

# THE HUFFINGTON POST

## **Dog The Bounty Hunter And A Top Conservative Lawyer Are Trying To Save The Bail Industry**

*A federal appeals court heard arguments on Thursday in a case that could shape the future of bail in the U.S.*

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With TV's Dog the Bounty Hunter looking on from the front row, a civil rights attorney representing an indigent Georgia man appeared before a federal appeals court Thursday in a case that could affect the future of the multibillion-dollar bail bond industry — and the constitutional rights of people who are legally presumed innocent but can't afford to purchase their freedom.

The U.S. Court of Appeals for the 11th Circuit heard oral arguments in Atlanta on Thursday in the case of Maurice Walker v. City of Calhoun. Walker, a 54-year-old with a serious mental health disorder, lived with his sister and was receiving about \$530 in Social Security disability payments per month when he was arrested in Calhoun, Georgia, on Sept. 3, 2015, for walking while drunk.

Taken to Gordon County Jail, Walker was told he would not be released unless he came up with \$160 in cash — the amount that Calhoun's bail schedule set for all people arrested as pedestrians under the influence, regardless of their financial circumstances.

Deprived of his medication and forced to spend 23 hours a day in his cell, Walker was not scheduled to appear before a judge until 11 days after his arrest. But D.C.-based civil rights attorneys and lawyers with the Southern Center for Human Rights intervened, filing a lawsuit on Walker's behalf while he was still in custody. The suit described Calhoun's preset bail system as a "money-based post-arrest detention scheme" that discriminated against the poor.

Last year, a federal judge granted a preliminary injunction against Calhoun and ruled that “any bail or bond scheme that mandates payment of pre-fixed amounts for different offenses to obtain pretrial release, without any consideration of indigence or other factors, violates the Equal Protection Clause.”

The class action suit is about much more than just Walker and the city of Calhoun, which made changes to its bail practices following the litigation. Walker v. Calhoun is one of several cases across the nation challenging the practice of money bail, many of them filed by Alec Karakatsanis, now of the organization Civil Rights Corps, who has been waging a battle against bail policies that have a disparate impact on the poor.

When pretrial defendants accused of minor offenses are locked up for even a short period of time, it can have severe consequences. They can lose their jobs, their housing and the connections that give their lives stability. Sometimes, they can lose their lives. As part of an extensive investigation of jail deaths across the United States, The Huffington Post reported last year on the death of Mark Goodrum, 60-year-old stroke victim who died in a troubled jail in Virginia (which is now under federal investigation).

Charged with smoking marijuana in his apartment, and after missing a court date while he was ill, Goodrum was held on \$1,000 bond, meaning he’d need about \$100 in cash to purchase a commercial bail bond. Instead, he died in the jail’s custody a month after his arrest. Goodrum’s death was tragic but not unique: Dozens of people accused of similar low-level offenses died behind bars over the course of the year.

Under the Obama administration, the Justice Department filed an amicus brief in the Walker case stating that when bail practices “do not account for indigence,” they result in “the unnecessary incarceration of numerous individuals who are presumed innocent.” Other amicus briefs in the Walker case calling fixed-money bail systems unconstitutional were filed by the Pretrial Justice Institute and the American Bar Association.

The case was heard on Thursday by Judge William Pryor, a George W. Bush appointee; Judge Adalberto Jordan, a Barack Obama appointee; and Judge Bobby L. Baldock, a Ronald Reagan appointee who is visiting from the 10th Circuit Court of Appeals. They’ll decide whether the lower court erred by issuing a preliminary injunction that, until major changes were made, banned the town from holding anyone charged with a misdemeanor.

Former U.S. Solicitor General Paul Clement, a widely respected conservative attorney known for (unsuccessfully) arguing before the Supreme Court in 2013 that the Defense of Marriage Act was unconstitutional, represented the American Bail Coalition, a trade association for the bail bond industry. For-profit bail bondsmen in the U.S. handle \$14 billion in bonds each year, raking in \$2 billion in annual revenue, according to a 2012 report by the Justice Policy Institute. A handful of large insurance firms are responsible for underwriting the majority of these companies, and have mounted an aggressive lobbying campaign to protect the industry’s bottom line.

Clement entered an amicus brief in the case, but did not appear before the court on Thursday. However, in a separate case in Maryland, Clement recently argued that the U.S. Constitution

“does not include a right to affordable bail in every case,” and that pretrial deprivation “is not a punishment.” He also said the Constitution “doesn’t guarantee everyone the means of being able to post the bail,” only that it guarantees the option. (Maryland’s highest court ultimately reached a compromise this month that did not abolish money bail, but rather told judges to look for alternative ways to make sure defendants show up at future court appearances.)

The battle over bail certainly hasn’t broken down along straight party lines, and many conservatives support bail reform. In New Jersey, which recently underwent a massive reform to its pretrial detention and bail system, Gov. Chris Christie (R) defended the new practices and accused the bail bond industry of posting “ridiculous” propaganda “crap” about the reforms failing.

“The bail bonds community has made a fortune over the years predominantly on the backs of poor people in New Jersey,” Christie said in a radio interview. “We are now stopping them from doing it and they’re pissed. Too bad. You shouldn’t be making money off the poor that way.”

And the Cato Institute, a libertarian think tank, filed an amicus brief in the Walker case arguing that the court’s decision to issue a preliminary injunction against Calhoun was supported by “nearly a *millennium* of Anglo-American constitutional and common law.” The institute asserted that the right to pretrial liberty has been a procedural right since “time immemorial,” even before the Magna Carta was put in place more than 800 years ago.

In other parts of the world, paying a person’s bond in exchange for money is the equivalent of obstruction of justice. Today, just one other country in the entire world — the Philippines — has a commercial bail bond industry similar to that which exists in the United States.

But Clement, in his brief on behalf of the bail industry in the Walker case, argued that bail is a “well-founded tradition” that has been around since the nation’s birth. His brief called the lawsuit “a frontal attack” on the bail system, and argued that the commercial bail bond industry “allows individuals of all financial means to leverage their social networks and community ties to obtain pretrial release.”

As Clement defends the bail industry in court, two of the most famous people associated with the bail industry — Duane Chapman, aka Dog the Bounty Hunter, and his wife, Beth — are aiding a public relations campaign to save the bail industry. Duane Chapman called the battle over the future of bail a “two-front war” involving both litigation and legislation. “This is an all-out assault by the criminal lobby to change a 200 year old practice of cash bail,” he said in a statement about attending oral arguments in the case.

Beth Chapman, who last year was elected president of the Professional Bail Agents of the United States, said the bail industry “provides a service to the government and helps ensure the public’s safety at no cost to the taxpayers.” In reality, though, jailing people is expensive, and U.S. taxpayers end up footing the bill. A report published last month found that pretrial incarceration costs \$14 billion a year, with much of that money going to process and house lower-risk defendants who are only locked up because they can’t afford bail.

Chapman said the lawyers challenging cash bail systems are “social justice lackeys” whose “only goal is to make it easier for the bad guys to get out of jail with no repercussion and no deterrent.”

As the bail industry and civil rights advocates await the federal appeals court decision, there’s another court battle shaping up in Texas next month. Harris County, which has an understaffed jail where at least 12 inmates died over the course of a single year, is facing a lawsuit from Civil Rights Corps alleging that its bail system is unconstitutional.

A lawyer for Harris County actually argued earlier this month that some people were in jail because they *wanted* to be there. The federal judge didn’t buy it.