TO: House Criminal Justice Committee

FROM: Patrick Higgins, Policy Counsel, ACLU of Ohio

DATE: April 6, 2022

RE: House Joint Resolution 2 – Opponent Testimony

Chairman LaRe, Vice Chair Swearingen, Ranking Member Leland, and members of the House Criminal Justice Committee:

My name is Patrick Higgins, and I have the pleasure of serving as Policy Counsel at the ACLU of Ohio. Thank you for the opportunity to present opponent testimony in today's hearing on House Joint Resolution 2 ("HJR 2") which, because it proposes an unnecessary and harmful response to a Supreme Court of Ohio decision, should be rejected soundly by this Committee. The recent Court decision simply underscores what we have known for a long time: the purpose of bail is to ensure the accused person's appearance at court. Simply put, the *DuBose* decision does not need fixing.

The ACLU of Ohio opposes HJR 2 for the following reasons:

- The changes proposed in HJR 2 are not necessary or helpful.
    - *DuBose* made clear that should a court or prosecuting attorney wish to deny a person bail, courts and prosecutors have legal tool to do so, but that tool is not wielded by setting excessive cash bail.
    - Passage of HJR 2 does not absolve compliance with the Eighth Amendment's prohibition of excessive bail.
- Cash bail does not keep us safe.
    - Instead, it creates a two-tiered system of justice, allowing wealthy individuals to go home regardless of the threat they pose to the community. Simply put, a person should not be incarcerated because of the amount of money—or lack thereof—in their wallet. Further, our fiscal impact analysis found that 63 percent of the people held in jail pretrial were charged with a misdemeanor or non-person felony.
- This Committee has a significantly better alternative before it.
    - House Bill 315—as well as its companion legislation, SB 182—is an evidence-based, public safety-focused approach to pretrial fairness. This bill has a broad and bipartisan coalition of support[1] that in large part mirrors the opposition standing up against HJR 2 today.
- Cash bail is remarkably costly for all of us.
    - Cash bail has a clear, damaging cost to people accused of crimes, their families, and their communities. The wealth extracted from black and low-income communities because of our overreliance on cash bail has an effect far beyond the instant criminal case.

[1] https://www.acluohio.org/en/publications/endorsements-sb-182-and-hb-315-bail-reform

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- The average daily cost of holding a person in a jail is $64.45-87.40 per day.[2] With as many as 12,000 legally innocent people held in our jails across the state on any given day, the expense of our state's overreliance on cash bail is staggering.
- True pretrial fairness efforts like those in HB 315 and SB 182 have the potential to save our state and incredible amount of money. The ACLU of Ohio published a fiscal impact analysis estimating annual savings of $199,000,000 - $264,000,000.[3]

You have a unique opportunity in this moment of time, General Assembly, and Committee. Directly impacted people, advocates, and lawmakers have spent years making our pretrial system work fairly and reached consensus in House Bill 315 and Senate Bill 182. All of us acknowledge that cash bail does not keep us safe. We are on the path to pretrial fairness, but that path does not go through House Joint Resolution 2. For this reason, I urge you to reject it.

[2] https://www.acluohio.org/en/publications/ohio-could-save-big-implementing-bail-reform-fiscal-impact-analysis
[3] *Id*.