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SUPREME COURT COPY



March 14, 2018

Honorable Tani Cantil-Sakauye, Chief Justice  
and Associate Justices of the California Supreme Court  
California Supreme Court  
350 McAllister Street  
San Francisco, CA 94102-4797

SUPREME COURT  
FILED

MAR 16 2018

Jorge Navarrete Clerk

Re: Request for Depublication, *In re Humphrey* (2018)  
No. A152056, First Appellate District, Division Two  
San Francisco City and County Super. Ct. No. 17007715

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Deputy

Dear Chief Justice Cantil-Sakauye and Associate Justices:

The Golden State Bail Agents Association writes to request depublication of the Court of Appeal opinion in *In re Humphre*., No. A152056, filed January 25, 2018 by the First Appellate District, Division Two. The request is made pursuant to California Rules of the Court, Rule 8.1125.

### **I. Golden State Bail Agents Association's Interest in Depublication**

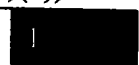
The Golden State Bail Agents Association (GSBAA) is a trade association representing the California bail industry. The purpose of the association is to promote the understanding of the bail industry's important role in California's criminal justice system and to protect the rights of its members. The Association is headquartered in Sacramento, California, but has members throughout California.

### **II. Case Background**

Petitioner Humphrey filed a petition for habeas corpus claiming bail was set by the trial court without an inquiry into his financial resources or the availability of a less restrictive non-monetary alternative condition or combination of conditions of release, petitioner maintains he was denied rights guaranteed by the Fourteenth Amendment and the California Constitution. The Court of Appeal agreed and issued the writ of habeas corpus for the purpose of providing petitioner a new bail hearing.

### **III. Necessity for Depublication**

The Court of Appeal erroneously held that monetary bail cannot be set in an amount greater than the defendant can afford unless the court finds by clear and convincing evidence that the defendant is a danger to public safety and no less restrictive nonmonetary conditions are available to insure the defendant's appearance in court and protection of the public. The court's holding conflicts with the Victims' Bill of Rights Act of 2008 which requires that public safety and the safety of the victim be the primary considerations in setting bail. All other considerations are secondary and own recognizance release is subject to the same factors considered in setting bail (Cal. Const. §28, subd. (b)(3)).



The Attorney General failed to make a timely assertion of the Public Safety Bail provision contained in the Victims' Bill of Rights Act of 2008 (Cal. Const. §28, subd. (b)(3)). The Attorney General waited until oral argument to allege that the Public Safety Bail provision allowed the court to set a higher bail for a defendant found to present a risk to public safety or the safety of the victim. The Attorney General stated that his position on the ten year old law had "come into greater clarity" over the course of other litigation in the time since the return in the case was filed. The Attorney General further argued that the court may impose a bail amount exceeding defendant's ability to pay if a preponderance of evidence shows the defendant is a risk to victim or public safety and no less restrictive alternatives are adequate to protect public safety or safety of the victim. The Attorney General also maintained that a defendant may be detained under section 28 solely to protect against flight. The Attorney General acknowledged that this view of section 28 would effectively eviscerate section 12. The Court of Appeal declined to resolve the issue because it was raised so late in the proceedings.

In rebutting petitioner's argument that bail and release conditions are synonymous, the Attorney General argued that:

"[b]ecause monetary bail, unlike nonmonetary conditions, is an 'amount' that can be fixed, it makes little sense to view this clause as applying only to nonmonetary conditions. Moreover, the reference to 'release conditions' in that clause would be surplusage if 'bail' and 'release conditions' meant the same thing." (*Humphrey*, fn. 27 [referring to Cal. Const. §28, subd. (b)(3)]).

Furthermore, the Court of Appeals mistakenly relied on *United States v. Salerno* (1987) 481 U.S. 739 (*Salerno*). The United States Constitution does not require California courts to find that "no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community" before a defendant may be detained without bail or with a bail amount they cannot afford. (*In re White* (2018), 4th App. Dist., No. D073054, \_\_ Cal.App.5th \_\_, fn. 8.)

The holding of the *Humphrey* court may have been different if not for the malpractice of the Attorney General. *Humphrey* is a bad precedent that disregards the constitutional rights of victims in favor of defendants. It would be absurd to release a defendant if the preponderance of the evidence shows he or she presents a danger to the victim or public safety merely because that defendant cannot afford his or her bail or agrees to abide by a stay-away order regarding the victim.

The Attorney General has refused to appeal *Humphrey* to the California Supreme Court, despite his failure to competently represent the People of the State of California in this matter.<sup>1</sup> Thereby foreclosing full consideration of the contours of the Victims' Bill of Rights Act of 2008 and allowing the holding of *Humphrey* to bind all California trial courts.

#### IV. Conclusion

The *Humphrey* decision is premature because the legislature is working on comprehensive bail reform which will likely include additional court funding for implementation of bail reform measures. Senate Bill 10 (Hertzberg) is pending before the California legislature and both Governor Brown and Chief

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<sup>1</sup> Becerra, Xavier, *Attorney General Becerra: We Will Not Appeal Bail Decision in Humphrey Case*, February 20, 2018, Press Release, Available at: <https://oag.ca.gov/news/press-releases/attorney-general-becerra-we-will-not-appeal-bail-decision-humphrey-case>

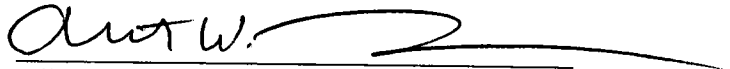
Justice Cantil-Sakauye have agreed to work with the legislature on bail reform.<sup>2</sup> The legislature is in a better position to consider all public policy issues in crafting bail reform than the Court of Appeal.

Furthermore, as the Court of Appeal admits, the numerous and lengthy bail hearings required by Humphrey will cause disruptions in our already underfunded court system and will compel courts to reduce services currently provided to the public.

This decision should be depublished for the reasons stated above.

Respectfully submitted,

**GOLDEN STATE BAIL AGENTS ASSOCIATION**



Albert W. Ramirez  
General Counsel

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<sup>2</sup> Office of Governor Edmund G. Brown Jr., *Governor Brown, Chief Justice Cantil-Sakauye, Senator Hertzberg and Assemblymember Bonta Commit to Work Together on Reforms to California's Bail System*, August 25, 2017, Press Release, Available at: <https://www.gov.ca.gov/2017/08/25/news19917/>

## PROOF OF SERVICE

Case Name: In re Humphrey (2018)  
Case Number CA Court of Appeal, First District, Div. Two, A152056  
San Francisco City and County Super. Ct. No. 17007715

I, the undersigned, declare that I am, and was at the time of service of the papers herein referred to, over the age of 18 years and not a party to the within action or proceeding; that my business address is 1230 M Street, Fresno CA 93721, which is located in the county in which the within-mentioned mailing occurred. I am familiar with the practice at my place of business for collection and processing of correspondence for mailing with the United States Postal Service. Such correspondence will be deposited with the United States Postal Service on the same day in the ordinary course of business.

On March 14, 2018, I mailed from Fresno, California the following document(s):  
**REQUEST FOR DEPUBLICATION**

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San Francisco, CA 94102-4797

**Court of Appeals of California (1 copy)**

California Court of Appeal  
First Appellate District  
Division Two  
350 McAllister Street  
San Francisco, CA 94102

**San Francisco County Superior Court (1 copy and courtesy copy of opinion)**

Hon. Joseph M. Quinn  
San Francisco County Superior Court  
Hall of Justice  
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San Francisco, CA 94103

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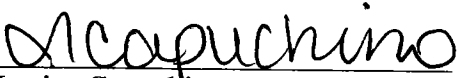
**San Francisco County District Attorney (1 copy and courtesy copy of opinion)**

Julia Cervantes, Esq.  
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850 Bryant, 3rd Floor  
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and by sealing the envelope and placing it for collection and mailing with postage fully prepaid in accordance with our ordinary business practices.

Executed on March 14, 2018, at Fresno, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

  
Jessica Capuchino