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McDermott Files California Supreme Court Amicus Brief in Landmark Constitutional Challenge to State's Bail System

Brief on Behalf of Leading Bar Associations Supports Access to Justice and the Protection of the Constitutional Rights of the Accused

WASHINGTON, DC (December 5, 2018) — McDermott Will & Emery LLP, 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.

McDermott's 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 [\[here\]](#).

McDermott’s representation of the Bar Associations in *Humphrey* is only the latest high-profile appellate project the firm has undertaken as part of its pro bono practice. In 2017, a McDermott team represented the American Bar Association at the US Supreme Court in [Jae Lee v. United States](#), helping to secure the freedom of a Korean legal immigrant who faced deportation after pleading guilty to a first-time drug offense. McDermott also filed a pivotal amicus brief for the San Francisco and Los Angeles County Bar Associations at the California Supreme Court in [Heller Ehrman LLP v. Davis Wright Tremaine LLP](#), which held that a dissolved law firm has no property interest in legal matters handled on an hourly basis after the dissolved firm’s former partners continue to work on these matters at their new firms.

About McDermott Will & Emery

McDermott Will & Emery is a premier international law firm with a diversified business practice. Numbering more than 1,000 lawyers, we have offices in Boston, Brussels, Chicago, Dallas, Düsseldorf, Frankfurt, Houston, London, Los Angeles, Miami, Milan, Munich, New York, Orange County, Paris, Rome, San Francisco, Seoul, Silicon Valley and Washington, DC. Further extending our reach into Asia, we have a strategic alliance with MWE China Law Offices in Shanghai.

About the Bar Association of San Francisco

The Bar Association of San Francisco (BASF) is a non-profit voluntary membership association of attorneys, law students, and legal professionals in the San Francisco Bay Area. Founded in 1872, BASF enjoys the support of approximately 7,500 individuals, law firms, corporate legal departments, and law schools. Its membership includes current or former prosecutors and defense counsel. Through its board of directors, committees, volunteer legal services programs, and other community efforts, BASF works to champion equal access to justice and to pioneer constructive change in society.

About the Los Angeles County Bar Association

The Los Angeles County Bar Association (LACBA) was founded in 1878 and is one of the largest metropolitan voluntary bar associations in the United States with nearly 20,000

members. In addition to meeting the professional needs of its members, LACBA actively promotes and advances the fair administration of justice.

About the Santa Clara County Bar Association

The Santa Clara County Bar Association (SCCBA) is a non-profit, non-regulatory professional organization that trains and supports its member attorneys to improve the local administration of justice and to serve the public by fostering improved public understanding of and access to the legal system. Founded in 1917, SCCBA enjoys the support of more than 5,000 attorneys. The SCCBA has a longstanding tradition of advocating for the individual rights of all persons no matter their race, sexual orientation, gender, religion, nationality, or socioeconomic status.