Abolition in the Real World: A Case Study of Cash Bail Abolition in Illinois

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Abstract

In recent years, legal academia's interest in abolition and the harms of pretrial incarceration has increased dramatically. Much of the scholarship has focused on the theoretical underpinnings of abolition, problems associated with the cash bail system, and forms of abolition (police abolition, prison abolition, etc.) in the abstract. However, less attention has been paid to abolitionist movements on the ground—that is, examining how or why abolitionist projects, organizing, campaigns, and movements operate—and their attempts to abolish cash bail. Currently, legal scholarship lacks sufficient grounded qualitative empirical accounts of abolition.

This article aims to fix this problem by offering a detailed account of one of the most successful and significant abolitionist campaigns of the past decade: the abolition of cash bail in Illinois. Relying on thirty-three in-depth semi-structured interviews with current and past organizers, politicians, government officials, activists, and advocates, I explore how "The Movement to End Money Bond" succeeded. The narrative(s) presented here demonstrate how abolitionist praxis operates in the real world, providing practical and viable public safety alternatives to the status quo. By engaging with those directly responsible for the abolition of cash bail in Illinois, this project highlights the importance of broad-based coalition-building and multi-faceted tactics.

* University of California-Irvine Assistant Professor of Law. This piece would not have been possible without the input of many brilliant scholars. I would like to first thank my dissertation committee Robert Vargas, Eve Ewing, Julian Go, and Jennifer Chacón for their labor in shaping and guiding this project. My University of Virginia Law family Kim Forde Mazrui, Anne Coughlin, Josh Bowers, Megan Stevenson, Joy Milligan, and especially Thomas Frampton for whom I owe so much of the framing of this piece to. I am also thankful to Mario Barnes, Osagie Obasogie, and Swethaa Ballakrishnen for their comments and helpful insights on early versions of this piece. I'm thankful to Josie Duffy-Rice who helped walk me through abolitionist ideas found in this piece early on. I'm grateful to Zachary Duffy-Rice and Margaret Montoya for their helpful conversations that pushed me to make the narrative components of this paper better. Thank you to Billi Jo Morginstar, Jocelyn Simonson, and Song Richardson for all of their labor in challenging me to continuously make the ideas and structure of the paper better. A special thank you to all of my interviewees whom this work would not be possible without and especially Sharlyn Grace who made sure all of the big and small details about the law and movement were accurate. A special thank you to Justice Turner, Nicolas Cook, Lance Calloway, Ike Nnadi, Dion Boyd, and Brendan Johnson who supported this work from start to finish. Lastly, I'd like to thank the brilliant editors (Connor Morgan, Kacey Manlove, Max Sterling, Meredith Sullivan, and Sunah Chang) at the *Harvard Civil Rights-Civil Liberties Law Review* for platforming and taking a chance on this paper. To those I may have left out, please charge it to my mind and not my heart.

I advance the claim in this article that abolition can be used to make our criminal justice system, specifically our pretrial system, more safe, accountable, and just. My work here provides three critical contributions. Firstly, I uncover the various tactics abolitionists in Illinois used to achieve success, ranging from disruptive direct actions that shut down courtrooms to more traditional Civil Rights tactics like legislative lobbying and impact litigation. This demonstrates the importance of both traditional and nontraditional tactics in efforts to successfully decarcerate the criminal justice system. Secondly, my work shows that meaningful coalitions, which include abolitionists and non-abolitionists, can result in successful abolitionist campaigns. Lastly, I show that abolitionists are not solely focused on wholesale revolutionary change; they are equally focused on getting victories that gradually make our criminal justice system more just.

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Introduction

In 2021, Illinois passed the Pretrial Fairness Act ("PFA").[1] In doing so, Illinois became the first state in the country to completely abolish cash bail for all accused offenses.[2] While many laws have interesting backstories,

[1] Chip Mitchell, *Illinois Is Now the First State to Eliminate Cash Bail*, NPR (Sept. 18, 2023), https://www.npr.org/2023/09/18/1200223477/illinois-is-now-the-first-state-to-eliminate-cash-bail [https://perma.cc/R6FN-6ASN].

[2] Throughout this article, I use the terms "cash bail" and "money bond" somewhat interchangeably. I do this primarily because people on the ground use the terms interchangeably, and I want to convey the same sentiment to the reader. I do acknowledge, however, that there is

the PFA is particularly unique: Its passage was the result of one of the most successful abolitionist movements of the past decade. This historic legal change, which completely revamped Illinois's pretrial system, was brought about by people actively pursuing abolition.

The passage of the PFA comes at a particularly significant time in legal scholarship, as scholars have begun to take a more focused look at pretrial incarceration and cash bail as harmful practices.[3] For good reason, too; jail incarceration has massively increased alongside skyrocketing prison incarceration.[4] Between 1980 and 2016 alone, the jail population increased from 182,288 to 740,700.[5] Statistically, more people experience jail incarceration than they do prison incarceration.[6] In 2022, 469,000 people went to prison, but more than 7 million people went to jail.[7]

The central theoretical claim animating this paper is that abolition can be used to make our pretrial system more safe, just, and accountable. I argue here that a grounded qualitative approach reveals that abolition is both a practical[8] and preferable public safety alternative to the cash bail system.

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a slight distinction between "bail" and "bond." Bail refers to a mechanism of release, i.e., the process for people to be released pretrial. Bond refers to an agreement the accused makes with a court (which can also include a surety) related to release. In practice (as I use it here), Timothy Schnacke points out that people use the phrase "cash bail" to describe the bail process or a bond agreement that attaches money as a condition for release. I found in my research that people use the phrases "money bond" and "cash bond" similarly. For a detailed discussion on these terms, see TIMOTHY R. SCHNACKE, NAT'L INST. OF CORR., FUNDAMENTALS OF BAIL: A RESOURCE GUIDE FOR PRETRIAL PRACTITIONERS AND A FRAMEWORK FOR AMERICAN PRETRIAL REFORM 2, 38, 96 (2014). For a history of the terms "bail" and "bond," see Kellen R. Funk & Sandra G. Mayson, *Bail at the Founding*, 137 HARV. L. REV 1816, 1827-48 (2024) (discussing the origins of the usage of bail and bond).

[3] Joshua Page & Christine S. Scott-Hayward, *Bail and Pretrial Justice in the United States: A Field of Possibility*, 5 ANN. REV. CRIMINOLOGY 91, 106 (2022) (summarizing the increased literature on pretrial incarceration and cash bail).

[4] Kristin Turney & Emma Conner, *Jail Incarceration: A Common and Consequential Form of Criminal Justice Contact*, 2 ANN. REV. CRIMINOLOGY 265, 269-70 (2019).

[5] Page & Scott-Hayward, *supra* note 3, at 92.

[6] Turney & Conner, *supra* note 4, at 266.

[7] Wendy Sawyer & Peter Wagner, *Mass Incarceration: The Whole Pie 2024*, PRISON POL'Y INITIATIVE (Mar. 14, 2024), https://www.prisonpolicy.org/reports/pie2024.html [https://perma.cc/D6WK-SNHW].

[8] Abolition has not been without its critics. *See* Rachel E. Barkow, *Promise or Peril?: The Political Path of Prison Abolition in America*, 58 WAKE FOREST L. REV. 245, 249-53 (2023) (claiming that abolition might actually cause more harm than good firstly because it will frighten segments of the public who might otherwise support decarceration and secondly because abolitionist rejection of reformist reforms potentially stalls any incremental progress that could improve the criminal justice system); Christopher Slobogin, *The Minimalist Alternative to Abolitionism: Focusing on the Non-Dangerous Many*, 77 VAND. L. REV. 531, 543, 556 (2024) (arguing that abolitionists' critique is improper because we need police and prisons); Trevor G. Gardner, *The Conflict Among African American Penal Interests: Rethinking Racial Equity in Criminal Procedure*, 171 U. PA. L. REV. 1699, 1726-30 (2023) (advancing the idea that abolition is antithetical to African American interests because some African Americans want to maintain aspects of the carceral system); Máximo Langer, *Penal Abolitionism and Criminal Law Minimalism: Here and There, Now and Then*, 133 HARV. L. REV. F. 42, 58-70 (2020) (arguing that a reduced criminal legal system is more preferable than an abolitionist alternative that seeks to reinvent the criminal legal system). The most prominent critique of abolition is that it is impractical. *See* Barkow, *supra*, at 294-97; Langer, *supra*, at 44-45. Abolitionists' focus

Further, a grounded qualitative approach helps us better understand ways in which we can improve our criminal justice system. To demonstrate the importance of this approach, I share the history of the abolition of cash bail in Illinois as an illustrative case study of how this can practically be accomplished. I focus specifically on "The Movement to End Money Bond" ("The Movement") in Illinois because its story provides the best insight into how people conceptualized and operationalized abolition to bring about the end of cash bail.

In telling this story, some key insights and contributions are revealed. Firstly, my work illuminates the successful organizing tactics used by The Movement in Illinois. In doing so, my qualitative work shows that abolitionist tactics can range from disruptive actions like protests that shut down bond courts to more traditional civil rights tactics like impact litigation, electoral organizing, legislative writing, and political lobbying. Using a broad spectrum of tactics allows abolition to appeal to a wide range of audiences who want to improve our criminal justice system. An additional benefit of shifting to the practical is that I provide one of the few accounts explaining how an abolitionist movement started, operationalized abolitionist concepts, and succeeded using the voices of those directly involved.

Secondly, I show that abolition can win. Furthermore, abolitionists and non-abolitionists can work together to deliver successful abolitionist campaigns. This is especially important and timely in a deeply polarized society like the United States. Not everyone involved in this story was an abolitionist, nor did everyone have the same vision of the future. Yet abolitionists and non-abolitionists united to improve the criminal justice system in pursuit of an abolitionist cause. The fact that The Movement was successful with a diverse coalition indicates that our energy should be focused on collaborating to achieve a decarceral future using all of our available tools. As this case shows, abolition is one available tool, and we can all utilize it by working together, regardless of whether one identifies as an abolitionist or not. Most importantly, the abolitionist win here shows us what is possible to achieve, even in the most carceral country in the world, and why we should remain hopeful about what we can achieve together.

Thirdly, I expand the conversation on what abolition is and highlight how the project of abolition contains a range of ideas, not just wholesale jail, prison, and police abolition. Put another way, there is a whole host of short-term policies that abolitionists could embrace in service of meeting their long-term goals of jail, prison, and police abolition. Abolition, in this sense, encompasses long-term and short-term projects deeply concerned with the conditions facing directly impacted individuals. Many of these projects

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on deconstructing current carceral institutions has led some critics to ponder whether the public could feasibly embrace abolition because of how embedded institutions are in society. *See* Slobogin, *supra*, at 538; Barkow, *supra*, at 297-301. Other examples of critiques of abolition are that it is harmful to the people it proclaims to protect, will lead to crime, and fails to account for the interests of black people adequately. *See* Gardner, *supra*, at 1722; Slobogin, *supra*, at 555.

don't result in the immediate abolition of whole institutions. In highlighting cash bail abolition as an abolitionist policy, we can see that abolitionists care deeply about short-term harm reduction. For those skeptical of the long-term vision of abolition, this article suggests that there is a place for collaboration in the short term.

An abundance of research has shown that cash bail punishes the poor. Christine Scott-Hayward and Henry Fradella point out that high rates of pretrial incarceration are directly linked to the usage of money bail and the limited capacity of people to pay their bonds.[9] Scholars estimate that the average felony money bond amount is about $10,000.[10] That is about eight months of income for the typical detained person and out of reach for many.[11] Despite this, judges have been found to regularly ignore the defendant's ability to pay when setting bail.[12]

Wealth-based inequality at the pretrial phase leads to what scholar Megan Stevenson labels the "downstream consequences" the accused face due to their inability to pay money bonds.[13] Stevenson finds that pretrial detention has been linked to a 41% increase in courtroom debt.[14] Essentially, wealth-based inequality at the pretrial phase results in wealth-based inequality in case outcomes.[15]

Stevenson also finds that pretrial detention puts defendants at a disadvantage.[16] Court proceedings are often very short, and in some cases, defendants do not have counsel.[17] Being incarcerated pretrial is linked to increased odds that a defendant will receive a longer sentence and have courtroom

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[9] *See* Christine S. Scott-Hayward & Henry F. Fradella, Punishing Poverty: How Bail and Pretrial Detention Fuel Inequalities in the Criminal Justice System 102 (2019).

[10] Turney & Conner, *supra* note 4, at 282; *see* Sawyer & Wagner, *supra* note 7.

[11] Sawyer & Wagner, *supra* note 7.

[12] Christine S. Scott-Hayward & Sarah Ottone, *Punishing Poverty: California's Unconstitutional Bail System*, 70 Stan. L. Rev. Online 167, 172-73 (2018) (conducting an empirical study in California finding that judges often made no individualized assessment in setting bail).

[13] Megan T. Stevenson, *Distortion of Justice: How Inability to Pay Bail Affects Case Outcomes*, 34 J.L. Econ. & Org. 511, 538 (2018) (describing that downstream consequences include the accused being more likely to be convicted, receive a lengthy sentence, and accumulate more courtroom debt).

[14] *Id.* at 513. Courtroom debt here refers to fines and fees associated with courtroom costs.

[15] Stevenson, *supra* note 13, at 512 (explaining that the usage of money bail can form a poverty trap where poor people suffer economic downstream consequences); Paul Heaton, Sandra Mayson & Megan T. Stevenson, *The Downstream Consequences of Misdemeanor Pretrial Detention*, 69 Stan. L. Rev. 711, 771 (2017) (pointing out the various ways wealth impacts case outcomes).

[16] Stevenson, *supra* note 13, at 512.

[17] Amy E. Lerman, Ariel Lewis Green & Patricio Dominguez, *Pleading for Justice: Bullpen Therapy, Pre-Trial Detention and Plea Bargains in American Courts*, 68 Crime & Delinq. 159, 174 (2021); Stevenson, *supra* note 13, at 514; Heaton et al., *supra* note 15, at 720; Scott-Hayward & Ottone, *supra* note 12, at 172.

debt.[18] Being assessed bail and/or being incarcerated pretrial increases the chances of a defendant receiving a longer sentence and accepting a guilty plea.[19] This is mainly attributable to the devastating pressure that even a short stay in jail puts on defendants and their families.[20] They face poor jail conditions, a reduced ability to meet with counsel, less opportunity to delay proceedings, and bad health outcomes; they also risk losing housing, child custody, and employment.[21] At the pretrial phase, black[22] and hispanic defendants are far more likely to be held on bail than white defendants are, and they are less likely to post bail.[23] Those locked up pretrial often face harsher and longer sentences than those released pending trial.[24]

In recent years, abolition has re-emerged as a framework challenging the harms of the criminal justice system. In doing so, abolition has gained renewed interest amongst legal scholars, which has led to a flurry of scholarship.[25] In particular, scholars have done excellent work in discussing the merits of what the project of abolition is and why it is needed contemporarily.[26]

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[18] Stevenson, *supra* note 13, at 534; Scott-Hayward & Ottone, *supra* note 12, at 172-73 (finding that court proceedings were very short and disallowed for proper process pretrial).

[19] Lerman, *supra* note 17, at 161; Christopher T. Lowenkamp, Marie VanNostrand & Alexander Holsinger, Laura & John Arnold Found., Investigating the Impact of Pretrial Detention on Sentencing Outcomes 14 (Nov. 2013), https://www.ncsc.org/__data/assets/pdf_file/0015/1590/ljaf_report_state-sentencing_fnl.ashx.pdf [https://perma.cc/Y9CE-ACT2] (finding that people detained pretrial receive sentences that are 2.78 times longer than people who were released at some point pretrial); Page & Scott-Hayward, *supra* note 3, at 102 (citing various studies that show pretrial pressures lead to increased plea bargaining); Stevenson, *supra* note 13, at 512 (showing that pretrial detention leads to increased chances of a person accepting a plea bargain); Arpit Gupta, Christopher Hansman & Ethan Frenchman, *The Heavy Costs of High Bail: Evidence from Judge Randomization*, 45 J. Legal Stud. 471, 471-73 (2016) (finding that the assessment of money bail leads to a 12% increase in likelihood of conviction).

[20] Heaton et al., *supra* note 15, at 721; Ram Subramanian, Ruth Delaney, Stephen Roberts, Nancy Fishman & Peggy McGarry, Vera Inst. Just., Incarceration's Front Door: The Misuse of Jails in America 25 (2015), https://vera-institute.files.svdcdn.com/production/downloads/publications/incarcerations-front-door-report_02.pdf [https://perma.cc/FE93-L7N3]; Stevenson, *supra* note 13, at 512-16.

[21] Heaton, *supra* note 15, at 713, 715; Subramanian et al., *supra* note 20, at 13; Stevenson, *supra* note 13, at 512.

[22] I have made the deliberate political choice to lowercase all references to race and ethnicity. I have purposely decided to break the spelling convention surrounding race and ethnicity throughout as a constant reminder of the social construction of racialized identities.

[23] John Mathews II & Felipe Curiel, *Criminal Justice Debt Problems*, 44(3) Hum. Rts., Nov. 2019, at 6, 6; Traci Schlesinger, *Racial and Ethnic Disparity in Pretrial Criminal Processing*, 22 Just. Q. 170, 174 (2005).

[24] Laura & John Arnold Found., Pretrial Criminal Justice Research 2 (Nov. 2013), https://www.ils.ny.gov/files/Pretrial%20Criminal%20Justice%20Research.pdf [https://perma.cc/CJ2J-8AFA].

[25] Thomas Ward Frampton, *The Dangerous Few: Taking Seriously Prison Abolition and Its Skeptics*, 135 Harv. L. Rev. 2013, 2015 (2022) (noting the emergence of scholarship about abolition from both critics and proponents); Slobogin, *supra* note 8, at 532-33 (acknowledging increased scholarship in the area of abolition).

[26] Dylan Rodríguez, *Abolition as Praxis of Human Being: A Foreword*, 132 Harv. L. Rev. 1575, 1577 (2019) (making the case that abolition is an essential framework because it challenges systems of oppression and seeks to transform them generatively). *See generally* Dylan

This has led to much-needed work exploring the interaction between abolition and the Constitution,[27] the environment,[28] systems of policing,[29] and the prison system.[30]

The work addressing bail and abolition is of particular interest to this project. Jocelyn Simonson's work has shown how bail funds serve as

Rodríguez, Brianna Byrd & Camilla Hawthorne, *Why Abolition Now? Reflecting on 2020 with Scholar-Activists Brianna Byrd, Camilla Hawthorne, and Dylan Rodriguez*, 13 INTERFACE 246 (2022) (explaining why social mobilizations regarding race and policing post-2020 have increasingly turned to abolition as an organizing principle); Allegra M. McLeod, *Envisioning Abolition Democracy*, 132 HARV. L. REV. 1613, 1615 (2019) (explaining that justice in an abolitionist sense is about exposing systems of violence but also attempting to "achieve peace, make amends and distribute resources more equitably." The project, in these terms, is about a critique of oppressive systems and transformation such that society becomes better.); Amna A. Akbar, *Toward A Radical Imagination of Law*, 93 N.Y.U. L. Rev. 410, 460 (2018) (describing the abolitionist project as one that calls for the end of punitive systems like policing and replacing them with alternative systems that aren't rooted in harm and oppression); Jamelia Morgan, *Responding to Abolition Anxieties: A Roadmap for Legal Analysis*, 120 MICH. L. REV. 1199, 1203 (2022) (explicating that abolition is a project that is based on building a society where people "address harm without relying on structural forms of oppression or the violent systems that increase it").

[27] *See* Dorothy E. Roberts, *Racism, Abolition, and Historical Resemblance*, 136 HARV. L. REV. 37, 58 (2022) (analyzing the difference between the Roberts Court's historical resemblance test and prison abolitionists' interpretation of racial history. Roberts here is really charting out her theory of abolition constitutionalism whereby we should interpret the Constitution from the perspective of antislavery abolitionists); Dorothy E. Roberts, *The Supreme Court, 2018 Term-Foreword: Abolition Constitutionalism*, 133 HARV. L. REV. 1, 5-10 (2019) (introducing constitutional abolition as a method for reading the Constitution from the perspective of slavery abolitionists. For Roberts, this method of understanding the Constitution rightfully situates and expands our understanding of laws like the Fourteenth Amendment, precisely because abolitionists' understandings subvert dominant analysis but also give insight into what was going on at the time particular laws were enacted. Most compelling about this method is that abolitionists and the abolition movement themselves were responsible for the Fourteenth Amendment and in a tangible sense, their interpretation of the law is perhaps chiefly important.); Shawn E. Fields, *The Fourth Amendment Without Police*, 90 U. CHI. L. REV. 1023, 1082 (2023) (theorizing about the Fourth Amendment in a hypothetical post-police world and arguing that the Fourth Amendment's protections would remain important even in the post-police world).

[28] *See generally* Allegra M. McLeod, *Abolition and the Environment*, 69 UCLA L. REV. 1536 (2023) (exploring how the connections between movements for environmental justice and penal abolition provide compelling frameworks for transformations).

[29] *See* Kate Levine, *Police Prosecutions and Punitive Instincts*, 98 WASH. U. L. REV. 997, 1046-56 (2021) (arguing that police prosecutions will not curb police violence and that society instead needs to reduce its reliance on police as abolitionists suggest); Jamelia N. Morgan, *Rethinking Disorderly Conduct*, 109 CALIF. L. REV. 1637, 1702 (2021) (pointing out the problems of policing public disorder crimes and suggesting a move away from their usage via abolition); Jocelyn Simonson, *Police Reform Through a Power Lens*, 130 YALE L.J. 778, 790 (2021) (arguing for the usage of the power lens as a way to shift power and resources away from policing). *See generally* Dylan Rodríguez, *Tyranny of the Task Force: Police Abolition and the Counter Insurgent Campus*, 53 CONN. L. REV. 573, 574 (2021) (illuminating the ways universities and campus task forces often work to sustain and legitimize police power in the face of radical calls for abolition).

[30] *See generally* Rafi Reznik, *Retributive Abolitionism*, 24 BERKLEY J. CRIM. L. 123 (2019) (explaining how prison abolition is both concerned with racial and economic justice while consistent with conceptions of punishment); Frampton, *supra* note 25, at 244-51; Allegra M. McLeod, *Prison Abolition and Grounded Justice*, 62 UCLA L. REV. 1156 (2015) (discussing the abolitionist ethic that works to gradually eradicate the penal prison system).

important sites of resistance for those pursuing justice at the pretrial phase.[31] In particular, Simonson points out that the existence and practices of abolitionist bail funds challenge ideas about public safety within the criminal justice system.[32] Sean Hill's work also adds an important contribution by discussing the intersection of campaigns to abolish cash bail and pretrial risk assessments.[33] Hill primarily contends that abolitionist bail campaigns must be keen to challenge and move away from the use of risk assessments in order to maintain decarceral aims.[34] Lastly, Jamelia Morgan's scholarship highlights how abolitionists conceive of abolition as a future-oriented project.[35] She illustrates this by explicating how the Brooklyn Community Bond Fund decided to shut down after a New York bail reform law was passed.[36] To continue to operate the bail fund for abolitionists would have thwarted their ongoing objective of abolishing cash bail because they felt like they would have been legitimizing the system by paying money to the state when in reality, what they wanted to do was delegitimize cash bail as a practice.[37] They didn't feel like it was possible to both run a bail fund and tear down the system at the same time.

I add to these rich areas of both bail and abolition scholarship by centering abolitionist campaign actors in my analysis via a qualitative empirical study. This is important because, as Joshua Page and Scott-Hayward point out, we know very little about the issue of bail from the perspective of those most affected or involved in bail policies and practices.[38] This is mostly because the empirical research conducted in the bail and pretrial incarceration field has been quantitatively focused on the law's shortcomings or summarizing reform changes.[39] This research also tends to focus on the

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[31] Jocelyn Simonson, *Bail Nullification*, 115 MICH. L. REV. 585, 590 (2017); JOCELYN SIMONSON, RADICAL ACTS OF JUSTICE 11-12 (2023).

[32] Simonson, *Bail Nullification*, *supra* note 31, at 590-91.

[33] Sean Allan Hill II, *Bail Reform & The (False) Racial Promise of Algorithmic Risk Assessment*, 68 UCLA L. REV. 910, 920 (2021) (staking out the claim that risk assessments maintain and contribute to black people being viewed as dangerous and calling for the elimination of risk assessments because they are inherently oppressive towards people of color).

[34] Sean Allan Hill II, *Reading Bail Reform Through a Critical Race Lens*, LAW & POL. ECON. BLOG (Feb. 14, 2020), https://lpeproject.org/blog/reading-bail-reform-through-a-critical-race-lens/ [https://perma.cc/8XL4-M3Z9].

[35] Morgan, *supra* note 26, at 1205 ("[A]bolition justice imagines a future 'where punishment is abandoned in favor of accountability and repair, and where discriminatory criminal law enforcement is replaced with practices addressing the systematic bases of inequality, poverty, and violence.'").

[36] *Id.* at 1207.

[37] *Id.*

[38] Page & Scott-Hayward, *supra* note 3, at 106.

[39] *See generally* Turney & Conner, *supra* note 4 (Most of the studies highlighted in the review are quantitative, with surveys being the most prevalent. The authors primarily summarize findings from various studies that are focused on the backend of the pretrial incarceration, that is, the outcomes of the system. The review does not highlight any studies focused on qualitative research or discuss how people conceive of the system or are working at other phases not related to outcomes).

outcomes of the current system or reform efforts, which tells us a lot about how the current system is flawed or how new reforms work but does not provide an account of how or why the existing or new system came into being.[40] This is largely because those responsible for the current system or those who fought for reforms are often not the focal point of this empirical research.[41]

My intervention here is to propose that scholars concerned about the problems of pretrial incarceration and cash bail should begin to practically focus on the goal of meaningful decarceration. By this, I mean that we must better incorporate real people's experiences and real-world campaigns into our analysis if we truly want to understand how law is used in the real world to decarcerate.

In doing my part to advance the importance of qualitative work, I undertake one of the first qualitative projects about a contemporary abolitionist movement. My approach centers the narratives of the individuals directly involved. I reinvigorate and answer current Critical Race Theory ("CRT") calls for a more structured and robust narrative commonly found in earlier CRT work.[42] Mario Barnes has pointed out the need for more careful and stringent tailoring of narrative generally but in particular for personal and autobiographical narratives.[43] For Barnes, this is important because narratives create a specific space where collaborations can be forged and sociolegal knowledge can be gained.[44] Similarly, renowned abolitionist Mariame Kaba explains that lived experiences on the ground shape a person's worldview.[45] To truly understand the material conditions on the ground and how individual experiences shape them, it is essential to center the voices of those people.[46] That is to say, to understand how abolition truly plays out in the real world, it is imperative to center the voices of folx who are engaging in abolitionist work in everyday life.

Methodology

My approach to collecting and analyzing data falls in line with the burgeoning movement within CRT called Empirical CRT ("e-CRT"). To be

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[40] *Id.*

[41] *Id.*

[42] *See* Mario L. Barnes, *Empirical Methods and Critical Race Theory: A Discourse on Possibilities for a Hybrid Methodology*, 2016 Wis. L. Rev. 443, 445.

[43] *Id.* at 446.

[44] *Id.*

[45] *See* Mariame Kaba, *Everything Worthwhile Is Done with Other People*, *in* We Do This 'Til We Free Us: Abolitionist Organizing and Transforming Justice 105 (Tamara K. Nopper ed., 2021).

[46] *See* Marbre Stahly-Butts & Amna A. Akbar, *Reforms for Radicals? An Abolitionist Framework*, 68 UCLA L. Rev. 1544, 1551 (2022); *see also* Morgan, *supra* note 26, at 1211 (discussing how personal commitments and subjectivity are important to abolitionist analysis).

clear, e-CRT is not a splinter or counter movement to CRT and was not created because of a theoretical dispute with CRT. Rather, e-CRT is an attempt to harmonize the theory of CRT with empirical social science methodologies. In bridging social sciences and CRT, e-CRT seeks to blend CRT theories on race and other axes of identities with methodologies that produce new ways of thinking about social relations.[47] However, e-CRT does not accept or take the position that data is objective and untouchable.[48] Instead, e-CRT asserts that CRT must maintain its core anti-racist commitments, as social science methods only tell us so much.[49] As Aya Gruber notes: "It is people, not data, who tell us something is a crisis, a state of affairs is unjust, or groups are suffering."[50]

This study utilizes two different methods. The first consists of thirty-three in-depth semi-structured interviews with current and past organizers, politicians, government officials, activists, and advocates directly involved in advocating for and drafting the Pretrial Fairness Act.

Interviews allow folx to tell their own history in order to allow others to gain insight and understanding. Additionally, as Monica Bell explains, interviews that "elicit concrete descriptions of specific events may partially substitute for real-time observation."[51] This is especially important in recounting history and telling stories authentically. My interviews took place primarily over Zoom, except for two interviews that occurred in person at a university. Interviews lasted between thirty and ninety minutes. Respondents were recruited through snowball sampling.[52]

Focused on affirmatively capturing The Movement, I spoke only with individuals who were, to some degree, involved in The Movement. I did not speak with individuals who were opposed to The Movement. At times, I refer to The Coalition to End Money Bond ("The Coalition") and The Movement interchangeably. The Coalition refers to a smaller, Chicago-based organization responsible for starting and running The Movement. The two were practically interchangeable on the ground, as everyone in The Coalition was involved in the broader social movement that encompassed The Movement.

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[47] *See* Osagie K. Obasogie, *Response to Gómez and Omi and Winant*, 41 Law & Soc. Inquiry 1078, 1079 (2016).

[48] Tukufu Zuberi & Eduardo Bonilla-Silva, White logic, White Methods: Racism & Methodology 4 (2008).

[49] *Id.*

[50] Aya Gruber, *When Theory Met Practice: Distributional Analysis in Critical Criminal Law Theorizing*, 83 Fordham L. Rev. 3211, 3214-15 (2015).

[51] Monica C. Bell, *Situational Trust: How Disadvantaged Mothers Reconceive Legal Cynicism*, 50 Law & Soc'y Rev. 314, 323 (2016).

[52] *See* Xeturah M. Woodley & Megan Lockard, *Womanism and Snowball Sampling: Engaging Marginalized Populations in Holistic Research*, 21 Qual. Rep. 321, 322-23 (2016) (describing snowball sampling as a method in which "a few identified members of a rare population are asked to identify other members of the population, those so identified are asked to identify others, and so on, for the purpose of obtaining a nonprobability sample or for constructing a frame from which to sample").

During interviews, respondents discussed their involvement with the Pretrial Fairness Act, their conceptions of justice and the criminal justice system, the intersections of racism, classism, and sexism, and their conceptions of hope, among other things. At the close of each interview, I asked interviewees who they thought would be essential to talk to, and I attempted to follow up with those referred individuals. I used Otter.Ai, an AI-based transcription software, to transcribe each interview. I then listened to the entire interview and manually adjusted each transcript to accurately reflect the audio recording. Afterward, I coded each transcript in phases, starting with open, then thematic, and finally, a more narrow coding. In other words, I organized the data initially using broad terms like race, gender, religion, etc., to more specific markers like person X's personal account of racialized violence. During the open or initial phase of coding, I separated data chronologically to get a rough sense of time. The thematic phase involved inductively taking this chronological data and analyzing it to deduce what common threads came up for respondents. Some examples of thematic threads were "racialized experiences" and "contact with the system." Once the thematic coding was finished, I revisited each transcript for internal validity for each thematic code and sequenced the data chronologically again. During this phase, I developed more distilled categories like racialized consequences of bail, backlash obstacles, and abolition as faith amongst others.

In relying on abolition and CRT as informative frameworks, the second methodology I use is narrative. As Margaret Montoya explains, CRT stories provide new understandings of the world for those engaged in anti-subordination projects.[53] They displace conventional wisdom and expose forces of domination.[54] As both CRT scholars and abolitionists teach us, narrative stories move people to action and motivate praxis while allowing those subordinated to narrate and interpret events in opposition to dominant narratives.[55] They allow voices that would not usually have the opportunity and space to tell their resistance stories to speak them freely. Perhaps most importantly, narratives teach us what is possible in the world through the lens of CRT.[56] To this end, I utilize narrative in telling the story from my perspective and intentionally include interviewees' quotes in totality as much as possible to allow their narratives and accounts about events to be authentic. I encourage readers to read their quotes in full, as I have intentionally left them lengthy so the narrators can share their stories in their own words.

I tell this story in three parts. In Part I, I focus on the actions and tactics involved in abolishing cash bail in Illinois, which informs us about how abolition was achieved. Specifically, I discuss the origins of The Movement

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[53] *See* Margaret E. Montoya, *Celebrating Racialized Legal Narratives*, *in* Crossroads, Trajectories and A New Critical Race Theory 243, 244 (2002).

[54] *Id.*

[55] *See* Montoya, *supra* note 53, at 244-45; *see also* Kaba, *supra* note 45, at 105.

[56] *See* Montoya, *supra* note 53, at 246-48.

and highlight the legal pathway to abolishing cash bail in Illinois. This focus illuminates the variety of tactics used by abolitionists and details how meaningful collaboration between non-abolitionists and abolitionists occurred. Having told the story up until enactment, Part II discusses the Pretrial Fairness Act. I establish that the law is an abolitionist legal reform. I detail the understandings and considerations that went into crafting the law from the movement actors who put the law together. In concluding that the law is abolitionist, I display how abolitionists care about short-term projects. In Part III, I highlight the backlash and retrenchment The Movement faced post-enactment to illustrate how abolition endured in the face of challenges. Finally, I offer key takeaways in the conclusion.

Part I. Building A Successful Movement With Tactics and Actions That Win

In Part I, I focus on how The Movement mobilized abolition and what we can learn from said mobilization. Specifically, this Part of the article looks in depth at the actions and tactics used by The Movement. While it is important to understand the law and its underpinnings, that alone does not tell us how or why the law came into being. Law doesn't just appear out of thin air. Rather, law is deeply informed by the broader context that shapes its existence. Understanding this context is particularly important for those concerned with abolition and decarcerating generally because it reveals the motivations and experiences that push folx to pursue decarceral futures. Furthermore, doing so showcases the wide range of tactics and actions abolitionists engage in and displays the broad appeal of an abolitionist approach on the ground. In this Part, I first explore The Movement's emergence in sections A and B. After exploring The Movement's emergence, I discuss how The Movement operationalized abolition in section C, examining the legal actions and tactics successfully used to abolish cash bail.

A. DeSean Pittman and The Chicago Community Bond Fund

Scholars recognize three factors that are necessary catalysts for a social movement's emergence.[57] The first factor is the presence of a political opportunity, which is an external opening that impacts whether mobilization around an issue will happen.[58] The second factor relates to mobilizing structures. These are entities "through which people mobilize and engage in collection action" via recruitment, framings, and the coordination of resources.[59] The last factor is cognitive framing, which refers to the movement actors'

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[57] *See* Glenn E. Bracey II, *Black Movements Need Black Theorizing: Exposing Implicit Whiteness in Political Process Theory*, 49 Socio. Focus 11, 14 (2016).

[58] *Id.*

[59] *Id.*

interpretation of problems and solutions and the use of those interpretations to motivate action.[60]

The story and the political opportunity for The Movement begins with the killing of DeSean Pittman in Chicago. DeSean was killed by a Chicago police officer named James Hunt,[61] who shot him ten times.[62] According to news reports, police were called to the scene to investigate shots fired near 80th and Ingleside in Chicago on August 24, 2014.[63] Four officers arrived on the scene to find a young black man, who, according to news reports, had just shot and killed someone in self-defense.[64] Officers claimed that Pittman turned a gun on them, and then James Hunt shot him.[65] The shooting would later be ruled a "reasonable" use of force.[66]

In the wake of his death, family and friends organized a candlelight vigil in memoriam.[67] Officers were present on the scene, and as one might expect, community members were not pleased by their presence.[68] Police had just taken the life of the very person friends and family had gathered to mourn. Soon, tensions rose as Chicago Police Department officers began

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[60] *Id.*

[61] *See Chicago Cop Who Bragged About Killing Someone Was Assigned to Team Designed to 'Strengthen Community Trust'*, CBS News (Mar. 23, 2021), https://www.cbsnews.com/chicago/news/chicago-cop-who-bragged-about-killing-someone-was-assigned-to-team-designed-to-strengthen-community-trust/ [https://perma.cc/B3MK-RQG8]. The officer who killed Pittman was certainly no saint. He had one of the highest total use of force reports on the police force between 2016 and 2020. *Id.*

[62] *CPD Officer James Hunt, Who Said He's Killed 'Mother------s,' Could Be Suspended for 1 Year After COPA Review*, CBS News (July 12, 2019), https://www.cbsnews.com/chicago/news/cpd-officer-james-hunt-who-said-hes-killed-mother-s-could-be-suspended-for-1-year-after-copa-review/ [https://perma.cc/QR3A-JRYP].

[63] *See* Megan Hickey, *Eight Years After It Happened, COPA Releases Recordings from Night CPD Officer James Hunt Shot, Killed DeSean Pittman, 17*, CBS News (Apr. 1, 2022), https://www.cbsnews.com/chicago/news/copa-releases-recordings-cpd-officer-james-hunt-shot-killed-desean-pittman-17/ [https://perma.cc/VF3G-EMZA]. Nearly four years after he killed DeSean Pittman, Hunt was recorded on a cellphone and body camera having an exchange with an unarmed civilian, Kenneth Lee, who was crossing the street with friends:

> Lee: You say you trying to kill mother------s?
>
> Hunt: No I kill mother------s.
>
> Lee: You just tried to hit me with a car?
>
> Hunt: Don't try to film me, dude.

Id. Lee would go on to say that Hunt told him that "we about to go on Snapchat," to which Lee responded, "You don't even got a Snapchat, bro." *Id.* Hunt responded, "Yeah I do, it's called 'I f----d your mom.'" *Id.* Openly bragging about killing people and having sex with someone's mother certainly isn't the way to endear oneself to the community you are supposed to protect. And to Pittman's family, the footage appeared to show Hunt bragging about killing DeSean.

[64] *Id.*

[65] *See Chicago Cop*, *supra* note 61.

[66] *See* Hickey, *supra* note 63.

[67] Erin Meyer & Quinn Ford, *Near Riot Erupts at Vigil for Teen Killed by Police; Teen's Mom Charged*, DNA Info (Aug. 27, 2014), https://www.dnainfo.com/chicago/20140827/chatham/near-riot-erupts-at-vigil-for-man-slain-by-cops-mans-mom-5-more-charged/ [https://perma.cc/QDQ6-AZKY].

[68] *Id.*

kicking over candles and tearing down posters at the memorial, according to Pittman's family.[69] As officers mocked the mourners by laughing and stomping on more candles a clash ensued between officers and mourners, according to spectators.[70] According to the family, they had obtained permission from neighbors to hold the vigil, and it wasn't until officers appeared on the scene that the situation escalated.[71]

Pittman's death would serve as a galvanizing political opportunity needed to bring down cash bail. The killing of a young black man at the hands of a white officer resonated deeply with those already frustrated with the racialized nature of police interactions. While these types of shootings and outcomes are not new to communities of color throughout the city, they are deeply painful and often contribute to distrust between communities and police.[72] Yet this interaction was particularly galvanizing because it connected to a broader political moment throughout the country. DeSean Pittman was killed in close temporal proximity to Michael Brown in Ferguson, Missouri, whose death had sparked national protests about racism and policing at the time.[73] When Pittman was killed in similar circumstances, it created an opportunity to not only grieve a fallen loved one but also express discontent with the police.

Several arrests were made in the fallout of the clash between Pittman's family and the police, most notably Pittman's mother.[74] The individuals arrested were held on cash bail and could not afford to get bonded out.[75] Upon hearing Pittman's story, organizers got involved in supporting the family through parties, fish fries, and crowdfunding pages to help raise bond money to pay bail for those who had been arrested at DeSean's vigil.[76] In this sense, there was a connection between the injustice of Pittman dying at the hands of police and subsequently his family being locked up, unable to obtain financial release from jail.

One of those organizers was a wiry white guy with shoulder-length hair named Matt McLoughlin. Matt would later become one of the founding members of The Coalition, the pivotal group that organized and created the

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[69] *Id.*

[70] *Id.*

[71] *Id.*

[72] *See* Craig B. Futterman, Chaclyn Hunt & Jamie Kalven, *Youth/Police Encounters on Chicago's South Side: Acknowledging the Realities*, 2016 U. Chi. Legal F. 125, 132-70 (discussing the ubiquity of police presence, ranging from plain physical presence to police shootings, in the lives of Chicago youth).

[73] *See Ferguson Unrest: From Shooting to Nationwide Protests*, BBC News (Aug. 10, 2015), https://www.bbc.com/news/world-us-canada-30193354 [https://perma.cc/3UPQ-C9TH].

[74] *See* Meyer & Ford, *supra* note 67.

[75] *Id.*

[76] *See* Anna Attie, *What's Next for the Chicago Community Fund?*, S. Side Wkly. (May 28, 2021), https://southsideweekly.com/whats-next-for-the-chicago-community-bond-fund/ [https://perma.cc/C4ZY-TBWB].

PFA.[77] Rallying to the cause of a loved one being swept into the system due to an interaction with the police wasn't new for Matt; it was what got him involved with helping the Pittman family. As Matt explained:

> And I think the real impetus that got me connected was a protest I helped organize in June of 2012. Me and like 12 other people were arrested while marching down Michigan Avenue. One of the people I was arrested with was charged with a felony for allegedly hitting a Chicago cop. And he got a $5,000 bond. We spent over a month trying to raise the money to get them out and couldn't get it together. I was unemployed at the time. But feeling like a lot of responsibility for this person, having helped organize the action. I used the little bit of savings I had to get him out. Even though I was unemployed, and you know, going down to the jail and being a part of that process of paying the bond. I got really interested in helping develop infrastructure to support activists. And so for a few years was involved with a lot of bail fundraising, when people would get arrested at protests.[78]

Matt explains here that his interaction with the bail system and police pushed him to get involved; the injustice served as the entry point rather than the exit point. Even though he didn't have the money himself because he was unemployed, he still sought a way to get folx out of jail. This act of mutual aid helped him see the connection between his experience with the police and DeSean Pittman's family.

Another organizer named Sharlyn Grace also shared the same sentiment. Sharlyn was a white woman who was another founding member of The Coalition and worked in the Public Defender's office when I met her. Like Matt, her entry began with DeSean's Pittman's family and was also about combatting injustice at the hands of the police:

> [P]art of the reason I went to law school and wanted to have a law degree was to do legal support for movements. And I was particularly interested in movements against police violence and criminalization. So I was involved in legal support. And involved in organizing against police violence in Chicago, including when Michael Brown was murdered in Ferguson in August of 2014. And all the sort of attendant protests around the country. Including in Chicago. And Chicago police shot and killed two young black people on the same day, about two weeks after Michael Brown was murdered. And one of those young people, DeSean Pittman, his family organized a vigil for him a couple days later. And then the Chicago Police basically attack that vigil. Used racial slurs, knocked over candles,

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[77] Matthew McLoughlin, *How We Ended Wealth-Based Jailing*, INQUEST (Nov. 7, 2023), https://inquest.org/how-we-ended-wealth-based-jailing/ [https://perma.cc/MTX5-SEQN].

[78] Zoom Interview with Matt McLoughlin, Organizer (Sept. 8, 2022).

> and memorial sort of items [that] had been set up. And they arrested eight people. And five people were charged with serious felonies and sent to bond court, where they were ordered to pay over $30,000 in bond, and someone else who I had been doing legal support with and who was part of also part of the National Lawyers Guild of Chicago, read about the arrests and the high bonds and wanted to start a fundraising campaign. We started fundraising to pay bonds. Reached out to the people and the family members of the people who were arrested to make sure they wanted that help. And then started organizing people to just engage in grassroots fundraising to raise that money for bonds. So online fundraisers, house parties, fish fries, raffles, things like that.[79]

The organizing worked. Pittman's mother was released from jail in time to attend her son's funeral. It would take several months for the last person arrested, Derreck Wince, to get released.[80] Upon his release, Wince's mother, Jeanette Wince, suggested that organizers who rallied behind the family create a permanent bond fund.[81]

Zooming out, what happened here is instructive for a couple of reasons. For folx thinking about abolition, the aftermath of DeSean Pittman's death indicates that instances of systemic violence caused by systemic oppression represent sites of mourning and political opportunity. The political opportunity here came from the police killing a young black man and those who loved him mourning him. The subsequent arrests of Pittman's family made people begin to focus on cash bail as a problem.

This story also highlights that political opportunities are deeply informed by interlocking forms of oppression. That is to say that political moments can be racialized and informed by class and gender, as was the case with DeSean Pittman. Put another way, the emergence of the abolitionist political opportunity here was greatly informed by the fact that DeSean Pittman was a young black man, whose death was connected to a broader framework about racialized interactions with police. This was further compounded by class once there became a need to raise funds to pay the cash bail for DeSean Pittman's family. This is not to suggest that because political opportunities are racialized, only certain communities can utilize them. Rather, this story suggests that political opportunities in the context of social movements cannot be disentangled from the moments that create them. Factors like race, class, and gender greatly inform how political opportunities manifest themselves.

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[79] Zoom Interview with Sharlyn Grace, Organizer (Sept. 23, 2022).

[80] Attie, *supra* note 76.

[81] *Id.*

B. The Coalition to End Money Bond

Jeannette Wince's suggestion to create a bond fund proved to be pivotal because it led people in DeSean Pittman's family, organizers like Matt and Sharlyn, and a host of other community organizers to create the Chicago Community Bond Fund ("CCBF").[82] The CCBF was born in response to the racialized harm people of color face at the hands of police and jails.[83] It was constructed from the ground up, based on a suggestion from directly impacted community members.[84] More importantly, the fund was about helping those who could not afford freedom.[85]

The CCBF is essential to this story because it provided a tangible opportunity to organize and create infrastructure around bail.[86] The CCBF, in this sense, was the first mobilization structure for The Movement. Though The Movement hadn't officially formed yet, the CCBF was a critical precursor organization for The Movement. Many pivotal actors in The Movement, like Sharlyn Grace and Matt McLoughlin, started working on ending cash bail as a part of the CCBF before launching The Movement. The fund, in this way, functioned as a gateway or entry point for those seeking to do something about the harms of cash bail and pretrial incarceration before it manifested into a full-blown movement. By the time The Movement was formed, the CCBF organizers and activists had already gained experience organizing around ending cash bail because they had been raising money for the bond fund, organizing teach-ins, and going down to the county jail to bail people out.

In May 2016, The Coalition officially formed as a result of meetings organized by the Chicago Appleseed Center for Fair Courts.[87] The Coalition would serve as the mobilizing structure for The Movement by providing resources and organization. At this meeting, the group determined their cognitive frame: the total abolition of the money bond system.[88] For them, the usage of cash bail was unconstitutional, harmful, and could not be reformed.[89] The problem to be addressed in their cognitive frame was the usage of money bond/cash bail. The solution in their framing was to completely abolish the usage of money bond/cash bail from the pretrial system.

Members who composed The Coalition were lawyers, faith leaders, abolitionist organizers, service providers, policy experts, and impacted

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[82] *Our Story*, Chi. Cmty. Bond Fund, https://chicagobond.org/about-us/ [https://perma.cc/6A26-CJ2B] (last visited June 6, 2024); Simonson, Radical Acts, *supra* note 31, at 22; Attie, *supra* note 76.

[83] Simonson, Radical Acts, *supra* note 31, at 22.

[84] Attie, *supra* note 76.

[85] Simonson, Radical Acts, *supra* note 31, at 22.

[86] *Id.* at 25-27.

[87] Sharlyn Grace, '*Organizers Change What's Possible'*, Inquest (Sept. 23, 2021), https://inquest.org/organizers-change-whats-possible/ [https://perma.cc/PM6K-KVSH]; McLoughlin, *supra* note 77; Interview with Sharlyn Grace, *supra* note 79.

[88] McLoughlin, *supra* note 77.

[89] *Id.*

community members.[90] The Coalition was not just a random formation of organizations and organizers who happened to be working on ending money bond. The formation was strategic in that The Coalition intentionally brought together groups with different organizational specialties.[91] Organizations comprising The Coalition included groups like Southsiders Organized for Unity and Liberation ("SOUL"), the CCBF, and the People's Lobby, which specialized in direct actions, protests, electoral mobilizing, and base building.[92] Further down the line, organizations like Chicago Appleseed, the Illinois ACLU, and the Illinois Justice Project focused much more on legal policy and politics.[93]

The group could even count a future Democratic state senator named Robert Peters among its ranks. Though a state senator when I met him, he started his work with The Coalition as an organizer for the People's Lobby, where he assisted grassroots candidates with campaign organizing.[94] Here's how once-organizer-turned-State-Senator Robert Peters describes the composition of The Coalition:

> [Y]ou have members who are just policy driven. They just know policy. They're not going to do grassroots base building, but they're gonna know the policy, in and out. You're gonna have people who know policy from a legal perspective. People [who] know policies from a data perspective. That's in The Coalition. You have grassroots organizations. They're gonna do direct action, right? They're gonna protest. You have grassroots organizations that are gonna do direct action. You have grassroots organizations that are gonna do the political work, right? You have people who are going to do communications. They're going to be great with the press; they'll be able to communicate the narrative.[95]

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[90] Tanya Watkins, Sharlyn Grace, Will Tanzman & Sharone Mitchell, Jr., *Illinois May Be First State to Eliminate Money Bail, but the Fight Isn't Over*, TRUTHOUT (Feb. 2, 2021), https://truthout.org/articles/illinois-may-be-first-state-to-eliminate-money-bail-but-the-fight-isnt-over/ [https://perma.cc/9PE4-D3VE]; Will Tanzman, *How We Ended Cash Bail in Illinois*, NATION (Nov. 15, 2023), https://www.thenation.com/article/activism/end-cash-bail-illinois/ [https://perma.cc/DB5T-5PY6].

[91] McLoughlin, *supra* note 77; Watkins et al., *supra* note 90; Tanzman, *supra* note 90.

[92] *Who Is Soul?*, SOUL (SOUTHSIDERS ORGANIZED FOR UNITY & LIBERATION), https://www.soulinchicago.org/mission/ [https://perma.cc/VSQ2-SK9Q] (last visited June 6, 2024); *About Us*, THE PEOPLE'S LOBBY, https://www.thepeopleslobbyusa.org/about-us/ [https://perma.cc/9XQV-DAV8] (last visited June 6, 2024); Tanzman, *supra* note 90.

[93] *About Us*, CHI. APPLESEED, https://www.chicagoappleseed.org/about-us/ [https://perma.cc/SF68-RCNB] (last visited June 6, 2024); *About Us*, AM. C.L. UNION ILL., https://www.aclu-il.org/en/about/about-us [https://perma.cc/44DU-NN8K] (last visited June 6, 2024); *About ILJP*, ILL. JUST. PROJECT, https://www.iljp.org/about [https://perma.cc/2HRH-5XVB] (last visited June 6, 2024); Tanzman, *supra* note 90.

[94] *2021 Year in Review*, THE PEOPLE'S LOBBY, https://thepeopleslobbywins.org [https://perma.cc/U72Q-RB9Z] (last visited May 19, 2025).

[95] Interview with Robert Peters, Illinois State Senator, in Chicago, Ill. (Sept. 21, 2022).

Though each organization had a different focus, the goal of ending money bond united them under the umbrella of The Coalition, including organizations that weren't abolitionist. It is important to note that The Coalition did not strive to create a movement where a few organizations or individuals were doing all of the work. Rather, The Movement was intentional about creating space for movement actors to do what they were good at.[96]

This was an effective strategy for The Movement for a couple of reasons. For one, it was practical. Ideally, you want those who are good at writing policy to solely write policy instead of trying to do other tasks they may not be as good at. Stretching actors too thin runs the risk of them doing many tasks less than optimally and, worse, burning out. With The Movement's strategy, everybody could stay in their lane and do what they were good at.

Secondly, this strategy allowed The Movement to build broadly. This is important because The Movement's goal was to abolish cash bail, not necessarily to convince folx to become wholesale abolitionists. In other words, in order for this campaign to be successful, they merely needed people to support their cause, not become abolitionists. As such, they would need to convince and reach community members in various sectors of society, which, in turn, meant they needed supporters who had access to those segments as a part of their coalition.

Even at the beginning, not everyone involved was necessarily an abolitionist. Some engaged with ending money bond because they understood money bond to be wrong and wanted to do something about it. Take Tanya Watkins, for example, who was the Executive Director of the grassroots organization SOUL. Here, she talks about her initial entry point with ending money bond:

> [L]ike today, I'm a raging abolitionist. But then, I won't say that I didn't know any better. I wasn't able to yet connect the fact that the system is ineffective, even with all the jails and prisons, right?[97]

I highlight this example to show that there were differing levels of commitment to abolition as a total project for jails and prisons. Those in The Movement came from different walks of life with different sets of knowledge and political commitments. Nevertheless, there was full buy-in to the idea of cash bail abolition precisely because The Movement felt that their best chance at eliminating the harms of the money bond system was to work together across ideological differences. Organizers in The Movement knew that achieving progress within the legal system would require buy-in from system actors like judges, politicians, and everyday people who were not abolitionists.

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[96] *Id.*

[97] Zoom Interview with Tanya Watkins, Organizer (Oct. 11, 2022).

Later on, as The Movement gained more strength, the same was true in reverse. Politicians, judges, and others who cared about pretrial issues knew that having The Coalition on board would be pivotal for electoral success. Here is Senator Peters talking about this dynamic:

> And a large part of that [discussing The Coalition fending off backlash] is that I don't think we, as a Coalition, realized how strong we are, but I think we do now. I mean, I basically told or am telling people who want to run for State's Attorney that they have two choices to make. They are either going to be on the side that The Coalition stands for, or they are not. And they should know that one wins, and one loses. I would not have said that a year ago. And that's definitely now where I'm at because of the election, the trailer bill, and the election of Brandon Johnson [current Chicago Mayor, as of 2024]. And I think you know, one time's like a fluke, two times, you know you're lucky. Third time might be a trend.[98]

The intentional building of a coalition composed of various organizations with different functions significantly shaped the tactics of The Movement's mobilizing structure.[99] Because The Coalition had policy and grassroots organizations amongst their ranks, they formed a strategy featuring inside and outside tactics to bring down the money bond system.[100] The inside tactics worked within existing systems to bring about change. These tactics included policy-focused initiatives like impact litigation, data collection, legislative lobbying, and policy drafting.[101] The outside tactics exerted pressure outside of more conventional means through direct actions, protests, and original educational videos.[102] Together, these strategies allowed The Coalition to operate in multiple places concurrently. While outside organizing and protesting as impacted individuals at courthouses, The Coalition was simultaneously inside the courthouse, city halls, and the Statehouse.

The Coalition also had a large contingent of faith-based organizations.[103] This proved beneficial for several reasons. Firstly, the faith-based organizations had access to large swaths of impacted individuals and were fertile ground for mobilization, as many faith leaders and organizations had active congregations or were actively involved in their churches.[104] As such, they could easily organize individual actions like teach-ins or protests.[105]

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[98] Interview with Robert Peters, *supra* note 95.

[99] Watkins et al., *supra* note 90.

[100] *Id.*

[101] *Id.*

[102] *Id.*

[103] *Id.*

[104] Zoom Interview with Violet Johnicker, Pastor and Faith-Based Organizer (Oct. 25, 2022); Zoom Interview with Shelly Heideman, Faith-Based Organizer (Oct. 17, 2022); Zoom Interview with Amber Bordolo, Faith-Based Organizer (Oct. 14, 2022).

[105] Interview with Violet Johnicker, *supra* note 104; Interview with Shelly Heideman, *supra* note 104; Interview with Amber Bordolo, *supra* note 104.

Furthermore, many of the impacted individuals and organizers were faith believers, which made this connection fundamentally practical.[106] Secondly, many faith-based organizations and organizers were already connected via statewide networks.[107] Instead of establishing and creating statewide pipelines from scratch, they could borrow from pre-existing statewide faith-based networks.[108] This strategically put The Movement in multiple places throughout the state. Thirdly, including faith-based organizations allowed The Movement to leverage the legitimacy of faith leaders in the media and with politicians.[109]

Overall, the establishment of The Coalition shows that folx pursuing abolition did so by building a broad coalition which included abolitionists and non-abolitionists.[110] They were able to achieve this coalitional support because they were clear about their cognitive framing of pursuing the goal of cash bail abolition. As such, one didn't need to identify as an abolitionist but instead identify with the cause of abolishing cash bail.

To the extent that one wants to pursue abolitionist and decarceral goals through institutions like the law, this case indicates that one successful strategy is to build coalitions with constituents inside and outside the institution one seeks to transform. Put another way, for abolitionists who want to use the law, this case study indicates that meaningful partnerships with non-abolitionists can provide real abolitionist wins. These sorts of partnerships don't have to compromise on principles per se; rather, they should be oriented around the focused pursuit of the particular goal of decarceration. Of course, other variations of coalition building could also work, but this is one example from a successful movement.

C. Tactics in Action

1. Focusing on Courts: Lawsuits and Court Rules

With the mobilizing structure in The Coalition established and the cognitive frames surrounding cash bail abolition formed, The Movement began operationalizing abolition. One of the first collective actions in which The Coalition participated was a class action lawsuit filed in 2016 against several Cook County Judges and Cook County Sheriff Tom Dart, alleging the unconstitutional usage of unaffordable cash bail.

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[106] Interview with Violet Johnicker, *supra* note 104; Interview with Shelly Heideman, *supra* note 104; Interview with Amber Bordolo, *supra* note 104.

[107] Interview with Violet Johnicker, *supra* note 104; Interview with Shelly Heideman, *supra* note 104; Interview with Amber Bordolo, *supra* note 104.

[108] Interview with Violet Johnicker, *supra* note 104; Interview with Shelly Heideman, *supra* note 104; Interview with Amber Bordolo, *supra* note 104.

[109] Interview with Violet Johnicker, *supra* note 104.

[110] McLoughlin, *supra* note 77; Watkins et al., *supra* note 90; Tanzman, *supra* note 90.

Zachary Robinson and Michael Lewis were the plaintiff class representatives in this particular lawsuit.[111] According to the court filing, Zachary was a twenty-five-year-old indigent black man who had been incarcerated for theft in Cook County.[112] Zachary worked at a local meat market on the Southside of Chicago and was getting his construction degree from a local community college.[113] He had no bank account, earned minimum wage, and relied on the state for food stamps, health care, and financial aid for school.[114] As a result of being incarcerated, he lost his employment and could not attend school.[115] After his arrest, he was given a $10,000 D-Bond, which required him to pay 10% of his bond.[116] The judge decided that Zachary could be released only if he could pay $1,000 for his freedom.[117] The price of his freedom was too high, and he remained in jail.[118]

The other class representative was Michael Lewis. According to the court filing, Michael was a forty-year-old indigent black man with post-traumatic stress disorder who lived in Cook County.[119] He was arrested for retail theft.[120] Before that, he was the caretaker for his seventy-two-year-old godmother, who had dementia.[121] Michael was on disability, receiving about $700 a month.[122] He also worked as a caterer, making about $6,000 annually.[123] Michael relied on his disability income to pay for utilities and necessities.[124] Michael was given a $50,000 D-Bond, which meant he would have to pay about $5,000 for his release.[125] The price of his freedom was too high, and he remained in jail.[126]

Plaintiffs pursued a variety of legal theories: They alleged that cash bail in Cook County violated their rights under the Equal Protection Clauses of the Illinois and U.S. Constitutions (by discriminating against the poor);[127] under the Due Process Clauses of the Illinois and U.S. Constitutions

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[111] Class Action Complaint at 1, Robinson v. Martin Jr., No. 2016CH13587 (Ill. Cir. Ct. Oct. 14, 2016), https://wwws.law.northwestern.edu/legalclinic/macarthur/projects/treatment/documents/class%20action%20complaint%20bail%20101416.pdf [https://perma.cc/J36Y-PDPD].

[112] *Id.* at 6, 8.

[113] *Id.* at 8-9.

[114] *Id* at 9.

[115] *Id.*

[116] *Id.* at 8.

[117] *Id.*

[118] *Id.*

[119] *Id.* at 7, 10.

[120] *Id.* at 9.

[121] *Id.* at 10.

[122] *Id.* at 9.

[123] *Id.*

[124] *Id.*

[125] *Id.*

[126] *Id.*

[127] *Id.* at 25-26.

(by depriving them of "liberty" without sufficient procedure);[128] under the Eighth Amendment (as an unreasonable and excessive restraint on pretrial release);[129] and additional theories under the Illinois Constitution and statutes.[130] The reason for pursuing all of these claims was that if the court agreed with the plaintiffs, then the usage of money bonds, at least for those who could not afford them, likely would have ended. They wanted to utilize all angles in trying to defeat the system and wanted to leave no stone unturned.

The Coalition's role was to identify and support those accused in the Cook County Jail to join the lawsuit.[131] Here, they utilized a traditional civil rights tactic of using litigation to pursue their goal. In particular, The Coalition helped find the plaintiffs, one of whom was recruited by someone the CCBF bonded out.[132] The lawsuit did not ultimately ask for cash bail to be abolished for everyone, but that did not seem to matter to The Coalition. The Coalition was concerned with preventing the system from harming people like Zachary or Michael, who would have been freed had they had the money. The Coalition also desired to move the system in a direction that decreased the state's ability to incarcerate individuals. Collaborating on a lawsuit attempting to push the Cook County courts to end the usage of cash bail for the poor made sense because it worked toward their goal of ending money bond. It was also a way for The Coalition to engage and center the needs of the directly impacted in litigation.

As the class action suit worked its way through the courts, on June 9, 2017, Illinois Governor Bruce Rauner signed SB 2034 into effect.[133] SB 2034 was passed in response to the mounting pressure The Movement was building. As Sharlyn Grace put it, seventeen bills alone were introduced in 2017 addressing money bond. This was in addition to direct actions The Movement actors were engaging in throughout the city aimed at money bond. Outside of The Movement, a study was conducted by Cook County Sheriff Tom Dart and State's Attorney Kim Foxx, which concluded that the bail process in Illinois was unfair to the poor.[134] In response to mounting political pressure for movement on the bond front, the legislature passed

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[128] *Id.* at 27-28.

[129] *Id.* at 29.

[130] *Id.* at 30-31.

[131] Interview with Matt McLoughlin, *supra* note 78.

[132] *Id.*

[133] Amber Ruch, *Governor Rauner Signs Bill to Transform Bail Process*, KFVS 12 (June 9, 2017, 3:24 PM), https://www.kfvs12.com/story/35630657/gov-rauner-signs-bill-to-transform-bail-process/ [https://perma.cc/R2W6-ZZ6Q]; *Bill Status of SB2034*, ILL. GEN. ASSEMBLY, https://www.ilga.gov/legislation/billstatus.asp?DocNum=2034&GAID=14&GA=100&DocTypeID=SB&LegID=105495&SessionID=91 [https://perma.cc/4EXK-BVV3] (last visited June 6, 2024).

[134] Devin Taseff, Comment, *The Illinois Bail Reform Act of 2017: Roadmap to Reform, or Reform in Name Only?*, 38 NIU L. REV. 528, 536 (2018).

SB 2034 to reform the bail process in Illinois.[135] SB 2034 notably received bipartisan support in the legislature.[136]

Substantively, SB 2034 created a presumption against the usage of monetary bail.[137] If bail was to be set, judges were encouraged to set lower money bonds, assess a person's socioeconomic background, and use the least restrictive means when detaining.[138] It also changed existing law to require courts to appoint counsel at bail hearings if the accused did not have a privately retained lawyer.[139]

However, SB 2034 is significant in this story not necessarily because of what it did, but because of what it did not do. Despite SB 2034's directives, the law still allowed money bond to be used. In practice, nothing stopped judges from legally ignoring the presumption against monetary bonds in the law, and nothing punished judges for setting high monetary bonds in defiance of the law.

For The Movement, SB 2034 represented a step in the right direction, but it wasn't enough because the money bond system they were fighting to abolish remained intact.[140] The Movement viewed SB 2034 as making important, yet mostly small, changes to the bond system.[141] For example, members of The Movement certainly thought it was a good thing that the law now required that defendants have counsel at bond hearings and established that defendants could be appointed a public defender if they couldn't retain private counsel.[142] However, having counsel at bond hearings wouldn't mitigate a person going to jail if they still couldn't buy their way out of jail.[143] Furthermore, Ben Ruddell at the Illinois ACLU, who was also a policy advocate in The Movement, expressed concern that even these incremental reforms were not being implemented.[144] Thus, the system hadn't actually changed; the accused were still experiencing the same system that existed before SB 2034.

On July 17, 2017, about a month after SB 2034 went into effect, Chief Judge Timothy Evans of the Circuit Court of Cook County paved another

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[135] *Id.* at 537.

[136] *Id.*

[137] *Bill Status of SB2034*, *supra* note 133.

[138] *Id.*

[139] *Id.*

[140] *See Bail Reform Act of 2017*, Chi. Cmty. Bond Fund, https://chicagobond.org/2017/06/09/bail-reform-act-of-2017/ [https://perma.cc/NPB5-JXDV] (last visited May 19, 2025); *see also* Sharlyn Grace, *Illinois Takes Small First Step Toward Bail Reform*, Chi. Appleseed (June 9, 2017), https://www.chicagoappleseed.org/2017/06/09/illinois-takes-small-first-step-toward-bail-reform/ [https://perma.cc/P7Y9-LG6B]

[141] Grace, *supra* note 140.

[142] *Id.*

[143] *Id.*

[144] Zoom Interview with Ben Ruddell, Policy Analyst (Sept. 9, 2022).

step toward bail reform by issuing General Order 18.8A ("GO18.8A").[145] Prior organizing was also paying off as newly elected State's Attorney Kim Foxx implemented a policy around the same time, which directed the prosecutor's office to stop seeking monetary bond for certain offenses. Here is how Kim Foxx described the policy:

> The real work starts in 2017. And we craft a bail policy in the office, the first of its kind, where we decide that we're not going to seek bail for certain offenses. Like we're just not going to ask a judge to assign bail for most misdemeanors and a significant portion of felonies. We wrote the policy down. It applied pressure, I believe, to Chief Judge Evans. Where, you know, historically, it had been the prosecutors and the judges working together on these things. And my position was, alright, if we're going to work together, the together is not using bail so much. And then Chief Judge Evans issues his order, I want to say in August of that year, that defines how and when cash bail will be used. That it had to only be in amounts that people could afford. So all of that was working in tandem.[146]

Practically speaking, this meant that in the span of 3 months, bail reform was pursued at both the state and county levels.

GO18.8A instructed Cook County bond court judges to determine first whether the accused should be released pretrial.[147] If it was determined that the accused could not be released, then the accused would be detained.[148] If it was determined that the accused could be released, GO18.8A instructed that a presumption of release without a money bond.[149] If a money bond was needed, then the money bond was supposed to be set at an affordable amount for the accused.[150] To be clear, GO18.8A here wasn't creating new law. It simply restated existing state law while putting in place a procedure to improve judicial compliance in Cook County with existing state law.

While Chief Judge Timothy Evans authored GO18.8A, the order was the direct result of activists and advocates applying pressure on the Chief Judge and the court system. This reality might often get lost in reading news reports or focusing on the authorship of the order. However, looking closer, a clear picture begins to emerge—one that is not about the benevolence of state officials but rather about the pressure and power The Movement exerted.

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[145] Cook Cnty. Cir. Ct., Gen. Ord. No. 18.8A (eff. Sept. 18, 2017 for felony cases and Jan. 1, 2018 for all cases), https://web.archive.org/web/20230821182353/https://www.cookcountycourt.org/Portals/0/Orders/General%20Order%20No.%2018.8a.pdf [perma.cc/SZA3-TSKW].

[146] Zoom Interview with Kim Foxx, Cook County State's Attorney (Feb. 6, 2024).

[147] *Id.*

[148] *Id.*

[149] *Id.*

[150] *Id.*

In the immediate aftermath of GO18.8A, according to Matt, The Coalition organized and trained over 100 people to observe bond court.[151] The strategy was to watch bond court before and after GO18.8A went into effect in order to gather first-hand data rather than wait for the county to provide it to them.[152] Collecting data allowed The Coalition to get real-time information about whether judges complied with the order and other data about how money bonds were being used in court.[153] Court observations also served as an organizing tactic to get supporters actively engaged in the cause at the courthouse.

Armed with data, The Coalition produced a report on its findings, created videos and infographics on social media to inform the public about what was happening in court, and fed data to policymakers who were engaging with county officials.[154] This was all about applying pressure to move county stakeholders to ensure compliance with the order and evaluate whether the policy was working. There was a sense that in the absence of holding the system accountable, non-compliance would mean that the order would exist for a considerable time before the policy would be re-evaluated.

As The Movement suspected, the data that emerged told a different story than what the court forecasted. SB 2034 and GO18.8A changed *how* defendants were released, but they did not necessarily alter the number of defendants released pretrial or constrain the judge's ability to impose an unaffordable bail.[155] What I mean here is that more people were receiving low or non-financial bonds than they were prior to SB 2034 and GO18.8A but the number of people released from jails pre and post-reforms was relatively the same.

An example here might help drive home this point. Say there were 100 people detained pretrial pre-SB 2034 and GO18.8A. Let's say ninety of those people received a money bond, and ten people received a personal recognizance or non-financial bond. Of that group, twenty-five were released, and seventy-five remained behind bars. Now, let's think about that same group post-enactment of SB 2034 and GO18.8A. Again, 100 people are detained, except now seventy-five people receive a money bond and twenty-five people receive a non-financial bond. Of this group, twenty-five get released and seventy-five remain behind bars. Here, despite the fact that there were more non-financial bonds and presumably more non-financial releases in the second scenario, it didn't change the overall number of people released.

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[151] Simonson, Radical Acts, *supra* note 31, at 56-57; Interview with Matt McLoughlin, *supra* note 78.

[152] Interview with Matt McLoughlin, *supra* note 78; Simonson, Radical Acts, supra note 31, at 56-57.

[153] Interview with Matt McLoughlin, *supra* note 78; Simonson, Radical Acts, *supra* note 31, at 56-57.

[154] Interview with Matt McLoughlin, *supra* note 78.

[155] Don Stemen & David Olson, Dollars and Sense in Cook County: Examining the Impact of General Order 18.8A on Felony Bond Court Decisions, Pretrial Release, and Crime 9 (2020).

However, GO18.8A did increase the number of people released without having to pay a bond, which resulted in an estimated $31.4 million in savings for those accused.[156] The impact of the increased number of defendants released under GO18.8A was also found to have a minimal impact on failures to appear back in court and no impact on crime in Chicago.[157] What GO18.8A and SB 2034 did not do, however, was eradicate wealth-based detention in Cook County.

Armed with the fact that GO18.8A was still leading to folx being locked up on unaffordable money bonds, members of The Coalition decided to engage in direct action at Cook County Bond Court and the Chief Judge's office to get a meeting with Chief Judge Evans to address the money bond system.[158] The organizers specifically targeted Chief Judge Evans because he had long hindered bail reform.[159] The courts issuing money bonds were the ideal place for disruption since the aggrieved harm occurred there. The idea here was to disrupt the normal course of business until the judge agreed to meet with them to address their grievances. Their goal was to shut court down to force a change since the courts did not seem otherwise motivated to embrace meaningful change through traditional means. Organizer Will Tanzman highlighted this in speaking about his experience organizing around GO18.8A:

> Evans had been one of the blockages around bail reform. And, we did a couple of direct actions where we brought hundreds of people in at one point in early 2017 to protest Evans at Evans' office. And that was what it took for us to get the meeting with him. Actually was to bring, I don't know, 200 people to his office. Then, a group of people sat down in the street and got arrested. An act of civil disobedience. The Evans order was always a confluence of the long-term work by stakeholders.[160]

Organizer Tanya Watkins also echoed this sentiment in reflecting on her experience:

> And so one of our first collective actions was we shut down bond court. You know, we saw okay, there's this order in place. People are still getting locked up with unaffordable bail. What are we doing about it? And we're gonna shut this pla-[ce]- ain't gone be. Ain't gone be no bond court! How about that?! You can't have court right then you're not going to have no court. And we got, I don't know, maybe 15 people in the building, and nobody could go in and out

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[156] *Id.*

[157] *Id.* at 10-12.

[158] Joe Vince, *Protesters to Meet with Judge After Chicago Courthouse Shutdown*, PATCH (Oct. 31, 2018, 2:33 PM), https://patch.com/illinois/chicago/watch-protesters-shut-down-chicago-courthouse-end-money-bail [https://perma.cc/RZ2N-SJRX]; SIMONSON, RADICAL ACTS, *supra* note 31, at 26-27.

[159] Zoom Interview with Will Tanzman, Organizer (Sept. 30, 2022).

[160] *Id.*

> that motherfucker. Until Chief Judge Evans agreed to have a meeting with us and figure out how to make this work. That was like our first really code red action as a coalition. It forced us to be in a real struggle. It made us trust each other. And it made us really lean into our values. And we believe that this work is love and rigor. And this is the type of shit that we have to do.[161]

As Tanya highlights here, this type of direct action was important because it forced the members of The Coalition to exist in relationship with each other. While engaging in direct action, organizers had to be accountable and trust each other to do the work of their values.

Despite achieving some success in reaching their goal via direct actions and Kim Foxx's new policy, one of the unintended consequences of the legal victories that organizers and activists had won with GO18.8A and SB 2034 is that it set the stage for Zachary Robinson and Michael Lewis's class action suit to get dismissed.[162] For the Circuit Court, which dismissed the action, the complaint was now moot because GO18.8A and SB 2034 addressed the concerns the plaintiffs raised.[163] Specifically, the court noted that GO18.8A provided the plaintiffs with the requested procedures by introducing inquiry into the defendant's ability to pay bail and ensuring that bail was not oppressive and inconsiderate of the accused's financial resources.[164]

For the court, Zachary and Michael's concerns about the problems of pretrial incarceration and money bonds were solved by GO18.8A and SB 2034. In a pat-on-the-back gesture that turned out to be false, the court said that GO18.8A, in particular, made Chicago "the largest place in the country to eradicate wealth-based detention."[165]

Unlike the court, The Coalition knew that neither GO18.8A nor SB 2034 eradicated wealth-based incarceration. While SB 2034 and GO18.8A were good movements on the bail front, that movement was far more modest than what the class action suit would have produced had the Circuit Court sided with Michael and Zachary. Even though the Circuit Court's proclamation that the Zacharys and Michaels of the world no longer had an issue, the harm central to their lawsuit had not been addressed: pretrial incarceration of the poor. In order to prove that, they needed data to show that wealth-based incarceration was still occurring.

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[161] Zoom Interview with Tanya Watkins, Organizer (Oct. 11, 2022).

[162] Interview with Matt McLoughlin, *supra* note 78; Grace, *supra* note 87; Watkins et al., *supra* note 90; Judicial Defendants' Supplemental Section 2-619 Motion to Dismiss for Mootness, Robinson v. Martin Jr., No. 2016CH13587 (Ill. Cir. Ct. July 24, 2017), https://www.civicfed.org/sites/default/files/motion_to_dismiss_for_mootness.pdf [https://perma.cc/HGC2-UBKP].

[163] Judicial Defendants' Supplemental Section 2-619 Motion to Dismiss for Mootness, *supra* note 162.

[164] *Id.* at 3-4.

[165] *Id.* at 4.

Nevertheless, GO18.8A and the organizing around its implementation are significant for several reasons. Firstly, with the issuance of GO18.8A, The Coalition now had evidence that they could move the chief judge of the largest county court system in the state to act. Though the class action lawsuit had been dismissed, their organizing work as a part of the case and with Kim Foxx helped them apply enough pressure to get Chief Judge Evans to issue GO18.8A.

It is important to note that State's Attorney Kim Foxx's policy decision to stop the State's Attorney's Office from pursuing bail for certain offenses likely made the move for Chief Judge Evans easier because another key state official was agreeing to a similar policy position.[166] Chief Judge Evans, in this sense, wouldn't be alone in shifting his stance. But I think this move would not have happened, or at least would have been much more complicated, had The Movement not engaged with Kim Foxx or had she not delivered on her campaign promise to move away from money bonds. Thus, maneuvering to get a specific prosecutor with specific politics elected, and having that prosecutor follow through on her campaign promises, proved immensely useful to The Movement.

Secondly, GO18.8A also proved that The Movement's inside and outside tactics could be successful. The combination of direct actions, litigation, media coverage, and movement actors meeting with Judge Evans proved essential to the creation of GO18.8A because it created a political environment where Chief Judge Evans moved from an obstacle to a champion of reform.

Thirdly, and most importantly, it was a real, tangible policy win that moved the system closer to total abolition. This seems like a peculiar conclusion, considering that GO18.8A is most accurately described as a reformist reform in that it mostly kept the money bond system in place. How then could the implementation of a reformist reform be a win for an abolitionist movement?

The answer is related to perspective. GO18.8A was never viewed as the end goal of The Movement; the goal was the abolition of cash bail. In this sense, the order did not stop the organizing and movement efforts toward complete abolition. Had GO18.8A been viewed as the crowning accomplishment or even the end The Movement was fighting for, getting a reformist reform back would have been deflating. Yet because The Movement had its sights set on the larger goal of abolition, the order had utility in that it made the pathway to abolition easier. This was because the order moved the system in a direction that benefited The Movement. GO18.8A provided a tangible data point that the use of cash bail could be reduced without resulting in increased local crime.[167] As such, the move to total abolition wouldn't

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[166] Interview with Kim Foxx, *supra* note 146.

[167] Stemen & Olson, *supra* note 155, at 12 (showing that GO18.8A had no statistically significant impact on crime in Chicago).

seem as farfetched because a similar frame of reference existed. By inching closer toward abolition and scaling down the need for and usage of cash bail, it would become clear that there was no need for it.

A big part of the perspective was also caring about the conditions facing the community on the ground. Recall that The Movement fought and engaged in direct action to get GO18.8A implemented. Before their efforts, the money bond system remained intact. Starting from nothing and getting something better was important validation that they could change the status quo. Furthermore, it cannot be understated that the policy made a huge difference and impacted the amount of money bonds being set in its aftermath. GO18.8A didn't fully abolish cash bail from the system, but it did, in theory, advise judges not to issue and set unaffordable bonds in certain scenarios. In practice, this resulted in the court system, at least for a little while, issuing fewer and lower money bonds.

I say all of that to illustrate that despite GO18.8A's shortcomings, the organizers of The Movement recognized the importance of the order in improving the realities for those most harmed by the cash bail system. After all, the campaign wasn't about waging an ideological war but was rather about creating a better criminal justice system. Sharlyn here provides further insight into The Coalition's organizing around GO18.8A:

> While the [class action] lawsuit ultimately wasn't successful strictly in court, what it did do was result in enough political pressure that Chief Judge Evans issued General Order 18. 8A in June or July of 2017. More important than a memo that repeated existing state statutes and constitutional law, was that the Chief Judge made political decisions based on pressure from organizing and from litigation and from media coverage and everything. We know that he moved new judges into central bond court who were bluntly more likely to follow the law. And that made a huge difference for a while in the number of people who are receiving money bonds. It's made an immediate difference and continues to make a difference in the amount of money bonds that were being set. Money bonds are much lower than they were prior to the General Order.[168]

Overall, I think SB 2034 and GO18.8A were ultimately helpful to The Movement in that they helped move the system in a direction that was amenable to the PFA. Organizers and supporters of the PFA had evidence that they could point to that showed that less reliance on money bonds wouldn't lead to havoc. Though reformist reforms may not be ideal, this suggests that their enactment can still be used as a pathway or opportunity to pass more idyllic non-reformist reforms.

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[168] Interview with Sharlyn Grace, *supra* note 79.

2. Shifting to the Legislature

Things would change abruptly in 2020. Amid the pandemic, news broke on March 13, 2020, that a young unarmed black woman named Breonna Taylor had been killed in her own home by seven Louisville police officers executing a no-knock warrant.[169] Two months later, camera footage captured Minneapolis police officer Derek Chauvin murdering an unarmed black man named George Floyd as he proclaimed he couldn't breathe and pleaded for his mother.[170] Just a day later, a transgender black man named Tony McDade would also be killed by police in Tennessee.[171]

These three deaths swept the nation and thrust to the forefront conversations about racism and the criminal justice system in the United States.[172] George Floyd's death, in particular, galvanized many across the country because his cries for help as he died in the street were broadcast all across the country. Taylor, Floyd, and McDade were the latest high-profile deaths at the hands of police but were reminders of those who proceeded them like Eric Garner, Sandra Bland, Michael Brown, and LaQuan McDonald.[173]

Though the pandemic was raging across the country, people took to the streets to protest racial injustice throughout the country and the world.[174]

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[169] Richard A. Oppel Jr., Derrick Bryson Taylor & Nicholas Bogel-Burroughs, *What to Know About Breonna Taylor's Death*, N.Y. Times (Aug. 23, 2024), https://www.nytimes.com/article/breonna-taylor-police.html.

[170] Evan Hill, Ainara Tiefenthäler, Christiaan Triebert, Drew Jordan, Haley Willis & Robin Stein, *How George Floyd Was Killed in Police Custody*, N.Y. Times (May 31, 2020), https://www.nytimes.com/2020/05/31/us/george-floyd-investigation.html.

[171] Meredith Deliso, *LBGTQ Community Calls for Justice After Tony McDade, a Black Trans Man, Shot and Killed by Police*, ABC News (June 2, 2020, 10:55 PM), https://abcnews.go.com/US/lgbtq-community-calls-justice-black-trans-man-shot/story?id=71022981 [https://perma.cc/BMV6-5HSP].

[172] Naomi Murakawa, *Say Their Names, Support Their Killers: Police Reform After the 2020 Black Lives Matter Uprisings*, 69 UCLA L. Rev. 1430, 1435-36 (2023); Laurin-Whitney Gottbrath, *In 2020, the Black Lives Matter Movement Shook the World*, Al Jazeera (Dec. 31, 2020), https://www.aljazeera.com/features/2020/12/31/2020-the-year-black-lives-matter-shook-the-world [https://perma.cc/9Z6M-5AQ4]; Larry Buchanan, Quotrung Bui & Jugal K. Patel, *Black Lives Matter May Be the Largest Movement in U.S. History*, N.Y. Times (July 3, 2020), https://www.nytimes.com/interactive/2020/07/03/us/george-floyd-protests-crowd-size.html; Jason Silverstein, *The Global Impact of George Floyd: How Black Lives Matter Protests Shaped Movements Around the World*, CBS News (June 4, 2021, 7:39 PM), https://www.cbsnews.com/news/george-floyd-black-lives-matter-impact [https://perma.cc/S622-UQKZ]; Kim Parker, Juliana Menasce Horowitz & Monica Anderson, *Amid Protests, Majorities Across Racial and Ethnic Groups Express Support for the Black Lives Matter Movement*, Pew Rsch. Ctr. (June 12, 2020), https://www.pewresearch.org/social-trends/2020/06/12/amid-protests-majorities-across-racial-and-ethnic-groups-express-support-for-the-black-lives-matter-movement [https://perma.cc/3XYS-HFTA]; Ben Okri, *'I Can't Breathe': Why George Floyd's Words Reverberate Around the World*, Guardian (June 8, 2020, 2:00 AM), https://www.theguardian.com/commentisfree/2020/jun/08/i-cant-breathe-george-floyds-words-reverberate-oppression [https://perma.cc/XU2P-W9LC].

[173] WSJ News Graphics, *From Ferguson to Dallas: A Recent History of Deaths Involving Police*, Wall St. J. (July 8, 2016, 3:30 PM), http://graphics.wsj.com/dallas-police-involved-deaths [https://perma.cc/PT6F-6MRD].

[174] Buchanan et al., *supra* note 172.

George Floyd's proclamation that "I can't breathe" quickly became the slogan for protestors in the street alongside "Black Lives Matter."[175] Protestors throughout the country flooded the streets despite the danger of the pandemic and demanded justice.[176] They shut down roads and disrupted the normal, or whatever was left of the normal, businesses in cities throughout the country.[177] Protestors mobilized themselves and placed an enormous amount of pressure nationwide on decision-makers to do something about racism in the criminal justice system.[178]

I had lived through the Eric Garner, Sandra Bland, Michael Brown, Trayvon Martin, and LaQuan McDonald deaths and subsequent protests, but something about this moment in 2020 was different. There seemed to be considerably less pushback in the media and from politicians about the need to address racial injustice and the criminal justice system. Whereas the slogan "Black Lives Matter" was somewhat controversial as it emerged on the national stage when Michael Brown was killed, suddenly the slogan was being adopted by even major corporations.[179] There truly seemed to be a brief moment of consensus that something needed to be done to address racism and the criminal justice system.

The Taylor and Floyd protests reverberated all the way to the Illinois State Capitol. In direct response, the Illinois Legislative Black Caucus[180] decided it wanted to act to address systemic racism.[181] The intentionality of the dialogue and messaging of the protests here (i.e. systemic racism and criminal justice reform) was important because it ended up being the framing vehicle through which the Black Caucus chose to focus their action.[182] Equally and if not more important was that the intensity of these calls for reform created a moment for the Black Caucus where the usual resistance to criminal justice reform in the legislature was absent, according to Senator Peters:

> Well, when the pandemic hits, we're spending much more time trying to figure out how to save lives and how to get by, just dealing with the state of the toxic crisis. And then, during that moment, we saw a response to a murder. That was a response we've never seen

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[175] *Id.*; Okri, *supra* note 172; Mary Blankenship & Richard V. Reeves, *From the George Floyd Moment to a Black Lives Matter Movement, in Tweets*, Brookings (July 10, 2020), https://www.brookings.edu/articles/from-the-george-floyd-moment-to-a-black-lives-matter-movement-in-tweets/ [https://perma.cc/5TXT-8DDZ].

[176] Buchanan et al., *supra* note 172.

[177] *Id.*

[178] *Id.*

[179] *Id.*

[180] The Black Caucus is a group within the Illinois legislature that is comprised of black lawmakers in both the House and Senate.

[181] *Illinois Legislative Black Caucus (ILBC): ILBC Pillars*, Ill. Senate Democrats (Mar. 8, 2021, 4:28 PM), https://www.illinoissenatedemocrats.com/ilbc-pillars [https://perma.cc/6ZYT-LD3A].

[182] *Id.*

> before. The murder of George Floyd [for Illinois] was not something that was just left to just be a yard sign. It would actually spark a transformative set of policies, but particularly one, which I would say is the Pretrial Fairness Act. And I do fundamentally believe when there's a crisis, there [are] competing ideas on how to respond to a crisis. And I think that in Illinois, at least, The Coalition, the Black Caucus, all of these things, responded to that crisis, and said that our vision of the world is the one that needs to win out. And so, you know, legislators, who don't normally support Black Caucus, black-led organizations, did not feel necessarily that they were in the position to say they were against anything.[183]

Senator Peters was not alone in holding this view. Ben Ruddell from the Illinois ACLU also said that 2020 marked a time when moderate and conservative white legislative Democrats, who typically might have opposed reforms, recognized that they needed to back the Black Caucus, even if doing so was uncomfortable:

> And what I found in those conversations is that those legislators too, who are mostly not black legislators, they're mostly white legislators, also recognized that we were in a moment where they were going to have to stretch into and to vote for something that they might otherwise be less comfortable voting on. Their colleagues in the Black Caucus needed their support, and that they were prepared to give it.[184]

The Black Caucus soon unveiled its plan to address systemic racism in the state by aiming legislation at the "four key pillars of Illinois government"—Criminal Justice Reform, Education and Workforce Development, Economic Access, Equity and Opportunity, and Health Care and Human Services.[185]

Relevant to this story is the Criminal Justice Reform Pillar,[186] where the Pretrial Fairness Act was introduced.[187] This pillar also included a host of criminal justice reforms that extended far beyond eliminating cash bail, including sentencing reform, requiring the usage of police body camera,

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[183] Interview with Robert Peters, *supra* note 95.

[184] Interview with Ben Ruddell, *supra* note 144.

[185] *Illinois Legislative Black Caucus (ILBC): ILBC Pillars*, *supra* note 181.

[186] *Id.*

[187] *Illinois Legislative Black Caucus (ILBC): Criminal Justice, Police Accountability and Violence Reduction Pillar*, Ill. Senate Democrats (Mar. 8, 2021, 4:26 PM), https://www.illinoissenatedemocrats.com/ilbc-pillars/pillar-1 [https://perma.cc/N3GX-QT4E]; L. Nicole Trottie, *SAFE-T Act: Illinois Legislators Weigh Changes to Law Says Disproportionately Affects Black and Brown Communities*, Chi. Rep. (Nov. 22, 2022), https://www.chicagoreporter.com/safe-t-act-illinois-legislators-weigh-changes-to-law-says-disproportionately-affects-black-and-brown-communities/ [https://perma.cc/YHF8-MN2U]; *SAFE-T Act FAQ*, Robert Peters (Sept. 8, 2022), https://senatorrobertpeters.com/constituent-resources/193-safe-t-act-faq [https://perma.cc/5RYB-WBYC].

banning chokeholds, establishing of a statewide use of force standard, and the control response reforms amongst others.[188] The reforms were packaged together in an omnibus reform bill called the SAFE-T Act, also known as the Safety Accountability Fairness Equity Today Act.[189] The PFA was merely one of the reforms included in the SAFE-T Act.[190]

According to the Black Caucus, the Criminal Justice Reform Pillar was specifically "written to increase public safety for everyone while dismantling the systems that hold Black people back from achieving their full potential, as well as increasing trust between law enforcement and the Black community."[191] Given the focus of the Criminal Justice Reform Pillar, the inclusion of the Pretrial Fairness Act made a lot of sense, especially for those inspired by the activism of Black Lives Matter, who wished to act quickly on criminal justice reform. Reducing the scale and scope of the criminal justice system by eliminating cash bail was listed amongst the demands made by Black Lives Matter at the time, such as abolishing the police.[192]

This connection was palpable, especially for a black activist named Cassandra Greer-Lee, who got involved in The Movement after her husband died in Cook County jail.[193] Here, she draws a connection between problems with policing, a direct invocation of the police involvement with Floyd and Taylor, and issues with pretrial incarceration:

> But you know, Chris, it's amazing to me how the police remember the mental health tactics and the other tactics when it comes to everybody else. Except black and brown men or women. [Other] people are arrested, they can shoot up grocery stores, they can shoot up churches, they are arrested without a scratch. But when it comes to us [black people], we could be accused of having a phony $20 bill and get our necks crushed in front of the world. That's horrible. That's horrible. You can walk into the Cook County jail, a pretrial detainee, not guilty. Not found guilty of anything, but you lose your life. From the guards beating you. From a cellmate with a mental health disability beating you to death. Like Rashawn. You know his celly beats him to death. He was 23 years old. He was a small young man. Was small in stature. Going in there [his cell] with a really huge guy that probably shouldn't even been in the Cook County Jail. Probably should have been in a mental health facility. But all

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[188] *Illinois Legislative Black Caucus (ILBC): Criminal Justice*, *supra* note 187.

[189] *Id.*; *SAFE-T Act FAQ*, *supra* note 187.

[190] *See Bill Status of H.B. 3653*, Ill. Gen. Assembly, https://www.ilga.gov/legislation/billstatus.asp?DocNum=3653&GAID=15&GA=101&DocTypeID=HB&LegID=120371&SessionID=108 [https://perma.cc/3ABW-NS2S] (last visited June 6, 2024) (providing a list of provisions the SAFE-T Act introduces and amends with respect to the criminal code).

[191] *Illinois Legislative Black Caucus (ILBC): Criminal Justice*, *supra* note 187.

[192] *End to Pretrial Detention and Money Bail*, The Movement for Black Lives, https://m4bl.org/policy-platforms/end-pretrial-and-money-bail [https://perma.cc/3EHT-ZYN6] (last visited Feb. 27, 2025).

[193] Zoom Interview with Cassandra Greer-Lee, Activist (Oct. 15, 2022).

> of the things that happen to us, we have to fight to show and beg for some type of justice or help. That's not fair.[194]

Though it made sense, the PFA's inclusion in the SAFE-T Act was not a foregone conclusion. Like everything The Coalition had done up until then, they had to organize and fight for its inclusion. And some things had to fall in place for that to happen. Firstly, they needed to write a bill that could be included in the reform package. Secondly, they needed someone in the legislature who would push to include the PFA in the Black Caucus's Criminal Justice Reform Pillar.

Luckily for The Coalition, Senator Peters, former-organizer-turned-senator, was on their team. Senator Peters and The Coalition wanted their legislation to be included in the pillar in order to institutionalize all the work they had been doing to end money bond.[195] Members of The Movement felt that legislation and inclusion in the Black Caucus's pillar would be their best chance to implement real change because of both the ideological focus of the pillar and the impact that reform aimed at the courts would have.[196]

Peters, in particular, pushed hard for this type of reform because he felt that it would be difficult to reform the police at the state level due to what he perceived as state actors' limited influence to curb bad policing (unlike federal and local municipal actors).[197] Peters believed that if he couldn't impact policing directly by regulating police departments, he could affect policing indirectly by minimizing its impact via the courts.[198]

Peters's background as an organizer in The Movement influenced this approach. Peters had been working on ending cash bail long before this moment arose.[199] And now that the opportunity to abolish cash bail presented itself, The Movement decided to hone in on getting the PFA into the Black Caucus's pillar.

Outside the capital, The Movement was also adjusting to the pandemic's new challenges. At this time, The Movement had expanded their cause statewide, forming the Illinois Network for Pretrial Justice. But just like lobbyists within the capital, the pandemic forced organizers outside of the capital to shift from direct actions to digital organizing.[200] The network began holding educational teach-ins on Zoom.[201] Many members, though,

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[194] *Id.*

[195] Interview with Robert Peters, *supra* note 95; Zoom Interview with John Amdor, Lobbyist (Oct. 6, 2022); Interview with Ben Ruddell, *supra* note 144.

[196] Interview with Sharlyn Grace, *supra* note 79; Interview with Robert Peters, *supra* note 95; Interview with John Amdor, *supra* note 195.

[197] Interview with Robert Peters, *supra* note 95.

[198] *Id.*

[199] Zoom Interview with Ruby Pinto, Organizer (Sept. 15, 2022); Interview with Will Tanzman, *supra* note 159.

[200] Interview with John Amdor, *supra* note 195; Interview with Matt McLoughlin, *supra* note 78.

[201] Interview with Matt McLoughlin, *supra* note 78; Zoom Interview with Marie Franklin, Organizer (Oct. 5, 2022). Interview with Robert Peters, *supra* note 95.

were also still participating in protests on the ground and utilizing them as opportunities to spread awareness around the PFA, as Cassandra Greer-Lee noted: "We had boots on the ground. We were marching. We were just trying to make people aware of what the Pretrial Fairness Act is and what it entails."[202]

Despite all of their lobbying efforts inside and outside of the capitol, there was still genuine concern that the bill would not be included in the pillar.[203] What was going to be included in the SAFE-T Act was continuously debated. At some junctures, the Pretrial Fairness Act was included, and at other junctures, it was not.[204] This back and forth occurred for quite some time and even led to some in The Movement to note that there was "a lot of pessimism about whether we [could] actually get anything around [the] Black Caucus vision done."[205]

But then something very crucial happened. In December of 2020, Senator Peters was unanimously elected as Chair to the Senate Black Caucus.[206] At another moment or time, this appointment might not have been significant. However, it was vital here because of the power the Black Caucus wielded in setting the agenda for what criminal justice reform would be in the state.[207] As Chair of the Senate Black Caucus, Peters had incredible influence in shaping this agenda.[208] According to Peters, the Chair of the Senate Black Caucus isn't always taken seriously unless the Chair, themself takes the position seriously.[209] Knowing this, Peters made the crucial choice to approach the position with gravity, in his words. He said he did so because he knew doing so would increase the chance that the Pretrial Fairness Act would get passed.[210]

With Peters's appointment, The Coalition now had one of their own members in a pivotal leadership role within the legislative group empowered to address systemic racism in the state criminal justice system. After many hearings, discussions, and negotiations, the PFA was finally included in the SAFE-T Act, with Peters green-lighting the decision. Here's how he describes it:

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[202] Interview with Cassandra Greer-Lee, *supra* note 193.

[203] Interview with Robert Peters, *supra* note 95; Interview with John Amdor, *supra* note 195; Interview with Ben Ruddell, *supra* note 144.

[204] Interview with Robert Peters, *supra* note 95.

[205] *Id.*; Interview with John Amdor, *supra* note 195.

[206] *Peters Outlines Goals as New Senate Black Caucus Chair*, Robert Peters (Dec. 4, 2020), https://www.senatorrobertpeters.com/news/press-releases/88-peters-outlines-goals-as-new-senate-black-caucus-chair [https://perma.cc/8VGV-M5ZV] [hereinafter Press Release].

[207] Interview with Robert Peters, *supra* note 95.

[208] *Id.*

[209] *Id.*

[210] *Id.*

> And we have a real moment to make some history. So we do all these hearings, we do subject matter hearings. We have people turn out and do press conferences. The Coalition is organizing like crazy. I'm doing my job as the governing organizer. I'm like organizing inside [the statehouse] and doing it with the lobbyist. We're doing it together by organizing our colleagues. And I remember when we're about to go down for lame duck. This is where we're going to run the pillars. This is January 2021. And I get a call from a Senate staffer. And she says, "Hey, do you want this in the bill?" And that was maybe the best decision I could have ever made. To pass this bill, because if it had been separate, it would have never gotten called. But being in the key part of a Black Caucus pillar, the amount of pressure to get that done meant that this bill had to get [passed].[211]

Peters here underscores the importance of the moment. Separately, the PFA may not have gathered momentum on its own, but—given that it was included in the SAFE-T Act—there was political will to see the bill through. After debates and hearings in both chambers, the SAFE-T Act was passed by both the House and Senate on the last day of the lame-duck session, January 13, 2021.[212] It was signed into law by Governor J.B. Pritzker on February 22, 2021.[213]

With the stroke of a pen, the culmination of years of organizing and fighting seemed to be realized. What had started as protests against the killings of young men by the police in Chicago, akin to George Floyd and Breonna Taylor, now resulted in the elimination of cash bail. The connection between the moment created by the responses to Breonna Taylor and George Floyd's deaths and the ultimate passage of the PFA was not lost on The Movement. There was a strong sense that the Black Lives Matter movement was responsible for the bill passing both at the time and in the way that it did.[214] There was another sense, though, that the momentum was growing throughout the state such that the bill would have passed even if

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[211] *Id.*; Interview with John Amdor, *supra* note 195.

[212] Patrick Smith, *Illinois Lawmakers Pass 'Transformational' Criminal Justice Legislation in 11th Hour of Lame Duck Session*, WBEZ Chi. (Jan. 13, 2021, 5:35 PM), https://www.wbez.org/stories/ill-lawmakers-pass-transformational-criminal-justice-legislation-in-11th-hour-of-lame-duck-session/b8e04d81-f097-4904-86ec-400e7674d746 [https://perma.cc/W6XR-GDP5]; *see also* Rachel Hinton, *Senate Advances Black Caucus' Legislation, Bill on Social Equity in Cannabis Licensing*, Chi. Sun-Times (Jan. 13, 2021, 8:46 AM), https://chicago.suntimes.com/politics/2021/1/13/22228569/illinois-legislature-black-caucus-legislation-social-equity-cannabis-licensing [https://perma.cc/MX9F-2QCJ].

[213] Craig Wall, Sarah Schulte & ABC 7 Chicago Digital Team, *Pritzker Signs Sweeping Police Reform, Criminal Justice Bill, Despite Opposition from Law Enforcement*, ABC 7 Chi. (Feb. 22, 2021), https://abc7chicago.com/police-and-criminal-justice-reform-bill-pritzker-house-3653-accountability/10361126 [https://perma.cc/X5P6-RVKL]; H.B. 3653, 101st Gen. Assembly (Ill. 2021).

[214] Zoom Interview with Sharone Mitchell, Jr., Public Defender (Aug. 30, 2022); Zoom Interview with Sarah Staudt, Policy Analyst (Sept. 22, 2022); Interview with Sharlyn Grace, *supra* note 79; Interview with Will Tanzman, *supra* note 159; Interview with Robert Peters, *supra* note 95; Interview with Matt McLoughlin, *supra* note 78.

the uprisings hadn't occurred.[215] The uprisings, in this way, generated an important moment that made the law easier to push over the finish line.[216] This position was taken out of the recognition of the sheer amount of effort and work The Movement had done even before the pandemic.[217] There had already been litigation, policy changes, the establishment of the Supreme Court Commission, direct actions, the establishment of a statewide network, and buy-in from academics and other state officials, all which pointed to the fact that something had to be done about cash bail.[218]

That said, organizers also felt that the moment created by the uprisings was, in fact, absolutely essential to the bill's passing.[219] Although they agreed that the amount of work and effort they had put in likely was going to lead to some change, they felt that the bill would have been watered down and, quite frankly, not as radical as the bill that passed subsequent to the uprisings.[220] There seemed to be a fine line where people acknowledged the work that had been done but knew that the moment created by the uprisings was equally significant to achieving abolition.[221]

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[215] Interview with Sharone Mitchell, Jr., *supra* note 214; Interview with Sarah Staudt, *supra* note 214; Interview with Sharlyn Grace, *supra* note 79; Interview with Will Tanzman, *supra* note 159; Interview with Robert Peters, *supra* note 95; Interview with Matt McLoughlin, *supra* note 78.

[216] Interview with Sharone Mitchell, Jr., *supra* note 214.

[217] *Id.*

[218] *Id.* The establishment of the Illinois Supreme Court Commission and The Movement's creation of a statewide organizing network was fairly influential to the PFA's passage. Interview with Sarah Staudt, *supra* note 214. After GO18.8A was implemented, The Movement proposed a statewide court rule that would end cash bail to the Illinois Supreme Court. Interview with Sharlyn Grace, *supra* note 79; Interview with Matt McLoughlin, *supra* note 78. The court didn't take up the rule but, in response, created the Illinois Supreme Court Commission for Pretrial Practices, whose charge was to assess the state of Illinois Pretrial System. Interview with Matt McLoughlin, *supra* note 78. They convened a bunch of stakeholders from within the state and outside of the state to advise the Commission on pretrial policy proposals. *Id.* The Movement created The Illinois Network for Pretrial Justice to help organize and turn people to put pressure on the Commission to limit money bonds to affordable amounts. *Id.* The Commission report was released in 2020 and recommended the reduced use of money bond along with the creation of a detention net where only certain crimes would be on the table for detainment. Jessica Reichert & Alysson Gatens, *An Examination of Illinois and National Pretrial Practices, Detention, and Reform Efforts*, Ill. Crim. Just. Info. Auth. (June 6, 2018), https://icjia.illinois.gov/researchhub/articles/an-examination-of-illinois-and-national-pretrial-practices-detention-and-reform-efforts [https://perma.cc/8FYY-AE93]; Ill. Sup. Ct. Comm'n on Pretrial Pracs., Final Report (2020), https://ilcourtsaudio.blob.core.windows.net/antilles-resources/resources/227a0374-1909-4a7b-83e3-c63cdf61476e/Illinois%20Supreme%20Court%20Commission%20on%20Pretrial%20Practices%20Final%20Report%20-%20April%202020.pdf [https://perma.cc/Y2CX-4RDC] [hereinafter Illinois Supreme Court Commission Report].

[219] Interview with Sharone Mitchell, Jr., *supra* note 214; Interview with Sarah Staudt, *supra* note 214; Interview with Sharlyn Grace, *supra* note 79; Interview with Will Tanzman, *supra* note 159; Interview with Robert Peters, *supra* note 95; Interview with Matt McLoughlin, *supra* note 78.

[220] Interview with Sharone Mitchell, Jr., *supra* note 214; Interview with Sarah Staudt, *supra* note 214; Interview with Sharlyn Grace, *supra* note 79; Interview with Will Tanzman, *supra* note 159; Interview with Robert Peters, *supra* note 95; Interview with Matt McLoughlin, *supra* note 78.

[221] Interview with Sharone Mitchell, Jr., *supra* note 214; Interview with Sarah Staudt, *supra* note 214; Interview with Sharlyn Grace, *supra* note 79; Interview with Will Tanzman, *supra*

I think the most important thing is that, in either scenario, The Movement was ready. If the uprisings hadn't happened, it seemed that they had built enough momentum and infrastructure to change something about the cash bail system. Would it have been a harder road, with a more watered-down bill? Maybe. But The Movement would have been prepared nonetheless.

The reality, though, is that the uprisings did occur, and The Movement was ready to take advantage of the opportunity that presented itself. And because they were ready in that scenario, they were able to capitalize on the moment by getting their bill passed in its most robust form.

Relatedly, it was significant that The Movement didn't compromise. They could have easily drafted a milder bill out of fear that abolishing cash bail would seem too radical or impractical to get sufficient votes and support in the legislature. But they didn't do that. And as a result, the bill that passed was nearly identical to the one The Movement produced. This demonstrates that abolition is practical and indicates that abolitionist movements do not need to compromise their values to achieve justice in the legislative arena.

This may seem like an easily overstated conclusion because it might, in fact, seem as if the opportunity created by the uprisings was unique to what happened here. The uprisings created a political context where the usual haggling and negotiations that go into a bill did not occur, making it easier for the bill to pass in its uncompromised form. Additionally, I think the uprisings created a moment, albeit a brief one, that changed politicians' political calculus.

I would caution against reaching the conclusion that this case is so unique that a similar set of nationwide police killings and protests would need to occur to bring about a similar type of change. The logic here is that the George Floyd and Breonna Taylor moments are presumably rare, and thus, enacting this type of change elsewhere, at a different time, would be difficult. However, highly publicized police killings and ensuing protests are, tragically, quite frequent in the United States. One needs to look no further than the killings of Michael Brown, Trayvon Martin, Sandra Bland, Alton Sterling, Freddie Gray, Laquan McDonald, Sandra Massey, and the ensuing protests as proof.

Secondly, even during the surge in the Black Lives Matter movement, people were skeptical about abolitionist reforms. Take, for example, abolishing and defunding the police. This topic was probably the most prolific defunding policy conversation that emerged out of this time period. And while there was a lot of dialogue and support for this idea, these discourses didn't actually translate into defunding and abolishing the police. The point is that not all the conversations and reforms that emerged during this time came to fruition. The outcome was different in Illinois precisely due to the

note 159; Interview with Robert Peters, *supra* note 95; Interview with Matt McLoughlin, *supra* note 78.

infrastructure The Movement had built through their existing usage of inside and outside tactics, which aligned with the changing political calculus of the moment.

Thirdly, many abolitionist victories appeared to be unique and improbable at the time they were first initiated. Yet just because the occasion that sparks an abolitionist reform might be unique doesn't mean that the same time type of abolitionist reform couldn't be enacted elsewhere. One of the best examples is slavery itself. As mentioned previously, Pennsylvania was the first state to abolish slavery.[222] Certainly, there were specific circumstances in Pennsylvania that led to it becoming the first state to abolish slavery, but those specific circumstances didn't need to be present everywhere slavery was abolished.

Likewise, another abolitionist idea: Iowa was the first state to desegregate its public schools.[223] Did other states eventually need the same circumstances that were present in Iowa to desegregate their schools? No. As the first state to embrace these types of abolitionist reforms, other states could rely on them as precedent for enacting their own reforms. I think here, then, any place that would try to replicate abolishing cash bail would have an example they could point to in Illinois. Abolition at the time in Illinois was uncharted territory. It is much easier to replicate something when there is an existing proof of concept.

To recap, political opportunities can give rise to abolitionist movements. These opportunities can be racialized or characterized by various axes of oppression. That political opportunity needs to give way to mobilizing structures. In the context of abolishing cash bail, those structures should be a mix of resource mobilization (recall the bond fund) and coalition building amongst abolitionists and non-abolitionists. In the case of the PFA, the strategic partnership with non-abolitionists allowed The Movement to pursue and exert pressure on institutions from the inside and outside. Even with ideological diversity among its members, The Coalition succeeded in maintaining a cohesive movement by adopting clear cognitive framings and using those framings to inform their legal strategy.

In terms of tactics and actions, abolition remained the clear end goal of every action The Movement took, whether that was protesting, litigating, or doing legislative work. As cliché as it sounds, they always kept the main thing the main thing across a wide variety of tactics. There was no legal

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[222] Edward Raymond Turner, *The Abolition of Slavery in Pennsylvania*, 36 Pa. Mag. Hist. & Biography 129, 129 (1912).

[223] Katie Peikes, *Segregation Still Evident in Iowa Schools 150 Years After State Supreme Court Ruling*, Iowa Pub. Radio (Dec. 17, 2020 2:29 PM), https://www.iowapublicradio.org/racial-justice/2020-12-17/segregation-still-evident-in-iowa-schools-150-years-after-state-supreme-court-ruling# [https://perma.cc/9U84-A93L]; *see also* Mackenzie Ryan, *How Iowa Became the First State in the Nation to Desegregate Schools*, Des Moines Reg. (Feb. 6, 2020, 11:57 AM), https://www.desmoinesregister.com/story/news/education/2018/11/19/iowa-civil-rights-history-school-desegregation-muscatine-alexander-clark/1524457002/ [https://perma.cc/57YK-GLWR].

avenue that was off-limits. This allowed The Movement to engage the legal system from various angles both within and outside legislative and legal institutions.

What shouldn't be lost here is that The Movement's pursuit of abolition is what made it attractive to many audiences. The Movement appealed to those who were more inclined to seek solutions outside of the system through tactics such as protests and direct actions. The Movement was also able to appeal to people who were more inclined to seek reform within the system by using traditional system-oriented Civil Rights tactics like electoral organizing, political lobbying, impact litigation, and policy writing. For those interested in improving our pretrial system, this case indicates that abolition is a uniquely situated tool that we can use to attract a broad base of support and unite communities to work together to improve the system who may not otherwise do so. It is precisely abolition's embrace and willingness to use many tactics and actions that enable it to be one of the best tools in our toolkit for making our systems more humane.

Part II. Assessing the Abolitionist Legal Reform

Having established how the PFA got passed, I now turn to determining whether the law is abolitionist or not. Doing so bolsters the claim that abolition is practical because the legal reform here was enacted. Additionally, characterizing the law as abolitionist helps illuminate how abolition as a tool and as a legal reform can help improve our criminal justice system. The idea here is that by analyzing why this legal reform is abolitionist, we can better understand how abolition aims to improve our pretrial system. In service of this, the focus of this Part of the article will be devoted to establishing the law as abolitionist.

A. A Primer on Non-Reformist Reforms

Much of the legal abolitionist project has been focused on theoretically carving out what abolitionists call "non-reformist reforms."[224] Specifically in the criminal law context, Allegra McLeod explains that abolitionist non-reformist reforms can be understood "as a gradual project of decarceration in which radically different legal and institutional regulatory forms supplant criminal law enforcement."[225]

Non-reformist reforms (or "abolitionist steps," as Amna Akbar and Marbre Stahly-Butts refer to them) are legal reforms that guide the path toward transformation.[226] Non-reformist reforms, in essence, seek to

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[224] For a particularly rich discussion of the origins and contemporary usage of the term "non-reformist reform," see Amna Akbar, *Non-Reformist Reforms and Struggles Over Life, Death, and Democracy*, 132 Yale L.J. 2497, 2527-31 (2023).

[225] McLeod, *supra* note 30, at 1161.

[226] Stahly-Butts & Akbar, *supra* note 46, at 1547-48.

dismantle rather than rework oppressive systems and can be gradual to the extent that such reforms move society towards the abolitionist non-carceral horizon.[227] They help deconstruct systems that abolitionists are trying to abolish and help move society toward an abolitionist horizon.[228]

Jamelia Morgan adds that these reforms are projects that make it easier to dismantle the systems that organizers seek to abolish.[229] Dorothy Roberts adds that non-reformist reforms aid in such a way that we might one day demolish oppressive systems rather than fix them.[230] These projects diminish the reach of the oppressive system and show how the existent system does not solve the problems it purports to solve.[231] This means that all reforms do not necessarily need to solve every problem at once. Incremental reforms that shrink carceral systems are indeed abolitionist so long as they get us closer to an "abolitionist horizon."[232]

Non-reformist reforms are juxtaposed with reformist reforms. These are reforms that enact changes but do not structurally change existing systems' power structures.[233] According to abolitionist scholar Dylan Rodríguez, reformist reforms prohibit, rather than enable, the pursuit of meaningful change.[234] Amna Akbar adds that these types of reforms entrench, rather than transform, "fundamentally corrupt systems."[235] Reformist reforms, in this sense, seek to make changes that protect the status quo of power while also shielding institutions and their actors from necessary change.[236]

My work here extends the discussion of non-reformist reforms by directly introducing the voices of those who contributed to producing such reforms. These perspectives provide the best insight into how people in the real world think about and craft non-reformist reforms. By engaging with these types of perspectives in our work, a clearer picture of how abolition is understood and operationalized in the real world begins to emerge.

Leading abolitionist organization Critical Resistance gives particularly useful criteria for evaluating whether a reform is non-reformist.[237] Per Critical Resistance, the four criteria are:

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[227] McLeod, *supra* note 30, at 1161.

[228] Mariame Kaba, *Toward the Horizon of Abolition*, *in* We Do This 'Til We Free Us: Abolitionist Organizing and Transforming Justice 65, 66 (Tamara K. Nopper ed., 2021); *see also* Morgan, *supra* note 26, at 1208.

[229] Morgan, *supra* note 26, at 1208-09 (quoting Kaba's discussion of non-reformist reforms).

[230] Roberts, *Abolition Constitutionalism*, *supra* note 27, at 5-10. x

[231] *Id.* at 1.

[232] Stahly-Butts & Akbar, *supra* note 46, at 1553-54.

[233] Morgan, *supra* note 26, at 1208 (quoting Kaba's discussion of non-reformist reforms).

[234] Dylan Rodríguez, *Police Reform as Counterinsurgency*, *in* Abolition for the People: The Movement for a Future Without Policing & Prisons 130, 133-34 (Colin Kaepernick ed., 2021).

[235] Akbar, *supra* note 224, at 2518-19.

[236] *Id.* at 2519.

[237] *Mission & Vision*, Critical Resistance, https://criticalresistance.org/mission-vision/ [https://perma.cc/U4TD-Q4PF] (last visited June 7, 2024); *see also* Morgan, *supra* note 26, at 1200 (discussing the significance of Critical Resistance in abolitionist spaces).

1) Does the reform weaken the system's power or means to jail, surveil, monitor, control, or otherwise punish people?
2) Does the reform challenge the size, scope, resources, or funding of the [Prison Industrial Complex ("PIC")]?
3) Does the reform maintain protections for everyone and resist dividing people into categories of "deserving" and "undeserving"? Does the reform maintain or expand existing paths to freedom for all people?
4) Does the reform shrink parts of the PIC, industries that profit from the PIC, and/or the power of elected officials who sustain the PIC?[238]

Analyzing the PFA closely is helpful for a few reasons. Firstly, doing so will help us determine whether the PFA is abolitionist or not. Secondly, if the PFA is, in fact, a non-reformist reform, then an in-depth look helps to show what a non-reformist reform in the context of cash bail looks like on a practical level. This is important for those interested in crafting similar laws to abolish cash bail elsewhere. Thirdly, doing so helps us to better understand the on-the-ground considerations that went into crafting this non-reformist reform. This gives us the best insight into what people think and consider when applying abolitionists' criteria in defining non-reformist reforms. Lastly, the most significant contribution is showing practically how the law was crafted. While we know a lot about what goes into non-reformist reforms, we know much less about how folx on the ground put together successfully enacted non-reformist reforms.

B. Understanding the Pretrial Fairness Act

To get a sense of how the Pretrial Fairness Act changed the pretrial process in Illinois, we must first understand the system that preceded it. Under the old system, a defendant would typically be arrested, charged, and booked for an alleged crime,[239] including most misdemeanors and felonies.[240] Afterward, the defendant would have a bond hearing.[241] At the bond hearing, a judge set or denied bond.[242] Typically, these bonds were either secured or unsecured bonds.[243] Secured bonds are money bonds; this category is how bonds are typically envisioned. If the bond was secured, the

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[238] Mohamed Shehk, Pilar Weiss, Rachel Foran, Sharlyn Grace & Woods Ervin, On the Road To Freedom: An Abolitionist Assessment of Pretrial and Bail Reforms 7 (2021).

[239] *See* 725 Ill. Comp. Stat. 5/110; *see also* Reichert & Gatens, *supra* note 218, at 2; Illinois Supreme Court Commission Report, *supra* note 218.

[240] *See* Reichert & Gatens, *supra* note 218, at 2.

[241] *Id.*

[242] *See id.*

[243] *Rule Part 9.1 – Bonds-Sureties*, Cir. Ct. Cook Cnty., https://www.cookcountycourt.org/part-9-bonds-sureties [https://perma.cc/T3KY-VRLL] (last visited Apr. 8, 2025); *see also* Illinois Supreme Court Commission Report, *supra* note 218, at 21.

accused had to pay the amount before release.[244] If the bond was unsecured, then bond was due only if the accused failed to appear in court.[245] Within the mix of secured and unsecured bonds, judges could give someone a C-Bond, D-Bond, or I-Bond.[246] Both C- and D-Bonds are secured bonds.[247] A C-bond requires someone to pay the total amount of set bail.[248] A D-Bond requires the accused to pay 10% of the set bail amount.[249] An I-Bond is an unsecured bond that releases someone without having to pay a bond.[250] In addition to giving someone a monetary bond, judges could also put someone on electronic monitoring in conjunction with or separate from giving them a money bond. Though it is permissible under the law, in practice most counties did not charge pretrial electronic monitoring fees before or after the PFA.[251]

In practice, a bond hearing resulted in one of four possible outcomes.[252] Two of these directly resulted in pretrial incarceration, but all four had the potential to develop into pretrial incarceration.[253] The first outcome was if the accused received a secured bond and paid it, then they were released from jail.[254] But, if the accused violated the conditions of their bond, then they could be jailed again. The second outcome was if the accused received an I-Bond, then the accused could also get out of jail without having to pay the state.[255] But if the accused violated the conditions of their bond, then they could be re-arrested.[256] The third outcome was if the accused received a money bond but could not pay.[257] In this case, they remained incarcerated. The fourth outcome occurred when the accused was denied bond and incarcerated pretrial. Though there were four potential outcomes, most accused were given either a C- or D-Bond, which meant that in most cases, how

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[244] Schnacke, *supra* note 2, at 29; *see also* Illinois Supreme Court Commission Report, *supra* note 218, at 21.

[245] *See* Reichert & Gatens, *supra* note 218, at 8.

[246] *Id.* at 7-8.

[247] *Id.*

[248] *Id.*

[249] *Id.*

[250] Stemen & Olson, *supra* note 155, at 3.

[251] Interview with Sharlyn Grace, *supra* note 79.

[252] *See* Reichert & Gatens, *supra* note 218, at 2.

[253] *Id.*; Stephanie Agnew, *Communities Successfully Defend the Pretrial Fairness Act: Updates and Next Steps for the Abolition of Money Bond on January 1*, Chi. Appleseed (Dec. 19, 2022), https://www.chicagoappleseed.org/2022/12/19/updates-and-next-steps-for-the-abolition-of-money-bond-in-january/ [https://perma.cc/5SSU-9QS9].

[254] Reichert & Gatens, *supra* note 218, at 2; *see also* Crim. Just. Pol'y Program, Harv. L. Sch., Moving Beyond Money: A Primer on Bail Reform 6 (2016), https://www.prisonpolicy.org/scans/cjpp/FINAL-Primer-on-Bail-Reform.pdf [https://perma.cc/FH7L-ZCMU]; League of Women Voters of Ill., *Pretrial Fairness Act*, YouTube, at 08:54 (Sept. 12, 2022), https://www.youtube.com/watch?v=3VJiPCSGRw&t=534s [https://perma.cc/S3YJ-PZ9T].

[255] *See* Reichert & Gatens, *supra* note 218, at 2.

[256] *See Moving Beyond Money*, *supra* note 254, at 16.

[257] League of Women Voters of Ill., *supra* note 254.

much money someone could access determined whether they would go home or sit in jail.[258]

The Pretrial Fairness Act fundamentally altered this process. Chiefly, it expelled cash bail entirely from the pretrial process.[259] Rather than modify the existence of bond, the PFA completely abolished and removed cash bail from the pretrial system.[260] Under the Pretrial Fairness Act, first, someone would have to be accused of a crime and stopped by the police or presumably turn themselves in.[261] Depending on the alleged offense, the person will be cited and released or arrested, charged, and booked.[262] For certain minor charges like littering, speeding, or weed possession, law enforcement is required to give citations and release the accused, rather than arresting them and taking them to jail.[263] However, law enforcement can still detain someone if they determine that they are a threat to the community or a particular person, if criminal activity persists after issuance of a citation, or if there is an obvious medical or mental health issue that poses a risk to one's safety.[264] If the accused is not a safety threat, depending on the specific offense, the accused will have to pay the citation, return for any court dates, and fulfill any pretrial conditions.[265] Prior to the PFA, law enforcement could detain and jail anyone for any offense. Under the PFA, they are statutorily required to release the accused.[266] This move adds a required release mechanism that previously did not exist, and it helps better establish release from incarceration as the norm.

If the accused is arrested, charged, and booked, they can still be released from police custody directly from the police station.[267] This will largely turn on the law enforcement officer's discretion and whether the officer believes there are circumstances to justify release before an appearance before a judge. If the accused is not released from police custody and instead transferred to a jail overnight, they will have what is called an initial

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[258] *Going to Bond Court*, Ill. Legal Aid Online, https://www.illinoislegalaid.org/legal-information/going-bond-court [https://perma.cc/Q97Z-XNLR] (last updated Dec. 4, 2024); *see also* Civic Fed'n for the Ill. Sup. Ct. Pretrial Pracs. Implementation Task Force, Elimination of Cash Bail in Illinois: Financial Impact Analysis 3 (Aug. 2022), https://www.civicfed.org/sites/default/files/financial_impact_of_eliminating_cash_bail_report_revised_august_2022.pdf [https://perma.cc/U6G8-VKPQ]; Illinois Supreme Court Commission Report, *supra* note 218, at 27.

[259] 725 Ill. Comp. Stat. 5/110-1.5.

[260] *Id.*

[261] 725 Ill. Comp. Stat. 5/109-1(a-1). This language was adapted from the League of Women Voters of Illinois Briefing on the Pretrial Fairness Act. *See* League of Women Voters of Ill., *supra* note 254, at 16:00. Sarah Staudt is a particularly authoritative voice on the Pretrial Fairness Act as she is generally credited as being one of the primary drafters of the legislation.

[262] 725 Ill. Comp. Stat. 5/109.

[263] *Id.*

[264] 725 Ill. Comp. Stat. 5/109-1(a-1).

[265] *Id.*

[266] 725 Ill. Comp. Stat. 5/110-2.

[267] *Id.*

or first appearance hearing the next day, during which their pretrial release conditions will be determined.[268] At that particular hearing, the state will decide if they will pursue detention or not.

Whether or not the accused will be detained turns on several factors. The most significant determinant is whether the accused offense falls inside or outside the detention eligibility net. If the offense falls outside of the eligibility net, the person must be released unless they are already "on release" for another offense.[269] If the alleged offense falls within the eligibility net, they can be detained, though it is not mandated by statute.[270]

If the prosecutor decides at the conditions hearing that they want the accused to be detained, the state must file a written motion to the court asking them to hold a detention hearing where the state has to prove that the accused poses a real and present threat to someone or the community or that they are a flight risk.[271] If the state does not file that motion, the accused can be released.[272] Another key consideration related to this release is whether or not additional discretionary conditions are going to be attached to release in addition to conditions already mandated by the statute.

Should the state move for, and the court grant, a detention hearing, the detention hearing has to occur twenty-four to forty-eight hours after the conditions hearing.[273] In this hearing, the state bears the burden of proving by clear and convincing evidence based on the particular facts of the case that the defendant has committed an offense ineligible for release and that the accused poses a specific threat to an individual or the community at large, or the accused is a flight risk.[274] At this hearing, the court will either release or detain the accused with or without conditions.[275] If the state persuades the court that the accused poses a safety threat or is a high flight risk and that no conditions can mitigate that risk, then the accused will be detained.[276]

Now that we have a good idea of how the Pretrial Fairness Act works, in the following sections, I explore the various commitments that animate how the law is constructed. Chiefly, the next sections discuss the law's commitments to mitigating the racialized, gendered, and disability-based harms the cash bail system inflicts. Doing so provides us with the best insight into how these commitments shaped the law.

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[268] 725 Ill. Comp. Stat. 5/110-2(a)-(c).

[269] 725 Ill. Comp. Stat. 5/110-6.1.

[270] *See* 725 Ill. Comp. Stat. 5/110-2(a)-(c); 725 Ill. Comp. Stat. 5/110-2(e).

[271] *See* 725 Ill. Comp. Stat. 5/110-2(e).

[272] *Id.*

[273] *See* 725 Ill. Comp. Stat. 5/110-6.1(c)(2).

[274] 725 Ill. Comp. Stat. 5/110-2.

[275] *Id.*; *see also* 725 Ill. Comp. Stat. 5/110-6.1(e)(1)-(4).

[276] *See* 725 Ill. Comp. Stat. 5/110-6.1(h).

1. Aims of the PFA: Race

Perhaps the most outsized commitment undergirding the PFA is that it seeks to fundamentally change the way the pretrial system in Illinois harms people of color. The PFA modified the bail system to make it easier for accused individuals to stay in their communities, retain their jobs, and remain with their families instead of being locked behind bars for minor offenses. To put this into perspective, in 2017, when a bail reform law that reduced reliance on cash bail was implemented, Cook County families saved $31 million in the first six months of implementation.[277] That is $31 million they would have lost had the law not been implemented. The alternative built into the law here is not simply about eliminating money from the system but keeping folx and their money in their communities away from a racist system.

Under the PFA, a person can be jailed only if they are accused of committing certain specific offenses and are either a safety or flight risk.[278] A fundamental way the PFA accomplishes this is by shrinking the detention net—limiting the number of offenses for which an accused person can be detained in jail.[279] By doing so, the law shrinks the reach of jails by reducing jail eligibility. In practice, a person accused of a crime can be detained only for offenses within the detention net.[280] These include non-probational felonies, forcible felonies, stalking, violations of protective orders, domestic batteries, sex offenses, non-probational gun-related felonies, animal cruelty, particular aggravated driving offenses, and any attempt to commit a crime within the detention net.[281] For other offenses—offenses outside of the detention net—the accused can only be cited, not jailed.[282] It is important to point out that offenses within the detention net constitute the minority of arrests throughout the state each year, which means that jail is off the table for most people.[283]

The PFA significantly shrinks the detainee pool by reducing the offenses for which a person can be arrested. Ideally, for proponents of the PFA, the

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[277] Stemen & Olson, *supra* note 155, at 7.

[278] 725 Ill. Comp. Stat. 5/110-22.

[279] 725 Ill. Comp. Stat. 5/110-2; 725 Ill. Comp. Stat. 5/110-6.1.

[280] 725 Ill. Comp. Stat. 5/110-2; 725 Ill. Comp. Stat. 5/110-6.1.

[281] 725 Ill. Comp. Stat. 5/110-2; 725 Ill. Comp. Stat. 5/110-6.1.

[282] Don Stemen, Branden DuPont & Dave Olson, *Bond Decisions in Cook County*, Loyola Chi. Ctr. for Crim. Just. (June 19, 2022), https://loyolaccj.org/blog/cook-bond [https://perma.cc/ZU4J-MFH2].

[283] *Id.*; *Pretrial Fairness Act (PFA) Weekly Dashboard*, Cir. Ct. Cook Cnty. (Mar. 18, 2025), https://ocj-web-files.s3.us-east-2.amazonaws.com/documents/2025%2003%2015%20OCJ%20Public%20PFA%20Dashboard%20New%20Layout%2025.03.19%20FINAL.pdf?VersionId=y1V.q1uaZKI9zRI25rdON_GhXHvmHdDy [https://perma.cc/9XS3-BEBE]. *See generally* Alexandra Natapoff, Punishment Without Crime: How Our Massive Misdemeanor System Traps the Innocent and Makes America More Unequal (2018) (noting that misdemeanors make up the majority of the nation's criminal docket).

law would prevent the accused from going to jail even if they are disproportionately targeted by racist policing practices, as Cook County Chief Public Defender Sharone Mitchell, Jr. explains:

> I think . . . it reduces the ability of the state to incarcerate people pretrial. I think for me, that is the biggest deal, right? This idea that . . . the rise of pretrial incarceration has been the front door, the doorstep to mass incarceration. And this idea that any single person, no matter what they are charged with, can be detained pretrial . . . I think it tracks at the heart of that idea. I think what the bill does in its current form, is that it . . . removes the ability for [the] state to incarcerate full swaths of people . . . because people are ineligible to be detained. Right. That . . . will reduce the amount of people who will be detained going forward.[284]

For the remainder of detainable offenses, the prosecutor must prove that someone is a threat to another individual or the community or a flight risk.[285] This change was specifically made because under the previous system, advocates believed prosecutors and judges could detain anyone, even if they weren't dangerous to themselves, the community, or a flight risk. By shifting the burden to the state to prove that someone needs to be detained, the statute, in theory, creates a system whereby those who do not need to be detained can return to the community without suffering the collateral consequences of detainment.

For proponents of the PFA, the money bail system not only targets and harms those who are incarcerated but also their families. As noted above, people of color are disproportionately incarcerated at the pretrial phase.[286] The burden here then disproportionately falls on families and communities of color to bond out their loved ones. Sharone provides an example of this when he explained how The Movement viewed money bond as a tax on women of color:

> The idea that we are valuing money as a top variable is an extreme problem. We have a system that strips tens of millions of dollars each year from communities. Typically, black and brown communities. Typically, black and brown women, who are essentially paying ransoms for their loved one's freedom. These are loved ones that have not been found guilty of any offense.[287]

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[284] Interview with Sharone Mitchell, Jr., *supra* note 214.

[285] *See* 725 Ill. Comp. Stat. 5/110-2(e).

[286] *See* Sawyer & Wagner, *supra* note 7; Julie Wertheimer, *Racial Disparities Persist in Many U.S. Jails*, Pew (May 16, 2023), https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2023/05/racial-disparities-persist-in-many-us-jails [https://perma.cc/D4CF-BPP7]; Jennifer L. Skeem, Lina Montoya & Christopher Lowenkamp, *Place Matters: Racial Disparities in Pretrial Detention Recommendations Across the U.S.*, 86 Fed. Prob. J. 3, 5 (2023).

[287] League of Women Voters of Ill., *supra* note 254.

Sharone's comments here describe how women of color, in particular, are burdened with the task of paying money bonds. And for him and The Movement, this was something baked into the structure of the cash bail system. That is, The Movement didn't see a pathway forward with the cash bail system where the harms of that system didn't exist. Hence, abolition was preferable. As a tool, it eliminates harm rather than making it more palatable.

2. The PFA and Disability

Additionally, the move to abolition is also a commitment toward eliminating harm to people with disabilities. Individuals with disabilities are disproportionately incarcerated.[288] About 40% of people incarcerated in state prisons self-report having at least one disability, and over 60% in jails report having symptoms of mental disorder.[289] Despite the passage of the Americans with Disabilities Act, which states that facilities should have accommodations for disabled individuals, jails often do not have adequate medical or housing accommodations for people with disabilities.[290]

Hearings under the money bond system are too often short and fast.[291] For people with disabilities, this is a compounded problem, leaving them ill-prepared and at a disadvantage because they often are not given adequate time to analyze their case file or meet with lawyers due to the lack of interpreters and mobility aids.[292] Additionally, despite the fact that disabilities make certain groups of people more susceptible to increased injury or death behind bars, the presence of something like a mental health diagnosis seems to be viewed as an aggravating rather mitigating factor for release. That is, a person's mental health diagnosis is viewed as something that show a person cannot comply with conditions of release rather than a reason that they need pretrial release for alternative care.

Income disparity looms large as a significant reason why disabled individuals are incarcerated pretrial.[293] Many in the disabled community rely

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[288] Laurin Bixby, Stacey Bevan & Courtney Boen, *The Links Between Disability, Incarceration, and Social Exclusion*, 41 HEALTH AFFS. 1460, 1464 (2022).

[289] Letter from Access Living of Metro. Chi. to Ill. Sup. Ct. Comm'n on Pretrial Pracs. 2 (June 28, 2019), https://chicagobond.org/wp-content/uploads/2019/07/access-living-pretrial-written-comment-.pdf [https://perma.cc/A36E-PDDR] [hereinafter Letter from Access Living] (subject of letter is the Impact of Pretrial Detention Practices on People with Disabilities); *see also* LAURA M. MARUSCHAK, JENNIFER BRONSON & MARIEL ALPER, DISABILITIES REPORTED BY PRISONERS 1 (2021), https://bjs.ojp.gov/content/pub/pdf/drpspi16st.pdf [https://perma.cc/3STG-9BR3]; SUBRAMANIAN ET AL., *supra* note 20, at 5.

[290] Letter from Access Living, *supra* note 289, at 4-5.

[291] THE CIVIC FEDERATION, OBSERVATIONS OF COOK COUNTY FELONY BOND COURT HEARINGS: ANALYSIS AND FINDINGS 23 (2022), https://www.civicfed.org/sites/default/files/final_bond_court_watching_report_draft_11.1.22.pdf [https://perma.cc/3VZ7-F5ZC].

[292] Bixby et al., *supra* note 288, at 1467.

[293] *Id.*

on social security income ("SSI") as their primary or supplementary source of income to pay for housing and other living expenses.[294] SSI benefits are suspended if someone is incarcerated for more than 30 days.[295] SSI benefits may or may not be reinstated when one is released.[296] Even if they are reinstated, there is still a waiting period—thus someone who relies solely or supplementarily on SSI will be without income.[297] If someone is incarcerated for more than twelve months in jail, they completely lose their SSI benefits and have to reapply.[298] Further, Medicare coverage can lapse for someone who has no income to pay premiums while incarcerated.[299]

Access Living, an organization that serves individuals with disabilities in Illinois, notes that about 70% of individuals with disabilities in Illinois claim that they would not be able to pay the average bond amount.[300] For people with disabilities, then, being detained for even a trivial offense represents a completely life-altering event. In the case where someone is innocent but can't afford a bond, they risk losing their entire income, housing, and health benefits. Even for those "guilty" of the accused offense, the money bond system does not distinguish between serious and trivial offenses, so they are equally at risk of losing their entire income and health benefits.

This is not to say that all with disabilities wouldn't be detained and at risk of losing these benefits under a system without cash bail. Some inevitably will suffer the consequences of incarceration. However, abolishing money bond significantly reduces the risks to the disabled during incarceration by eliminating the financial barrier for release. The pool of detainable offenses would be substantially reduced, meaning fewer people would be eligible to be detained overall. Taking incarceration off the table for most offenses allows those with disabilities who might have been incarcerated previously to retain many life essentials such as their income, disability accommodations, housing, and healthcare.

3. Gender and the PFA

Abolition also seeks to mitigate the harms faced by women of color by centering their needs in law. The PFA makes significant changes in this arena. For instance, the PFA changes how notice to survivors of violence,

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[294] Soc. Sec. Off. Rsch. Evaluation & Stat., Annual Statistical Report on the Social Security Disability Insurance Program (2021), https://www.ssa.gov/policy/docs/statcomps/di_asr/2021/sect01.html [https://perma.cc/4HFX-A9EU].

[295] *Id.*

[296] *Benefits After Incarceration: What You Need to Know*, Soc. Sec., https://www.ssa.gov/reentry/benefits.htm [https://perma.cc/MC7E-PSM6] (last visited Apr. 2, 2025).

[297] Soc. Sec. Off. Rsch. Evaluation & Stat., *supra* note 294.

[298] *Id.*

[299] *Id.*

[300] Letter from Access Living, *supra* note 289, at 2.

which can include domestic and/or sexual violence, is handled at the pretrial phase. Under the PFA, prosecutors must notify a crime victim when a hearing related to the crime is taking place.[301] Domestic survivor advocate Amanda Pyron explains this important intersection about notification procedures under the PFA:

> [T]he ability to be notified and to potentially come to court and talk at a hearing allows survivors, including survivors of color, to come in and say what they need. They won't all do it, right? But that's part of it. I think removing injustice from the system helps everyone but particularly people of color who are afraid. Like oh, if I call the police for help, and they come and arrest him, he may not get out for months, right.[302]

Although notice was required by law prior to the enactment of the PFA, bond hearings were an exception to the victim notice requirement.[303] This meant that survivors under the money bond system often were not notified when the accused person involved in their case had a hearing. According to advocates, this resulted in survivors being unaware of the happenings of a case that intimately involved them. This was a major problem to survivor advocates like Madeline Behr:

> So the problem was that our clients would hear about bond hearings after the fact or not at all. And it would violate all these parts of the law, particularly the rights of Crime Victims and Witnesses Act, because they wouldn't get information about their case, even though they're supposed to under that state law and the state constitution.[304]

Not having notice under the money bond system precluded survivors from appropriately planning for their safety, because they were unaware if or when someone who caused them harm would be getting out. Madeline expounds:

> These are serious cases that could impact someone's safety. And to get notified, either not at all or after the fact, doesn't allow that person to safety plan or figure out what they need to do to keep themselves safe. If they have no notification, can't participate in the hearing, can't say to the judge or the prosecutor this is what I really need. Whether that person would be detained or not. I can't do that with no notification. That was one of the biggest things for us.[305]

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[301] 725 Ill. Comp. Stat. 5/110-6(h); 725 Ill. Comp. Stat. 5/110-6.1(m)(1).

[302] Zoom Interview with Amanda Pyron, Survivor Advocate (Oct. 31, 2022).

[303] Stephanie Agnew, *Dispelling Myths: The Pretrial Fairness Act and Domestic Violence*, Chi. Appleseed (Feb. 16, 2021), https://www.chicagoappleseed.org/2021/02/16/dispelling-myths-pretrial-fairness-act-and-domestic-violence [https://perma.cc/HD9J-XF4Q].

[304] Zoom Interview with Madeline Behr, Survivor Advocate (Oct. 31, 2022).

[305] *Id.*

Another advocate, Mallory Littlejohn, discussed the inequities of the previous money bond system. At the time I spoke to Mallory, she had recently transitioned to a new job from her last post, where she handled cases involving survivors of sexual violence. I first heard her speak at a community event at St. Sabina Church on the Southside of Chicago. The event had been organized to help inform and contextualize the PFA in light of, at the time, efforts to repeal it. Here, she highlights how the lack of notice specifically harmed women of color and how this harm was central to how The Movement approached changing the law:

> Four percent get arrested, then after arrest, there is a charge, and only 2% get charged. Of that 2%, only 1% get convicted. And less than half of those people actually go to prison. So imagine having that conversation with somebody who's 48 hours outside of a rape. And then I have had instances where people come in. . . . Felony review is the process where the prosecutors decide if they're going to charge the case or not. . . . I have people who come in right before felony review. When I got to tell them about bond court, they're like the prosecutor at bond court isn't going to call you and if for some reason you do get a call, that prosecutor is not the prosecutor that you've talked to, to do the felony charges. And if you do get a call from that bond prosecutor, it's not going to be the prosecutor that actually tries your case. So by the time you get to your trial courtroom as a survivor, you would have spoken to three prosecutors. The likelihood of them looking like you if you're a black or brown woman is slim to none. Slim to none. And those were ideas and conversations that I was having with [The Coalition].[306]

Under the PFA, survivors' accounts must be considered when assessing the risk of releasing the accused.[307] Under the previous money bond system, survivors' accounts were not guaranteed to be taken into account by the court.[308] Nor was it even guaranteed that they would know when court proceedings were occurring. This is important because survivors' circumstances are complicated, and sometimes they would prefer the accused detained for their safety.[309] Sometimes, they want the person released because they don't want to be involved.[310] Sometimes, they don't want to subject the accused

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[306] Zoom Interview with Mallory Littlejohn, Survivor Advocate (Nov. 7, 2022).

[307] 725 Ill. Comp. Stat. 5/110-5(a)(5)-(7); *see* Ill. Just. Project, *SAFE-T Act and Public Safety Panel*, Facebook https://m.facebook.com/senatorrobertpeters/videos/safe-t-act-and-public-safety-panel/1329435334466081/?locale=ne_NP (last visited Mar. 1, 2025) (debriefing about survivors).

[308] Interview with Amanda Pyron, *supra* note 302; Interview with Madeline Behr, *supra* note 304; Interview with Mallory Littlejohn, *supra* note 306.

[309] Interview with Amanda Pyron, *supra* note 302; Interview with Madeline Behr, *supra* note 304; Interview with Mallory Littlejohn, *supra* note 306.

[310] Interview with Amanda Pyron, *supra* note 302; Interview with Madeline Behr, *supra* note 304; Interview with Mallory Littlejohn, *supra* note 306.

to the criminal justice system. Whatever the case, the PFA allows that perspective to be centered.[311]

With the aid of an advocate, survivors can now seek a variety of protective orders at any court date, including any pretrial release or detention hearing.[312] This allows survivors to access a wide range of protections via the state, which they can statutorily exercise at various points throughout the pretrial phase. The careful coupling of advocacy and legal resources was birthed out of the context of advocates intentionally centering survivors, as Madeline explains:

> [Survivors] also have the ability to get protective orders in court. But there's a big difference between what judges typically do, which is a SCOB [special condition of bond], versus those protective orders. Protective orders are a lot stronger. They can also have different remedies. So SCOBs, usually just, if you violate your SCOB, you get a warrant, you're [arrested]. It just kind of funnels through the system. You get a warrant, you're arrested, you know, blah blah blah case continues. With a protective order, there's all these other kinds of things that can be done. It could be a monetary fine. So it might not limit someone's actual freedom. It could be issues related to childcare, if the people have children in common. So it's a better system, because there's a lot more remedies that could be specific to that victim and what they need. They can literally check a box and say [t]his is really what I'm looking for, like I don't want this person incarcerated. But I do want to make sure that they can pay child support or this or that. So those were the two things that I really centered in my conversations.[313]

All in all, the move toward a new system for people in The Movement was anchored in the notion that the cash bail system does not serve survivors' needs. Primarily because survivors' myriad of safety needs—from safety planning to family planning—are all subverted by access to wealth. Prior to the PFA, in the event a survivor in fact wanted their abuser detained, so long as that abuser had access to capital to pay for their bond, a survivor could do little to prevent pretrial release. In the event a survivor wanted someone who may have harmed them out of the system, they couldn't do much in the absence of themselves or that person having funds to pay for their bond.

The move toward abolition represented a move closer to survivors' needs. Instead of being outside of the systems of accountability, organizers centered the voices of survivors and survivor advocates and used abolition

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[311] Interview with Amanda Pyron, *supra* note 302; Interview with Madeline Behr, *supra* note 304; Interview with Mallory Littlejohn, *supra* note 306.

[312] 725 Ill. Comp. Stat. 5/110-5(j).

[313] Interview with Madeline Behr, *supra* note 304.

as a way to revise court procedures, which allows survivors to now be notified of their case proceedings so they can better safety plan and/or attend court. Additionally, via the PFA, survivors' perspectives are now relevant for detention determinations, providing more flexible outcomes for survivors who may or may not want contact with the system. At first blush, this might seem at odds with abolition, but it's quite the opposite. Abolitionists aren't opposed to accountability and aren't impractical. Abolitionists here were fully aware that in taking the incremental route, some vestiges of carcerality would remain until perhaps one day they could abolish the system altogether. But in the meantime, they recognized they had to work with what they have and listen to what people most devastated by the system tell them.

4. Second Chances and the PFA

Another key feature of the PFA is how the statute deals with mistakes. Before the PFA, minor release violations, such as a device malfunctioning or missing court-imposed curfew, were punished harshly.[314] For low-income people of color, practically, this meant they were both out of the money they paid to the state and also now in state custody again. Recognizing this, the drafters aimed to make it easier for defendants to maintain their pretrial release. The statute shifts the burden to the state to prove by clear and convincing evidence that:

1) The accused committed an act in violation of their release;
2) the accused had actual knowledge that the action would violate the court order;
3) violation of the order was willful; and
4) the violation was not caused by a lack of access to financial resources.[315]

Here, requiring the state to prove a willful violation that was not the result of financial constraints moves the system away from punishing poverty. Because of this, the law allows for economic conditions to be considered but not held against someone. Likewise, moving away from carceral punishment, the statute allows defendants to cure violations such as nonappearances by appearing in court. It also gives them opportunities to be heard and to appeal the revocation of pretrial release and pretrial conditions.[316]

The statute also allows courts to remove release conditions, making it even easier for defendants to comply with court orders and maintain pretrial

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[314] *See* Sarah Staudt, 10 Facts About Pretrial Electronic Monitoring in Cook County 2, 10 (Stephanie Agnew ed., Sept. 2021), https://www.chicagoappleseed.org/wp-content/uploads/2021/11/202109_10-Facts-EM-Cook-County-EM-FINAL-updated.pdf [https://perma.cc/SW2X-KZ7J].

[315] 725 Ill. Comp. Stat. 5/110-6(e)(1)-(4).

[316] 725 Ill. Comp. Stat. 5/110-6.1(j); 725 Ill. Comp. Stat. 5/110-5(k).

release.[317] In this way, the abolitionist reform reserves punishment for those who knowingly violate the law and enables the state to sanction in a way that doesn't repeat financial plunder.

Lastly, courts are also encouraged to use summons instead of warrants to compel people to come to court when a violation is suspected.[318] Summons encourage and allow the accused to go to court of their own will, whereas a warrant authorizes law enforcement to arrest someone to bring them into court. The statute again reduces contact with the criminal justice system and, in this case, reduces potentially dangerous encounters with law enforcement.[319] Though the PFA does not entirely eliminate warrants, the PFA limits warrants for instances such as when a serious violent felony is committed, conditions of release are knowingly violated, or another offense is committed while someone is on pretrial release.[320]

5. But Is It Really Abolitionist?

Returning to the criteria laid out earlier:

1) Does the reform weaken the system's power or means to jail, surveil, monitor, control, or otherwise punish people?
2) Does the reform challenge the size, scope, resources, or funding of the PIC?
3) Does the reform maintain protections for everyone and resist dividing people into categories of "deserving" and "undeserving"? Does the reform maintain or expand existing paths to freedom for all people?
4) Does the reform shrink parts of the PIC, industries that profit from the PIC, and/or the power of elected officials who sustain the PIC?[321]

I think the underpinnings laid out by advocates also align with those of a non-reformist reform. By mandating release for most offenses because of the limited detention net, the law weakens the ability of the state to punish folx with incarceration. Shrinking the detention net and prohibiting arrests for most crimes also reduces the size and reach of jails. While the law makes some distinctions between who can be detained and who cannot be, release is still on the table for all offenses. Provisions under the PFA also provide ample protections and heightened standards that make it harder to detain individuals even when the state requests detention. Removing cash bail will also remove sources of revenue from the jail system. This money will

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[317] 725 Ill. Comp. Stat. 5/110-5(f-5).

[318] 725 Ill. Comp. Stat. 5/110-3(a).

[319] Rowe v. Raoul, No. 22-CH-16, 2022, Ill. Cir. LEXIS 1380, at *14 (Ill. Cir. Ct. Dec. 28, 2022).

[320] 725 Ill. Comp. Stat. 5/110-6(c)(4).

[321] Shehk et al., *supra* note 238, at 7.

presumably stay in the hands of the community instead of fueling incarceration. For these reasons, it's fair to say the law is fundamentally an abolitionist non-reformist reform.

Though I have reached this conclusion, there may be some who disagree with my assessment. In discussing this work with peers, I want to flag a few points of pushback I have received by concluding that the law is a non-reformist reform. The first point of disagreement stems from the idea that because the PFA is a legal reform, it cannot be abolitionist.[322] The idea here is that legal reforms serve to reify the system rather than transform the system. It is a variation of the idea that "the master's tools will never dismantle the master's house" advanced by Audre Lorde.[323]

But this ignores the fact that the slavery abolitionist movement's most prominent goal, abolishing slavery throughout the country, was achieved because of the legal reform we know as the Thirteenth Amendment.[324] Even before the Thirteenth Amendment was enacted, abolitionists repeatedly attempted to use the legal system to dismantle the system of slavery.[325] They did this via lawsuits in court challenging the constitutionality of slavery in various ways and by lobbying legislatures throughout the country to pass laws banning the practice of slavery.[326]

While it eventually took a civil war, a big part of the reason that we deem the slavery abolition movement successful is that it enshrined many of its goals into law. Its legacy is directly implicated and reflected in the Thirteenth, Fourteenth, and Fifteenth Amendments, also known as the Reconstruction Amendments.[327] These reforms legally abolished slavery, established equal protection under the law, and theoretically gave black people the right to vote, which were all outcomes that the movement fought to achieve. The slavery abolition movement's legacy is reflected in the Civil Rights-era transformations, such as desegregating schools, public transportation, and public accommodations, as well as establishing equal voting

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[322] Derecka Purnell, *Reforms Are the Master's Tools: The System Is Built for Power, Not Justice*, *in* Abolition For the People: The Movement for a Future Without Policing & Prisons 120, 124 (Colin Kaepernick ed., 2021) ("Reforms do not solve the root causes of harm—individual or institutional. The master's house is on fire, and the more we try to reform, diversify, and resource it, the more people will suffer as it collapses."). To be fair, I think Purnell here is referring to reformist reforms, which she mentions on page 122. However, there is no distinction in the piece made here between reformist reforms and non-reformist reforms. So, it appears as if all legal reforms are reformist reforms. To the extent that Purnell is referring just to reformist reforms, I agree. To the extent that Purnell thinks all legal reforms are reformist reforms, I disagree.

[323] *See generally* Audre Lorde, The Master's Tools Will Never Dismantle The Master's House (2018).

[324] Manisha Sinha, The Slave's Cause: A History of Abolition 587-91 (2017).

[325] *Id.* at 387-89 (describing enslaved black people utilizing freedom petitions, contesting fugitive slave laws, proposing legislation, etc.).

[326] *Id.*

[327] *Id.* at 588-89.

rights for men and women irrespective of race.[328] Civil Rights leaders often invoked and credited slavery abolitionists as their inspiration in organizing and advocacy,[329] as evidenced by the abolitionist pamphlets that were reprinted in the 1960s and distributed as organizing tools amidst civil rights struggles.[330]

Indeed, the Reconstruction Amendments and Civil Rights-era legislation are an essential legacy of the slavery abolitionist movement. However, the usage of law by the slavery abolitionist movement and the Civil Rights movement was not without downsides. As Michael McCann points out, using "legal tactics" by social movements can "discourage, thwart, or contain social movement development."[331] Furthermore, through the usage of the legal and political system, movements risk surrendering power over their cause.[332] This is because the legal and political decision-makers, such as judges, lawyers, and legislators, are often not connected to nor share the same goals as the social movement attempting to utilize the legal and political system.[333]

In the case of the Reconstruction Amendments, the writing and implementation of the laws were not tasked to abolitionists. Instead, these were the tasks of the federal government—the very system of oppression that had enthusiastically endorsed and justified slavery and sparked the need for change in the first place. Unsurprisingly, the implementation of the laws failed to live up to the actual promise or spirit of the movement that influenced them. Though the Reconstruction Amendments promised to promote equality of the formerly enslaved, that is far from what happened, due to the immense white resistance to equality after the Civil War. The noble intentions of the laws and the movement that influenced those laws did not translate into noble implementation.[334]

For example, in the post-enactment period, the Thirteenth Amendment didn't immediately prevent slavery in all parts of the country and certainly didn't prevent the harms of involuntary servitude that followed, which largely mirrored slavery.[335] It also didn't abolish slavery for those convicted of crimes.[336] The Fourteenth Amendment was used to justify separate and

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[328] *Id.* at 419, 590-91.

[329] *Id.*

[330] *Id.* at 419.

[331] Michael McCann, *Law and Social Movements: Contemporary Perspectives*, 2 ANN. REV. L. & SOC. SCI. 17, 28 (2006).

[332] *See id.* at 33.

[333] *See id.* at 29.

[334] Michele Goodwin, *The Thirteenth Amendment: Modern Slavery, Capitalism, and Mass Incarceration*, 104 CORNELL L. REV. 899, 911 (2019) (explaining how slavery was abolished figuratively in law by the Thirteenth Amendment but was still being practiced in the United States).

[335] Adam Davidson, *Administrative Enslavement*, 124 COLUM. L. REV. 633, 642-45 (2024).

[336] Goodwin, *supra* note 334, at 914.

unequal treatment.[337] The Fifteenth Amendment did not pave the way for robust voting among black folx, especially black women.[338] In practice, the Reconstruction Amendments were transformed from laws about equality to laws that justified inequality, largely because those tasked with implementing the amendments sought to achieve radically different goals than the abolitionist movement that had inspired them.[339] The point here is that this wasn't the fault of the abolitionists or their usage of the law. Instead, the problem was an issue of power and usage of the tool, not the tool itself.

Another related disagreement might be that the PFA isn't abolitionist because it is incremental in nature. That is, the law doesn't completely abolish jails or prisons and still allows for at least some defendants to be jailed under the law. But to dismiss this law as non-abolitionist because it does not completely abolish jails is wrong, I think, because that perception misunderstands the law's purpose and ignores incrementalism in the abolitionist project. History again is instructive. While the Thirteenth Amendment completely abolished slavery, it was the culmination of different strategies, organizing, and laws that had been passed previously. Pennsylvania was the first state to abolish slavery, doing so almost 100 years before the ratification of the Thirteenth Amendment.[340] Other Northern states would follow suit, but in a very real sense, abolition played out over time. Incrementalism is not, and has never been, counter to abolitionist praxis.[341]

I concede that some individuals *may* be worse off as a result of the abolition of cash bail given that jailing will still be a practice. These people would presumably have been able to pay for their freedom to get out of jail but now will not be able to. While I don't think this reflects a sizeable group, it is still a very real group nonetheless. I think at this point, taking jail off the table is a step in the right direction. Overall, the protections and ability to get out of confinement are more robust now than they previously were. Because the PFA shrinks the detention net, the number being held behind bars will still be considerably smaller.

Furthermore, people in this scenario still have a pathway for release, one that is not conditioned on wealth. It is not the case that just because cash bail is eliminated, people suddenly lack options for release. Because of the PFA's additional procedures that prevent and challenge detainment, the accused will fare far better than they would in a money bond-based system. The best way to think about this within an abolitionist schema is that, if successful, it normalizes decarceration, thus making further moves toward abolition a real possibility.

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[337] *See* Plessy v. Ferguson, 163 U.S. 537, 548-49 (1896).

[338] *See* Courtney Lauren Anderson, *Activismitis*, 14. Ne. U. L. Rev. 185, 193 (2022).

[339] Sinha, *supra* note 324, at 588-91.

[340] Turner, *supra* note 222, at 135.

[341] Stahly-Butts & Akbar, *supra* note 46, at 1553-54.

Returning back to the question of whether this law is abolitionist, it becomes clear that the organizers and advocates behind the bill were fighting for an alternative abolitionist vision of public safety that centered on vulnerable populations, unlike the money bond system before it. In making that vision into legal reality, one where abolition meant safety, the architects of the PFA inscribed and centered the voices of the marginalized into their reform. They were not only considering theoretical abolitionist commitments like reducing the carceral state but were also thinking deeply about how to wed those commitments with the marginalized voices embedded in their local context. This translative work operationalized the voices of the marginalized as instructive and generative to the solution of the identified problem. In essence, translation here married the theoretical commitments of abolition with the practical realities of those harmed on the ground, giving the law its abolitionist substance.

Part III. Winning Against Backlash

In Part III, I explore how The Movement overcame backlash and retrenchment to achieve success. Certainly, getting a law passed, especially an abolitionist one, is no small task. As with most advances centered around social justice, it is essential to understand that backlash and retrenchment are always lurking on the horizon. But just because backlash will happen does not mean it will inevitably dilute gains won by movements. The importance of understanding backlash and retrenchment here is twofold. Firstly, it is important to flag the types of situations organizers may encounter in trying to enact the type of reform I have described in this article. Secondly, the retrenchment and backlash campaign The Movement faced is integral to understanding how the PFA came into being because the law was only implemented after the backlash and retrenchment campaign concluded. Thus, we can't get a full understanding of how the campaign won without digging into the biggest obstacles it faced before being enacted fully.

To get a sense of backlash and retrenchment in this case study, this Part will analyze the two major instances where the PFA was in danger of getting repealed. The first episode was the 2022 midterm elections in Illinois. This episode highlights how opponents of the PFA attempted to use the political cycle to repeal the PFA. The second instance was a legal saga that paid out in courts over the constitutionality of the PFA. The second highlights how opponents turned to the courts when their election hopes failed. Together, both episodes provide clues as to how opponents might attack abolitionist wins and how they might ultimately be overcome.

A. Election Season

Marie Franklin is a black, faith-based organizer who headed up efforts to organize faith congregations in the Metro East/East St. Louis area. When

I spoke to Marie, the PFA had passed, but it was in the middle of a repeal campaign. When I asked her about the repeal efforts, I expected her to shy away from the topic or at least tell me it was difficult. But she didn't. Here's how she described anticipating what was going to happen:

> So, we knew that it was going to be a fight when it came time to implement it. And actually, it passed rather easily. Then it was like okay, they didn't try to take stuff out, or at least the Pretrial Fairness part of it. Like they didn't try to hack it up or change it or nothing. We said, they must have been [a]sleep. What happened? Because we've been working on this all the time, and they told us how much they hate it. But then it passed.[342]

I then asked her what it was like to organize statewide to achieve abolition. She responded that this statewide effort was important, but brought her answer back to the contemporary moment where the issues were contentious:

> So, you know [organizing together statewide], it was just confirmation that the way to combat this [repeal efforts] is just don't panic, organize. I got a little sticker, and it shows a big fish going after this little fish. But then it says, "Don't panic," and then they show a bunch of little fish getting the big fish. Don't panic. Organize.[343]

This stuck with me for a long time afterward. As I began piecing together the aftermath of the PFA's passage, it became emblematic of how The Movement responded to efforts to repeal the PFA. Though there was cause to panic in the form of very real threats that the PFA would be rescinded or deemed unconstitutional, proponents of ending money bond were determined to see it through.

While the SAFE-T Act and the PFA became law in 2021, the PFA provisions within the SAFE-T Act were set to go into effect on January 1, 2023.[344] The delay until 2023 was intended to give courts, lawyers, and other stakeholders throughout the state time to learn the law and prepare for the massive change that eliminating cash bail would have on the criminal justice system.[345]

It is no understatement to say that the PFA was on the 2022 Illinois midterm ballot.[346] Sheriffs, legislators, attorneys, then-gubernatorial

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[342] Interview with Marie Franklin, *supra* note 201.

[343] *Id.*

[344] *Additional Pretrial Resources*, Ill. Cts., https://www.illinoiscourts.gov/courts/additional-resources/pretrial-resources/additional-pretrial-resources [https://perma.cc/H63P-M5JM] (last visited June 11, 2024).

[345] *Id.*

[346] Jessie Sullivan, Opinion, *Tackling Illinois' Crime Epidemic: A Plan for Safe Streets*, Chi. Trib. (Feb. 1, 2022, 10:50 PM), https://www.chicagotribune.com/2022/02/01/jesse-sullivan-tackling-illinois-crime-epidemic-a-plan-for-safe-streets/; Rick Pearson, *Irvin Blames Death of Eight Cops on Criminal Justice Bill*, Chi. Trib. (Feb. 4, 2022, 12:07 PM), https://www.chicagotribune.com/2022/02/03/gop-candidate-for-governor-richard-irvin-says-criminal-justice-bill-signed-by-pritzker-fueled-crime-rise-had-a-role-in-deaths-of-8-law-officers/;

candidate and Illinois State Senator Dan Bailey, and even disgruntled community members came out against eliminating cash bail as the election neared.[347] Politicians formed a concerted effort on social media and in the news to sow doubt and concern regarding the implications of eliminating cash bail. Perhaps the most infamous attempt was a startup campaign mailer disguised as a newspaper that ran disinformation about the SAFE-T Act and popped up at homes in Cook County seemingly overnight.[348]

The arguments that PFA opponents used during this time were some variation of the following: 1) The PFA was rushed and lacked appropriate time for deliberation in the legislature; 2) the PFA prohibits and discourages cops from doing their job; and 3) the PFA will allow criminals to run free and cause cities to descend into crime-ridden areas.[349] Some even blamed current crime rates on the PFA before it took effect.[350]

At first glance, these talking points were easily invalidated. The SAFE-T Act underwent an extensive number of hearings and debates before it was

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Jayce Eustice, *Bureau County Board and Sheriff James Reed Discuss Possible Resolutions Opposing the SAFE-T Act*, Shaw Loc. News Network (Mar. 10, 2022, 5:28 AM), https://www.shawlocal.com/bureau-county-republican/2022/03/10/bureau-county-board-and-sheriff-james-reed-discuss-possible-resolution-opposing-the-safe-t-act/ [https://perma.cc/6B5C-8YTK]; Patrick Pfingsten, *Crime to Be Major Issue in 2022 Elections*, Nw. Herald (Apr. 8, 2022); Stefanie Hood, *Illinois House 42nd District 2022 Primary Election Questionnaire*, Shaw Loc. News Network (Apr. 30, 2022), https://www.shawlocal.com/news/election/2022/04/30/stefanie-hood-illinois-house-42nd-district-2022-primary-election-questionnaire/ [https://perma.cc/XWF2-68AE]; Eric Schelkopf, *Bailey Talks About Crime, Other Issues During Kane County Fairgrounds Rally Sunday*, Shaw Loc. News Network (Sept. 12, 2022, 5:30 AM), https://www.shawlocal.com/kane-county-chronicle/news/2022/09/12/bailey-talks-about-crime-other-issues-during-kane-county-fairgrounds-rally-sunday/ [https://perma.cc/FN86-QVV7]; James Norman, *Election 2022: McHenry County Board Candidates in District 6 Say State Needs to Pay for SAFE-T Act Mandates*, Shaw Loc. News Network (Sept. 17, 2022), https://www.shawlocal.com/news/election/2022/09/17/election-2022-mchenry-county-board-candidates-in-district-6-say-state-needs-to-pay-for-safe-t-act-mandates/ [https://perma.cc/4FDR-QM5B].

[347] Sullivan, *supra* note 346; Eustice, *supra* note 346; Pearson, *supra* note 346; Pfingsten, *supra* note 346.

[348] Noah Asimow, *'Deceptive' Chicago City Wire Hitting Mailboxes Looks Like a Newspaper. But It's Really a Conservative Campaign Mailer*, Block Club Chi. (Sept. 23, 2022), https://blockclubchicago.org/2022/09/23/deceptive-chicago-city-wire-hitting-mailboxes-looks-like-a-newspaper-but-its-really-a-conservative-campaign-mailer/ [https://perma.cc/BHM9-9JD8].

[349] Sullivan, *supra* note 346; Eustice, *supra* note 346; Pearson, *supra* note 346; Pfingsten, *supra* note 346.

[350] *2022 News-Gazette Election Questionnaire: Mike Marron (R), 104th District State Representative Incumbent*, News-Gazette (Oct. 22, 2022), https://www.news-gazette.com/election/2022/2022-news-gazette-election-questionnaire-mike-marron-r-104th-district-state-representative-incumbent/article_d0bba04d-baab-5801-850e-e59828612793.html [https://perma.cc/Y4GV-F4HW]; Joe Sosnowski, *Your Turn: Our State's Attorneys Are Right. Changes to SAFE-T Act Are Needed*, Rockford Reg. Star (Nov. 12, 2022, 1:37 PM), https://www.rrstar.com/story/opinion/columns/2022/11/12/your-turn-our-states-attorneys-are-right-changes-needed-to-safe-t-act/69641203007/ [https://perma.cc/65WY-TMR4]; Peter Hancock, *Police Fret Mix of Rising Crime, Legislative Restriction*, Jacksonville J.-Courier (Jan. 22, 2022), https://www.myjournalcourier.com/news/article/Police-fret-mix-of-rising-crime-legislative-16795169.php; Eustice, *supra* note 346; Dean Olsen, *Illinois Ends Cash Bail*, Ill. Times (June 23, 2022), https://www.illinoistimes.com/news-opinion/illinois-ends-cash-bail-15320130 [https://perma.cc/W9KL-NLVX]; Ted Slowik, *GOP, Police are Winning Messaging War over Law that Will End Cash Bail in Illinois*, Chi. Trib. (Aug. 17, 2022, 7:45 PM), https://www.chicagotribune.com/2022/08/17/column-gop-police-are-winning-messaging-war-over-law-that-will-end-cash-bail-in-illinois/.

adopted.[351] A court later found that the timing of legislative deliberation before the passage was also a non-issue.[352] Regarding cops and crime, the argument that cops would no longer be able to arrest people who committed serious crimes was not supported by data or the actual law.[353] Cops were and are still able to make arrests should they determine that someone is a flight or safety risk.[354]

The argument that the PFA would lead to and, in some cases, had already led to increased crime was also easily verifiable as false. For one, the PFA had not been implemented, so it could not have resulted in increased criminal activity. Perhaps critics were confused or were unaware of the two-year implementation period. What was more perplexing for me was that in making this point, opponents were actually complaining about how bad crime was with the then-existing cash bail system. The urge to continue doing the same thing that was failing seemed to be more about resisting change than about improving the actual reality on the ground.

Putting aside the unmerited arguments that opponents used, these opponents were able to mount an immense amount of resistance to the PFA during this time. And The Coalition certainly felt this pressure. When I interviewed Senator Peters, he was in the middle of confronting these opposition efforts. Here's how he conveyed what it felt like at the moment:

> The entire game that's being played by law enforcement and their allies, is that they think that if they just don't engage, they can undermine the whole thing, and bring it down. And then put immense pressure on people like me, to then have to give in. And it has been a very exhausting experience. The last two weeks were a very upsetting experience. Difficult. One that has just been a lot to handle. It's an immense amount of pressure. But you know I? I don't know how long I can keep doing this.[355]

Seemingly reflecting further on his position:

> It's an American tradition. And I knew that. You know, after we got the bill passed, I got asked about how I felt and I was like, I feel dread. I feel like it's harder to get this bill to actually get going than it is to pass it.[356]

The Movement used a couple of different tactics to overcome backlash during this moment. It is important to remember that the 2022 Illinois midterm election occurred during the pandemic. This largely meant that much of the campaigning and messaging surrounding the election was occurring

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[351] Interview with Robert Peters, *supra* note 95.

[352] *See* Rowe v. Raoul, No. 22-CH-16, 2022 Ill. Cir. LEXIS 1380, at *37 (Ill. Cir. Ct. Dec. 28, 2022).

[353] *See* 725 Ill. Comp. Stat. Ann. 5/110.

[354] *Id.*

[355] Interview with Robert Peters, *supra* note 95.

[356] *Id.*

online.[357] As such, The Movement turned to digital organizing as a way to combat opponents.[358] They ran op-eds in large newspapers throughout the state focused on dispelling opponents' attacks on the PFA.[359] The Movement hosted numerous public online forums where key organizers and state officials spent time addressing the attacks on the PFA and fielding questions from people who attended the call.[360] Art also played a key part of The Movement's tactics at this time; members of The Movement distributed original art via their social media that contained potent yet easily digestible messaging about the need to protect the PFA and end the usage of money bond.[361] Whenever an op-ed, video, or art piece was published, organizers distributed them through their social media networks and posted them on various social media sites. The idea here presumably was to find ways to directly connect with the public in the same forums where disinformation was occurring to help cut through the opponent's noise.

The common thread running through these tactics was that they were defensive. The PFA had already been passed by the time midterm elections rolled around, meaning that The Movement wasn't trying to convince people to pass the PFA. Instead, it was trying to convince people not to elect politicians running to repeal the law. The Movement just needed to hold the line to win out.

Despite the pandemic, some organizing during this time happened in person. For example, The Movement held a large forum with politicians and organizers who supported the PFA in Chicago at the historic St. Sabina Church on the Southside.[362] Like the Zoom forum, each speaker opened up with remarks about why they supported the PFA and how attacks on it were

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[357] Interview with Matt McLoughlin, *supra* note 78.

[358] *Id.*

[359] *See, e.g.*, John Legend & Michelle Alexander, Opinion, *The Pretrial Fairness Act, a Critical Step Toward Justice, Is Under Threat*, Chi. Trib. (Nov. 15, 2022), https://www.chicagotribune.com/2022/11/15/michelle-alexander-and-john-legend-the-pretrial-fairness-act-a-critical-step-toward-justice-is-under-threat/; Insha Rahman, Opinion, *Bail Reform Is the Solution We Need to Bring About Safety and Justice*, Chi. Trib. (Mar. 28, 2023), https://www.chicagotribune.com/2023/03/28/insha-rahman-bail-reform-is-the-solution-we-need-to-bring-about-safety-and-justice/; Editorial Board, *No, 'The Purge' Isn't Here, but Illinois' Cash Bail Ban Still Needs Work*, Chi. Trib. (Sept. 20, 2022), https://www.chicagotribune.com/2022/09/20/editorial-no-the-purge-isnt-here-but-illinois-cash-bail-ban-still-needs-work/.

[360] Interview with Matt McLoughlin, *supra* note 78; *see also* The Coalition to End Money Bond, *The Legal Challenge to the Pretrial Fairness Act*, YouTube (Jan. 31, 2023), https://www.youtube.com/watch?v=gmC_V7Kzyzg [https://perma.cc/56DU-9LPQ]; The Coalition to End Money Bond, *Don't Believe the Hype: Cutting Through False Narratives and Protecting Pretrial Justice Reforms*, YouTube (July 28, 2021), https://www.youtube.com/watch?v=HFsF-WKjo2C4 [https://perma.cc/58LR-552E]; The Coalition to End Money Bond, *What Does the Pretrial Fairness Act Mean for Winnebago County?*, YouTube (Sept. 20, 2022), https://www.youtube.com/watch?v=6MKSyQ3U9-A [https://perma.cc/YK4V-9F4B].

[361] Illinois Network for Pretrial Justice, Facebook (Oct. 2, 2024), https://www.facebook.com/share/p/1FUkVmoZEg/ [https://perma.cc/F8L5-EDFA] (illustrating some examples of this art).

[362] The Faith Community of Saint Sabina, *The Illinois SAFE-T Act Panel Discussion*, Facebook (Oct. 18, 2022), https://www.facebook.com/watch/live/?ref=watch_permalink&v=5682972251754251 [https://perma.cc/3X35-L5QP].

wrong.[363] Following remarks, attendees were able to ask questions to the speakers, many of whom were directly involved with some aspect of getting the PFA passed.[364]

Another key part of the in-person tactics was The Movement's large electoral door-knocking campaign.[365] Various constituents of The Movement fanned out across the state and canvassed for politicians who they knew supported the PFA.[366] This was significant for two reasons. For one, "being on the doors" as they called it,[367] allowed movement actors to have direct contact and conversations with people about the PFA. This was important because movement actors felt it was easier to combat disinformation in person when people could put a face to the activism. Secondly, doing the political work of helping specific politicians get elected meant they were securing votes to protect the law. The logic was simple. Help get the people elected who say they are going to defend the law, and don't help those who want to repeal the law. Politicians in turn would have an incentive to protect the law because their victory could be in part attributed to the people who were out doing the groundwork to help get them elected.

Ultimately, though opponents mounted a formidable campaign, Governor Pritzker, a self-proclaimed champion of the PFA, overwhelmingly defeated Senator Bailey, who made opposition to the PFA an integral part of his campaign.[368] Democrats decisively maintained power in statehouses and the judiciary after the November 2022 elections.[369] This ensured security for the PFA because Democrats mostly supported the bill.[370] After the election season, legislators and organizers set out to clarify language in the PFA and

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[363] *Id.*

[364] *Id.*

[365] Interview with Will Tanzman, *supra* note 159.

[366] *Id.*

[367] *Id.*

[368] Rick Pearson, *GOP Candidate for Governor Richard Irvin Says Criminal Justice Bill Signed by Pritzker Fueled Crime Rise, Had a Role in Deaths of 8 Law Officers*, Chi. Trib. (Feb. 3, 2022), https://www.chicagotribune.com/2022/02/03/gop-candidate-for-governor-richard-irvin-says-criminal-justice-bill-signed-by-pritzker-fueled-crime-rise-had-a-role-in-deaths-of-8-law-officers/; Donald DeWitte, *Letters to the Editor*, Bartlett Exam'r (Feb. 2, 2022), https://plus.lexis.com/api/permalink/f84aacac-cdf1-43db-9c0d-6827c30b91b9/?context=1530671 [https://perma.cc/8E3Z-DNV4]; Patrick M. Keck, *Candidates for Illinois Governor Talk Public Safety at Separate Tuesday Events*, The State J.-Reg. (Sept. 6, 2022, 4:29 PM), https://www.sj-r.com/story/news/politics/state/2022/09/06/election-nine-weeks-away-bailey-pritzker-focus-on-crime-prevention/65474843007/ [https://perma.cc/HH62-LQHA].

[369] *Illinois Election Results*, N.Y. Times, https://www.nytimes.com/interactive/2022/11/08/us/elections/results-illinois.html (last updated Jan. 7, 2023).

[370] Illinois Senate Democrats, *SAFE-T Act*, Ill. Sen. Dem. Caucus, https://www.illinoissenatedemocrats.com/component/tags/tag/safe-t-act [https://perma.cc/V29C-7FQ5] (last visited June 11, 2024); Tina Sfondeles & Mitchell Armentrout, *Illinois Democrats Celebrate Court Decision Ending Cash Bail: 'Monumental Change is Possible'*, Chi. Sun Times (July 18, 2023, 6:40 PM), https://chicago.suntimes.com/politics/2023/7/18/23798843/safe-t-act-cash-bail-eliminated-illinois-democrats; *Repeal the SAFE-T Act*, Ill. House Republicans, https://www.ilhousegop.org/repeal [https://perma.cc/E7TT-GUL9] (last visited May 12, 2025).

solidify its place in Illinois ahead of its effective enactment date on January 1, 2023.[371] This would culminate in the passage of trailer bill HB 1095 in December 2022.[372] It indeed appeared that cash bail in Illinois would end on January 1, 2023, and that PFA opponents had lost their campaign to repeal the act.

B. But Is It Constitutional?

While PFA opponents were ardently mobilizing in the governor and statehouse races through public-facing campaigns to repeal the PFA, they were also hard at work trying to bring down the PFA through the court system.[373] For opponents, presumably, the calculus was that if the political process failed, they would still have a chance to stop the PFA by utilizing the courts. In this way, opponents viewed the law as a mechanism that could be used to subvert the political process, which included the initial passing of the bill and the political races of 2022.

To this end, two months before the governor and statehouse elections would be decided, State's Attorneys and law enforcement officials who opposed the PFA filed identical actions challenging the constitutionality of the PFA in sixty-four counties throughout the state.[374] Under Illinois Supreme Court Rule 384, when civil cases deal with the same issue, the Supreme Court itself can transfer the case to a particular forum, or they will allow one of the parties to the suit to do so.[375] Here, opponents of the PFA utilized this rule to consolidate their cases and transfer the case to a Kankakee County Circuit Court, whose judge, the PFA backers claimed, was a conservative opposed to the PFA.[376] By taking advantage of the Supreme Court rule and moving the case to a hostile forum, opponents of the PFA dramatically increased their odds that they would successfully overturn the

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[371] Tina Sfondeles, *Illinois Lawmakers Pass Fixes to SAFE-T Act Criminal Justice Reform Law*, WBEZ Chi. (Dec. 1 2022), https://www.wbez.org/stories/illinois-senate-clears-changes-to-safe-t-act/1eb728a1-35cd-4b12-a3a6-dfea6008df1a [https://perma.cc/6EY9-NU4M]; Mike Miletich, *Illinois Democratic Lawmakers Pass SAFE-T Act Clean-up Language*, WGEM (Dec. 1, 2022, 9:59 PM), https://www.wgem.com/2022/12/02/illinois-democratic-lawmakers-pass-safe-t-act-clean-up-language/ [https://perma.cc/486Q-NTXT].

[372] Press Release, *supra* note 206; *see also* Jerry Nowicki, *General Assembly Passes SAFE-T Act Language Changes; Peters Says it Protects Legislation's Intent*, Hyde Park Herald (Dec. 2, 2022), https://www.hpherald.com/news/politics/general-assembly-passes-safe-t-act-language-changes-peters-says-it-protects-legislations-intent/article_a8febade-714f-11ed-b182-ef8b1b18daa4.html [https://perma.cc/QH8Y-WERY].

[373] Rowe v. Raoul, No. 22-CH-16, 2022 Ill. Cir. LEXIS 1380, at *1-2 (Ill. Cir. Ct. Dec. 28, 2022).

[374] *Id.*

[375] Ill. Sup. Ct. R. 384 (2021) (summarizing proceedings for the transfer and consolidation of multi-circuit actions), https://ilcourtsaudio.blob.core.windows.net/antilles-resources/resources/41113f0b-7c6c-4399-bc8c-3779a7595e03/Rule 384.pdf [https://perma.cc/A6JB-NBAA].

[376] Interview with Sarah Staudt, *supra* note 214.

PFA, not because the act was constitutionally invalid but because they could use the legal system to get the result they wanted.

Ultimately, opponents of the PFA were successful at the trial court. Judge Thomas Cunnington of the Kankakee County Circuit Court issued his ruling blocking the PFA on December 28, 2022, just three days before it was set to go into effect.[377] Implementation of the law was blocked, but only in the sixty-four counties with a party to the suit challenging the PFA.[378] Given that Illinois has 102 total counties,[379] this ruling set up a scenario where the PFA would not go into effect in sixty-four of Illinois's counties but would go into effect in the remaining thirty-eight counties.[380] That is to say, cash bail would have been abolished in some places but not others, creating a patchwork criminal justice system throughout the state.

Immediately after Judge Cunnington's ruling, Illinois Attorney General Kwame Raoul filed an appeal to the Illinois Supreme Court, and Governor Pritzker condemned the circuit court's ruling.[381] Both were steadfast in their belief that the PFA was, in fact, constitutional and sound policy.[382] Both also were politicians who people in The Movement had backed during the mid-term election. Herein lies the importance of the political canvassing work during the midterms. Had there been a different Attorney General, or had Governor Pritzker lost the governor's race, there could have been a solid chance that Judge Cunnington's ruling would not have been appealed, and his word would have been final on the act. But it wasn't.

Nevertheless, capitalizing on Cunnington's ruling, two State's Attorneys, one Republican and one Democrat, named Robert Berlin and James Mosser, filed an action with the Illinois Supreme Court to request a statewide halt of the PFA pending the resolution of the appeal.[383] The rationale was that their

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[377] *Illinois High Court Halts Elimination of Cash Bail*, AP News (Jan. 1, 2023, 12:45 PM), https://apnews.com/article/politics-illinois-state-government-legal-proceedings-law-suits-b310c3f68a1abed94fd71a0709d34df2 [https://perma.cc/R6LX-67MG].

[378] *Id.*

[379] *Illinois Counties*, Ill. Ass'n Cnty. Bd. Members, https://ilcounty.org/resources/illinois-counties [https://perma.cc/4YWH-2EWL] (last visited Apr. 11, 2025).

[380] Madeline Buckley & Jeremy Gorner, '*What Illinois Did Is Really Truly on Another Level*' *Despite Legal Limbo, Elimination of Cash Bail Set to Take Effect Jan. 1*, Chi. Trib. (Dec. 30, 2022, 4:42 PM), https://www.chicagotribune.com/news/criminal-justice/ct-bond-reform-illinois-cook-county-20221230-vzjwrl3qrvbapi4dcisgpyx3ce-story.html [https://perma.cc/LSS7-54T4]; *see also* Danny Connolly & Cole Henke, *Counties Scramble in Aftermath of Judge's SAFE-T Act Ruling*, WCIA.com (Dec. 29, 2022, 6:56 PM), https://www.wcia.com/news/capitol-news/counties-scramble-in-aftermath-of-judges-safe-t-act-ruling/ [https://perma.cc/ZNR4-4FBT].

[381] *See generally* Brief of Defendants-Appellants, Rowe v. Raoul, 223 N.E.3d 1010 (Ill. 2023) (No. 129248), https://ilcourtsaudio.blob.core.windows.net/antilles-resources/resources/1ded-2f9c-8b00-43b1-9e9d-bfc0e9020f4a/129248_ATB.pdf [https://perma.cc/Q4A4-RNNT].

[382] Buckley & Gorner, *supra* note 380.

[383] Tre Ward, *IL Supreme Court Halts Pre Trial Fairness Act, Preventing No Cash Bail Provision from Taking Effect*, ABC 7 Chi. (Dec. 31, 2022), https://abc7chicago.com/illinois-supreme-court-pre-trial-fairness-act-no-cash-bail-safe-t/12635593/ [https://perma.cc/7W-PY-T5UC]. *See generally* Emergency Motion for Supervisory Order, People *ex rel.* Berlin &

State Attorney's offices represented counties where the PFA would have gone into effect and another where it would be blocked.[384] The patchwork implementation would create confusion about how offices needed to proceed in particular cases.[385]

One day before the PFA would have gone into effect, the Illinois Supreme Court granted Rowe a supervisory order that maintained the usage of cash bail pending the Illinois Supreme Court's decision in the case.[386] Effectively it blocked the PFA statewide, pending further review from the court.[387] With the statewide stay, the PFA did not go into effect on January 1, 2023. Cash bail still ruled the day, as it had before. Although the appeal was filed, it would be months before oral arguments were heard and even longer before the Supreme Court made a decision. For a brief moment, opponents got what they wanted—their time in the sun, blocking the PFA.

That time wouldn't last long, as the Supreme Court would eventually hear the case. In the meantime, The Movement figured they still needed to organize to help support the PFA. They didn't get this far by playing from the sidelines. But the court represented a different challenge for them. There was a sentiment amongst organizers that the usual tactics like direct actions and targeted lobbying wouldn't work on the Supreme Court and its justices.[388] In fact, they perceived that the court might react poorly to them and strike down the PFA out of spite.[389] The Movement decided they needed to take a more indirect, passive approach.[390]

Luckily for The Movement, some of its work had already been done. During the 2022 midterm election, Democrats retained a majority on the court.[391] This is noteworthy because the Democratic Party was the party that ran the PFA and, during the election, largely defended it. This didn't ensure that the law would be held constitutional, but it made it more likely. So again, the political groundwork of ensuring certain officials were elected proved to be important.

Mosser v. Raoul, No. 129249 (Ill. Dec. 30, 2022), https://ilcourtsaudio.blob.core.windows.net/antilles-resources/resources/2b1ec246-3948-4434-8075-94dd4d09377a/129249%20Emergency%20motion%20for%20supervisory%20order.pdf [https://perma.cc/BFG2-QNNA].

[384] Emergency Motion for Supervisory Order, *supra* note 383, at ¶ 9.

[385] *Id.* at ¶ 8.

[386] Order, People *ex rel.* Berlin v. Raoul, No. 129249, at *4 (Ill. Dec. 31, 2022), https://ilcourtsaudio.blob.core.windows.net/antilles-resources/resources/4456b09e-3138-4914-b8f9-0c32ae8763d9/129249%20order.pdf [https://perma.cc/EAY5-P9ZX].

[387] *Id.*

[388] Interview with Matt McLoughlin, *supra* note 78; Interview with Sharlyn Grace, *supra* note 79.

[389] *Id.*

[390] *Id.*

[391] Fox 32 Digital Staff, *2022 Illinois Midterm Election Results: Illinois Supreme Court*, Fox 32 Chi., https://www.fox32chicago.com/election/2022-illinois-midterm-election-results-illinois-supreme-court [https://perma.cc/2P6T-NR2L] (last updated Nov. 8, 2022, 6:09 PM).

The Movement decided that the best way to get involved would be to influence the briefs in the case.[392] To do so, they helped write and support an amicus brief that was submitted to the court in support of the PFA.[393] At the same time, they were also working to help the Attorney General's office in their defense of the PFA.[394] They also connected the Attorney General's office with leading experts within and outside of the state to help feed them data and arguments for the Attorney General's brief.[395] Their sense was that this was the best they could do because they weren't a party to the suit themselves.[396]

As it turned out, having the right court composition and right legal backing worked in The Movement's favor. In overturning the circuit court's ruling, the Illinois Supreme Court's opinion centered around three issues. The first argument centered around the PFA removing monetary bail from judges' bail toolkits.[397] At the circuit court level, opponents had advanced the idea that the PFA was unconstitutional because it removed the judges' ability to consider monetary bail as a surety in all cases.[398] The circuit court agreed and reasoned that the Illinois Constitution contains language that citizens must be "bailable by sufficient sureties."[399] By removing money as a surety or mechanism by which someone can be released, the circuit court reasoned that there was no longer a sufficient amount of sureties for which someone could be bailed out.[400] The circuit court reasoned that legislatures had amended the Illinois Constitution over and over again with the understanding and general practice of money being used as a surety.[401]

The trial court further rationalized that one of the main reasons money bail needed to be used by judges as a tool was because it was perhaps the strongest way to ensure an accused's return to court while protecting public safety interests.[402] By removing money bail as a tool, the PFA undermined the state's interest in ensuring the accused would return to court.[403] According to the circuit court, money needed to be constitutionally required as a surety—paying for one's freedom needed to be a constitutionally required practice.[404]

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[392] Interview with Sharlyn Grace, *supra* note 79.

[393] *Id.*

[394] *Id.*

[395] *Id.*

[396] *Id.*

[397] Rowe v. Raoul, 223 N.E.3d 1010, 1014 (Ill. July 18, 2023).

[398] *See* Rowe v. Raoul, No. 22-CH-16, 2022 Ill. Cir. LEXIS 1380, at *20 (Ill. Cir. Ct. Dec. 28, 2022).

[399] *Id.* at *32.

[400] *Id.*

[401] *See id.* at *36.

[402] *See Rowe*, 223 N.E.3d at 1016.

[403] *Id*.

[404] *Rowe*, 2022 Ill. Cir. LEXIS 1380, at *21.

The Illinois Supreme Court found this line of reasoning unpersuasive. Firstly, the court found that the circuit court's idea of mandating money as a constitutionally required surety was not supported by the Illinois Constitution because it contains no mention of money.[405] Secondly, the court found that the circuit court erroneously assumed that abolishing cash bail undermined the state's interest in ensuring the accused come to court.[406] The court reasoned that the circuit court falsely assumed that a monetary bond was the only way to ensure that defendants return to court while balancing the court's interest in protecting the public.[407] For the court, this assumption was unsupported by the Illinois Constitution because the right to bail is made conditional by the availability of sureties and exceptions that allow courts to detain individuals.[408]

The second argument against the PFA focused on the protection of crime victims.[409] The reasoning of the circuit court was that the Crime Victims' Rights Clause in the Illinois Constitution gives crime victims enumerated rights, which include "the right to have the safety of the victim and the victim's family considered in denying or fixing the amount of bail, determining whether to release the defendant, and setting conditions of release after arrest and conviction."[410] The circuit court determined that the "fixing the amount" language refers to monetary bail.[411] Thus, removing monetary bail would have prevented courts from fixing the amount of bail, and therefore, prevented them from protecting victims and their families.[412]

The Illinois Supreme Court also found this line of reasoning improper for three reasons. Firstly, the court found that the circuit court ignored the plain meaning of the Illinois Constitution.[413] For the court, the quantity language was not about the fixed amount of monetary bail but rather about a sufficient number of sureties or ways for individuals to be bailable.[414]

To clarify, the court found that the phrase "amount of bail" in the Illinois Constitution means the number of sufficient types of release available to the accused and not the quantity of money attached to bail. Adopting the circuit court's meaning of the phrase "amount" would have created a scenario where bail would have been synonymous with cash bail when, in fact, bail just connotes a mechanism of release, not the *type* of release.[415]

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[405] *Rowe*, 223 N.E.3d at 1017.

[406] *Id.* at 1018.

[407] *Id.*

[408] *Id.*

[409] *Rowe*, 2022 Ill. Cir. LEXIS 1380, at *21-22 (citing ILL. CONST. art. I, § 8.1(a)(9)).

[410] *Id.* at *20-21.

[411] *Id.* at *21.

[412] *Id.*

[413] *Rowe*, 223 N.E.3d at 1020.

[414] *Id.*

[415] For a discussion on bail as a mechanism of release, see Schnacke, *supra* note 2, at 38. *See also Rowe*, 223 N.E.3d at 1018 (explaining that bail does not just mean cash bail).

A money bond is merely one *type* of bond, and personal recognizance is another. Although the PFA eliminates one of the types of release (money bond), the court determined that the existence of personal recognizance release alone is a sufficient amount of surety.

Secondly, the court found that the PFA was constitutional because it requires crime victims to be given notice of hearings and requires courts to consider the nature and seriousness of a real and present threat to their safety in determining whether someone should be released.[416] Under the PFA, prosecutors are required to notify a victim of a crime when a hearing related to the crime is taking place.[417]

Lastly, the court reasoned that claiming the Crime Victims' Rights Clause mandated the usage of the entire money bond system was a stretch because its purpose had nothing to do with money bond.[418] Further, the court noted that nothing in the legislative history suggested that the intent of the clause was to mandate a permanent money bond system.[419]

The third argument against the PFA related to the separation of powers.[420] The circuit court determined that the PFA was an unconstitutional interference with judicial power.[421] Bail, for the circuit court, was an inherently administrative matter entrusted to the judiciary.[422] By passing the PFA and removing cash bail as a tool for judges, the legislature impermissibly impeded judges' abilities to detain defendants pending trial.[423] Per the circuit court, bail is solely the domain of judges, and thus, legislatures can't intervene except for bringing the measure to the ballot.[424]

The Illinois Supreme Court dispensed with this argument rather swiftly.[425] The court stated that the Illinois Supreme Court has never proclaimed bail to be solely the domain of courts, though courts can revoke release. Instead, legislatures, as in the case of the PFA, have historically been explicitly involved with the bail and sentencing processes.[426]

In sum, victory here suggests that using the courts isn't untenable for abolitionists or those who want the law to move society away from caging each other as the norm. Legal actors have to do their job, but movement actors must also organize via the political system and give courts a legal foundation to build on. The legal work of abolition is, in fact, just as

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[416] *Rowe*, 223 N.E.3d at 1021.

[417] *See* 725 Ill. Comp. Stat. 5/110-6(h); 725 Ill. Comp. Stat. 5/110-6.1(m)(1).

[418] *Rowe*, 223 N.E.3d at 1021-23.

[419] *Id.*

[420] *Id.*

[421] *See* Rowe v. Raoul, No. 22-CH-16, 2022 Ill. Cir. LEXIS 1380, at *20 (Ill. Cir. Ct. Dec. 28, 2022).

[422] *Id.*

[423] *Id.*

[424] *Id.*

[425] *See Rowe*, 223 N.E.3d at 1021-23.

[426] *Id.* at 1016, 1022.

important as the grassroots work of abolition. While backlash and retrenchment may be inevitable, this campaign suggests that abolition can overcome such efforts when abolitionist legal reforms have sound grassroots and legal foundations. The PFA's survival here suggests that abolition provides us with one of the best vehicles to enact systematic change in the face of backlash at multiple levels: the courts, the law, and the electoral process.

Conclusion

In this article, I have articulated how a grounded qualitative approach can help us better understand how to make our criminal justice system more fair, accountable, and just. To make this point, I explained how The Movement successfully abolished cash bail in Illinois, making it the most successful abolitionist campaign of the past decade.

My approach reveals that abolition is a practical tool for improving our pretrial systems, especially our policies regarding pretrial release and pretrial incarceration. Abolition can do so firstly because abolitionist campaigns can win and get policy implemented in the criminal justice arena. Abolitionist campaigns are spaces where non-abolitionists and abolitionists can unite to deliver abolitionist wins, even in a deeply polarized society. The success of the PFA campaign indicates that despite polarity, folx from all walks of life are willing to work together to pursue abolitionist goals to make the system better.

Secondly, abolitionists use a variety of tactics, which allows abolition to appeal to a wide range of audiences who may not otherwise work together. For example, abolitionists utilized disruptive tactics like protests and shutting down bond court. They also used traditional civil rights tactics like grassroots electoral organizing and legislative policy advocacy. The disruptive tactics brought people who generally seek solutions outside of the system into the fold while the traditional civil rights tactics brought in people who seek solutions within the system. This successful collaboration of inside and outside tactics indicates that abolition is a wide-ranging tool with broad applicability that we can use to effectuate change.

Thirdly, my approach reveals that abolition is more than just the long-term project of prison, jail, and police abolition. Abolitionists actually care a lot about incremental short-term harm reduction, as was the case here where cash bail was abolished but jailing as an institution was not. This indicates that abolitionists aren't solely concerned with reducing jail populations for the sake of ending jailing. Rather, abolitionists care deeply about the conditions of the directly impacted, leading them to embrace short-term solutions that improve the system and move it closer towards total abolition.

The abolition of cash bail in Illinois did not happen overnight. Many things occurred along the way to make the improbable probable. History was made by organizers, advocates, and activists who imagined that the criminal justice system could be different. But perhaps a looming question one might

rightfully have is: Why Illinois? And more specifically, why didn't changes to cash bail in Illinois see the rollbacks experienced by other places that attempted similar measures? After all, other states that moved away from cash bail have reverted back to using cash bail.

To be fair, I do think a few key points made the situation in Illinois different. Firstly, the timing here was important. Illinois implemented the PFA after other states had passed laws or implemented court-ordered changes to reduce reliance on money bail.[427] I think organizers saw and adjusted their strategies by learning from rollbacks in different places in real-time.

Secondly, there was an incredible partnership between organizers and elected officials. Having a statewide network with a broad coalition of supporters and organizers mattered. Having a governor who supported ending cash bail mattered. Having the right Supreme Court composition mattered.[428] Having two State's Attorneys in two of the largest counties supporting the end of cash bail mattered.[429] And having legislators who were former organizers themselves mattered. Some, but not all, were abolitionists. By contrast, many places where there have been extensive rollbacks did not appear to possess the same continuity of care and support from the ground to the capitol.[430]

Thirdly, bail bond agents have been outlawed in Illinois since the 1960s.[431] I'm not sure they could have stopped the momentum of ending cash bail in Illinois, but their absence likely made abolition more accessible. In other states, bail bond agents have formed a formidable lobby in opposing efforts to end cash bail.[432]

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[427] Frank Main, *A Lesson for Illinois on Cash Bail? New York, California Also Got Rid of It, but Reforms Didn't Last*, Chi. Sun-Times (Jan. 16, 2021), https://chicago.suntimes.com/politics/2021/1/16/22231974/cash-bail-reform-illinois-new-york-california-reforms-criminal-justice.

[428] *See Rowe*, 223 N.E.3d at 1010; John Garcia, *Democrats Elizabeth Rochford, Mary Kay O'Brien Declare Victory in Illinois Supreme Court Cases*, ABC 7 Chi. (Nov. 9, 2022), https://abc7chicago.com/illinois-supreme-court-justices-ballot-judges/12434220/ [https://perma.cc/CX8Q-WCE9].

[429] Jerry Nowicki & Hannah Meisel, *Ahead of Cash Bail's End, State's Replacement Pretrial Justice System Takes Shape*, Hyde Park Herald (Sept. 15, 2023), https://www.hpherald.com/evening_digest/ahead-of-cash-bail-s-end-state-s-replacement-pretrial-justice-system-takes-shape/article_4d7d247a-541b-11ee-b28c-9375c8e902cc.html [https://perma.cc/ZHG4-W9ST]; Blair Paddock, *Kim Foxx Sees Elimination of Cash Bail as Step Toward Equal Justice*, WTTW News (July 19, 2023, 6:41 PM), https://news.wttw.com/2023/07/19/kim-foxx-sees-elimination-cash-bail-step-toward-equal-justice [https://perma.cc/T7RC-RVHF].

[430] Jasmine Garsd, *New York Rolls Back Reforms That Gave Judges More Discretion*, NPR (May 4, 2023, 5:54 PM), https://www.npr.org/2023/05/04/1174083658/new-york-rolls-back-bail-reforms-that-gave-judges-more-discretion [https://perma.cc/PF4X-DXLR]; Interview with Robert Peters, *supra* note 95; Interview with John Amdor, *supra* note 195; The Times Editorial Board, *California Blew It on Bail Reform. Now Illinois Is Showing It Works*, L.A. Times, (May 19, 2023, 3:00 AM), https://www.latimes.com/opinion/story/2024-05-19/illinois-bail-reform-works [https://perma.cc/57B3-SEJT].

[431] John Boyle, *Bail Under the Judicial Article*, 17 DePaul L. Rev. 267, 273-74 (1968).

[432] Alexei Koseff, *Bail Bondsmen Ask Voters to Kill California Law That Puts Them Out of Business*, Sacramento Valley News (Aug. 28, 2018, 4:59 PM), https://www.sacbee.com/

Lastly, and perhaps most importantly, I cannot understate the influence of the protests in response to the deaths of Breonna Taylor, Tony McDade, and George Floyd.

That said, ending cash bail was accomplished only because The Movement had been doing work in the community for many years prior. Yes, timing was important, but recall that The Coalition had been working in various capacities to end money bond since at least 2014. The Coalition worked hard to get an amenable State's Attorney elected in Cook County.[433] Members of The Coalition moved from organizing positions to elected offices. They organized statewide and wrote legislation. They went into communities, talked to the community, bailed the accused out of jails, and campaigned in the news. So yes, one may attribute the success of the PFA to arriving at the right place, at the right time. But The Movement worked to put themselves in the right place to take advantage of the right time. Put another way, without The Movement being ready, the George Floyd moment would not have been enough to end cash bail. Abolition of cash bail simply would not have happened because there wouldn't have been an actionable agenda. But because The Movement was ready, they were able to seize the moment such that the political moment was helpful to their cause. So, for abolitionists and abolitionist movements, this case study indicates that abolitionists must be willing to capitalize on political opportunities as they present themselves because abolitionist wins can be achieved when such opportunities are seized upon.

For those of us who are concerned about the disparities and inequities in the criminal justice system, there is indeed more work to be done. Stories that display how everyday people succeed at fighting deeply unfair systems show us what we can achieve when we work together, even if we do not all identify as the same thing. Certainly, there is a place for sketching the outlines of our academic concepts and movements. I think, though, that more time needs to be spent on the communities and situations that actually exist in the world in front of us. Without centering The Movement's work, or what I call the practical, we are left with incomplete theoretical assumptions because we don't know how abolitionist concepts play out in the real world. But when we shift to the practical, we give a voice to those whose conditions we hope to alleviate. We can also see that communities embrace abolitionist movements. In the end, here, it mattered less whether or not someone was an abolitionist and more that people wanted a more just system that was not predicated on incarceration.

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news/politics-government/capitol-alert/article217523875.html [https://perma.cc/QY7C-K83D]; Ryan Santistevan, Jonathan Bandler & Will Cleveland, *Bail Industry Facing Collapse, Touting Value of Service Amid Bail Reform*, POUGHKEEPSIE J. (Feb. 5, 2020, 6:00 AM), https://www.poughkeepsiejournal.com/story/news/local/2020/02/05/bail-industry-facing-collapse-touting-value-service-amid-bail-reform/4655061002/ [https://perma.cc/X43A-GQ7D].

[433] Interview with Will Tanzman, *supra* note 159.

I do not believe, nor do many of those who worked on the PFA believe, that this law is the be-all and end-all for criminal justice. Abolishing cash bail will not stop predatory policing, nor will it ultimately end the practice of warehousing our community members in cages. But abolishing cash bail entirely is a new territory for any state in the country. There will undoubtedly be mistakes made, and should the entire project fail, we should also be willing to do something different. What we cannot do and what we don't have to do, as PFA proponents have shown us, is continue the same harmful mistakes of the past. We can hope, imagine, and act on something that has not been done before—something that is not more of the same.