U.S. House of Representatives
Committee on the Judiciary

Statement of Congressman Robert Wexler
before the
Subcommittee on Crime, Terrorism, and Homeland Security Subcommittee
Hearing on H.R. 2286, "The Bail Bonds Fairness Act"
Thursday, June 7, 2007

Good morning. Chairman Scott, Ranking Member Forbes, members of the subcommittee, thank you for allowing me to testify in support of my bill, H.R. 2286, "The Bail Bonds Fairness Act." Since its first introduction in the 105th Congress, this bill has enjoyed bipartisan support; and I am pleased to join Congressman Keller, who has been a leader on this issue for years, to testify before the subcommittee this morning.

Essentially, this bill seeks to restore realistic expectations for the federal bail bonds system, which was thrown off following a judicial interpretation from the 1980's. Since then, federal judges have been ordering bail bonds to be forfeited even when the defendant appears in court if the defendant fails to behave in a certain way. Bail agents who underwrite federal bonds now must ensure not only appearance, but also other conditions — such as ensuring that the defendant will not consume alcohol — over which the bail agent obviously has no control. While bail agents do accept responsibility for a dependent, they cannot, and should not be expected to be, full-time nannies for each defendant.

The Bail Bond Fairness Act preserves the authority of the judge to grant or refuse bail. The judge will continue to make a determination of the defendant's flight risk and threat to the community. Judges will still have the discretion to determine who is eligible for pretrial release, what conditions accompany that release, and whether or not a suspected criminal is a considerable flight risk. We all agree that if a suspected criminal is a serious threat to society, he or she should stay in jail.

That said, the bail bonds system -- on which the judicial system relies – will fail if it is not reformed. For example, nonviolent individuals -- who are no threat to our society – will not be able to get bonds. Without reform, we run the risk of losing the services bail agents provide and forgetting the original purpose of the bail bond -- to ensure the appearance of a defendant for a later court date.

The bottom line is bail bonds should be primarily involved in guaranteeing appearance in court. Any other valid conditions set by the judge such as alcohol or drug consumption should not be tied to the bond, or the system will collapse. It makes much more sense to revoke the bail bond but not forfeit the bond if the defendant violates a condition set by the judge.

Federal Rule of Criminal Procedure 46(e)(1) has withstood repeated court challenges. In cases such as *United States v. Vaccaro*, the rule has been held to authorize federal courts specifically to order bonds forfeited for violations of collateral conditions of release and not simply for failure to appear. Moreover, the federal courts have continued to uphold and expand the rule because they find no evidence of Congressional intent to the contrary, specifically finding the provisions of the "Bail Reform Act of 1984" (BRA) were not intended to supersede the rule.

It is important to note that even without the authority of Federal Rule of Criminal Procedure 46(e)(1), judges have authority under the BRA to declare a bail bond forfeited for a failure to appear as required by "the conditions of release." It appears that federal judges have merged the purposes of bail and others conditions of release. I understand that judges have come to order bonds forfeited in cases in which the defendant actually appears as ordered, but fails to comply with some collateral conditions of release. As a result the underwriting of bonds for federal defendants has become virtually impossible.

By way of history, in 1997 Congressman Bill McCollum, who now serves as Florida's Attorney General, introduced legislation addressing this problem. The "Bail Bond Fairness Act of 1997" proposed amending Federal Rule of Criminal Procedure 46(e) to divest judges of their authority to order bonds forfeited based simply on the defendant's violation of a collateral condition of release. This alone would not solve the problem of judge's using their authority to forfeit bonds for non-compliance with collateral conditions. A 2001 revision of the original bill clarified that federal judges would also be authorized only to declare bail bonds forfeited where a defendant actually failed to appear physically before a court as ordered and not when a defendant had simply failed to comply with other collateral conditions of release. Subsequently, the "Bail Bond Fairness Act of 2003" added provisions amending the "Bail Reform Act of 1984" (BRA) to clarify the issue of Congressional intent.

The "Bail Bond Fairness Act of 2007" will amend sections 3146(a) and 3148 of the BRA to provide, essentially, that a judge could not declare a bond forfeited based on a violation of any condition of release, other than actual failure to appear physically before the court. The bill would also provide that forfeiture of a bail bond is not an available sanction for violation of a release condition.

Where once the bail agent was simply ensuring the defendant's physical presence, he or she now must

guarantee the defendant's general "good behavior." This is simply unrealistic. Insofar as the risk for the bail agent has greatly increased, the industry has been forced to adhere to strict underwriting guidelines, in most cases requiring full collateral. Consequently, the federal criminal justice system has been deprived of any meaningful bail bond options and bail agents have been effectively locked out of the federal system since the 1980's.

I hope the subcommittee will join me and Congressman Keller in supporting this needed reform of the federal bail bonds system and allow professional bail agents to return to the federal court system. I thank you for your time and consideration of the Bail Bond Fairness Act of 2007.