

THURSDAY, DECEMBER 15, 2106

COVER STORY

State AG reverses course, won't defend bail system

By Malcolm Maclachlan
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Attorney General Kamala D. Harris has reversed course and will not defend a legal challenge to California's bail system.

Her office filed a notice of non-intervention in Oakland federal court Wednesday, one day after missing a deadline to enter a new motion in the case. *Buffin et al. v. City and County of San Francisco*, 15- CV4959 (N.D. Cal., filed Oct. 28, 2015).

A spokesperson for Harris confirmed the decision Wednesday, as did attorneys for the California Bail Agents Association (CBAA) and Equal Justice Under Law, the Washington, D.C.-based nonprofit that filed the suit.

Currently, no one is defending the lawsuit brought by two women who claimed they were unreasonably burdened by the costs of money bail and fees after their arrests.

The bail agents' attorney said she intends to file a motion to defend the case.

"The effect of the bail statute being struck down for lack of any defense whatsoever by state or local government could be to eviscerate a legal industry, and render uncertain or unenforceable thousands of bail contracts throughout California," said Harmeet K. Dhillon, the owner of Dhillon Law Group Inc. in San Francisco.

"Given the Eighth Amendment's clear authorization of money bail as a legitimate part of the criminal justice system, it should be for the Legislature to make any changes the public deems necessary," Dhillon said.

Harris' decision marks the likely end of apparent indecision on the case by the outgoing attorney general.

In October, Harris convinced U.S. District Judge Yvonne Gonzalez Rogers to release her from the case on constitutional grounds. Last month, after San Francisco City Attorney Dennis Herrera announced he would not defend the lawsuit, Harris' office said she would file a new motion to intervene.

Phil Telfeyan, executive director of Equal Justice Under Law, praised the attorney general's decision not to defend what he called "San Francisco's wealthbased detention scheme."



Daily Journal Photo

Harmeet Dhillon, an attorney representing the California Bail Agents Association, said she will try to defend a lawsuit challenging the money bail system after Attorney General Kamala Harris decided not to.

"We will continue to fight until California's unjust pay-for-freedom system comes to an end," Telfeyan said.

He filed an earlier motion opposing the bail agents' right to intervene in the Buffin case, arguing, "Plaintiffs have made no claims against the bail bond industry" and "seek no relief" from it.

Telfeyan's group is also behind another challenge to the state's bail system. *Welchen et al. v. County of Sacramento*, 16-CV00185 (E.D. Cal., filed January 29, 2016).

Harris' office filed a motion to dismiss *Welchen* on Tuesday, claiming the plaintiff failed to show his due process rights had been violated.

However, the filing also indicated the attorney general would offer only a limited defense of the bail system.

The attorney general's *Welchen* motion said the case is "a challenge to California's state bail law ... in which the justice system fails indigent individuals."

It went on to say Harris will defend only

"the facial constitutionality of California's bail law. The Attorney General will not defend any application of the bail law that does not take into consideration a person's ability to pay."

Sacramento County has hired Porter Scott APC to defend the *Welchen* case. The firm filed a motion to dismiss the lawsuit on Tuesday, citing due process grounds. The filing also sought to have the county and Sheriff Scott Jones dismissed from the case.

It argued the plaintiff cannot sue Scott because of the Eleventh Amendment protection of sovereign immunity — the same defense Harris used in *Buffin*.

Since the sheriff acts on behalf of the state in administering the bail system, rather than the County of Sacramento, no claim can be stated against the county," defense attorneys argued.

The bail agents' association has not attempted to intervene in the *Welchen* case. Attorneys for Porter Scott did not return a call seeking comment.

Two bills to change the bail system were introduced in the state Legislature last week.