



AMERICAN BAIL COALITION

STATEMENT ON CITY OF MOSS POINT, MISSISSIPPI BAIL LITIGATION

The Equal Justice Foundation is in heavy-duty hype mode – touting last week’s City of Moss Point, Mississippi case as a big win. But as with the recent settlement in Clanton, AL, it is nothing of the sort. The Moss Point case is heavy on rhetoric but empty on substance.

More background in the case is available below, but let me summarize:

- EJF filed another copycat low-dollar federal lawsuit, this one in Moss Point, a small Mississippi city of 14,000 people.
- The lawsuit is a mirror of the case they filed in Clanton, AL, arguing that low-dollar bail is unconstitutional.
- The case went uncontested. There were no responses filed in court to EJF’s briefs, nor any arguments in court. The local jurisdiction may have, in fact, actually invited the litigation.
- Amid this lack of opposition, a notice of settlement was filed on Oct. 14, 2015.
- Then, bizarrely, the court issued a Declaratory Judgment on Nov. 6, 2015, making it appear as if the court had “ruled.” There was no ruling on the merits; this was merely a ruling that restated the settlement.
- EJF is now contorting reality by calling this a “landmark judgment” and a “historic case.”

Here are the facts:

- No federal court *on the merits in a contested case* has ruled in EJF’s favor. Instead, each is a product of a friendly or willing settlement party on the other side or a friendly federal judge who will order someone released from jail *ex parte*, that is, without a response from the defendant municipality.
- Usually, these small jurisdictions (Moss Point population: 14,000; Clanton population: 8,700) can’t afford to fight the machine of litigation in a federal court with no opportunity to recover as much of a nickel in attorneys’ fees if they prevail under the rules pertaining to federal civil rights litigation. That is why it is a risk-free proposition for the EJF and their activist lawyers.
- In Clanton, despite the historic intervention of the U.S. Attorney General in a matter concerning municipal bail, the Plaintiffs admitted in settlement documents that the use of bail schedules, including the one still being used in Clanton, *are constitutional*. The big change in Clanton as a result of the *settlement* was speedier review of bails set by the schedule—from just once a week on Tuesdays to now within 48 hours.

- The Clanton case was initially contested, and the Plaintiffs did not prevail on their ultimate point. As the City of Clanton’s attorneys wrote in their brief, “bond schedules, with a single exception from 45 years ago, have never been held unconstitutional.” The Plaintiffs never responded to that assertion except to later agree the practice was “constitutional.”

Let’s go back to Moss Point for a moment. The Declaratory Judgment issued by Judge Louis Guirola, Jr., in a remarkably strange action, actually cites the US AG’s brief in Clanton as authority for the proposition that bail schedules “violate the equal protection clause.” No such order was issued in the Clanton, case. Nor is a brief filed by the Attorney General accepted as a precedent for anything.

Even more brazenly, this is the same EJP that agreed to settle the Clanton case – a settlement that said such schedules were “constitutional.”

In the national conversation on bail, the misinformation being spread concerning these lawsuits must be exposed and then rebutted with policy makers by all of us who work in and understand the process of bail. Lawyers and judges who are not familiar with what is going on in these cases are also guilty of believing the rhetoric and not reviewing the actual files and facts.

At the end of the day, these cases are not really about bail -- they settle on issues concerning lack of adequate or timely *due process*, i.e., getting a prompt review of bail setting, which is the fundamental way a person would assert their constitutional right to be free from excessive bail.

While this is a burgeoning legal movement, it is merely a tool to a defined political end – the false legal statement based on these settlements that all money conditions are unconstitutional and that therefore legislation and constitutional changes that will forever end monetary conditions of bail are necessary to square the law with that false conclusion.

Whatever legislatures decide about the mix of monetary conditions in the various bail systems, they should not deceive themselves that the current system is somehow on its face unconstitutional. In fact, nothing could be further from the truth.