No. 129248

IN THE SUPREME COURT OF ILLINOIS

JAMES R. ROWE, KANKAKEE COUNTY STATE'S ATTORNEY, and MICHAEL DOWNEY, KANKAKEE COUNTY SHERIFF,

Plaintiffs-Appellees,

v.

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

Defendants-Appellants.

On Appeal from the Circuit Court of the Twenty-First Judicial Circuit, Kankakee County, Illinois

No. 2022CH16

The Hon. Thomas W. Cunningham
Chief Judge Presiding

BRIEF FOR AMICUS CURIAE CHICAGO FOP LODGE #7 IN SUPPORT OF PLAINTIFF-APPELLEES

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POINTS AND AUTHORITIES

I. INTRODUCTION AND INTEREST OF AMICUS

The Chicago FOP Lodge #7 (Lodge 7) is the largest Local Lodge in Illinois and represents approximately over 11,500 sworn Chicago Police Officers. As their recognized collective bargaining agent, Lodge 7 works to improve wages, working conditions, and provides many benefits for Chicago Police Officers.

Lodge 7, as an amicus curiae organization, has a significant interest in the outcome of this matter as it will have a drastic adverse impact on the work and safety of its members, their families, the community they serve, and the work of all law enforcement officers across Illinois. Members of Local 7, as Chicago Police Officers, are intricately involved and affected by the criminal prosecution process that Public Acts 101-652 and 102-1104 ("SAFE-T Act") significantly impacts. Illinois Police Officers are uniquely situated to be significantly affected by the SAFE-T Act. It is police officers that must patrol the streets of Illinois and engage criminals on daily basis – criminals that see officers as a threat to their freedom.

Setting aside the substantial constitutional flaws of the SAFE-T Act, as thoroughly set forth by Plaintiff-Appellees in this litigation, the Act sets forth a recipe for increases in crime, recidivism, dysfunction in the criminal prosecution system, and danger to police officers and the communities they serve. Since 2019, Chicago has lost over 3,000 officers through early departure due to the increasing undue demands and risks put on their shoulders. Chicago Police Officers are increasingly demoralized and attacked for their service, service that has been hamstrung by policy that protects criminals and villainizes law enforcement. In recent years, Chicago Police Officers, and law enforcement in general, have been the subject of attack after attack. Suicides amongst officers have dramatically increased. In the wake of this villanization, Illinois lawmakers have hastily passed the SAFE-T Act as a knee-jerk reaction without any due diligence or deference to

the people that must enforce the law. This is illustrated by the numerous last-minute amendments rushed in to desperately save the ill-conceived law.

As demonstrated herein, provisions similar to those of the SAFE-T Act were implemented in Cook County in 2017 and offer an insightful experiment that has made Cook County communities and the officers that serve them significantly less safe. Cook County's reform illustrates the alarming and dangerous consequences of removing the courts' authority and mandating the release of pretrial criminal defendants, including those accused of heinous and violent acts.

Lodge 7 presents this Amicus Brief for the important purpose of bringing to the attention of this Court the enormously negative impact the SAFE-T Act imposes on the daily lives of our members and the entire Chicago community. The data confirms the serious threat to our community as a result of the level of crime our citizens face daily. WBEZ Radio reports that their polling reveals that 63% of Chicagoans do not feel safe for fear of crime. The number expands to a staggering 84% of African American residents. We submit that a community facing these of levels of daily fear cannot survive. That fear undermines the very stability that a community must have in order to provide a livable environment, a venue in which families are able to raise their children in security and where business can risk investments to raise economic viability.

While many argue that economic growth and job training are essential components of any crime reduction plan, Lodge 7 respectfully submits that improving economic conditions and bringing in increased job opportunities to our city is severely hampered by the reality and perception of crime in Chicago. Removing the discretion from our judiciary to determine appropriate conditions, including monetary bail, upon the pretrial release of those accused of crime

will only exacerbate the level of fear the residents of our community face as well as the dangers our members must confront.

II. ARGUMENT

A. Importance of Pretrial Detention.

The Illinois Constitution provides that monetary bail is within the discretion of the courts to determine, in consideration of the potential threat an offender would pose to the physical safety of any person. Ill. Const. art. I. Sec. 9. The longstanding purpose of bail is to balance the defendant's rights with the interests of the criminal justice system including assuring a defendant's presence at trial and the protection of the public. Bail and pretrial detention have been used since the founding of the United States and upheld time and time again by the Supreme Court of the United States. Not only do pretrial detention and monetary bail help to ensure defendants return for trial, but they protect the public from active criminals, and they protect witnesses and victims of crime from retaliation and intimidation. The SAFE-T Act explicitly abolishes monetary bail, not only in contradiction of the Illinois Constitution, but at the expense of the safety of police officers and the communities they serve. 725 ILCS 5/110-1.5.

Pretrial detention, including monetary bail, has a significant impact on the safety of Illinois citizens and law enforcement. The effect of the SAFE-T Act's prohibition of monetary bail and limits on the courts' discretion in pretrial release may be illustrated by similar steps that were taken in Cook County in 2017. In 2017, the Circuit Court of Cook County, Illinois, issued G.O. 18.8A (effective September 2017), which was intended to reduce the use of monetary bail and increase pretrial release of defendants. Similar to the expected result of the SAFE-T Act, Cook County's Order resulted in a dramatic increase in pretrial releases. According to Cook County, between October 1, 2017 (approximately two weeks after the Order took effect) to June 30, 2021, over 18%

of pretrial defendants committed felonies while on release.[1] Circuit Court of Cook County, *Circuit Court of Cook County Model Bond Court Dashboard,* (Sept. 2021).

A study at the University of Utah of the Cook County bail reform shows in the relevant time periods of pre-reform and post-reform analyzed, the Order resulted in an increase of released pretrial defendants from 20,435 to 24,504. Paul Cassell & Richard Fowles, *Does Bail Reform Increase Crime? An Empirical Assessment of the Public Safety Implications of Bail Reform in Cook County, Illinois*, Utah Law Faculty Scholarship. (2020). According to the study, this increase in pretrial releases resulted in a 45% increase in crime committed by pretrial releasees. *Id*. at 20. This significant increase resulted despite the continuing trend of decreased overall crime. Even more disturbing, violent crime committed by pretrial releasees increased by 33%. *Id*. at 23. The number of defendants released with a "violence flag" increased by 39%. *Id*. at 24. The percentage of released defendants charged with violent crimes increased from 43.2% to 46.5% and the percentage of released defendants charged with crimes against a person increased from 48% to 61.6%. *Id*. at 24. Released defendants charged with weapons offenses increased from 60.6% to 76.4%. The Study further demonstrates the result of Cook County's bail reform by pointing out that over the 2019 Memorial Day weekend, 118 adults were charged with felony weapons offenses. *Id.* at 24. An alarming 30% of those arrested were released without posting any monetary bond. *Id*.

To further illustrate the consequence of Cook County's detention reform, the percentage of charges that were dropped in aggravated domestic battery cases increased from 56% in 2016 to 70% in 2018. *Id*. at 29. As the citizens and Police Officers of Chicago know all too well, dangerous

[1]https://www.cookcountycourt.org/Portals/0/Chief%20Judge/Model%20Bond%20Court/2021/2021_2%20New%20Dashboard%20Final.pdf?ver=UCTiYzfNiDpBBkzTnzmGgA%3d%3d

crimes such as car-hijacking have sharply increased, going from 939 in 2017 to 1,852 in 2021.[2] Chicago Police Department, *Annual Report 2017* (2018); Chicago Police Department, *Annual Report 2021* (2022). Aggravated assaults with firearms increased 29% from 2017 to 2021. *Id*. And of course, Chicago, world renowned for its murder, saw an increase of 23% in criminal homicide in 2021 compared to 2017. *Id*.

This data shows the distressing result of the increasingly dangerous trend of Illinois lawmakers to put criminals before law-abiding citizens and those that protect them. The implementation of the SAFE-T Act will undoubtedly result in more pretrial defendants being released as has occurred in Cook County. In fact, the SAFE-T Act goes even further than Cook County has in its design and purpose to eliminate monetary bail and remove discretion from courts in pretrial detention. The SAFE-T Act not only eliminates monetary bail, but it also narrows the legal basis for pretrial detention, removing discretion from courts and prosecutors. The result will be dramatic increases in crime, violent crime, and danger to communities across Illinois.

Chicago Police Officers, and all law enforcement across Illinois, are uniquely affected by the implications of the SAFE-T Act on the criminal prosecution system. Moreover, the data presented here confirms that the previously described level of fear residents of Chicago report is warranted.

B. <u>SAFE-T Act's Effect on Pretrial Detention</u>.

As demonstrated above, Cook County's reform has resulted in an alarming increase in crime, including violent crime. The SAFE-T Act goes much further in its reform of pretrial detention than Cook County's 2017 bail reform. The Act eliminates monetary bail, restricts the

[2]https://home.chicagopolice.org/wp-content/uploads/2017-Annual-Report.pdf; https://home.chicagopolice.org/wp-content/uploads/2021-Annual-Report.pdf

court's discretion even further in determining whether defendants pose a threat that warrants detention, and it frustrates and allows inefficiency in the judicial process.

To highlight the frustration and obstacles the SAFE-T Act imposes on the court system, it provides that a pretrial-detained defendant shall be brought to trial within 90 days of the order of detention. According to the Cook County State's Attorney, between 2015 and 2020, just 28% of felony cases were resolved within three months, 47% in under six months, and 73% in under a year. Cook County State's Attorney Office, *State's Attorney Felony Cases – Average Case Length and Sum of Length, By Offense Type* (2021). Given the state of the Cook County judicial system in resolving felony cases and the long, protracted process of bringing a felony case to trial, the result will certainly be an increase in felony charged defendants, including those charged with violent crimes, to be released on the streets. This in turn will obviously lead to an increase in crime and inevitably an increase in danger to law enforcement and law-abiding citizens.

The SAFE-T Act also goes further than Cook County in its restriction on the discretion of prosecutors and courts in determining whether pretrial detention is warranted. The Act abolishes the constitutionally recognized and affirmed concept of monetary bail. The Act mandates release for certain crimes, limiting courts and prosecutors, who are best situated to know and evaluate the specific facts of the case, in their authority to decide whether detention is warranted. The Act provides that courts may not consider a defendant's past failures to appear in court when considering whether a defendant poses a risk of not appearing in court in the future. This nonsensical restriction on the court makes it more likely that pretrial defendants will remain on the streets despite their disregard for the process and the court's authority. In the interest of not restating the numerous flaws of the SAFE-T Act and its overreaching restrictions on the authority of courts in pretrial detentions that have been effectively illustrated by the Appellees, the ultimate

point is that the SAFE-T Act will result in a dramatic increase in crime and danger to Illinois communities and law enforcement.

Importantly, the current system which grants authority to judges and prosecutors in such matters as pretrial detention, allows for citizens to hold their officials accountable. Judges and State's Attorneys, as elected officials, can be held accountable for their decisions. SAFE-T, by imposing such restrictions and mandates on the courts and prosecutors, allow these elected officials to wash their hands of responsibility. And citizens are left without recourse to hold these parties responsible.

As Cook County has shown, even under less restrictions than SAFE-T provides, less detention results in more crime, including violent crime. Citizens and law enforcement in Cook County know this firsthand. Illinois will undoubtedly see dramatic increases in crime because of the SAFE-T Act, and with increases in crime come danger to citizens and law enforcement.

Chicago Police Officers, and all law enforcement across Illinois, are uniquely affected by the implications of the SAFE-T Act on the criminal prosecution system. SAFE-T will allow more criminals on the streets, making it harder for officers to work with witnesses and victims to investigate crime. While crime statistics in Chicago may be represented by ink and paper in the comfort of politicians' offices, police officers must face the real-life threat of that crime. A 45% increase in crime is not just data to police officers, it represents a clear and present threat to their lives. A 17% increase in defendants released on weapons charges represents a drastic rise in dangerous offenders that police officers must encounter. A 33% increase in violent crime committed by pretrial releasees is not just a number to police officers – it's a substantial and real threat to their lives every time we ask them to put their badge on and go to work.

Residents of the City of Chicago go to bed each night secure in the knowledge that their officers stand ready to protect them from harm. They know that when they call, police officers will respond immediately, placing the safety of others ahead of their own security. Officers will respond courageously, regardless of the danger to themselves. Their families and friends worry more about them than the officers do themselves. They are proud to serve and never hesitate to answer a call. That is their job, their duty, and truly their calling in life.

Unfortunately, in the last few years a movement has surged in this country, aided and abetted by politicians to undermine the very system of police protection that guarantees security while also protecting liberty. Lawless street bands, prodded by political elites, have risen to demand a "defunding" of the police and their replacement with social service agencies. Others have garnered praise from national media for attacking and demonizing police. And all this with no denunciation from many large city Mayors, like the one to whom our members report.

As this decline in respect for police officers grew and was encouraged, Illinois lawmakers pushed SAFE-T in undue haste, without consideration of all the unintended consequences and without meaningful input from those directly impacted by this legislation - the law enforcement community and the public they serve. As a result of this fair-weather political opportunism and disregard for due diligence, Illinois lawmakers have thrust upon their constituents this ill-conceived and dangerous Act. The obvious result, as shown in Cook County's similar, yet less invasive bail reform, is a drastic increase in crime, including violent crime. And when a crime is committed, police officers will respond to the call. We respectfully ask that this Court listen to the pleas of those who risk their lives every day in a committed effort to protect the safety of our communities, communities which simply cannot on their own protect their families from the terror presented by the crime they face.

C. The SAFE-T Act Violates the Single-Subject Clause of Article IV, Section 89(d) of the Illinois Constitution.

In addition to demonstrating the negative societal impacts of the SAFE-T Act upon our members and their community, Lodge 7 joins the Plaintiff-Appellees in this matter in arguing that the Act clearly violates the single-subject clause of Article IV of the Illinois Constitution.

The single-subject provision of the Illinois Constitution provides that "Bills, except bills for appropriations and for the codification, revision or rearrangement of laws, shall be confined to one subject." Ill. Const., art. IV, Sec. 8(d). In reviewing a single-subject matter, courts apply a two-part analysis. *People v. Burdunice*, 211 Ill.2d 264, 267 (2004). The court first must determine whether the Act, on its face, addresses a "legitimate single subject." *Id*. Second, the court must "discern whether the various provisions within an act all relate to the proper subject at issue." *Id*. In other words, the court must determine whether the "individual provisions of the Act have a 'natural and logical' connection to that subject." *Id*. at 268. Where a public act violates the single-subject rule, the act is void in its entirety. *People v. Reedy*, 295 Ill. App. 3d 34, 42 (2nd Dist. 1998).

The broad reach of the SAFE-T Act addresses multiple areas of law that have no natural or logical connection to a single-subject. Defendant-Appellants have argued that the SAFE-T Act does not violate the single-subject provision of the Illinois Constitution as the Act relates to reforms in the criminal justice system. The Trial Court agreed, finding that the single-subject is the "criminal justice system." The Chicago FOP Lodge 7 respectfully disagrees with the Trial Court's findings on this single-subject issue.

While much of the SAFE-T Act, over its 764 pages and 265 separate statutes, seems to bare some logical connection to the broad subject of the "criminal justice system," not every provision meets this standard. The SAFE-T Act implicates a litany of issues related to criminal law and the criminal justice system including bail reform, sentencing, pretrial release, use of force,

police training, and rights of prisoners to name a few. However, the Act further invades the totally civil area of contracts and the collective bargaining process.

The Act amends the Illinois Public Labor Relations Act to state: "In the case of peace officers, the arbitration decision shall be limited to wages, hours, and conditions of employment (which may include residency requirements in municipalities with a population under 100,000, but those residency requirements shall not allow residency outside of Illinois) and shall not include... residency requirements in municipalities with a population of at least 100,000." 5 ILCS 315/4(i). This amendment to the Illinois Public Labor Relations Act bears no logical connection to the criminal justice system apart from the fact that it affects peace officers.

In *People v. Burdunice*, the Illinois Supreme Court found that the act in question violated the single-subject rule where the act encompassed matters relating to both criminal law and civil law. 211 Ill.2d 264 (2004). Similarly, the SAFE-T Act unquestionably invades the purely civil area of collective bargaining and contract law. This is a civil and contractual right of officers to engage in the collective bargaining process. If any law that references peace officers is considered applicable to the criminal justice system, then the single subject provision of the Illinois Constitution is meaningless, it is illusory in practice.

CONCLUSION

For the foregoing reasons, Amicus Curiae Chicago FOP Lodge 7, respectfully requests that this Honorable Court affirm the Circuit Court's Decision.

Respectfully Submitted,

Amicus Curiae Chicago FOP Lodge #7

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The following interested individuals submit their support of this Brief and the arguments set forth herein:

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 11 pages.

/s/ Timothy M. Grace_____
Attorney for Amicus Curiae FOP Lodge 7

AMENDED CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 11 pages.

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NOTICE OF FILING

To: See attached service list

PLEASE TAKE NOTICE that on February 22, 2023, CHICAGO FOP LODGE 7, as proposed *Amicus Curiae,* filed via the Court approved E-File system in the Supreme Court of Illinois the attached **Amended Certificate of Compliance**, a copy of which is hereby served upon you.

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CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that on February 22, 2023, I caused the foregoing **Amended Certificate of Compliance** to be submitted to the Clerk of the Supreme Court of Illinois using the Court's electronic-filing system. The undersigned further certifies that on February 22, 2023, I caused a copy of the above- **Amended Certificate of Compliance** to be served upon the parties listed in the attached service list through the Court approved electronic-filing and service system.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

/s/ Timothy M. Grace
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