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Prepared Statement of Linda Braswell, MCBA, President Professional Bail Agents of the United States

on

H.R. 2286, The Bail Bond Fairness Act

Before the Committee on Crime, Terrorism and Homeland Security

Room 2141, The Rayburn House Office Building

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PREPARED STATEMENT OF LINDA BRASWELL

Good Morning, Chairman Scott, Members of the Committee. On behalf of the Professional Bail Agents of the United States, I wish to thank you for inviting us to appear before the Subcommittee today to discuss H.R. 2286, the "Bail Bond Fairness Act of 2007." My name is Linda Braswell and I am a Licensed Bail Agent in Florida. I am the elected President of the Professional Bail Agents of the United States, the national professional association of the nation's 14,450 bail agents.

The historic use of the constitutional rights to reasonable bail in the United States is to guarantee the appearance of a defendant for all of his or her court hearings. A bail bond is forfeited by a court if the defendant fails to appear as ordered. In essence, a bail bond guarantees the appearance of a criminally accused person in court until his or her case is finally resolved.

H.R. 2286 seeks to remedy the result of the Ninth Circuit's 1995 opinion in *United States* v. *Vaccaro* (51 F. 3d 189) which allowed the court to forfeit the $100,000 corporate surety appearance bond posted by a bail agent (even though the defendant never missed a court date) because Vaccaro had violated his *personal* conditions of pretrial release by traveling outside of the jurisdiction and committing a new offense.

In *Vaccaro*, a federal district court held that the separate order specifying the conditions of the defendant's release was incorporated into the corporate surety appearance bond posted by the bail agent. In that case, at the bottom of the bail bond face sheet supplied by the government were the words, "see also, the order specifying methods and conditions of release attached hereto and made a part hereof." Thus, the court determined that the two documents should be read together, and actually constitutes one complete order. Then, using Rule 46(e), the court determined that a condition had been violated and that the entire bond should be forfeited. It is important to note that the *Vaccaro* court also added that Congress could have chosen to amend or alter Rule 46(e), and its failure to make such a change "is an indication of the continued viability of the 46(e) forfeiture sanction."

It is important to make the distinction that the traditional guarantee of appearance was changed by the Vaccaro decision to the extent that a bail bond came to guarantee both appearance and adherence of the defendant to the conditions of bail set by the court. Even though a defendant appeared for all of his or her court dates, bail could be forfeited for violation of conditions through the use of drugs or alcohol, a curfew or travel violation, re-arrest, and the like.

Since the *Vaccaro* opinion, bail agents and corporate surety bail bond issuers have essentially been eliminated from the federal pretrial release system, for obvious excessive risk reasons. Federal defendants are therefore faced with reduced means of pretrial release, and the federal system is deprived of a vehicle which returns an errant defendant to the court at no cost to the public sector. When commenting on this issue in 1998 before the House Crime Subcommittee, Congressman Bill McCollum noted that there were

some 7,000 warrants outstanding for federal defendants' failure to appear in court. I can assure you that few, if any, of those 7,000 fugitives were released pretrial on appearance bonds issued by professional bail agents.

A conditions or performance based bail bond (guaranteeing both appearance and personal conduct) is particularly hard on individuals and families who post bail directly with a federal court. In these cases, families, be it parents or grandparents, run the risk of loosing their life savings or homes simply because a defendant has failed a urine test or traveled outside a geographically defined area. Even if the defendant appears at every single one of his or her court hearings, the family can loose their cash or their property because a random urine test came back positive. This is inherently unfair to people who believe that they are merely guaranteeing that their child or grandchild will appear in the federal court.

In state court systems, bail bonds are appearance bonds. If a defendant fails to appear the bond is forfeited and the bail bond agent must either produce the defendant or pay the forfeiture to the court. This is considered as a defined risk. I know that the bail bond executed by me will only be forfeited in a state court if the defendant fails to appear. Therefore, the underwriting of a bail bond for a defendant in state court is based on the likelihood of a defendant to appear in court. Once the bail agent has assessed that risk, he or she can take whatever additional steps are necessary to assure the defendant appears in court. For example, the family or an indemnitor may be asked to co-sign on the bail bond or place collateral with the bail agent.

In the United States, bail agents post approximately 2.5 million state bail bonds each year, guaranteeing the appearance of defendants in court. Two and a half million defendants are being supervised, and being produced in court by the private sector, at no cost to the government and its tax payers. Imagine how difficult it is to underwrite a bail bond for a defendant detained in the Federal Court system when the risk is not solely appearance? How can a bail agent or the insurance company guarantee the behavior of a defendant released on bond? How can a mother or grandmother guarantee the behavior of her child or grandchild released on bond?

A federal court can require a defendant released on bail to adhere to a curfew, random urine testing, take an educational program, remain employed full-time, and much more. None of these conditions has anything to do with the most basic aspect of a bail bond which is the *appearance* of the defendant in court on his or her appointed day. The Vaccaro decision has transformed the traditional *appearance* bond into a *performance* bond, a wholly unfair and improper transition.

Historically, a bail bond guarantees appearance. When the bond is breached, a surety cures that breach by producing the defendant in court. If a bail bond is defined as a performance bond and a defendant violates a condition of the bond, by failing a urine test, there is no way that a surety can cure this type of breach. A surety must be given the opportunity to cure a breach. This can only be done by defining and utilizing a bail bond as an appearance bond.

The "Bail Bond Fairness Act of 2007" does not interfere with a court's ability to directly penalize a defendant who has violated his or her conditions of release. A defendant who fails to report to pretrial services or who fails urine screening, or who temporarily leaves the jurisdiction without court permission, may still be subject to more stringent conditions—even revocation—of bail. He or she may be remanded to custody. But if he or she is not remanded to custody, and if he or she shows up for trial on time, his or her bail will not be forfeited.

The increased "fairness" which the "Bail Bond Fairness Act of 2007" proposes is neither fairness to the defendant nor fairness to the prosecution, but fairness to the Surety. The Surety who produces his or her principal for trial in a timely manner has fulfilled his or her obligation to the courts and is entitled to discharge of his or her obligation under the bond. The Surety need not be penalized because, while released on bail, the defendant ran a traffic light, went across a jurisdictional line for the weekend, or quit his or her job. The consequences of these acts of misconduct will remain where they belong—with the defendant.

Passage of HR 2286 will allow for the release of defendants to be supervised by professional bail agents who can appropriately guarantee to the court that the defendant will appear in court as directed. Sureties—particularly corporate sureties—will be willing to accept the risk of a given defendant's nonappearance in circumstances in which they would not accept the risk of the same defendant's violation of personal performance conditions. It is in society's interest for private sector surety release to once again be an available means of pretrial release. The Ninth Circuit's Vaccaro ruling, a judicial territorial muscle flex, needs to be remedied by passage of this bill.

The "Bail Bond Fairness Act of 2007" would restore a defendant's failure to appear in court as the sole reason for forfeiture of a bail bond in Federal Court. This bill *would not* impede, hinder, constrain or interfere with the court's ability to penalize defendants who have personally violated conditions of bail, nor would it cause the release of defendants the courts feel should be detained pretrial. This bill *would* enable bail agents to be responsible for more Federal bonds which would assist the Federal court system in supervising defendants, reduce the pretrial detention populations, and result in the return of non-appearing defendants to custody in an efficient fashion, without cost to the public treasury. Thank you for your consideration of H.R. 2286, which our industry believes is good public policy that enhances public safety.