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**California Department of Insurance Hearing: “An Exploration of California’s Bail System”**

*Testimony of Treasurer José Cisneros, January 31<sup>st</sup>, 2017*

Good morning and thank you for inviting me to participate in this important discussion. My name is José Cisneros and I am the Treasurer for the City and County of San Francisco. My office serves as the banker, tax collector, collection agent, and investment officer for the City and County of San Francisco.

More than ten years ago, I started the Office of Financial Empowerment to equip poor and low-income San Franciscans with the knowledge, skills and access they need to achieve greater financial security. For more than 10 years, I’ve worked to reduce reliance on check cashers and payday lenders, and ensure every San Franciscan has access to safe and affordable financial products. I have worked hard to use the powers of my office to be a Treasurer for ALL San Franciscans. My collections staff in the Bureau of Delinquent Revenue has deep expertise in collections for both the City and County, and the Courts. I recognize the important role this revenue plays to fund the city’s core operations.

As the City and County’s official debt collector, I also know that frequently, individuals we collect from do not have the ability to pay the fines and fees we attempt to collect. A growing number of government programs levy fines and fees on their residents, fines that are not adjusted for income, and are out of reach for low-income San Franciscans. That’s why my office is the first in the nation to launch a Financial Justice Project, to assess and reform how fines and fees impact our city’s most vulnerable residents. These are the same people we focus on in our financial empowerment work—struggling San Franciscans.

It is essential that government holds people accountable, and that there are consequences when people break rules or laws. But we need to do so in a way that is fair and just, and doesn’t dig struggling San Franciscans into an even deeper hole. Government should be an equalizer of opportunity, not another driver of inequality. After learning more about the money bail system, I am concerned that money bail- and particularly its reliance on predatory private companies- is one of these drivers of inequality.

I want to be clear: I am not a public safety expert. I am not here in any way to say we should reduce accountability for crimes. Like many of my colleagues here today, I firmly believe that when City and County resources are spent to keep people in jail, the decision should be based on the risk they pose to our communities, not on the money they have in their bank accounts.

I’d like to make four main points today, and then offer some recommendations.

The first point is that money bail discriminates against low income communities. Our current system requires low-income people to use private companies to secure their freedom. 99% of people who post bail in San Francisco do so through a private bail bond company, rather than paying a refundable

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fee to the court. These private bail bond companies charge a 10% nonrefundable fee for service. If charges are dropped the next day, or they show up at every court appearance and are found not guilty, this 10% is not refunded. This shocks me.

A person with wealth can purchase their freedom while waiting for trial, while low income people accused of the exact same crime must rely on private companies to access bail, and lose their hard earned deposit – likely scraped together with help from grandparents, aunts, sisters and brothers.

Secondly, we know bail strips wealth and resources from communities that need it the most. I've done a lot of work to ensure everyone in San Francisco has access to tools that build wealth, not that strip wealth.

Here in San Francisco, an average of 11 people per day pay bail. As I mentioned earlier, almost everyone does so by paying a fee that they'll never get back. This system has the greatest impact on our low-income neighborhoods. About half of bail bonds posted in 2016 came from Bayview, Hunters Point, the Tenderloin, and the Mission. We know that it also has the greatest impact on people of color. Over 40% of the people who paid bail bonds in the first half of 2016 were African American, and recent studies have found that African Americans are less likely to be released without bail, and more likely to receive larger bail amounts. African Americans currently make up six percent of the San Francisco population. We also know that the cost of paying bail typically falls on the family of the defendant. They face the choice of using money to bring the defendant home while waiting for trial, or using the money to pay rent and groceries.

Bail Bond companies in San Francisco posted over \$107 million in bonds during the first half of last year. If bail agencies are collecting the full 10%, that equals over \$10 million in nonrefundable fees collected in San Francisco in just the first half of last year.

My third point is that the role and practices of bail bond companies deserve greater scrutiny and oversight. Statewide, the California Department of Insurance estimates that bail bond companies collect over \$308 million each year. I'm concerned about our reliance on this industry for three reasons:

First, I'm concerned that a privatized industry plays such a pivotal role in our justice system. Because bail is set so high, 99% of people who make bail need to utilize a private company. Bail companies have no obligation to offer bail, and get to utilize whatever criteria they want to decide how and when to offer help.

Secondly, we have seen several incidents where bail agents abuse this power. As the Commission on the Department of Insurance has noted in the past, complaints against bail bond agencies have tripled in recent years.



Finally, as a debt collector, I am also concerned about the process used to collect on bail agents when an individual fails to appear. When someone fails to appear in court, the bail company is responsible to pay the entire bail amount to the government. That's the agreement they made with the courts. However, we have heard over and over again that the procedures that courts and our local government use to collect on these companies are burdensome and costly. Statewide, we have seen reports and anecdotal evidence that suggest bail bond companies take advantage of these procedures to delay or avoid paying the money they owe. Unfortunately, there is no state-wide effort that we know of to monitor how much money is still outstanding or dismissed. It's up to every county locally.

Finally, from a fiscal perspective, the money bail system is a bad deal for our City. We pay \$173 per day per person to incarcerate people who have had bail set beyond their ability to pay, yet we could save 90% of those costs through alternative pretrial diversion programs. Again, these are people who the courts have offered the opportunity to be released if they can post bail.

If someone can't afford bail, they must wait in jail until their trial, often more than 30 days away. Not only is the City funding this cost, but when people cannot pay bail to get released, they can be at risk of losing their jobs, housing or custody of their children. This means increased costs, and lost economic activity for the City. Our jails should be for people who pose the greatest risks to public safety. We should not be paying to keeping our jail full of people who cannot afford to post bail.

I'd like to offer a few recommendations. First, we're fortunate that in San Francisco we have a lot of great efforts underway to minimize the number of people who are behind bars for an inability to pay bail. We have a Pre Trial Diversion Program. We have used a Public Safety Assessment tool for about a year now, and the courts have completed over 4,000 to date. Our Public Defender has something called The Bail Project. We should support and expand these cost effective efforts.

Second, I'd like to see the California Department of Insurance have the authority to collect statewide information about the financial collections of bail companies, including any money bail companies owe to local jurisdictions.

Finally, when money bail is required, we want to ensure that it is in line with its original intent: that it is not used as punishment, and is not excessive. Over 80% of bail bonds in 2016 were over \$10,000 in San Francisco. We would like to explore if bail schedules can be lowered, at the local and state levels. And we should explore if bail can be paid directly to the courts and based on Ability to Pay.

Thank you for the opportunity to be part of this important discussion.