

BASF Joins California Supreme Court Amicus Brief in Landmark Constitutional Challenge to State's Bail System

December 13, 2018 -- San Francisco -- McDermott Will & Emery, as counsel to the Bar Association of San Francisco, the Los Angeles County Bar Association and the Santa Clara County Bar Association (the Bar Associations), has filed an amicus brief in the California Supreme Court in *In re Kenneth Humphrey*. The Bar Associations urge the Court to affirm the California Court of Appeal's decision holding that the California Constitution requires courts to consider a defendant's ability to pay bail, before detaining him prior to trial solely due to his inability to post bail.

The Bar Associations filed the brief in support of Kenneth Humphrey, a then-63-year-old retired shipyard laborer who was detained for nearly a year in San Francisco County Jail because he could not afford the \$600,000 bail (later reduced to \$350,000) required for release, after being charged with felonies arising from his alleged theft of \$5.00 and a bottle of cologne from an elderly neighbor and threats to suffocate him with a pillowcase. The Court of Appeal granted Mr. Humphrey's petition for a writ of habeas corpus, holding that due process and equal protection require courts to consider a defendant's ability to pay before setting the amount of bail. The California Supreme Court ordered review of the Court of Appeal's decision. No date has been set yet for oral argument.

The amicus brief provides broader context about California's pretrial detention system by analyzing empirical data about the consequences of the bail system on defendants, their families and the public in California's urban counties. The empirical evidence shows that California's current system can lead to the pretrial detention of individuals solely because they cannot afford bail, without necessarily improving public safety. Unnecessary pretrial detention, the McDermott team explained, produces grave collateral consequences, including job loss; eviction; disruption of familial relationships; harm to physical and mental health; interference with developing a defense; and a greater likelihood of pleading guilty, being convicted, and receiving longer prison sentences.

"An effective, constitutional pretrial justice system that does not unfairly punish the poor can be consistent with public and victim safety," said McDermott partner and lead on the case, A. Marisa Chun.

The amicus brief was written by Chun and associate Sarah P. Hogarth, with invaluable counsel from Paul M. Thompson. McDermott's brief on behalf of the Bar Associations can be viewed [here](#).

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The Bar Association of San Francisco (BASF) is a nonprofit voluntary membership organization of attorneys, law students, and legal professionals in the San Francisco Bay Area. Founded in 1872, BASF enjoys the support of more than 7,500 individuals, law firms, corporate legal departments, and law schools. Through its board of directors, its committees, and its volunteer legal services programs and other community efforts, BASF has worked actively to promote and achieve equal



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justice for all and oppose discrimination in all its forms, including, but not limited to, discrimination based on race, sex, disability, and sexual orientation. BASF provides a collective voice for public advocacy, advances professional growth and education, and attempts to elevate the standards of integrity, honor, and respect in the practice of law.