Judge Reginald J. Routson
Hancock County Common Pleas Court
Interested Party—Senate Joint Resolution No. 5
Senate Judiciary Committee—May 24, 2022

Good afternoon Chairman Manning, Vice Chair McColley, Ranking Member Thomas and all members of the Senate Judiciary Committee. Thank you for the opportunity to testify today. My name is Reg Routson. I am a common pleas court judge from Hancock County, Ohio. I have been a judge for nearly 33 years, serving on both the Findlay Municipal Court and Hancock County Common Pleas Court. During my tenure, I have made thousands of bail decisions and have actually conducted several statutory "no bail" hearings.

I oppose the Joint Resolution and its impact on Article I Section 9 of the Ohio Constitution for two important reasons. First, requiring judges to consider the matter of public safety when establishing a financial bond is illogical. There is absolutely no connection between the amount of bond set and public safety. We have nothing in our system that incentivizes good behavior upon release. Under current Ohio law, the only basis to forfeit a posted cash/surety bond is when a defendant fails to appear as required. An accused that commits a violent act while on bail cannot suffer a financial loss. So the use of money does not act as a deterrent.

This does not mean that a judge is powerless. A judge can revoke the bail of a non-compliant defendant, but that decision has nothing to do with the amount of bail posted.

Moreover, the institutionalization of monetary pretrial detention may be expedient, but it is nonetheless unconstitutional.

Second, I have heard it said that the amendment restores judicial discretion. Not true. The language commands that judges consider certain factors. For example, the offered language says that a judge "shall' consider public safety, not that the judge "may." More troubling is the elimination of the last sentence of Article 1 Section 9, stripping from the Supreme Court its rule-making authority in this area. Presumably, the Ohio Legislature would attempt to fill the vacuum. Since the issue of bail remains a constitutional right enforceable under both the U.S. and Ohio Constitutions, I fear this change will create a constitutional freefall and generate decades of litigation.

You may then ask: what is my proposal? As this body well knows, the Ohio Constitution was amended in 1998 to provide a procedure to detain the dangerous pending trial without bond. I had the honor of participating in the Judicial Conference Committee that had input into the drafting of R.C. § 2937.222. That section has been the law in Ohio since 1999. It is still relatively unknown and rarely invoked. Since the law's inception, I have conducted five such hearings—two of which I initiated myself.

The answer to valid concerns for public safety lies in the thoughtful amendment of this code section. At the very least, the list of crimes subject to no bail should be expanded. As far back as 1999, many of us could not understand why felony domestic violence was not included. Other offenses might also be appropriate for inclusion.

Critics of no bail hearings speculate that increased use of the process will have disastrous effects on the system and the victims of crime. Before you accept these arguments you must ask whether these dire predictions are real or imagined? How many of these critics have conducted or participated in a no bail hearing?

What the alarmists suggest has not been my experience. My research from the case law of Ohio, other states, and the federal system do not reveal any major problems. For example, years of federal case law holds that the pretrial detention process authorized by the Bail Reform Act of 1984 cannot be used to harass victims or cripple dockets. As aptly put by one federal judge, such hearings are "neither a discovery device nor a trial on the merits."

Expanded use of this procedure would ensure that all defendants—rich and poor—who pose a danger to the community will not gain release. If it creates more work for judges then so be it—a judge should never shrug his or her constitutional duties. In 1997, the voters of Ohio saw fit to create a constitutional system to detain potentially violent offenders. We have never actually implemented their will. If we do, public safety will truly be protected.

Once again, thank you for the opportunity to appear. I would be happy to answer any questions.

Respectfully submitted,

Judge Reginald J. Routson