

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
AT NASHVILLE**

THE NASHVILLE COMMUNITY)	
BAIL FUND,)	
)	
Plaintiff,)	Case No. 3:20-cv-00103
)	
v.)	Judge Trauger
)	Magistrate Judge Holmes
THE HONORABLE HOWARD)	
GENTRY, in his official capacity as)	
Criminal Court Clerk,)	
)	
Defendant.)	

CONSENT JUDGMENT AND DECREE

The parties, by the signatures of their counsel below, stipulate to the following court-ordered judgment and decree:

1. The Nashville Community Bail Fund (“NCBF”) brought this action against the Honorable Howard Gentry, in his official capacity as Criminal Court Clerk (“Gentry” or the “Criminal Court Clerk”), to challenge the constitutionality of Davidson County Local Rule Governing Bail Bonds 10(B) (“Rule 10(B)”) under the Eighth and Fourteenth Amendments to the United States Constitution.
2. The judges of the Davidson County Criminal Court enact the Local Rules, including Rule 10(B), and Gentry’s office is tasked with enforcing them.
3. Gentry has publicly voiced his disagreement with Rule 10(B). Nevertheless, because he was sued in his official capacity as Criminal Court Clerk, he defended Rule 10(B) as part of his duties as an officer of the Davidson County Criminal Court.
4. Gentry, through counsel, filed two Motions to Dismiss this action. The first Motion to Dismiss challenged whether Gentry was acting in his capacity as an official of the State of

Tennessee or the Metropolitan Government of Nashville and Davidson County, whether service of process was sufficient, and whether Gentry was a proper defendant. (ECF No. 18.) The Court concluded that the actions challenged in this litigation implicate Gentry as an officer of the State and denied the Motion to Dismiss. (ECF Nos. 22-23.)

5. The Court also granted NCBF a preliminary injunction, enjoining Gentry from enforcing Rule 10(B) against NCBF during the pendency of this action. (ECF No. 23.) Gentry has fully complied with the Court's preliminary injunction order.

6. On May 22, 2020, Gentry filed a second Motion to Dismiss. (ECF No. 47.) In it, Gentry challenged NCBF's standing to bring this lawsuit, asserted that he is entitled to judicial immunity, and argued that NCBF fails to state a claim under any of the three counts in the Complaint.

7. On October 26, 2020, the Court issued a Memorandum Opinion (ECF No. 65) and Order (ECF No. 66), denying Gentry's Second Motion to Dismiss. In it, the Court ruled:

a. NCBF has Article III standing to bring this lawsuit because it suffered an injury-in-fact caused by Rule 10(B) that is redressable by the Court. It holds its own right not to be deprived of property without appropriate procedural safeguards, as guaranteed by the Fourteenth Amendment to the U.S. Constitution. It also has "prudential" standing to bring claims because the relationship it has with its participants is close and NCBF participants are hindered from bringing the lawsuit themselves.

b. Gentry is not entitled to judicial immunity because the challenged actions are clerical in nature and the parties paying bail have no expectation of interacting with a judicial officer.

c. Rule 10(B) violates the excessive bail clause of the Eighth Amendment because it requires bail posters to provide something of value in excess of the amount of bail set—their consent to potential garnishment at the conclusion of the case—which bears no relationship to the legitimate purposes of bail.

d. Rule 10(B) violates the substantive due process clause of the Fourteenth Amendment because Gentry has not identified any relationship between the policy of mandatory consent to garnishment and the interests of public safety or ensuring appearance, and the policy therefore unduly infringes upon the individual right to pretrial liberty.

e. NCBF plausibly pleaded a violation of the procedural due process clause of the Fourteenth Amendment because third parties are not given notice or an opportunity to be heard by a neutral decision-maker prior to garnishment under Rule 10(B).

8. Gentry acknowledges that he has no evidence to contest NCBF's material facts, as alleged in the Complaint. Gentry further acknowledges that he has no additional factual proof that will satisfy the legal standards set forth by the Court in the Memorandum Opinion.

9. Thus, the parties agree that the Court's ruling on Gentry's second Motion to Dismiss is dispositive in this matter, and NCBF is entitled to judgment as a matter of law.

10. In its Order granting the preliminary injunction, the Court held that NCBF was likely to succeed on the merits and that a preliminary injunction was appropriate based on: the risk of irreparable harm to NCBF and the arrestees it serves in the absence of an injunction; the low risk of harm to the Clerk's Office if an injunction was granted; and the strong public interest in favor of an injunction. (ECF 22 at 28-34.) The parties hereby agree that, given the Court's rulings

in this matter, Gentry cannot contest that without a permanent injunction, NCBF and the arrestees it serves will suffer irreparable injury for which there is no adequate remedy at law; the balance of hardships between the parties warrants an equitable remedy; and the public interest would be served by a permanent injunction. The parties thus agree that the Preliminary Injunction should become a permanent injunction, and the permanent injunction should prohibit the Criminal Court Clerk from enforcing Rule 10(B) against any third-party attempting to post a cash bail bond in Davidson County. As a result, the Criminal Court Clerk is prohibited from conditioning a third-party's payment of cash bonds on any agreement acknowledging future payment of criminal debts.

11. In accordance with *Raceway Properties, Inc. v. Emprise Corporation*, 613 F.2d 656, 567 (6th Cir. 1980), and its progeny, Gentry explicitly preserves his right to appeal the Court's decision on his Motions to Dismiss. This right is purely on the legal issues presented, and Gentry is prohibited from introducing any new factual evidence that he may have entered at the summary judgment stage.

12. This Consent Decree shall inure to the benefit of and be binding upon the parties and their respective heirs, successors or assigns. Additionally, this decree shall inure to the benefit of and be enforceable by any third-party attempting to post a cash bail bond in Davidson County.

13. The parties to this Order shall endeavor in good faith to resolve informally any differences regarding interpretation of and compliance with this Order before bringing such matters to the Court for resolution. However, in the event that the Criminal Court Clerk acts in violation of any provision of this Order, NCBF or any affected third party, -present or future- who alleges a violation may then move the Court to impose any remedy authorized by law or equity, including, but not limited to, an order requiring performance or non-performance of

certain acts and sanctions including cost and attorney's fees associated with any enforcement action.

14. Pursuant to 42 U.S.C. § 1988 and Federal Rule of Civil Procedure 54, the Court concludes that NCBF is the prevailing party on all claims filed in this matter. In accordance with the parties' agreement, NCBF shall file any Motion for Attorney's Fees within 45 days of the date this Judgment is entered. Because the attorney's fees judgment will be against the Criminal Court Clerk in his official capacity, the judgment will be a suit against the "entity of which an officer is an agent." *Kentucky v. Graham*, 473 U.S. 159, 165 (1985) (citing reference omitted). Thus, there is still an outstanding question of which entity—the State of Tennessee or the Metropolitan Government of Nashville and Davidson County, Tennessee ("Metro")—is responsible for the satisfaction of any award of attorney's fees. If NCBF has any position on whether the State or Metro is responsible for the attorney's fee judgment, it should so state in its Motion.

15. Gentry, Metro, and/or the State may file a response within 21 days of NCBF's Motion. Any response shall indicate (1) whether NCBF is entitled to an award of their requested fees and (2) whether the award of attorney's fees is collectable from Metro or the State.

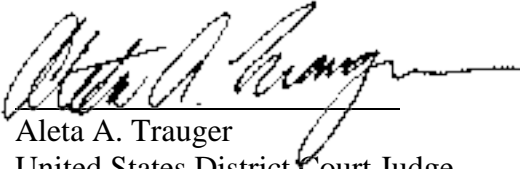
16. NCBF may file an optional reply in accordance with the Local Rule 7.01(a)(4).

17. The Clerk is **DIRECTED** to send a copy of this Stipulated Judgment to Herbert Slatery III, the Attorney General and Reporter for the State of Tennessee, and Bob Cooper, the Director of Law for Metropolitan Government of Nashville and Davidson County.

18. The Clerk shall enter judgment in accordance with Federal Rule of Civil Procedure 58.

19. It is hereby **ORDERED** that the preliminary injunction ordered by this Court on March 17, 2020 (Dkt. 23) shall be permanent. The Court retains jurisdiction for the purpose of enforcing the terms of the consent decree.

It is so ordered this 9th day of December, 2020.



Aleta A. Trauger
United States District Court Judge

APPROVED FOR ENTRY:

s/ Angela L. Bergman

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CERTIFICATE OF SERVICE

I certify that a true and exact copy of the foregoing has been forwarded via the Court's CM/ECF system on this 8th day of December, 2020, to:

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