IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

TERESA BEATTY, *et al.*,	:	3:22-cv-00380-JAM
Plaintiffs,	:	
v.	:	
MICHELLE GILMAN, *et al.*,	:	
Defendants.	:	JULY 14, 2023

Defendants' Reply Memorandum in Support of their Motion to Dismiss

I. Plaintiffs' Opposition Does Not Undermine that the Supreme Court, the Second Circuit, and this Court Have Made Clear that Plaintiffs Lack Standing to Challenge the Aspects of the Challenged Laws that Do Not Impact Any Named Plaintiff

This Court already "recognized that the 'aspects of the' challenged laws that do not impact any named Plaintiff are not properly 'challenged or at issue in this action.'"[1] That result was dictated by the Supreme Court and Second Circuit precedent Defendants cited.[2]

Plaintiffs do not mention, let alone persuasively distinguish, any of that binding precedent.[3] Indeed, Plaintiffs cite no caselaw at all. Plaintiffs apparently admit that they are only directly "affected by the inheritance portion of the challenged debt system, located within § 18-85b(b)" but claim that they can challenge the full system because it "operates as a unified whole." *PO*, 10. That cannot be reconciled with *Davis*, *Lewis*, and/or *Brokamp* and Plaintiffs make no effort to argue otherwise. Therefore, this Court should dismiss Plaintiffs' "claims as to the[ ] provisions" of all of the challenged laws except for Conn. Gen. Stat. § 18-85b(b). *Brokamp*, 66 F.4th at 389.[4]

II. Plaintiff Beatty Cannot Rely on Post-Filing Events to Establish Standing

The *en banc* Second Circuit expressly stated that "[e]vents occurring after the filing of the complaint cannot operate so as to create standing where none previously existed." *Hartford v.*

[1] *Defs' MIS of their Mot. to Dismiss Pls' Second Amended Compl.*, 21-22 (ECF No. 59-1) ("*MIS*") (quoting *Beatty v. Tong*, 2023 U.S. Dist. LEXIS 36528, at *5 n.9 (D. Conn. Mar. 6, 2023) (Meyer, J.) (LEXIS version of ECF No. 45)).
[2] *See, e.g.*, *Davis v. FEC*, 554 U.S. 724, 733-34 (2008); *Lewis v. Casey*, 518 U.S. 343, 358 n.6 (1996); *Brokamp v. James*, 66 F.4th 374, 389-90 (2d Cir. 2023).
[3] *See Plaintiffs' Memo. in Opp. to Defendants' Mot. to Dismiss the Second Amended Compl.*, 10 (ECF No. 65) ("*PO*").
[4] *Cf. California v. Texas*, 141 S. Ct. 2104, 2116 (2021) ("declin[ing] to consider" an argument in favor of standing that was "not directly argued by the plaintiffs" below and citing cases).

Glastonbury, 561 F.2d 1032, 1051 n.3 (2d Cir. 1977) (*en banc*). That is because "[a]ny other rule would permit lawsuits to be maintained in the mere hope that the lawsuit itself would generate a constitutional 'controversy' before the appellate process is complete." *Id*. Defendants argued that precludes Plaintiff Beatty from relying on events after March 2022 to establish standing.

Plaintiffs have no response to *Hartford*, so they barely try to address it. *See PO*, 11. Instead, they repeatedly represent that Plaintiff Beatty is not "trying to rely on events that postdate the filing of the initial complaint" to establish standing. *Id*. at 10.[5] At the same time, Plaintiffs reference the post-filing sale. For example, they argue that Plaintiff Beatty "alleged enough facts to show that she is facing imminent injury" based on *inter alia* "the **inevitable sale of her mother's house (which has now been sold)**." *PO*, 15 (emphasis added). To the extent (if any) that Plaintiffs' disclaimers are ambiguous, *Hartford* establishes that post-filing events cannot avoid dismissal. The same logic applies to other jurisdictional doctrines that are measured at the time the action is filed. *See, e.g.*, *New York Civil Liberties Union v. Grandeau*, 528 F.3d 122, 131 (2d Cir. 2008) (Sotomayor, J.) (measuring both forms of ripeness "[a]t the time of the complaint").

III. Plaintiffs' Representation that this Court Found that Plaintiff Beatty Had Suffered an Injury that Supported Standing is Inaccurate; Over a Year Later She Still Has Not Suffered Such an Injury and it Remains Speculative If and When She Will

Plaintiffs represent that this "Court found that" Plaintiff Beatty had "already suffered" an injury sufficient to support standing when Plaintiffs filed the initial Complaint. *PO*, 10 (parenthetical omitted). This Court found no such thing. Rather, this Court noted in *dicta* that Plaintiff Beatty alleged a "**future injury**" and the initial Complaint "alleged enough to plausibly show that she is subject to a **threatened injury** that is certainly **impending** and also that there is

[5] *See also PO* at 11 (representing that "Plaintiffs' allegations about Ms. Beatty have not changed," that Plaintiffs do not "rely on any factual development or event postdating the commencement of the suit to establish standing," that "[c]ases like" *Hartford* "are beside the point" because Plaintiff Beatty "does not rely on any new facts or factual developments in the Second Amended Complaint," and that "there are no new facts here").

a substantial **risk** that harm to her will occur." *Beatty*, 2023 U.S. Dist. LEXIS 36528, at *15-16 (emphasis added; quotation marks omitted).

Things have changed since then.[6] Over a year passed and Plaintiff Beatty's alleged future injury still has not materialized. Nor do Plaintiffs allege when it will—even at this late date, they allege only that she may suffer "'injury at some indefinite future time.'" *MIS*, 10 (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 564 n.2 (1992)); *see Second Amend. Compl.*, ¶ 34 ("*2dAC*").

Given that, finding now that Plaintiff Beatty had a future injury sufficient to support standing in March 2022 when Plaintiffs filed their initial Complaint would stretch future injury standing "'beyond the breaking point.'" *Id*. (quoting *Lujan*, 504 U.S. at 564 n.2). The Supreme Court has long held and "repeatedly reiterated that threatened injury must be *certainly impending* to constitute injury in fact,' and that '[a]llegations of *possible* future injury' are not sufficient." *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409 (2013) (quoting *Whitmore v. Ark.*, 495 U.S. 149, 158 (1990)) (emphasis in *Clapper*). Plaintiffs send mixed messages in their Opposition as to whether the alleged future injuries are certainly impending; on the one hand, they emphasize that Plaintiffs "have inheritances that *will* be taken from them absent a judgment from this Court." *PO*, 19 (emphasis Plaintiffs'). But later in the same paragraph, Plaintiffs acknowledge the obvious uncertainty, representing only that "Plaintiffs **may** lose their inheritances." *Id*. (emphasis added).

Plaintiffs had it right the second time. Although this Court must accept the truth of Plaintiffs' allegations at this stage, Plaintiffs "still bear[ ] the burden of alleging facts that affirmatively and plausibly suggest" standing in the light of "judicial experience and common

[6] Plaintiffs' argument that the law of the case doctrine applies here lacks merit. *See PO*, 8. First, "pure *dicta* . . . does not constitute law of the case." *Palin v. New York Times Co.*, 482 F. Sup. 3d 208, 215 n.9 (S.D.N.Y. 2020) (citing *Schwabenbauer v. Bd. of Educ.*, 777 F.2d 837, 841-42 (2d Cir. 1985). Second, when this Court issued that *dicta* it was not—and could not have been—aware that the timing and existence of Plaintiff Beatty's alleged injury still would not be certain over a year after Plaintiffs filed this action. *See id*. Third, "[t]he doctrine does not apply to . . . challenges to the Court's subject matter jurisdiction." *Norton v. Town of Brookhaven*, 2020 U.S. Dist. LEXIS 10806, at *13 (E.D.N.Y. Jan. 21, 2020) (citing cases).

sense." *Calcano v. Swarovski North Amer. Ltd.*, 36 F.4th 68, 75 (2d Cir. 2022) (quotation marks omitted). Plaintiffs' allegations are not enough.[7] Experience and common sense dictate that if Plaintiffs could allege facts to establish that Plaintiff Beatty's injury was certainly impending in March 2022 and would arrive by a definite time they would have—Plaintiffs are represented by experienced counsel and the information is within their control. Plaintiffs' failure to allege the necessary facts renders their allegations insufficiently plausible to support future injury standing—this Court cannot properly "bury[ ] [its] head[ ] in the sand" to allow Plaintiffs to invoke federal jurisdiction based on an injury that may never arrive. *Id*. at 77 (quotation marks omitted).

Plutzer is instructive. There, the plaintiff asserted standing based on an alleged financial loss. *Plutzer*, 2022 U.S. Dist. LEXIS 34712, at *11. The plaintiff asserted speculative bases for calculating the loss in his complaint, but "walked back" his reliance on those values as "unreliable" and asserted that he needed discovery "to generate standing" even though "publicly available documents" would have likely contained the relevant information. *Id*. at *11-12, 15-17. The district court dismissed the plaintiff's claims, concluding that "[w]ithout a showing that any harm flowed from the transaction, the Court" could not "conclude that Plaintiff . . . suffered a constitutionally cognizable injury." *Id*. at *17. The Second Circuit affirmed. It reasoned *inter alia* that the plaintiff did not "adequately state an overpayment injury" because the complaint did "not adequately allege that overpayment occurred"; rather, the plaintiff relied on unreasonable inferences and speculative, conclusory, and vague allegations. *Plutzer*, 2022 U.S. App. LEXIS 32021 at *2-7.

Plaintiff Beatty—like the plaintiff in *Pultzer*—relies on implausible, speculative, and conclusory allegations of injury to support standing. Specifically, Plaintiffs allege that "absent relief from this Court, Ms. Beatty will lose $83,762.26 in debt" based on the full amount in the

[7] *See, e.g., Plutzer v. Bankers Trust Co.*, 2022 U.S. Dist. LEXIS 34712, at *14-17 (S.D.N.Y. Feb. 28, 2022), *aff'd*, 2022 U.S. App. LEXIS 32021 (2d Cir. Nov. 21, 2022) (Summary Order).

notice the DAS filed before Plaintiffs' initial Complaint. *2dAC*, ¶ 40; *see also id*. at ¶ 37. However, the "estate's debts" will likely impact the amount of Plaintiff Beatty's distribution and—by extension—the amount of costs of incarceration (if any). *Id*. at ¶ 40. The $50,000 exemption enacted in May 2022 will also be considered in determining the amount of Plaintiff Beatty's distribution. *See id*. at ¶ 79 (referencing the exemption). In addition to failing to account for those factors as to the amount of Plaintiff Beatty's distribution, Plaintiffs fail to allege any facts regarding the timing of that distribution. *See id*. at ¶ 34. Plaintiffs either have access to the information regarding the estate's debts and the likely timing of a distribution and declined to plead it or are relying on pure speculation. Either way, Plaintiffs have failed to meet their burden; "jurisdiction must be shown affirmatively, and that showing is not made by drawing from the pleadings inferences favorable to the party asserting it." *APWU v. Potter*, 343 F.3d 619, 623 (2d Cir. 2003).[8] Given that Plaintiff Beatty relies on a threatened future economic injury to support standing, the "lack of detail" in the Complaint "is fatal to" Plaintiff Beatty's "standing, because it renders [her] economic injuries 'hypothetical' and 'conjectural' rather than 'actual or imminent.'"[9]

IV. Plaintiff Beatty's Lack of Standing when Plaintiffs Filed the Initial Complaint Requires Dismissal of this Action in its Entirety

"The longstanding and clear rule is that if jurisdiction is lacking at the commencement of [a] suit" because of defects relating to the initial Plaintiff the addition of new Plaintiffs cannot cure "defective jurisdiction itself" absent an exception not applicable here. *Pressroom Unions-Printers League Income Security Fund v. Continental Assurance Co.*, 700 F.2d 889, 893 (2d Cir. 1983)

[8] *See also Fund Liquidation Holdings LLC v. Bank of America Corp.*, 991 F.3d 370, 383-84 (2d Cir. 2021) ("*Fund Liquidation*") (holding that the plaintiff did not meet its burden to establish standing where it failed to address the core parts of the argument against standing).

[9] *Yaw v. Delaware River Basin Commission Delaware Riverkeeper Network*, 49 F.4th 302, 319 n.116 (3d Cir. 2022) (quoting *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339 (2016), and citing cases including *MGM Resorts Int'l Glob. Gaming Develop., LLC v. Malloy*, 861 F.3d 40, 42-43 (2d Cir. 2017)).

("*Pressroom*") (quotation marks omitted). In an effort to avoid *Pressroom*'s holding, Plaintiffs note that *Pressroom* discussed a district court case that had allowed an amendment and point to a footnote in *Pressroom* referencing the *Hackner* exception. *See PO*, 12. Neither of those things help Plaintiffs. The Second Circuit explicitly pointed out that the district court decision Plaintiffs reference "never reached the . . . fundamental issue of whether there was subject matter jurisdiction over such an action" before noting that the earlier decision should have put the plaintiff on notice that it named the wrong plaintiff (much as Defendants put Plaintiffs on notice that they had named the wrong Defendants early in this case). *Pressroom*, 700 F.2d at 894.

As to the *Hackner* exception, Defendants argued—and Plaintiffs do not rebut—that the exception is not available to Plaintiffs given the nature of the defects at issue. *See, e.g.*, *Kinra v. Chicago Bridge & Iron Co.*, 2018 U.S. Dist. LEXIS 87548, at *13-14 (S.D.N.Y. May 24, 2018) (rejecting the plaintiff's reliance on *Hackner* because *Hackner* involved "a statutory jurisdictional defect" and in *Kinra* there were "no other named plaintiffs with Article III standing"). Nor can Plaintiffs invoke *Hackner* given that Plaintiffs' "attempt to amend comes over a year after the Complaint, after full briefing, argument, and decision on a motion to dismiss." *MIS*, 8 n.7 (citing *Disability Advocates, Inc. v. N.Y. Coal. for Quality Assisted Living, Inc.*, 675 F.3d 149, 160-61 (2d Cir. 2012)). The Second Circuit emphasized that in *Hackner* the plaintiffs sought to amend to cure the defects "*twenty two days* after the complaint was filed and before any action by the defendants had been taken." *Disability Advocates, Inc.*, 675 F.3d at 161 (emphasis the Second Circuit's). Not so here—despite early notice to Plaintiffs of the defects, Plaintiffs' amendment came approximately 402 days after the complaint and after full briefing and argument by Defendants and a decision by this Court. Plaintiffs' Second Amended Complaint cannot cure the jurisdictional defects that existed at the commencement of this suit and this Court must dismiss this action.

Plaintiffs argue that even though this Court has already held that there were jurisdictional defects at the outset of this case and Defendants have pointed out others, dismissing this action at this point "would elevate form over substance" because if this action is dismissed Plaintiffs will simply "refile." *PO*, 13. Defendants anticipated that Plaintiffs would argue that this Court can and should brush aside *inter alia* those "pesky Article III standing requirements." *MIS*, p. 19 (quotation marks omitted). This Court cannot and should not. Standing's injury requirements "may sound technical, but they enforce 'fundamental limits on federal judicial power.'" *Biden v. Nebraska*, 2023 U.S. LEXIS 2793, at *65-66 (June 30, 2023) (Kagan, J., dissenting, joined by Sotomayor and Jackson, Js.) (quoting *Allen v. Wright*, 468 U. S. 737, 750 (1984)). "They keep courts acting like courts." *Id*. "[I]n our system, that means refusing to decide cases that are not really cases because the plaintiffs have not suffered concrete injuries." *Id.* at *76.[10]

Even if this Court were inclined to consider Plaintiffs' invitation to overstep the fundamental limits on its power on pragmatic grounds (it should not be), the pragmatic calculus is not as one-sided as Plaintiffs assert. Plaintiffs could not necessarily "refile the same complaint, verbatim" immediately. *PO*, 13. For example, if this Court agrees that Plaintiff Beatty and Plaintiff Johnson lack standing and cannot establish constitutional and/or prudential ripeness, Plaintiffs would need to either remove those named Plaintiffs or wait until those Plaintiffs suffered an injury (if that ever occurs). Moreover, if this Court allows this action to proceed as is instead of dismissing it and requiring Plaintiffs to refile Plaintiffs may seek to recover fees and costs associated with the

[10] *Fund Liquidation* is "instructive" because it supports Defendants' argument. *PO*, 14. That involved whether a case brought by a nominal plaintiff who lacked standing had to be dismissed where the real party in interest with standing to bring the same claim joined the action within a reasonable time. *Fund Liquidation*, 991 F.3d at 386, 389. Plaintiffs do not allege that any named Plaintiff was in a real party in interest relationship. *See* Fed. R. Civ. P. 17(a). Indeed, Plaintiffs explicitly represent that "Ms. Tosado and Mr. Johnson are not substituted plaintiffs, but additional plaintiffs." *PO*, 11. Here, "the directive that standing must exist at the case's inception" and the concept that amended pleadings cannot cure "defective jurisdiction itself" require dismissal. *Fund Liquidation*, 991 F.3d at 389.

earlier part of this litigation in the event Plaintiffs are someday prevailing parties.[11] By contrast, requiring Plaintiffs to refile should dispose of any argument that Defendants (and, by extension, the taxpayers) can be required to finance Plaintiffs' conduct that led to substantial unnecessary consumption of the parties' time in the first year of this litigation. *See, e.g.*, *Johnson*, 2023 U.S. Dist. LEXIS 22582, at * 71, 105 (finding fees and costs associated with a separate case not to be compensable).[12] Even the authority Plaintiffs rely on recognizes that dismissal is appropriate when allowing the appearance of a different party to cure a defect would "result in unfairness to defendants." *Fund Liquidation*, 991 F.3d at 391 (quotation marks omitted). That is the case here and Plaintiffs offer no substantive argument to the contrary. *See MIS*, 18.

V. Plaintiffs Did Nothing to Undermine Defendants' Prudential Ripeness Argument

There is no way to know based on Plaintiffs' Complaint if and when state law will require Plaintiff Beatty and Plaintiff Johnson to reimburse any costs of incarceration and the amount they will be required to reimburse. Even if Plaintiffs could still somehow establish standing and constitutional ripeness despite that uncertainty, this is "precisely" the type of case that warrants dismissal on prudential ripeness grounds; to coherently determine whether a state law requiring someone to reimburse costs violates the **Excessive** Fines Clause this Court needs to know how much—if anything—the state law will require Plaintiffs to reimburse. *MIS*, 15.

Plaintiffs rely on the DAS' issuance of notices reflecting the full amount each Plaintiff accrued. *See PO*, 16-19. But this Court need look no further than Plaintiffs' own Complaint to see that the amount reflected in those notices is not necessarily the amount Connecticut law will

[11] *See* 2dAC, p. 46 ¶ (e) (requesting fees and costs under 42 U.S.C. § 1988); *see, e.g.*, *Johnson v. City of New York*, 2023 U.S. Dist. LEXIS 22582, at *35-50, 69-70, *101-03 (E.D.N.Y. Feb. 8, 2023) (granting attorneys' fees, in part, for work done relating to claims that were dismissed where the plaintiff ultimately prevailed).

[12] To be clear, Defendants do not believe that any aspect of Plaintiffs' claims should ultimately prevail and reserve all challenges to any request for fees and costs should Plaintiffs ever be in position to make one.

require Plaintiffs to reimburse—Defendants pointed out (and Plaintiffs do not rebut) that Plaintiffs' own allegations establish "that the amount Plaintiff Tosado is required to reimburse reflects a little over a third of the assessed cost" reflected in the initial notice. *MIS*, 26 n.26; *see also id*. at 38-40. The Second Circuit's decision in *Dykstra* dictates that this court should "decline" on prudential ripeness grounds to reach a constitutional challenge to a reimbursement requirement where there has not been "a conclusive ruling" regarding the amount that Plaintiffs will have to reimburse. *Auto. Club of N.Y., Inc. v. Dykstra*, 354 F. App'x 570, 572 (2d Cir. 2009) (Summary Order).[13]

VI. The Eleventh Amendment Bars Plaintiffs' Claims to the Extent they Seek to Enjoin Collection of Accrued Liabilities

The gravamen of Plaintiffs' argument is that the Eleventh Amendment only bars claims that seek payment from the state treasury. *See PO*, 19-24. But the Supreme Court rejected the argument "'that the Eleventh Amendment never applies unless a judgment for money payable from the state treasury is sought.'" *MIS*, 27 n. 28 (quoting *Cory v. White*, 457 U.S. 85, 90 (1982)). "'The real interests served by the Eleventh Amendment are not to be sacrificed to elementary mechanics of captions and pleading. Application of the *Young* exception must reflect a proper understanding of its role in our federal system and respect for state courts instead of a reflexive reliance on an obvious fiction.'" *Miller v. Carroll*, 2021 U.S. Dist. LEXIS 92827, at *24 (D. Conn. May 17, 2021) (Bryant, J.) (quoting *Idaho v. Coeur d'Alene Tribe of Idaho*, 521 U.S. 261, 270 (1997)). Reflecting that, Circuit Courts have recognized both that the Eleventh Amendment bars declaratory and injunctive relief if a "monetary impact is . . . the primary purpose of the suit[14]" and that "it is

[13] Defendants discussed *Dykstra* in detail. *See MIS*, 17, 24. Although *Dykstra* was a Summary Order, both the Second Circuit and this Court have recognized that Summary Orders should not be disregarded. *See, e.g.*, *CSL Silicones Inc. v. Midsun Group Inc.*, 170 F. Sup. 3d 304, 314 n.8 (D. Conn. 2016) (Haight, J.) (citing cases). Plaintiffs address *Dykstra* only in a footnote. *PO*, 18 n. 29. Even that footnote supports Defendants' argument that *Dykstra* dictates dismissal on prudential ripeness grounds for the reasons Defendants argued. *See id*.

[14] *Barton v. Summers*, 293 F.3d 944, 950 (6th Cir. 2002). Plaintiffs' attempt to distinguish *Barton* ignores the Sixth Circuit's analysis, which found Eleventh Amendment immunity based on the states' "present financial interest" even though the money was based on future payments not yet in the states' custody. *Id*. at 948-51.

difficult to draw a rational distinction" for Eleventh Amendment purposes "between" an "attempt to recover funds already paid to the state [and] one that seeks to discharge present debts to the state."[15] As a court in this Circuit recently recognized in a decision Defendants cited and Plaintiffs make no effort to distinguish, the Eleventh Amendment bars Plaintiffs from enjoining Defendants "from collecting" an accrued liability based on a claim that it is tainted by a "past violation." *Cassidy v. New York State Ins. Fund*, 2023 U.S. Dist. LEXIS 37369, at *16 (N.D.N.Y. Mar. 7, 2023) (appeal pending).

VII. This Court Should Dismiss Plaintiffs' Claims on their Merits if it Reaches Them

Multiple Circuit Courts and District Courts have upheld costs of incarceration statutes against Excessive Fines Clause challenges. *See MIS*, 28-40. Plaintiffs do not cite a single case that held otherwise. That is not surprising; as to the first part of the analysis, "reimbursement for services rendered" is not "properly labeled a 'fine'"[16] and as to the second "[b]y definition, it seems that a fine based on a criminal's cost of incarceration will always be proportional to the crime committed." *Wright v. Riveland*, 219 F.3d 905, 915-16 (9th Cir. 2000).[17] Notably, Plaintiffs do not directly respond to the Second Circuit precedent establishing that the allegations as to Plaintiff Tosado (the only Plaintiff whose reimbursement amount has been determined) fail to establish excessiveness as a matter of law. *See MIS*, 38-40. That requires dismissal.[18]

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[15] *Mitchell v. Franchise Tax Board (In re Mitchell)*, 209 F.3d 1111, 1117 (9th Cir. 2000). Plaintiffs' attempt to distinguish *Mitchell* in no way undermines the court's logic.

[16] *United States v. Leone*, 813 F. App'x 665, 669 (2d Cir. 2020) (Summary Order).

[17] Plaintiffs rely on the portion of *Wright* that they believe supports their argument, but ignore the part of *Wright* that held that requiring an inmate to reimburse "the total cost of the inmate's incarceration" was "not, as a matter of law, excessive." *Wright*, 219 F.3d at 917, 918; *see MIS*, 35 n.37 & 37 (discussing *Wright*). Plaintiffs are incorrect that the fine portion of *Wright* supports their argument here. In *Wright*, there were indications that the cost requirement was intended to serve the purposes of punishment and deterrence. *See id*. at 916. That is not the case here. *See MIS*, 32-37. As they did before, Plaintiffs imply that Defendants' statement that the primary purpose of the challenged laws was remedial indicates that the laws were punitive. *PO*, 29. That is false. Defendants explicitly argued that the primary purpose of the laws was remedial, that "[t]he secondary purpose was to ensure inmates understand the financial impacts of their incarceration," and that there was no evidence that the laws were intended to be punitive. *MIS*, 34-35.

[18] There is not enough space to detail all of the errors in Plaintiffs' analysis. Defendants' inability to explicitly address aspects of Plaintiffs' arguments is not—and should not be seen as—an indication that Defendants have no response.

Respectfully submitted,

DEFENDANTS

WILLIAM TONG
ATTORNEY GENERAL

BY: */s/ Robert J. Deichert*
Robert J. Deichert (ct24956)
Krislyn Launer (ct31041)
Benjamin Abrams (ct29986)
Assistant Attorneys General
Attorney General's Office
165 Capitol Avenue
Hartford, CT 06106
860-808-5020 (phone)
860-808-5347 (fax)
Robert.Deichert@ct.gov
krislyn.launer@ct.gov
benjamin.abrams@ct.gov
Attorneys for Defendants

Certificate of Service

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/s/ Robert J. Deichert
Robert J. Deichert
Assistant Attorney General