IS POVERTY 'IMMUTABLE' FOR THE COUNTY JUDGE? | Reference Case Study*

Contemporary Civil Rights Litigation proceeds with expansion or constriction of fundamental rights, and with identification of new quasi-suspect classes subject to various levels of federal scrutiny. This study examines the case study of Odonnell V. Harris County, TX to explore various features of this process, with an emphasis on doctrines, cases, and argumentation schemes, useful as a reference to the litigation paralegal, and the pro se detainee.

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1 INTRODUCTION

> This case is about Harris County jailing some of its poorest people because they cannot afford to make a monetary payment…In Harris County, wealthier arrestees are released from custody almost immediately upon payment of money to the County. Arrestees who are too poor to purchase their release remain in jail because of their poverty. On any given night, over 500 people arrested for misdemeanors languish in the Harris County Jail because of a money bail that they cannot afford. Between 2009 and 2015, 55 human beings died in the Harris County Jail awaiting trial after being unable pay the amount of money demanded by the County for their release., Complaint, ODONNELL V. Harris County, Case 4:16-cv-01414, TXSD

The issue of money bail reform has long been in discussion in legal scholarly publications. [1] [2] [3] The case plaintiff attorneys include a Harvard Law Bail Reform advocate non-profit and two major white collar litigation firms.[4], while the lawsuit was assigned to a Chief District Judge with Washington, D.C. law reform connections.[5] [6] Some of the judicial officer defendants acted as witnesses for the plaintiffs. The facts and policy concerns of the case therefore formed an impressive coalition for change Refer to the Judge's Findings of Facts[7] and the amended complaint[8] for these fact and policy details.

Methodology

This memorandum is intended as a reference for the uninitiated reader and practitioner in civil rights litigation. Consequently, we mainly omit any narrative treatment of the multiplicity of procedural and merit arguments and their overlap by instead beginning with appendices of summary tables that act as dictionary entries for the various definitions and delineated tools of argument. We examine these with a focus on two major questions presented by the case, and then discuss the implications for further civil action for the indigent in localities. Each argumentation point is presented with a brief summary, followed by detailed excerpts distilling the issues and major cases of interest. The cases and secondary source material are hyperlinked to external resources. The paper then functions as an introductory reference portal to various subjects in civil litigation for the rights of the indigent.

2 PREREQUISITE DOCTRINAL DISCUSSION

2.1 REMINDERS

Before considering the mechanics and arguments of the litigation of interest, it may be helpful to summarize the various doctrines of Constitutional review, and their associated legal vocabulary,

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[1] C.S. Yang, *Toward an Optimal Bail System*, 92 NEW YORK UNIVERSITY LAW REVIEW 1399 (Jan. 2017).

[2] Shima Baradaran Baughman, *Dividing Bail Reform* (Mar. 2019).

[3] Wendy Calaway & Jennifer Kinsley, *Rethinking Bail Reform* (Oct. 2017).

[4] TXSD, *D-Consent Decree* (Sep. 2019). The agreement also addresses fees and costs. Harris County agrees to pay the following attorneys' fees and costs: $3,725,231.00 in fees and $114,832.54 in costs to Civil Rights Corps; $2,161,262.00 in fees (to be forgone) and $30,214.86 in costs to Susman Godfrey L.L.P.; $632,453.00 in fees to Wilmer Cutler Pickering Hale and Dorr LLP; and , $182,715.90 in fees and $5,378.00 in costs to the Texas Fair Defense Project.

[5] Wikipedia: Lee H. Rosenthal (May 2021).

[6] *AMERICAN LAW INSTITUTE – ACADEMICS OR ACTIVISTS?*, AMERICAN TORT REFORM FOUNDATION, https://www.judicialhellholes.org/american-law-institute-academics-or-activists/ (last visited Oct. 24, 2021).

[7] TXSD, *D-MEMORANDUM AND OPINION SETTING OUT FINDINGS OF FACT AND CONCLUSIONS OF LAW* (Apr. 2017).

[8] TXSD, D-CLASS ACTION COMPLAINT 2 (AMENDED) (Sep. 2016).

employed by the Courts in their analysis of the litigation's facts and law. The civil rights litigant will not need such a reminder, but they are attached for completeness.

In the appendix tables: we summarize as follows:

T1- *Substantive and Procedural three step case analysis*

If there is an apparent due process or equal protection violation, what is the subject matter (class or group), and the right violated, which upon consideration, maps into one of the three tiers of Court scrutiny.

T2- *Strict scrutiny*

If the group or class is qualified for strict scrutiny, is a fundamental right threatened, and if so, is there a compelling, necessary state interest, with the means tailored to the specific ends? An example might be that of a racial, ethnic, or religious group whose fundamental right is threatened, e.g., voting rights.

T3*-Intermediate, Heightened Scrutiny*

The group is not of the protected class of strict scrutiny, but often includes lessor protected groups, e.g., gender issues. The state interest must be important (less than necessary), and the ends must be substantially (not strictly tailored) to that state interest.

T4-Minimum Rational Basis Scrutiny

Groups not included under strict or intermediate concern with wide discretion given to government actors as long as the action is 'rational.'

T5-Factors Heightening Scrutiny:

Membership in a Quasi-suspect group, especially if having the characteristic of 'Immutability' (not necessarily physical), where fundamental rights are burdened. See also **T6** *Table of Cases with heightened scrutiny*, NYU Law Review.

2.2 LEGAL REALIST CAVEATS

Scholars, when examining court action rather than court rhetoric, throw out the above doctrinal framework in favor of a realistic analysis that recognizes:

- Rational Basis Review, outside of the component factors of T5, T6, is toothless.[9]
- Strict Scrutiny is a rarely used doctrine for judicial intervention.[10] Therefore active litigation wrought change will most likely occur when successfully arguing for an intermediate, heightened scrutiny rationale, elevating a class of disfavored plaintiffs into a new protected class. ('Rational Basis with Bite').

[9] Rational-basis review, the most deferential form of scrutiny under the Equal Protection Clause, rarely invalidates legislation. Between the 1971 and 2014 Terms, the Supreme Court has held laws violative of equal protection under rational-basis scrutiny only seven- teen times,2 out of over one hundred challenges analyzed under rational-basis scrutiny, Raphael Holoszyc-Pimentel, *Reconciling Rational-Basis Review: When Does Rational Basis Bite?*, 90 NEW YORK UNIVERSITY LAW REVIEW (1950) 2070 (Dec. 2015).

[10] Tyler Stoff, *Constitutional Law You Won't Hear in the Classroom – World Outlook [James Fleming on the Myth of Strict Scrutiny]*, DARTMOUTH JOURNAL OF INTERNATIONAL AFFAIRS, https://sites.dartmouth.edu/worldoutlook/2013/11/14/constitutional-law-you-wont-hear-in-the-classroom/ (last visited Oct. 24, 2021).,also The Roger S. Aaron '64 video Lecture, "The Myth of Strict Scrutiny for Fundamental Rights", James E. Fleming

- The Court often rubber stamps state equal protection and due process violations, despite its theoretical doctrine of insisting upon a criterion of compelling, precise state interest[11]
- However, the Court will intervene when legislative faction deadlock when state actions address favored groups, or changing, 'fundamental,' rights (tables T5, T6).[12]

2.3 Two Major Questions

Merit Issue: Is it a civil rights violation when a misdemeanor defendant is incarcerated for failure to pay a money bond due to poverty, when a wealthy, violent felony defendant can buy his way out of jail?

Discussion-Following **T1**, are there equal protection and due process claims here, and does the class of indigent misdemeanor defendants constitute a quasi-suspect class> If so, what is the proper level of scrutiny to evaluate these claims?

Procedural Issue: Can the federal courts impose a permanent injunction, and collect damages, from County hearing officers, sheriffs, and County court judges?

Discussion- Under what rationale can the plaintiffs defeat 11th Amendment[13] Immunity and 42 U.S. CODE § 1983 protection for judicial officers? In other words, do the plaintiffs in this class action have the standing to make a claim with an achievable remedy?

3 Arguments

Summary (distilling the response to the initial motion to dismiss, s Dec. 2016) [14] [15]

> The County Judges moved to dismiss the complaint on November 9, 2016. (Docket Entry Nos. 80–82). They argue that the named plaintiffs lacked standing under Federal Rule of Civil Procedure 12(b)(1), and that the complaint failed to state a plausible claim for relief under Rule 12(b)(6). They argue that their role in setting bail procedures for the County entitled them to immunity from suit. Finally, they argue that this court should dismiss by abstaining under Younger v. Harris, 401 U.S. 37 (1971).[16] [17]

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[11] Note, *Let the End Be Legitimate: Questioning the Value of Heightened Scrutiny's Compelling- and Important-Interest Inquiries*, 129 Harvard Law Review (2016).

[12] [John Hart] Ely's argument proceeds along the following lines: the Supreme Court has never issued a satisfactory and consistent theory of fundamental rights…By concerning itself with questions of participation, Ely intends that the Court should assure all persons a right to participate in the political process in some meaningful way, un- hampered by process-clogging concentrations of power. His perception of the Court's essential constitutional role as "policing the process of representation"19 leads to the vision of a judiciary involved in dilating constricted channels which stop the flow,80 and in keeping minorities within the political stream when op- pressive factions try, in effect, to toss them out
Judith Koffler, *Review-Constitutional Catarrh: Democracy and Distrust, by John Hart Ely*, 1 Pace Law Review 403 (Jan. 1981).

[13] *General Scope of State Sovereign Immunity | Constitution Annotated | Congress.Gov | Library of Congress*, https://constitution.congress.gov/browse/essay/amdt11-1-3-1/ALDE_00000986/%5B'college'%5D (last visited Oct. 24, 2021).

[14] Harris TXSD, D-Motion to Dismiss-1.

[15] TXSD, D-Rulings on Motions -MEMORANDUM AND OPINION (Dec. 2016).

[16] *Id.*

[17] Definitions here matter, see *Invidious Discrimination*, Civil Liberties and Civil Rights in the United States, https://uscivilliberties.org/themes/3979-invidious-discrimination.html (last visited Oct. 25, 2021). , Though the principle of equal protection of law stands as a constitutional commitment to the like treatment by the government of all similarly situated persons, it does not render every legislative classification invalid. Indeed, nearly every law discriminates in some way by differentiating on its face or in its effect between similarly situated persons—between those who will benefit from the law and those who will be burdened by it. As interpreted and applied by the Supreme Court, however, equal protection forbids only invidious discrimination…For example, the court has treated as presumptively invidious legislative classifications that disfavor individuals who may be identified by

3.1 STANDING

Issue -This Court lacks jurisdiction over ODonnell's claim for declaratory relief against the Hearing Officers in their individual capacity[Standing Challenges under Rule 12(b)(1)][18] [19] (MTD)

Rule [Kennedy v. FLORIDIAN HOTEL, INC. Court of Appeals, 11th Circuit 2021

> Attacks on subject matter jurisdiction, which are governed by Rule 12(b)(1), come in two forms: facial or factual attack. Lawrence v. Dunbar, 919 F.2d 1525, 1528-29 (11th Cir. 1990). A "facial attack" challenges whether a plaintiff "has sufficiently alleged a basis of subject matter jurisdiction, and the allegations in his complaint are taken as true for the purposes of the motion." Id. at 1529 (quotation marks omitted). A "factual attack," in contrast, challenges the existence of subject matter jurisdiction irrespective of the pleadings, and extrinsic evidence may be considered. Id. A district court evaluating a factual attack on subject matter jurisdiction "may proceed as it never could" at summary judgment and "is free to weigh the evidence and satisfy itself as to the existence of its power to hear the case." Id. (quotation marks omitted).

Application- If the plaintiffs have already been released from detention, there case is moot, and no relief can be offered. Moreover, even under speculative future harm, the Court may not intervene with regard to judicial officers under section 1983, see below. This converts the 12 (b) (1) standing attack into a FRCP 12(b)(6) motion. There may also be a factual standing attack on this same section. However, this implicates factual findings with regard to 1183. [20] [21] *Conclusion*- The motion to dismiss upon standing is denied.

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their race or national origin or that undermine the ability of individuals to exercise a fundamental right, such as the right to vote. Experience has shown that these classifications often flow from a desire by the majority to disadvantage a discrete group of persons. Accordingly, these classifications can be justified only by a demonstration of a compelling state interest and only if the means to achieve the government's ends are no broader than necessary.

[18] *Standing Requirement: ArtIII.S2.C1.2.5.1 US Const.*, LII / LEGAL INFORMATION INSTITUTE, https://www.law.cornell.edu/constitution-conan/article-3/section-2/clause-1/standing-requirement-overview (last visited Oct. 25, 2021).

[19] Martin H. Redish & Sopan Joshi, *Litigating Article III Standing: A Proposed Solution to the Serious (but Unrecognized) Separation of Powers Problem*, 162 UNIVERSITY OF PENNSYLVANIA LAW REVIEW 1373 (University of Pennsylvania Law School May 2014).

[20] *Standard for Facial Challenges to Subject Matter Jurisdiction Under Rule 12(b)(1) Clarified: Seventh Circuit | Practical Law*, (Nov. 20, 2015), https://content.next.westlaw.com/Document/Icd93d2b48f3611e598dc8b09b4f043e0/View/FullText.html?transitionType=Default&contextData=(sc.Default)." In evaluating a challenge to subject matter jurisdiction, the Seventh Circuit explained that a court must first determine whether a defendant has raised a factual challenge (there is no subject matter jurisdiction) or a facial challenge (the plaintiff has not sufficiently alleged a basis for jurisdiction). The court found that the defendants' Rule 12(b)(1) motion was a facial challenge because the defendants contended that the plaintiffs' complaint lacked sufficient factual allegations to establish standing. The court then noted that, under *Lujan v. Defs. of Wildlife*, the US Supreme Court held that standing "must be supported in the same way as any other matter on which the plaintiff bears the burden of proof" (504 U.S. 555, 559-60 (1992)). The Seventh Circuit also discussed the Supreme Court's clarification of the standard for pleading a claim in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), in which a court must both: Identify the well-pleaded factual allegations by discarding those that are "no more than conclusions." , Determine whether the remaining well-pleaded factual allegations "plausibly give rise to an entitlement of relief."
Based on this Supreme Court precedent, the Seventh Circuit clarified that the *Twombly-Iqbal* facial plausibility requirement for pleading a claim is incorporated into the standard for pleading subject matter jurisdiction in the Seventh Circuit. In doing so, the Seventh Circuit joined a number of its sister circuits that require a court to use *Twombly-Iqbal*'s "plausibility" requirement not only to evaluate facial challenges to claims under FRCP 12(b)(6), but also to evaluate a facial challenge to subject matter jurisdiction under Rule 12(b)(1).

[21] Morris James, *When Standing is Closely Related to Merits, 12(b)(6) Applies, Not 12(b)(1)*, DELAWARE BUSINESS LITIGATION REPORT, https://www.morrisjames.com/blogs-Delaware-Business-Litigation-Report,supreme-court-when-standing-is-closely-related-to-merits-12b6-applies-not-12b1 (last visited Oct. 24, 2021). "Deciding whether a motion to dismiss based on lack of standing is considered under Rule 12(b)(6) or 12(b)(1) has implications and has divided some courts. First, lack of subject matter jurisdiction under 12(b)(1) is non-waivable and can be raised by the court *sua sponte*, whereas failure to state a claim under 12(b)(6) must be raised by motion. Second, a 12(b)(6) motion for failure to state a claim may be converted to a motion for summary judgment, considering matters outside the pleadings, but a 12(b)(1) motion may not. In this consolidated appeal, the Supreme Court held that when the issue of standing is closely related to the merits, a motion to dismiss for lack of standing is properly considered under 12(b)(6) for failure to state a claim…The Supreme Court, in reviewing one decision, held that the issue of standing was closely related to the merits—since interpretation of the contract was a prerequisite to the plaintiff/appellant's standing—and that a motion to dismiss for lack of standing was thus properly considered by the Superior Court under 12(b)(6) for failure to state a claim. But the Supreme Court reversed the Superior Court's decision to dismiss because the parties were not given at least 10 days notice of the court's conversion of the 12(b)(6) motion to dismiss into a Rule 56 motion for summary judgment…And in the other case, the Supreme Court reversed the Superior Court's holding that the term "joint action" prohibited separate suits by the two shareholder representatives because it was not the only reasonable interpretation (i.e., the provision was actually ambiguous). Further, the Court held that on a Rule 12(b)(6) motion it was error to select the

1	Standing
Rules	
1a	Federal Rule of Civil Procedure 12(b)(1) applies to challenges to a plaintiff's standing. "A case is properly dismissed for lack of subject matter jurisdiction when the court lacks the statutory or constitutional power to adjudicate the case." Home Builders Ass'n v. City of Madison, Miss.[22]
1b	Standing requires: "(1) an 'injury in fact' that is (a) concrete and particularized and (b) actual or imminent; (2) a causal connection between the injury and the conduct complained of; and (3) the likelihood that a favorable decision will redress the injury." Croft v. Governor of Texas ., 562 F.3d 735, 745 (5th Cir. 2009) (citing Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992)).[23]
1c	When examining a factual challenge to subject-matter jurisdiction under Rule 12(b)(1), which does not implicate the merits of a plaintiff's cause of action, the district court has substantial authority "to weigh the evidence and satisfy itself as to the existence of its power to hear the case." Garcia v. Copenhaver, Bell & Associates, MD's ., 104 F.3d 1256, 1261 (11th Cir. 1997); see also Clark, 798 F.2d at 741. The court may consider matters outside the pleadings, such as testimony and affidavits, to resolve a factual challenge to subject-matter jurisdiction, without converting the motion to dismiss to one for summary judgment.[24]
Answer- confusing justiciability	
1d	{These standing objections] would require the court to resolve disputed facts that go to the merits. These assertions are not standing objections. See Bond v. United States , 564 U.S. 211, 218–19 (2011) (sufficiency of factual allegations should not be confused with justiciability of the controversy)[25]
1e	Bond v. United States: Even though decisions since Tennessee Electric have been careful to use the terms "cause of action" and "standing" with more precision, the distinct concepts can be difficult to keep separate. If, for instance, the person alleging injury is remote from the zone of interests a statute protects, whether there is a legal injury at all and whether the particular litigant is one who may assert it can involve similar inquiries. Steel Co. v. Citizens for Better Environment, 523 U.S. 83, 96-97, and n. 2, 118 S.Ct. 1003, 140 L.Ed.2d 210 (1998) (noting that statutory standing and the existence of a cause of action are "closely connected" and "sometimes identical" questions).[26] Still, the question whether a plaintiff states a claim for relief "goes to the merits" in the typical case, not the justiciability of a dispute, id., at 92, 118 S.Ct. 1003, and conflation of the two concepts can cause confusion. [See notes [27] [28]]

3.2 Claim Failure

Issue-The Motion to Dismiss [29] states: ODonnell's complaint fails to state a claim upon which relief can be granted against Harris County and other the Defendants in their official capacities [Pleading Sufficiency under Rule 12(b)(6)],[30] (MTD)

"more reasonable" interpretation as legally controlling, without admitting extrinsic evidence of the parties' intent. (This decision was subsequently cited by Chancellor Chandler in *Seidensticker v. Gasparilla Inn, Inc.*, 2007 WL 4054473, at *3 (Del. Ch. Nov. 8, 2007), for the proposition that Delaware courts adhere to the objective theory of contracts.)

[22] *Home Builders Ass'n v. City of Madison, Miss.*, 143 F. 3d 1006 (Court of Appeals, 5th Circuit 1998).

[23] *Croft v. Governor of Texas*, 562 F. 3d 735 (Court of Appeals, 5th Circuit 2009).

[24] *Garcia v. Copenhaver, Bell & Associates, MD's*, 104 F. 3d 1256 (Court of Appeals, 11th Circuit 1997).

[25] *Bond v. US*, 564 U.S. 211 (2011).

[26] *Steel Co. v. Citizens for Better Environment*, 523 U.S. 83 (1998).

[27] Morris James, *supra* note 21., Deciding whether a motion to dismiss based on lack of standing is considered under Rule 12(b)(6) or 12(b)(1) has implications and has divided some courts. First, lack of subject matter jurisdiction under 12(b)(1) is non-waivable and can be raised by the court sua sponte, whereas failure to state a claim under 12(b)(6) must be raised by motion. Second, a 12(b)(6) motion for failure to state a claim may be converted to a motion for summary judgment, considering matters outside the pleadings, but a 12(b)(1) motion may not. In this consolidated appeal, the Supreme Court held that when the issue of standing is closely related to the merits, a motion to dismiss for lack of standing is properly considered under 12(b)(6) for failure to state a claim.

[28] Redish & Joshi, *supra* note 19.

Application-Apply the Twombly-Iqbal test and discard the conclusionary allegations. Supplement the factual allegations with the attached government reports as part of the Motion. We are left with the assertion that no relief can be offered under Rational Basis scrutiny since bail is clearly rational to ensure defendants appearance at trial. Whether strict or rational basis scrutiny should apply is a factual matter to be determined by the trier of fact, as is the issue of whether money bail is rational. *Conclusion*- The MTD for failure to state a claim is denied.

2	Failure to State a Claim
Rules	
2a	A complaint must contain "enough facts to state a claim to relief that is plausible on its face." Bell Atlantic Corp. v. Twombly 550 U.S. 544, 555 (2007); Ashcroft v. Iqbal , 556 U.S. 662 (2009). Rule 8 "does not require 'detailed factual allegations,' but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." Iqbal, 556 U.S. at 678 (citing Twombly, 550 U.S. at 555). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Id. (citing Twombly, 550 U.S. at 556). "The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." Id. (citing Twombly, 550 U.S. at 556).[31] [32]
2b	Consideration of documents attached to a defendant's motion to dismiss is limited to "documents that are referred to in the plaintiff's complaint and are central to the plaintiff's claim." Scanlan v. TEXAS A&M UNIVERSITY , 343 F.3d 533, 536 (5th Cir. 2003) (citing Collins v. Morgan Stanley Dean Witter , 224 F.3d 496, 498–99 (5th Cir. 2000)). The court may consider these extrinsic materials without converting to a summary-judgment motion. See Isquith v. Middle South Utilities, Inc. ., 847 F.2d 186, 193 n.3 (5th Cir. 1988) (quoting 5 WRIGHT & MILLER, FEDERAL PRACTICE AND PROCEDURE § 1366).[33] [34] [35]
2c	**5** See Lormand v. US Unwired, Inc. ., 565 F.3d 228, 232 (5th Cir. 2009) ("[C]ourts must, as with any motion to dismiss for failure to plead a claim on which relief can be granted, accept all factual allegations in the complaint as true." (Citing Tellabs, Inc. v. Makor Issues & Rights, Ltd., 551 U.S. 308 (2007); Leatherman Tarrant County Narcotics Intelligence and Coordination Unit, 507 U.S. 163, 164 (1993)).[36]
Answer	
2d	[Using an asserted law and fact conclusion before trial as a premise in a Motion to Dismiss] Rational basis is a factual inquiry. Courts are properly reluctant to dismiss without permitting plaintiffs to make a factual showing that a government policy is irrational. Mahone v. Addicks Utility Dist. of Harris County , 836 F.2d 921, 937–38 (5th Cir. 1988) (asserting the discretion of district courts to deny dismissal at the Rule 12(b)(6) stage on rational-basis review).16 That analysis requires this court to resolve critical factual disputes about the Harris County bail system…A motion to dismiss is not the right way to resolvethese disputes.[37]
2e	Mahone v. Addicks Utility Dist. of Harris County: We begin by recognizing that motions to dismiss for failure to state a claim are disfavored in the law and, therefore, that a court will only rarely encounter circumstances which justify granting such a motion. *Clark v. Amoco Prod. Co.,* 794 F.2d 967, 970 (5th Cir.1986); *Rios v. Dillman,* 499 F.2d 329, 330 (5th Cir.1974). We look askance at these motions, of course, because of the nature of the Federal Rules of Civil Procedure's pleading requirements. The Rules require only "notice" pleading — that is, "`a short and plain statement of the claim' that will give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." *Conley v. Gibson,* 355 U.S. 41, 47, 78 S.Ct. 99, 103, 2 L.Ed.2d 80 (1957) (quoting Fed.R.Civ.P. 8(a)(2)); *accord Boudeloche v. Grow Chem. Coatings Corp.,* 728 F.2d 759, 762 (5th Cir.1984). In addition, we must

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[29] TXSD, *supra* note 14.

[30] Rule 12. Defenses and Objections: Federal Rules of Rule 12. Defenses and Objections: Civil Procedure § 12.

[31] *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007).

[32] *Ashcroft v. Iqbal*, 556 U.S. 662 (2009).

[33] *Scanlan v. Texas A&m University*, 343 F. 3d 533 (Court of Appeals, 5th Circuit 2003).

[34] *Collins v. Morgan Stanley Dean Witter*, 224 F. 3d 496 (Court of Appeals, 5th Circuit 2000).

[35] *Isquith v. Middle South Utilities, Inc.*, 847 F. 2d 186 (Court of Appeals, 5th Circuit 1988).

[36] *Lormand v. US Unwired, Inc.*, 565 F. 3d 228 (Court of Appeals, 5th Circuit 2009).

[37] *Mahone v. Addicks Utility Dist. of Harris County*, 836 F. 2d 921 (Court of Appeals, 5th Circuit 1988).

	liberally construe the pleadings "to do substantial justice." Fed.R.Civ.P. 8(f); *Dickens v. Lewis,* 750 F.2d 1251, 1254 (5th Cir.1984); *United States v. Uvalde Consol. Indep. School Dist.,* 625 F.2d 547, 549 (5th Cir.1980), *cert. denied,* 451 U.S. 1002, 101 S.Ct. 2341, 68 L.Ed.2d 858 (1981). In *Conley,* the Supreme Court described the standard which determines, in the context of a motion to dismiss, whether a particular pleading gives the requisite "notice" of a cognizable claim: In appraising the sufficiency of the complaint, we follow, of course, the accepted rule that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.

2f	ASHCROFT V. IQBAL (2009) b) Under Federal Rule of Civil Procedure 8(a)(2), a complaint must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." "[D]etailed factual allegations" are not required, *Twombly,* 550 U.S., at 555, 127 S.Ct. 1955, but the Rule does call for sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face," *id.,* at 570, 127 S.Ct. 1955. A claim has facial plausibility when the pleaded factual content allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. *Id.,* at 556, 127 S.Ct. 1955. Two working principles underlie *Twombly.* First, the tenet that a court must accept a complaint's allegations as true is inapplicable to threadbare recitals of a cause of action's elements, supported by mere conclusory statements. *Id.,* at 555, 127 S.Ct. 1955. Second, determining whether a complaint states a plausible claim is context specific, requiring the reviewing court to draw on its experience and common sense. *Id.,* at 556, 127 S.Ct. 1955. A court considering a motion to dismiss may begin by identifying allegations that, because they are mere conclusions, are not entitled to the assumption of truth. While legal conclusions can provide the complaint's framework, they must be supported by factual allegations. When there are well-pleaded 1941*1941 factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief. Pp. 1948-1951. (c) Iqbal's pleadings do not comply with Rule 8 under *Twombly.* Several of his allegations — … — are conclusory and not entitled to be assumed true. Moreover, the factual allegations …do not plausibly suggest that petitioners purposefully discriminated on prohibited grounds.

3.3 SECTION 1983

Issue-Is the alleged discriminatory rule making of the County Court Judges and hearing officers a judicial function, and therefore granted immunity under section 1983?[38] [39]

Rule: 42 USC § 1983

Application-

Is this purposeful deprivation of liberty or disparate impact? Does the indigent have presumed protective status qualifying for strict scrutiny? If merely disparate without Quasi-suspect classification, then rational basis might apply, and the government's rational interest in defendant's appearance at trial makes § 1983 in applicable. Under the section, non-judicial activities are not granted qualified immunity.

These issues of Official capacity[40], discrimination and rational basis review become ones of factual determination left to the trier of fact. *Conclusion* MTD denied.

[38] 42 U.S. Code § 1983., also, *Navigating Section 1983 Liability, pdf*

[39] Karen M. Blum, *SECTION 1983: QUALIFIED IMMUNITY* (Suffolk University Law)., pdf

[40] Samuel Hall, *Navigating Section 1983 Liability for Municipalities: Individual/Official Capacity, Qualified Immunity and Monell Claims* (Stratford 2017)., *pdf*

3	Section 1983
Rules	
3a	"Section 1983 provides a remedy against 'any person' who, under color of state law, deprives another of rights protected by the Constitution." Collins v. City of Harker Heights, Tex., 503 U.S. 115, 120 (1992). A local government may not be sued under § 1983[41] for the deprivation of rights guaranteed by the Constitution or federal law inflicted solely by its employees or agents. Instead, it is "when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government entity is responsible under § 1983." Monell v. New York City Dept. of Soc. Servs., 436 U.S. 658, 691 (1978).
3b	An official policy can be either "a policy statement, ordinance, regulation, or decision officially adopted and promulgated by [the municipality's] officers," or a "governmental 'custom' even though such a custom has not received formal approval through the body's official decision-making channels." Monell, 436 U.S. at 690–91.[*Monell v. New York City Dept. of Social Services,* 436 U. S. 658 (1978)] "Official municipal policy includes the decisions of a government's lawmakers, the acts of its policymaking officials, and practices so persistent and widespread as to practically have the force of law Connick v. Thompson 563 U.S. 51, 61 (2011); see also Peterson, 588 F.3d at 847. ("It usually exists in the form of written policy statements, ordinances, or regulations, but it may also arise in the form of a widespread practice that is so common and well-settled as to constitute a custom that fairly represents municipal policy.") (Quotation marks omitted). "Monell's 'policy or custom' requirement applies in § 1983 cases irrespective of whether the relief sought is monetary or prospective." Los Angeles County, Cal. v. Humphries 562 U.S. 29, 39 (2010). [42] [43] [44] [45]
3c	"[A] municipal judge acting in his or her judicial capacity to enforce state law does not act as a municipal official or lawmaker" for purposes of § 1983 liability. Johnson v. Moore, 958 F.2d 92, 94 (5th Cir. 1992); see also Familias Unidas v. Briscoe , 619 F.2d 391, 404 (5th Cir. 1980) (distinguishing Johnson v. Moore a county judge's "judicial duties" from his "executive, legislative and administrative chores in the day-to-day governance of the county."). [46] [47]
Disparate Impact versus Purposeful, Intent (interaction with level of scrutiny minimum or intermediate?)	
3d	The defendants argue that the Fourteenth Amendment is an improper basis for relief, first because disparate impact is insufficient to state a § 1983 claim, and second because the government's legitimate interest in ensuring that criminal defendants appear for trial satisfies rational-basis review. The defendants cite cases on racial discrimination for the proposition that disparate impact is not actionable under § 1983, and that the plaintiffs must instead plausibly allege discriminatory intent. See Manley v. Texas Southern University ., 107 F.Supp.3d 721 (S.D. Tex. 2015) (citing Priester v. Lowndes County , 354 F.3d 414, 424 (5th Cir. [48] [49]
3e	*Reply-goes to the merit of strict scrutiny under invidious discrimination, see Pugh v. Rainwater , 572 F.2d at 1055, . (citing Williams v. Illinois , 399 U.S. at 235; Tate v. Short , 401 U.S. at 395).Also bail rule implementation by county judges is legislative or delegated administrative, executive (non-judicial) action..* [50]

[41] § 1983., Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

[42] *Monell v. New York City Dept. of Social Servs.*, 436 U.S. 658 (1978).

[43] *Connick v. Thompson*, 563 U.S. 51 (2011).

[44] *Peterson v. City of Fort Worth, Tex.*, 588 F. 3d 838 (Court of Appeals, 5th Circuit 2009).

[45] *Los Angeles County, Cal. v. Humphries*, 562 U.S. 29 (2010).

[46] *Familias Unidas v. Briscoe*, 619 F. 2d 391 (Court of Appeals, 5th Circuit 1980).

[47] *Johnson v. Moore*, 958 F. 2d 92 (Court of Appeals, 5th Circuit 1992).

[48] *Manley v. Texas Southern University*, 107 F. Supp. 3d 712 (Dist. Court 2015).

[49] *Priester v. Lowndes County*, 354 F. 3d 414 (Court of Appeals, 5th Circuit 2004).

[50] *Pugh v. Rainwater*, 572 F. 2d 1053 (Court of Appeals, 5th Circuit 1978). At the outset we accept the principle that imprisonment solely because of indigent status is invidious discrimination and not constitutionally permissible. *Williams v. Illinois,* 399 U.S. 235, 90 S.Ct. 2018, 26 L.Ed.2d 586 (1970); *Tate v. Short,* 401 U.S. 395, 91 S.Ct. 668, 28 L.Ed.2d 130 (1971). The punitive and heavily burdensome nature of pretrial confinement has been the subject of convincing commentary.[4] We view such deprivation of liberty of one who is accused but not convicted of crime as presenting a question having broader effects and constitutional implications than would appear from a rule stated solely for the protection of indigents

3.5 YOUNGER ABSTENTION

Pugh v. Rainwater, 483 F. 2d 778 - Court of Appeals, 5th Circuit 1973 is controlling in the 5th district and abstention is denied.

4	Younger Abstention [51]
Rules	
4a	Abstention under Younger is warranted when three conditions are met: "(1) the dispute must involve an ongoing state judicial proceeding, (2) an important state interest in the subject matter of the proceeding must be implicated, and (3) the state proceeding must afford an adequate opportunity to raise the constitutional challenge." **Younger v. Harris** [52] …Unless all three conditions are present, Younger abstention is improper, and the plaintiff has the burden to show that the opportunity to raise the constitutional challenge in a state proceeding is inadequate. **Pennzoil Co. v. Texaco Inc.** ., 481 U.S. 1, 14 (1987) (citing **Moore v. Sims** , 442 U.S. 415, 429–30 (1979); Younger, 401 U.S. at 45). [53] [54]
Reply- state proceedings have ended	
4b	In Pugh v. Rainwater , 483 F.2d 778 (5th Cir. 1973), arrestees filed a class action challenging detention without a probable-cause hearing. Id. at 780–81. In deciding that Younger abstention did not apply, the Fifth Circuit reasoned that the suit "sought no relief which would impede pending or future prosecutions on various charges in the state courts" because the class action was not "against any pending or future court proceedings as such." Id. at 781–82 (quoting Fuentes v. Shevin , 407U.S. 67, 71 n.3 (1971)). The challenge to pretrial detention did not affect the merits of any subsequent criminal prosecution, and the allegedly unconstitutional pretrial detention could not be raised as a defense in the criminal proceeding. As the Fifth Circuit noted, "If these plaintiffs were barred by Younger from this forum, what relief might they obtain in their state court trials? Since their pre-trial incarceration would have ended as of the time of trial, no remedy would exist. Their claims to pre-trial preliminary hearings would be mooted by conviction or exoneration." Id. at 782 [55] [56]
4c	Winter v. Wolnitzek , 834 F.3d 681, 688 (6th Cir. 2016) ("In the absence of an ongoing enforcement action, Younger has no role to play, leaving us with authority, indeed an obligation, to resolve the case."); Banks v. Slay, 789 F.3d 919, 923 (8th Cir. 2015) (abstention was inappropriate because the state appellate case ended and plaintiffs did not petition the state supreme court); Mounkes v. Conklin, 922 F.Supp. 1501, 1511 n.5 (D. Kan. 1996) (if the state pretrial detention proceedings had already terminated when the court ruled, "Younger abstention would not apply"). In this case, there is no dispute that the named plaintiffs' underlying state-court cases are over. At this stage, there are no ongoing state proceedings to which this court can or should defer. [57]
	PUGH V. RAINWATER 483 F.2D 778 (1973), 572 F.2D 1053 (1978)[58] If these plaintiffs were barred by *Younger* from this forum, what relief might they obtain in their state court trials? Since their pre-trial incarceration would have ended as of the time of trial, no remedy would exist. Their claims to pre-trial preliminary hearings would be mooted by conviction or exoneration. Plaintiffs' due process claim is closely analogous to that made in Morgan v. Wofford, 472 F.2d 822 (5th Cir. 1972). In *Morgan,* we held that *Younger* did not bar a claim by a probationer who had been afforded no hearing to ascertain the amount of restitution he owed the victim of his crime. We said:[59] …"Abstention under the doctrine of Younger v. Harris, 401 U.S. 37, 91 S. Ct. 746, 27 L.Ed.2d 669 (1970) was never intended where there is no possible state proceeding through which appellant may raise his constitutional objections to a state proceeding which has already occurred . . . . we have never intimated that abstention is appropriate where there is no state court prosecution to be interfered with and where the plaintiff seeking relief in federal court has no alternative forum in which to raise his constitutional claim." Id. at 826.

[51] Ben Anderson, *Our Federalism – The Younger Abstention Doctrine*, 81 FLORIDA BAR JOURNAL (Nov. 2007).

[52] *Younger v. Harris*, 401 U.S. 37 (1971).

[53] *Pennzoil Co. v. Texaco Inc.*, 481 U.S. 1 (1987).

[54] *Moore v. Sims*, 442 U.S. 415 (1979).

[55] *Pugh v. Rainwater*, 572 F. 2d 1053.

[56] *Fuentes v. Shevin*, 407 U.S. 67 (1972).

[57] *Winter v. Wolnitzek*, 834 F. 3d 681 (Court of Appeals, 6th Circuit 2016).

[58] *Pugh v. Rainwater*, 572 F. 2d 1053.

[59] *Morgan v. Wofford*, 472 F. 2d 822 (Court of Appeals, 5th Circuit 1973).

	PREISER V. RODRIGUEZ 411 U.S. 475 (1973)[60] [61] We cannot agree. The respondents, we think, view the reasons for the exhaustion requirement of § 2254 (b) far too narrowly. The rule of exhaustion in federal habeas corpus actions is rooted in considerations of federal-state comity. That principle was defined in *Younger* v. *Harris,* 401 U. S. 37, 44 (1971), as "a proper respect for state functions," and it has as much relevance in areas of particular state administrative concern as it does where state judicial action is being attacked. That comity considerations are not limited to challenges to the validity of state court convictions is evidenced by cases such as *Morrissey* v. *Brewer, supra,* where the petitioners' habeas challenge was to a state administrative decision to revoke their parole, and *Braden* v. *30th Judicial Circuit Court of Kentucky, supra,* where the petitioner's habeas attack was on the failure of state prosecutorial authorities to afford him a speedy trial…. Principles of *res judicata* are, of course, not wholly applicable to habeas corpus proceedings. 28 U. S. C. § 2254 (d). See *Salinger* v. *Loisel,* 265 U. S. 224, 230 (1924). Hence, a state prisoner in the respondents' situation who has been denied relief in the state courts is not precluded from seeking habeas relief on the same claims in federal court. On the other hand, *res judicata* has been held to be fully applicable to a civil rights action brought under § 1983. *Coogan* v. *Cincinnati Bar Assn.,* 431 F. 2d 1209, 1211 (CA6 1970); *Jenson* v. *Olson,* 353 F. 2d 825 (CA8 1965); *Rhodes* v. *Meyer,* 334 F. 2d 709, 716 (CA8 1964); *Goss* v. *Illinois,* 312 F. 2d 257 (CA7 1963). Accordingly, there would be an inevitable incentive for a state prisoner to proceed at once in federal court by way of a civil rights action, lest he lose his right to do so.

3.6 Excessive Bail

Plaintiffs agree to the Defendant's claims that excessive, or even no bail, is constitutional, but not with discriminatory application, nor without due process.

5	Excessive Bail [62]
Rules	
5a	Bail may be set at "an amount reasonably calculated to ensure the defendant's presence at trial." Broussard v. Parish of Orleans 318 F.3d 644, 650 (5th Cir. 2003) (citing Stack v. Boyle , 342 U.S. 1, 5 (1951)); see also Schlib v. Kuebel, 404 U.S. 357, 365 ("Bail, of course, is basic to our system of law, and the Eighth Amendment\'s proscription of excessive bail has been assumed to have application to the States through the Fourteenth Amendment."). The defendants argue that the plaintiffs' complaint "is simply a disguised excessive bail challenge under the Eighth Amendment." (Docket Entry No. 80 at 32). They cite precedents holding that an inability to pay does not make bail excessive under the Eighth Amendment or unreasonable under state law. See United States v. McConnell, 842 F.2d 105, 107 (5th Cir. 1988) ("[A] bail setting is not constitutionally excessive merely because a defendant is financially unable to satisfy the requirement."); Simon v. Woodson, 454 F.2d 161, 166 (5th Cir. 1972) ("[T]he ability to make bond is an important element in fixing an appropriate amount therefor, but it cannot be said that the Constitution requires that it alone be controlling."); Jobe v. State, 482 S.W.3d 300, 302 (Tex. App.—Eastland 2016, pet. ref'd) (if ability to pay is the sole criterion, "the role of the trial court in setting bond would be eliminated, and the accused would be in the position to determine what his bail should be"). [63] [64] [65] [66]
Reply- This is not an excessive bail case, defense citations are *non sequitur*.	
5b	The plaintiffs do not challenge the existence of the bail schedule, or the specific amounts set out in the schedule, but rather the defendants' alleged refusal to consider any alternatives to financial-release conditions for misdemeanor defendants unable to pay bail and the delay in considering the inability to pay as a basis for release. This case is not properly characterized as an Eighth Amendment challenge to excessive bail.

[60] *Preiser v. Rodriguez*, 411 U.S. 475 (1973).

[61] *Habeas Corpus*, LII / Legal Information Institute, https://www.law.cornell.edu/wex/habeas_corpus (last visited Oct. 27, 2021).

[62] CRS, LII / Legal Information Institute: Excessive Bail Prohibition: Current Doctrine.

[63] *Broussard v. Parish of Orleans*, 318 F. 3d 644 (Court of Appeals, 5th Circuit 2003).

[64] *Stack v. Boyle*, 342 U.S. 1 (1951).

[65] *Eighth Amendment | Browse | Constitution Annotated | Congress.Gov | Library of Congress*, https://constitution.congress.gov/browse/amendment-8/ (last visited Oct. 25, 2021).

[66] *Fourteenth Amendment | Browse | Constitution Annotated | Congress.Gov | Library of Congress*, https://constitution.congress.gov/browse/amendment-14/ (last visited Oct. 25, 2021).

3.7 EQUAL PROTECTION

The defendants argue that the alleged equal protection claims under rational basis review since the state's actions are pursuant to a rational interest, and the consequences are mere disparate impact. The key proof by contradiction here is that the county will allow a wealthy violent accused felon to purchase freedom. In this sense, community protection cannot be a rational basis for pretrial incarceration of the misdemeanor violator. The court also found after review of extensive submitted evidence that such pretrial detention actually increases future criminal activity through the costs born by defendants who lose their jobs, medical benefits, etc.

This, then is voluntary, purposeful deprivation of absolute liberty, a fundamental right, applied unequally, as 'invidious discrimination,' MLB v. SLJ (1996). And here, the indigent gain the status of an 'Immutable,' Quasi-Suspect class, for application of a scrutiny higher than the 'pigeonhole' of mere Rational basis Review.

The cases, and the Court, emphasize the overlap or interaction of the concepts of Due Process and Equal Protection. This is especially true when examining a case where fundamental right is compromised by an unequal application legal process. Bearden v. Georgia (1983)

6	Equal Protection
Rules	
6a	The defendants argue that the Fourteenth Amendment is an improper basis for relief, first because disparate impact is insufficient to state a § 1983 claim [see 3.3 above] and second because the government's legitimate interest in ensuring that criminal defendants appear for trial satisfies rational-basis review. [see T4 MINIMUM OR RATIONAL BASIS SCRUTINY]
6b	The defendants argue that even if the Harris County Rules of Court did discriminate based on wealth, the case should be dismissed under rational-basis review because the government "has a substantial interest in ensuring that persons accused of crimes are available for trials and, ultimately, for service of their sentences" and "confinement of such persons pending trial is a legitimate means of furthering that interest." Bell v. Wolfish , 441 U.S. 520, 534 (1979).[67]
Reply:	Wealth discrimination for fundamental rights requires strict scrutiny, not rational basis review
5c 6c	…circuit law that requires courts to consider challenges to pretrial detention based on indigence with particular care. "[I]mprisonment solely because of indigent status is invidious discrimination and not constitutionally permissible." *Pugh v. Rainwater* 572 F.2d 1053, 1056 (5th Cir. 1978) (en banc) (citing *Williams v. Illinois*, 399 U.S. 235 (1970); *Tate v. Short*, 401 U.S. 395 (1971))…The Fifth Circuit panel decision in *Pugh v. Rainwater*, 557 F.2d 1189 (5th Cir. 1977), applied strict scrutiny… because the claim implicated "fundamental" Fourteenth Amendment rightsto be presumed innocent and presumptively eligible for release before trial and criminal conviction.[68] [69] [70]
6d	The defendants argue here that the court should apply rational-basis review and dismiss thecomplaint. That approach represents the "pigeonhole analysis" the Supreme Court rejected and ignores the analysis the Court applied in *Williams* and *Bearden*.
	Defining absolute liberty, United States v. Knights **534 U.S. 112 (2001)** Probation is "one point . . . on a continuum of possible punishments ranging from solitary confinement in a maximum-security facility to a few hours of mandatory community service." 483 U. S., at 874. Inherent in the very nature of probation is that probationers "do not enjoy `the absolute liberty to which every citizen is entitled.' " *Ibid.* (quoting *Morrissey* v. *Brewer*, 408 U. S. 471, 480 (1972)). Just as other punishments for criminal convictions curtail an offender's freedoms, a court granting probation may impose reasonable conditions that deprive the offender of some freedoms enjoyed by law-abiding citizens.

[67] *Bell v. Wolfish*, 441 U.S. 520 (1979).

[68] *Pugh v. Rainwater*, 572 F. 2d 1053 (Court of Appeals, 5th Circuit 1978).

[69] *Williams v. Illinois*, 399 U.S. 235 (1970).

[70] *Tate v. Short*, 401 U.S. 395 (1971).

MLB V. SLJ (1996) -Invidious Wealth Discrimination

"The invidiousness of the discrimination that exists when criminal procedures are made available only to those who can pay," the Court said in *Mayer,* "is not erased by any differences in the sentences that may be imposed."[Meyer] 404 U. S., at 197. Petty offenses could entail serious collateral consequences, the *Mayer* Court noted. *Ibid.* The *Griffin* principle, *Mayer* underscored, "is a flat prohibition," 404 U. S., at 196, against "making access to appellate processes from even [the State's] most inferior courts depend upon the [convicted] defendant's ability to pay," *id.* , at 197. ..[71]

The interaction of Due Process and Equal Protection

We observe first that the Court's decisions concerning access to judicial processes, commencing with *Griffin,* and running through *Mayer,* reflect both equal protection and due process concerns. See *Ross* v. *Moffitt,* 417 U. S., at 608-609. As we said in *Bearden* v. *Georgia,* 461 U. S. 660, 665 (1983), in the Court's *Griffin* -line cases, "[d]ue process and equal protection principles converge." The equal protection concern relates to the legitimacy of fencing out would-be appellants based solely on their inability to pay core costs. See *Griffin,* 351 U. S., at 23 (Frankfurter, J., concurring in judgment) (cited *supra,* at 110-111). The due process concern homes in on the essential fairness of the state-ordered proceedings anterior to adverse state action. See *Ross,* 417 U. S., at 609. A "precise rationale" has not been composed, *id.* , at 608, because cases of this order "cannot be resolved by resort to easy slogans or pigeonhole analysis," *Bearden,* 461 U. S., at 666. Nevertheless, "[m]ost decisions in this area," we have recognized, "res[t] on an equal protection framework," *id.,* at 665, as M. L. B.'s plea heavily does, for, as we earlier observed, see *supra,* at 110, due process does not independently require that the State provide a right to appeal. We place this case within the framework established by our past decisions in this area. In line with those decisions, we inspect the character and intensity of the individual interest at stake, on the one hand, and the State's 121*121 justification for its exaction, on the other. See *Bearden,* 461 U. S., at 666-667…[72] [73] [74]

Cannot be pigeonholed into Rational Basis Review

In aligning M. L. B.'s case and *Mayer* —parental status termination decrees and criminal convictions that carry no jail time—for appeal access purposes, we do not question the general rule, stated in *Ortwein,* that fee requirements ordinarily are examined only for rationality. See *supra,* at 115-116. The State's need for revenue to offset costs, in the mine run of cases, satisfies the rationality requirement, see *Ortwein,* 410 U. S., at 660; States are not forced by the Constitution to adjust all tolls to account for "disparity in material 124*124 circumstances." *Griffin,* 351 U. S., at 23 (Frankfurter, J., concurring in judgment). [75] [76]But our cases solidly establish two exceptions to that general rule. The basic right to participate in political processes as voters and candidates cannot be limited to those who can pay for a license.[14] Nor may access to judicial processes in cases criminal or "quasi criminal in nature," *Mayer,* 404 U. S., at 196 (citation and internal quotation marks omitted), turn on ability to pay. In accord with the substance and sense of our decisions in *Lassiter* and *Santosky,* see *supra,* at 117-120, we place decrees forever terminating parental rights in the category of cases in which the State may not "bolt the door to equal justice," *Griffin,* 351 U. S., at 24 (Frankfurter, J., concurring in judgment); see *supra,* at 110.

BEARDEN V. GEORGIA The interaction of Due Process and Equal Protection

Due process and equal protection principles converge in the Court's analysis in these cases. See *Griffin* v. *Illinois, supra,* at 17. Most decisions in this area have rested on an equal protection framework, although Justice Harlan in particular has insisted that a due process approach more accurately captures the competing concerns. See, *e. g., Griffin* v. *Illinois, supra,* at 29-39 (Harlan, J., dissenting); *Williams* v. *Illinois, supra,* at 259-266 (Harlan, J., concurring). As we recognized in *Ross* v. *Moffitt, supra,* at 608-609, we generally analyze the fairness of relations between the criminal defendant and the State under the Due Process Clause, while we approach the question whether the State has invidiously denied one class of defendants a substantial benefit available to another class of defendants under the Equal Protection Clause.

Strict or Rational Basis scrutiny?

The question presented here is whether a sentencing court can revoke a defendant's probation for failure to pay the imposed fine and restitution, absent evidence, and findings that the defendant was somehow responsible for the failure or that alternative forms of punishment were inadequate. The parties, following the framework of *Williams* and *Tate,* have argued the question primarily in terms of equal protection, and debate vigorously whether strict scrutiny or rational basis is the appropriate standard of review. There is no doubt that the State has treated the petitioner differently from a person who did not fail to pay the imposed fine and therefore did not violate probation. To determine whether this differential treatment violates the Equal Protection 666*666 Clause, one must determine whether, and under what circumstances, a defendant's indigent status may be considered in the decision whether to revoke probation. This is substantially similar to asking directly the due process question of whether and when it is fundamentally unfair or arbitrary for the State to revoke probation when an indigent is unable to pay the fine.[7] Whether analyzed in terms of equal protection or due process,[8] the issue cannot be resolved by resort to easy slogans or pigeonhole analysis, but rather requires a careful inquiry into such factors as "the nature of the individual 667*667 interest affected, the extent to which it is affected, the rationality of the connection between legislative means and purpose, [and] the existence of alternative means for effectuating the purpose . . . ." *Williams* v. *Illinois, supra,* at 260 (Harlan, J., concurring).

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[71] *Mayer v. Chicago 197*, 404 U.S. 189 (1971).

[72] *Ross v. Moffitt*, 417 U.S. 600 (1974).

[73] *Bearden v. Georgia*, 461 U.S. 660 (1983).

[74] *Griffin v. Illinois*, 351 U.S. 12 (1956).

[75] *Ortwein v. Schwab*, 410 U.S. 656 (1973).

[76] *Griffin v. Illinois*, 351 U.S. 12.

3.8 Due Process

The substantive and compelling state interest in requiring defendant's return to trial is undisputed. The question then becomes one of determining what type of detention is rational absent due process review of the risks of flight and danger to the community. County of Riverside v. McLaughlin indicates a 48-hour safe haven before determination of probable cause. Here the facts are in dispute: the counties apply this standard sparingly. Whether the procedure for bail determination is consistent with the rational basis Mathews Eldridge Test is also a factual determination. Therefore, the case should proceed to the trier of fact.

7	Due Process
Rules	
7a	In [Gerstein v. Pugh 1975] , the Supreme Court held that "the Fourth Amendment requires a timely judicial determination of probable case as a prerequisite to detention." 420 U.S. at 126. While a rule requiring courts to determine probable cause before every arrest "would constitute an intolerable handicap for legitimate law enforcement," id. at 113 [77]
7b	The 48-hour probable-cause-hearing standard announced in [County of Riverside v. McLaughlin] is not a safe harbor for the defendants under Rule 12(b)(6).17 The plaintiffs do not challenge the timing of the probable- cause hearings. They challenge the delay before any judicial officer allows a misdemeanor arrestee an opportunity to raise the inability to pay bail or eligibility for release on a personal bond; they challenge the Hearing Officers' refusal to consider nonfinancial conditions of release; and they challenge the refusal of the County Judges to allow categories of misdemeanor arrestees, including those who are homeless, to be considered for release on nonfinancial conditions.[78]
Reply: The facts are inconsistent with rule allegedly applied.	
7c	plaintiffs allege customs or practices of applying these rules in ways that amount to County policies that violate due process because of timing; and that violate equal protection by discriminating on the basis of wealth, or more precisely, poverty, with an insistence on financial release conditions.18 18 The claim is similar to that in Turner v. Rogers, 564 U.S. 431 (2011), in which the Supreme Court found a Due Process Clause violation after a father was incarcerated for civil contempt without an inquiry into his inability to pay child support and written state law required that such an inquiry be made. Id. at 449. Even if the law were clear that considering inability to pay bail within 48 hours of arrest is sufficient due process, the plausible factual allegations in the complaint make dismissal inappropriate. At least two of the named plaintiffs allegedly remained in detention for at least four days before they could even raise their inability to pay bail and eligibility for release on a personal bond before a judicial officer. (Docket Entry No. 54 ¶¶ 25–32). [79]
7d	TURNER V. ROGERS (2011) MATHEWS V ELRIDGE TEST [80] Third, as the Solicitor General points out, there is available a set of "substitute procedural safeguards," [Mathews v. Eldridge [81] [82]], 424 U.S., at 335, 96 S.Ct. 893, which, if employed together, can significantly reduce the risk of an erroneous deprivation of liberty. They can do so, moreover, without incurring some of the drawbacks inherent in recognizing an automatic right to counsel. Those safeguards include (1) notice to the defendant that his "ability to pay" is a critical issue in the contempt proceeding; (2) the use of a form (or the equivalent) to elicit relevant financial information; (3) an opportunity at the hearing for the defendant to respond to statements and questions about his financial status (e.g., those triggered by his responses on the form); and (4) an express finding by the court that the defendant has the ability to pay

[77] *Gerstein v. Pugh*, 420 U.S. 103 (1974).

[78] *Countyof Riverside v. McLaughlin*, 500 U.S. 44 (1991).

[79] *Turner v. Rogers*, 564 U.S. 431 (2011).

[80] Mathews Test | Constitution Annotated | Congress.gov | Library of Congress.

[81] *Mathews v. Eldridge*, 424 U.S. 319 (1976).

[82] Mathews Test | Constitution Annotated | Congress.gov | Library of Congress, *supra* note 80.

DISCUSSION

This reference identified the major argumentation issues of this case study's litigation, both procedurally, and on the civil rights merits. We reviewed the issues of factual and facial challenges under *12 (b) (1)* and *Twombley-Ichbal* application under *12 (b) (6)* for failure to state a claim. The language of the section 1983 code is examined for the liability of county officials, even Judges, when acting outside solely judicial functions. Ongoing state proceedings and Federal Younger abstention are important in criminal cases where Habeas or other appeals have not been exhausted. The interaction of the various levels of scrutiny doctrines with the overlapping claims for due process and equal protection were examined through detailed Table summaries of Scrutiny Doctrine, and their application in Issue Reference case arguments distilled. All of the above creates a useful reference portal for civil litigation for the indigent. The review so far answers the question, "IS POVERTY 'IMMUTABLE' FOR THE COUNTY JUDGE," affirmatively. This has major implications for future Civil Rights litigation in other fundamental rights distinct from criminal justice and bail, but exploration of these implications, will be left for a subsequent analysis.

4 APPENDIX REVIEW: TABLES OF CONSTITUTIONAL SCRUTINY

T1-THE THREE STEP ANALYSIS[83]

(1) determine whether there is a prima facie case; {and is it a substantive or procedural violation?][84]

(2) if so, apply choice criteria to choose a standard of review[85]; and

(3) apply the chosen standard of review

T2-STRICT SCRUTINY[86]

***Subject* Matter**	*Burdening* Fundamental Rights
1. Race [87] 2. National Origin 3. Religion (either under EP or Establishment Clause analysis) 4. Alienage	1. Denial or Dilution of the Vote 2. Interstate Migration 3. Access to the Courts 4. Other Rights Recognized as Fundamental

"The Court's most common articulations of strict scrutiny are that the state must show its action is necessary to further a compelling state interest or that its action is narrowly tailored to further a compelling state interest; *Component requirements*: *Ends* Actual Interests, legitimate, compelling, impacting fundamental rights), *Means* (inclusive. Precise[88] substantial advancing, *Necessity* (cannot be achieved through other means)

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83 Roy G. Spece & David V. Yokum, *Scrutinizing Strict Scrutiny*, No. ID 2568800 (Social Science Research Network Feb. 2015).

84 Zak Kurzhals, *Pre-Hearing Detention: Substantive or Procedural Due Process Analysis*, UNIVERSITY OF CINCINNATI LAW REVIEW (Jul. 2018)." Procedural due process "requires consideration of three factors: (1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and probable value, if any, of additional procedural safeguards; and (3) the Government's interest, including the fiscal and administrative burdens that the additional or substitute procedures would entail." Mathews v. Eldridge, 424 U.S. 319, 321 (1976, see also "The theory of substantive due process holds that substantive as well as procedural rights are protected by the U.S. Constitution. This argument is based on the Fifth and Fourteenth Amendments and reasons that these amendments guarantee that life, freedom and property cannot be infringed upon by the government without sufficient justification—regardless of the process by which they are infringed upon"

85 'The first step for the Court, when faced with an equal protection challenge, is to determine what level of review should apply. Where there isa suspect classification, usually involving race, strict scrutiny is the appropriate test…the Court stated that, "we have held …requires State legislation thatexpressly distinguishes among citizens because of their race to be narrowly tailored to further a compelling governmental interest."', Evan Gerstmann & Christopher Shortell, *THE MANY FACES OF STRICT SCRUTINY: HOW THE SUPREME COURT CHANGES THE RULES IN RACE CASES*, 72 U. PITT. L. REV. No. 1 (Apr. 2010).

86 *Levels of Scrutiny Under the Equal Protection Clause*, http://law2.umkc.edu/faculty/PROJECTS/FTRIALS/conlaw/epcscrutiny.htm (last visited Oct. 22, 2021).

87 " We explained in *Miller* v. *Johnson* that a racially gerrymandered districting scheme, like all laws that classify citizens on the basis of race, is constitutionally suspect. *Id.,* at 904-905; see also *Shaw I,* 509 U. S., at 657; *Adarand Constructors, Inc.* v. *Peña,* 515 U. S. 200 (1995). This is true whether or not the reason for the racial classification is benign 905*905 or the purpose remedial. *Shaw I, supra,* at 642-643, 653; *Adarand, supra,* at 228-229." *Shaw v. Hunt*, 517 U.S. 899 (1996).

88 *Id.*" the legislature's objective, comports with the *Miller* standard. In order to justify its redistricting plan, therefore, the State must show not only that the plan was in pursuit of a compelling 900*900 state interest, but also that it was narrowly tailored to achieve that interest. *Id.,* at 920. Pp. 904-908."

T3-Intermediate (Heightened) Scrutiny[89]
"[of] state actionbe "substantially related" to the achievement of an *important* state interest"[90];
To pass intermediate scrutiny, the challenged law must: further an important, 'compelling,' government interest and must do so by means that are substantially related to that interest.
Subjects: Gender[91], Illegitimacy, Burdening First Amendment Rights

T4-Minimum or Rational Basis Scrutiny 9293	
Applies to all government violations outside intermediate and strict scrutiny	A wide scope of discretion, "The government need only show that the challenged classification is rationally related to serving a legitimate state interest."
With Bite Immutability of Subject Groups and State actions which burden [Subjective[94]] fundamental rights	

[89] Wex, LII / Legal Information Institute: Intermediate Scrutiny.

[90] *Craig v. Boren*, 429 U.S. 190 (1976).See also, *Green v. US Department of Justice*, No. Civil Action No. 16-1492 (EGS) (Dist. Court Jun. 27, 2019). , "A content-neutral restriction, on the other hand, triggers intermediate scrutiny, which only requires the government to prove that the restriction serves a substantial governmental interest; that the interest served is unrelated to the suppression **of** free expression; and that the restriction does not burden substantially more speech than is necessary to further the government's"

[91] *Craig v. Boren*, 429 U.S. 190. REHNQUIST dissent,: " Subsequent to *Frontiero,* the Court has declined to hold that sex is a suspect class, *Stanton* v. *Stanton, supra,* at 13, and no such holding is imported by the Court's resolution of this case. However, the Court's application here of an elevated or "intermediate" level scrutiny, like that invoked in cases dealing with discrimination against females, raises the question of why the statute here should be treated any differently from countless legislative classifications unrelated to sex which have been upheld under a minimum rationality standard. *Jefferson* v. *Hackney,* 406 U. S. 535, 546-547 (1972); *Richardson* v. *Belcher,* 404 U. S. 78, 81-84 (1971); *Dandridge* v. *Williams,* 397 U. S. 471, 484-485 (1970); 219*219 *McGowan* v. *Maryland, supra,* at 425-426; *Flemming* v. *Nestor,* 363 U. S. 603, 611 (1960); *Williamson* v. *Lee Optical Co., supra,* at 488-489. … "

[92] *Id.*; quoting 'The applicable rational-basis test is one which

"permits the States a wide scope of discretion in enacting laws which affect some groups of citizens differently than 222*222 others. The constitutional safeguard is offended only if the classification rests on grounds wholly irrelevant to the achievement of the State's objective. State legislatures are presumed to have acted within their constitutional power despite the fact that, in practice, their laws result in some inequality. A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it." *McGowan* v. *Maryland,* 366 U. S., at 425-426 (citations omitted).'"

[93] Wex, LII / Legal Information Institute: Rational Basis Test." The rational basis test is generally used when in cases where no fundamental rights or suspect classifications are at issue. "

[94] Judith Koffler, *Constitutional Catarrh: Democracy and Distrust, by John Hart Ely*, 1 Pace Law Review 403 (Jan. 1981) . "[John Hart]Ely's argument proceeds along the following lines: the Supreme Court has never issued a satisfactory and consistent theory of fundamental rights…By concerning itself with questions of participation, Ely intends that the Court should assure all persons a right to participate in the political process in some meaningful way, un-hampered by process-clogging concentrations of power. His perception of the Court's essential constitutional role as "policing the process of representation"19 leads to the vision of a judiciary involved in dilating constricted channels which stop the flow,80 and in keeping minorities within the political stream when op- pressive factions try, in effect, to toss them out."

T5-RATIONAL BASIS FACTORS THAT 'BITE'	
Quasi-suspect Class	
History of Discrimination	Women, non-marital children, gender identity minorities
Political Powerlessness	Ibid, undocumented children, not the intellectually disabled
Capacity to Contribute to Society	rarely
Immutability	Physical but also those characteristics that are difficult to change; academic potential or poverty?
Burdening a Significant Rights	Voting rights, Privacy, contraception, right to counsel, interstate travel, dignity, private sexual activity, due process, liberty[95]
Animus	Private moral bias often inferred [96]
Federalism Concerns	Undocumented status, interstate travel, out of state taxation
Discrimination of an Unusual Character	Sexuality, alien status
Inhibiting Personal Relationships	Sexuality, co-habitation[97]

[95] *Jackson v. Indiana*, 406 U.S. 715 (1972). , "We hold, consequently, that a person charged by a State with a criminal offense who is committed solely on account of his incapacity to proceed to trial cannot be held more than the reasonable period of time necessary to determine whether there is a substantial probability that he will attain that capacity in the foreseeable future. If it is determined that this is not the case, then the State must either institute the customary civil commitment proceeding that would be required to commit indefinitely any other citizen, or release the defendant"

[96] *US v. Windsor*, 133 S. Ct. 2675 (2013)., "In determining whether a law is motived by an improper animus or purpose, "`[d]iscriminations of an unusual character'" especially require careful consideration. *Supra,* at 2692 (quoting *Romer, supra,* at 633, 116 S.Ct. 1620). DOMA cannot survive under these principles."

[97] *Lawrence v. Texas*, 539 U.S. 558 (2003)., "Two principal cases decided after *Bowers* cast its holding into even more doubt. In *Planned Parenthood of Southeastern Pa.* v. *Casey,* 505 U. S. 833 (1992), the Court reaffirmed the substantive force of the liberty protected by the Due Process Clause.… The second post-*Bowers* case of principal relevance is *Romer* v. *Evans,* 517 U. S. 620 (1996). There the Court struck down class-based legislation directed at homosexuals as a violation of the Equal Protection Clause."

T6-. TABLE OF CASES

[Pimentel, RATIONAL-BASIS REVIEW: WHEN DOES RATIONAL BASIS BITE?] pdf

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	Quasi-suspect Class								
	History of Discrimination	Political Powerlessness	Capacity to Contribute to Society	Immutability	Burdening a Significant Right	Animus	Federalism Concerns	Discriminationof an Unusual Character	Inhibiting Personal Relationships
Reed[a]	X	x	x	x					
Lindsey[b]	o	o			x				
Eisenstadt[c]					X				x
Weber[d]	X		X	X					
Jackson[e]	x	o		X	X				
James[f]	o	o			X				
Moreno[g]	o	o			x	X			x
Logan[h]				X	X				
Zobel[i]				x	X		x		
Plyler[i]	x	x		X	X		X	x	
Metro. Life[k]		x					X		
Williams[l]		x			X		X		
Hooper[m]				x	X		x		
Cleburne[n]	x	o		X	x	X			x
Allegheny[o]								x	
Quinn[p]	x		x		X				
Romer[q]	X	x	x	X	x	X		X	x
Windsor[r]	X	x	x	X	X	X	X	X	X
Totals:									
Direct cites	4	0	1	7	10	4	4	2	1
Other cites	4	6	4	3	4	0	2	2	4
Total cites	8	6	5	10	14	4	6	4	5
Rejected	(3)	(5)	(0)	(0)	(0)	(0)	(0)	(0)	(0)

Legend[s]:

X = cited by a majority of the Supreme Court in that case or another case involving a similar group x = cited by other authorities or inferred

o = rejected by a majority of the Supreme Court in that case or another case involving a similar group

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