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## **Elected Prosecutors File Amicus Brief Urging Appellate Court to Affirm Right to Counsel in Bail Hearings**

*Amici Argue that Representation when Critical Bail Decisions are Made is Necessary for Fairness and Integrity*

**ST. LOUIS** – Today 44 current and former local elected prosecutors and state attorneys general from across the country filed an [amicus curiae brief](#) in the United States Court of Appeals for the Fifth Circuit in *Booth v. Galveston* in support of a defendant’s right to counsel at initial bail hearings. In the brief, *amici* argue that legal representation at a time when these critical decisions are made is essential to ensuring fairness in the process for defendants and that failure to provide an attorney can result in uninformed decision making and erodes public trust in the integrity of the criminal justice process as well as public safety.

“The integrity of the criminal justice system is dependent on fundamental due process rights afforded to all individuals who come before a court, including the right to be represented by an attorney following arrest,” said **Miriam Krinsky, Executive Director of Fair and Just Prosecution**. “Yet, defendants in Galveston are being denied this right at one of the most critical stages of the justice process – where having counsel could mean the difference between remaining jailed, losing employment and the ability to care for loved ones, or being allowed to remain with family and in the community. Denial of the fundamental right to counsel is not only unconstitutional but erodes broader trust in the integrity and fairness of our system that only harms public safety.”

In Texas, individuals arrested and charged with crimes are subject to an initial bail hearing with a magistrate in which they are not given access to court-appointed legal representation until after the hearing. During the initial hearing, the magistrate is required to assess the nature and circumstances of the alleged offense based on presentation of evidence and make a subjective determination regarding bail. *Amici* argue that when individuals lack representation during this critical hearing, these subjective assessments are not tested through the safeguards of the adversarial process, which necessarily includes legal counsel for defendants. The brief cites to research that makes clear that detention decisions, even for a short period, can have tremendous adverse impact on individuals, families and communities. Further, they claim that requiring individuals to appear in these proceedings without legal representation is coercive and can result in waiving another fundamental right under the 5<sup>th</sup> amendment – the right against self-incrimination.

“Prosecutors are entrusted with carefully balancing the need to ensure those who present a danger to the community are prevented from exacting harm and protecting the due process rights of those who enter the criminal justice system,” said **John Cruzot, Dallas County, Texas District Attorney** and a signatory to the brief. “In meeting this obligation, far too often we end up punishing people, not because they represent a

danger to public safety, but because they do not have the economic means to go free. My vision for our system does not criminalize someone simply because they are poor, it creates fair access to resources across the board such that criminal cases can be determined based on facts, rather than access to wealth.”

*Amici* argue that prosecutors have an obligation to ensure individuals have access to legal representation as a matter of fairness and justice and because their role dictates that they protect the integrity of the justice system. When legal counsel is denied at such an integral stage of the criminal justice process, people are more likely to be detained, which has numerous legal and economic consequences, including lowering the likelihood of a successful defense, increasing the likelihood of recidivism and harm to families and communities.

“Our system provides a constitutional right to legal counsel to ensure fairness and that convictions aren’t arbitrary decisions based on a one-side presentation and interpretation of evidence,” said **Ingham County, Michigan Prosecuting Attorney Carol Siemon**. “Failure to provide legal counsel at such a critical stage, erodes the public perception that the bail process is fair. And when people remain locked behind bars simply because they don’t have the means to pay for their freedom, trust in the legitimacy of the entire criminal justice system is undermined, resulting in reduced cooperation with law enforcement and prosecutors, and ultimately, harm to public safety.”

The brief was authored by Ariel Glasner at [Blank Rome LLP](#), with the assistance and coordination of [Fair and Just Prosecution](#), a non-profit organization dedicated to promoting a justice system grounded in fairness, equity, compassion, and fiscal responsibility.

Read the brief [here](#) and see below for a full list of signatories.

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*Fair and Just Prosecution is a national network of elected prosecutors working towards common-sense, compassionate criminal justice reforms. To learn more about FJP’s work, visit <http://www.fairandjustprosecution.org/> or follow us on Facebook [@FairAndJustProsecution](#).*

### **List of Signatories**

**Diana Becton**, District Attorney, Contra Costa County, California  
**Wesley Bell**, Prosecuting Attorney, St. Louis County, Missouri  
**Buta Biberaj**, Commonwealth’s Attorney, Loudoun County, Virginia  
**Sherry Boston**, District Attorney, DeKalb County, Georgia  
**Chesa Boudin**, District Attorney, City and County of San Francisco, California  
**John Choi**, County Attorney, Ramsey County, Minnesota  
**David Clegg**, District Attorney, Ulster County, New York  
**W.J. Michael Cody**, Former Attorney General, Tennessee  
**Scott Colom**, District Attorney, Sixteenth Judicial District, Mississippi  
**John Cruzot**, District Attorney, Dallas County, Texas  
**Satana Deberry**, District Attorney, Durham County, North Carolina  
**Thomas J. Donovan, Jr.**, Attorney General, Vermont

**Michael Dougherty**, District Attorney, Twentieth Judicial District, Colorado

**Mark Dupree**, District Attorney, Wyandotte County, Kansas

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