Ohio Senate Judiciary Committee
Senate Joint Resolution 5 Opponent Testimony
Micah Derry – Arnold Ventures
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Chairman Manning, Vice Chairman McColley, Ranking Member Thomas, and members of the Ohio Senate Judiciary Committee, thank you for receiving my testimony regarding Senate Joint Resolution 5.

My name is Micah Derry and I represent Arnold Ventures. Arnold Ventures is a philanthropy dedicated to tackling some of the most pressing problems in the United States. We invest in sustainable change, building that change from the ground up based on research, deep thinking, and a strong foundation of evidence. We drive public conversation, craft policy, and inspire action through education and advocacy.

I would be remiss to offer this opposition testimony without beginning with a sincere acknowledgement of gratitude to the sponsor of SJR 5 for drawing attention to a pressing issue in Ohio – that is the compromised state of our public safety by the wanton abuse of one of the often-ignored tools of our courts at the outset of the criminal justice system, widely known as "cash bail" or "money bail".

As has been noted by others in the rollout of the proposed constitutional amendment before this committee, the genesis was born in the Ohio Supreme Court decision of January 4, 2022, *DuBose v McGuffey*. To those who have not been intimately involved in the pretrial policy field the decision may have been startling and even seemed a drastic departure from both the status quo or even from the principles and customs of our country.

The majority opinion of the court held,

The sole purpose of bail is to ensure an accused person's attendance in court – Under Crim. R. 46, public safety is not a consideration with respect to the financial conditions of bail.

This decision was hardly made in a vacuum and much of the support for the proposed constitutional amendment relies on a confusion between "bail" and "financial conditions of bail."

The two issues we must evaluate in considering SJR 5 are first, what options available to a court when contemplating the pretrial fate of a defendant and, second, does cash bail promote public safety when society faces a violent defendant?

Options Before the Court

At the time of a bail hearing, the options before a court are not as binary as “bail, or no bail”. Remembering that according to the 1951 US Supreme Court in *Stack v Boyle*, the “right to bail” quite literally equates the “right to freedom before conviction.” It is worth noting this court decision was unanimously decided, involved a Communist conspiracy to take up arms, and the dollar amount was a $50,000 secured bond.

Citing the 8th Amendment of the US Constitution, SCOTUS said,

… a defendant’s bail cannot be set higher than an amount that is reasonably likely to ensure the defendant’s presence at the trial.

Despite the sensational Communist uprising aspect of the case, the Supreme Court continued to hold that the financial conditions of release were inappropriate because they were placed in consideration of a potential public safety risk instead of the likelihood of court appearance.

Fortunately, in most states the barring of using monetary bond as the method of detention is not a stalemate in the pursuit of public safety. Judges have the options including but not limited to, releasing the defendant on their own recognizance, releasing the defendant on an unsecured bond (meaning they only have a financial obligation if they *fail* to appear on their court date), release with mandated court supervision, apply some form of monitoring, release upon the payment of a cash bond, or even to hold without bail.

Legislation has been introduced in both chambers this assembly that would even go so far as to expand the offenses eligible for denying bail and reduce the evidentiary burden of prosecutors to prove a defendant is a threat to public safety.

The Failure of Cash Bail to Keep Our Communities Safe

In the press conference regarding this constitutional amendment held on March 29, Attorney General Yost and Hamilton County Prosecuting Attorney Joe Deters did an excellent job laying out several examples of individuals with long and violent criminal histories who were able to make cash bail and proceeded to commit horrible crimes of a violent nature against their community.

In fact, we could add several examples to this list including one that just happened in December a few miles away from this very building. Twenty-year-old Avonte Sanford had shot and injured a 16 year-old girl at a bus stop in April. Avonte was released on a $150,000 bond and was still free waiting for his trial in early December when he shot and killed 19-year-old Antohn Saunders.

Complicating the fact that no credible research shows cash bail protects public safety is the presence of the bail bond agencies in our state. Bond agencies are a factor that courts cannot accurately account for when setting cash bail. While traditionally bond agencies pocket a service fee of 10% of the secured bond required by the court - this does not always hold true.

States like Texas have had a high reliance on using cash bail to hold felony defendants because of tight state constitutional restrictions on preventative detention. In October of last year, the Houston Chronicle released a lengthy report showing bond agencies were enabling felony defendants to go free for as little as one and two percent fees despite the state Insurance Commission having references to a ten percent standard in their rules. In the House Criminal Justice hearing on April 6th of this year, former Franklin County prosecutor Ron O'Brien stated these practices take place in Ohio as well.

Beyond the bond agencies, there are other rogue actors with one of the most recent examples taking place in Louisville, Kentucky. Mayoral candidate Craig Greenberg was nearly assassinated by 21-year-old Quintez Brown. Brown was held by the court on $100,000 bond only to have the radical Louisville Community Bail Fund, a local arm of Black Lives Matter, post the bond, allowing the would-be assassin to return home.

Closing

It takes very little imagination to conjure the ways in which our safety in today's world is insecure because of how real the threats are in our communities. The stories are numerous and our system today is insufficiently equipped to protect both our constitutional rights and the safety of our communities.

Unfortunately, SJR 5 is not only inadequate to remedy the problems we face, it calls on a playbook already demonstrated to fail at proportions that would be comedic if not so tragic.

While I acknowledge and appreciate the leadership shown by Attorney General Yost in attempting to address the concerns of many in the language of the Joint Resolution, the fact remains that passing this amendment alone without a more substantive reform such as that offered in Senate Bill 182 would be a mistake and a dangerous one at that.