” Crystal Yang, *Toward an Optimal Bail System*, 92 N.Y.U. L. Rev. 1399, 1431–32 (2017). Pretrial arrests for violent crimes are “not uncommon, and impose substantial societal costs.” *Id.* Requiring defendants charged with serious and violent offenses, like many of those added by S.B. 63, *see* O.C.G.A. § 17-6-12(a)(1)(AA)–(EEE), to post bail through secured means therefore helps to ensure that repeat offenders do not present a threat to the community. S.B. 63 preserves a judge’s discretion to tailor release conditions and set the bond amount for individual defendants so that only dangerous offenders must remain behind bars.

Finally, the State has an important interest in improving the administration of justice. The “[c]riminal justice [system] is already overburdened by the volume of cases and the complexities of our system.” *Gerstein v. Pugh*, 420 U.S. 103, 122 n.23 (1975). Particularly in the “early stages of prosecution,” delays “can seriously affect the quality of justice.” *Id.* Requiring an individualized determination on

whether a person should receive unsecured release in every criminal case would “exacerbate the problem.” *See id.*

These interests outweigh an S.B. 63 defendant’s interest in the opportunity to argue for unsecured release (as opposed to low or even nominal bail) in every case. After all, “where the government’s interest is sufficiently weighty,” even an “individual’s strong interest in liberty”—to say nothing of *unsecured* release—may be “subordinated to the greater needs of society.” *Salerno*, 481 U.S. at 750–51. And in each S.B. 63 case, the State has shown probable cause that the defendant committed one of many serious crimes, such as sex trafficking, voluntary manslaughter, or domestic terrorism. *See* O.C.G.A. § 17-6-12. “Given the well-established authority of the government ... to restrain individuals’ liberty prior to or even without criminal trial and conviction,” *Salerno*, 481 U.S. at 749, S.B. 63’s bail restrictions impose a relatively common and minor burden on most detainees.

III. S.B. 63 does not facially deny substantive due process.

Having framed their argument in procedural terms thus far, Coronell and Holsey switch gears and assert that S.B. 63 substantively infringes a fundamental right to pretrial liberty, triggering strict scrutiny. “Fundamental ... rights are those that are recognized as having a value so essential to individual liberty in our society that their infringement merits careful scrutiny by the courts.” *Ambles v. State*, 259 Ga. 406, 408 (1989). When a statute infringes such a right, strict scrutiny applies, and a court must assess whether the restriction is

“narrowly tailored to serve a compelling state interest.” *Id.* at 407. This Court has *never* applied strict scrutiny to a bail statute like S.B. 63, and it should not start now. Regardless, S.B. 63 is not facially unconstitutional under any applicable test.

A. Strict scrutiny does not apply.

Georgia’s Due Process Clause prohibits the State from depriving an individual of his “liberty” without “due process of law.” Ga. Const., art. I, § 1, para. 1. The doctrine of substantive due process requires strict judicial “scrutiny” of statutes that infringe “fundamental” rights established by “[h]istory and tradition” as “essential to individual liberty.” *Ambles*, 259 Ga. at 408. To satisfy strict scrutiny, the State must show that the challenged restriction is “narrowly tailored to serve a compelling state interest.” *Id.* at 407. Coronell and Holsey claim that pretrial liberty is a fundamental right, that S.B. 63 is subject to strict scrutiny, and that it fails review. Opening.Br.25–34. They are wrong.

Despite recognizing the importance of pretrial liberty, neither this Court nor the U.S. Supreme Court has applied strict scrutiny to a bail statute in response to a substantive due process claim. *See, e.g., Carr*, 303 Ga. at 858–60; *Salerno*, 481 U.S. at 747. While pretrial liberty is undeniably “importan[t] and fundamental” in a meaningful sense, pretrial detention of criminal defendants does not “categorically” transgress “some principle of justice so rooted in the traditions ... of our people as to be ranked as fundamental.” *Salerno*, 481 U.S. at 750–51; *Schultz*, 42 F.4th at 1332 (“Pretrial detainees have no fundamental

right to pretrial release.”). Accordingly, strict scrutiny does not apply—instead, the question is whether “the nature and duration of [detention] bear[s] some *reasonable relation* to the purpose for which the individual is committed.” *Carr*, 303 Ga. at 859 (quotation and emphasis omitted, emphasis added). Put differently, pretrial detention does not constitute “impermissible punishment” provided it is “rationally ... connected” to a non-punitive purpose and not excessive in relation to that purpose. *Salerno*, 481 U.S. at 747 (citations and quotation omitted).

In arguing otherwise, Coronell and Holsey rely heavily on *Salerno*. See Opening.Br.29. But in *Carr*, this Court did not interpret *Salerno* to mandate strict scrutiny of pretrial detention—much less the conditions attached to pretrial *release*. See *Carr*, 303 Ga. at 858–60. As the Eleventh Circuit recently reiterated, *Salerno* did not recognize a “fundamental right to pretrial release” that triggers strict scrutiny. *Schultz*, 42 F.4th at 1332; see also *Walker v. City of Calhoun, Ga.*, 901 F.3d 1245, 1262 (11th Cir. 2018) (“[T]he *Salerno* Court’s analysis was much closer to a relatively lenient procedural due process analysis than it was any form of heightened scrutiny.”).

None of this can be squared with Coronell and Holsey’s reasoning. They define the asserted fundamental right at a sky-high level of generality as “the right to liberty,” Opening.Br.26—a framing that flouts this Court’s focus on a specific historical tradition and would dramatically expand substantive due process, *Ambles*, 259 Ga. at 408. They then posit that S.B. 63 infringes this right by making it harder for

some defendants—those without “immediate access to sufficient cash”—to secure immediate release. Opening.Br.28. Thus, strict scrutiny must apply—and S.B. 63 fails it, because it is “overinclusive” in the sense that its bar on unsecured release applies to *categories* of defendants regardless of their *individual* circumstances. *Id.* at 32–33.

Under that logic, numerous provisions of the Georgia Code are subject to—and flunk—strict scrutiny merely because they increase the likelihood that some defendant, somewhere, will face an additional day, hour, or minute of pretrial detention. *See, e.g.*, O.C.G.A. §§ 17-6-1(e)(3) (requiring courts to presume that “no condition or combination of conditions will reasonably assure the appearance” of certain repeat violent offenders “or assure the safety of any other person or the community”); 17-6-1(f)(1) (authorizing courts to “establish a schedule of bails” and to grant release only upon “posting bail as fixed in the schedule”); 17-6-1(f)(4) (requiring that defendants charged with certain gang offenses pay “increased bail”). Nor is Georgia an outlier in this regard: Under Coronell and Holsey’s strict-scrutiny theory, numerous state bail restrictions would be unconstitutional merely because they apply to enumerated categories of defendants, including those who are currently on bail for another offense, have previously failed to appear, or (as in Georgia) have been charged with certain serious or violent

offenses.⁷ That radical proposition finds no foothold in Georgia law, and this Court should not carve one out.

B. S.B. 63 satisfies any applicable test.

Under *Carr*, pretrial detention is permissible if it is “rationally connected to a non-punitive purpose and it is not excessive in relation to that purpose.” 303 Ga. at 859 (quotation omitted). “At the least, [substantive] due process requires that the nature and duration of [detention] bear some reasonable relation to the purpose for which the individual is committed.” *Id.* (quotation and emphasis omitted). S.B. 63’s bail restrictions easily satisfy *Carr*’s nature-and-duration test because they do not regulate (much less dictate) the nature or duration of any defendant’s detention. And any incidental effect of S.B. 63 on the duration of detention is reasonable in relation to the purposes of bail. S.B. 63 is certainly not unconstitutional in “all of its applications.” *Bello*, 300 Ga. at 686 (quotation omitted).

⁷ See Ala. R. Crim. P. Rule 7.2 (mandatory secured bond for defendants charged with murder, kidnapping, rape, and other offenses); Colo. Rev. Stat. § 16-4-104 (mandatory secured bond for persons already on bail or who have previously failed to appear or have been convicted of certain offenses within certain timeframes); La. Code Crim. Proc. Ann. art. 321 (defendants charged with certain offenses); Mich. Comp. Laws Serv. § 765.6a (defendants on bail bonds or twice convicted of a felony within five years); Okla. Stat. tit. 22, § 1105 (defendants charged with violating protective orders or domestic violence offenses); Tex. Code Crim. Proc. Ann. art. 17.03 (defendants charged with certain offenses or civilly committed as a sexual violent predator); Va. Code Ann. § 19.2-123 (defendants charged with felonies who have previously been convicted of a felony or who are on bail for another offense).

This case is nothing like *Carr*. The statute in *Carr* required courts to transfer defendants found mentally incompetent to stand trial “to the physical custody of the department” of Behavioral Health and Developmental Disabilities for an evaluation to be conducted within 90 days. 303 Ga. at 860 (citation omitted). Starting with the “duration” of detention, this Court held that the statute would be unconstitutional “if the lack of explicit deadlines” surrounding the evaluation “meant that a defendant could be detained indefinitely.” *Id.* at 861–62. It therefore construed the law to require “a reasonable time limit for each step.” *Id.* at 862. Moving to the “nature” of detention, the Court held that mandatory commitment was not required to achieve the law’s purpose of obtaining a “careful and accurate diagnosis.” *Id.* at 866. Even so, the Court tailored its injunction to the discrete constitutional defect, *id.* at 869, holding that the law could not be enforced where a court “determines that inpatient evaluation is not appropriate,” *id.* at 870.

Unlike the statute in *Carr*, S.B. 63 does not require automatic detention for certain defendants. Indeed, it does not mandate pretrial detention at all, or that any defendant be detained for any length of time. Instead, S.B. 63 simply requires certain defendants to post *some amount* of bail to secure release, while preserving the procedural safeguards that apply to all bail proceedings in Georgia. By law, no defendant can be required to post an amount of bail higher than what is necessary to secure their appearance at trial, *see Ayala*, 262 Ga. at 705, and defendants have multiple options available to challenge the

outcome of their bail proceedings, *see supra* at 26–27. Defendants can also challenge their ineligibility for unsecured release. *See supra* at 28. There is simply no basis to deem the General Assembly’s preference for secured over unsecured release for certain offenses unconstitutional in any case, let alone in all applications.

To the extent S.B. 63 affects the duration of detention for some defendants, that affect is not *per se* “[ir]rational” or “[un]reasonable.” *See Carr*, 303 Ga. at 859. The statute’s bail restrictions serve weighty and compelling State interests, including “assuring the presence at trial of persons charged with crime,” *Schultz*, 42 F.4th at 1323 (citation omitted), protecting the community, *Salerno*, 481 U.S. at 749, and improving the administration of justice, *Gerstein*, 420 U.S. at 122 n.23. *See supra* at 30–32. Nor are S.B. 63’s restrictions “excessive” in relation to these purposes; rather, they impose a relatively common and minor burden on defendants: the payment of a secured bond or cash bail (in some cases as low as \$1.00) after a hearing at which the court must account for a defendant’s financial resources. *See V1-76–77; supra* at 26–27. Deeming S.B. 63 unconstitutional merely because it prohibits one form of pretrial release for certain defendants would declare open season on numerous Georgia bail provisions. *See supra* at 34–35. Nothing in this Court’s precedent requires that destabilizing result.

IV. The motion for class certification is moot.

The superior court correctly dismissed Coronell and Holsey’s claims without first adjudicating their class-certification motion. *See Glynn Cnty. v. Coleman*, 334 Ga. App. 559, 561 (2015) (citing 5–23 Moore’s Federal Practice § 23.81[2]) (a court may rule on a dispositive motion before deciding whether to certify a class)); *see also Thornton v. Mercantile Stores Co.*, 13 F. Supp. 2d 1282, 1289 (M.D. Ala. 1998) (explaining that “the vast majority of courts” permit this sequencing). Coronell and Holsey rely on *Peck v. Lanier Golf Club, Inc.*, where the Court of Appeals reversed a lower court’s denial of class certification on grounds relevant only to the merits of the named plaintiff’s claim. 298 Ga. App. 555, 557 (2009). Here, however, the superior court made no “findings of fact on the merits of [Coronell and Holsey’s] claim[s],” *id.*, because they asserted a facial challenge. *See supra* at 19–21. Unlike in *Peck*, the superior court ruled based on legal principles applicable to the entire class, not just the named plaintiffs.

CONCLUSION

For the reasons set out above, this Court should affirm the judgment of the Superior Court of Fulton County.

Respectfully submitted.

This submission does not exceed the word count limit imposed by Rule 20.

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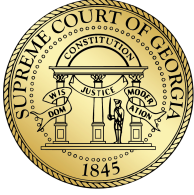
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SUPREME COURT OF GEORGIA
Case No. S26A0410

November 19, 2025

SIERRAH CORONELL et al. v. STATE OF GEORGIA.

Your request for an extension of time to file the brief of appellee in the above case is granted until December 29, 2025.

A copy of this order **MUST** be attached as an exhibit to the document for which the appellee received this extension.

SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Theresa A. Barnes, Clerk