

**Testimony of Midwest Innocence Project
In Opposition of HB 2780
House Judiciary Committee
March 5, 2024**

My name is Tricia Rojo Bushnell, and I am the Executive Director of the Midwest Innocence Project (MIP). MIP is non-profit that works to exonerate the wrongfully convicted in Kansas, Arkansas, Iowa, Missouri and Nebraska. We represented Floyd Bledsoe, Richard Jones and Lamonte McIntyre, who were the impetus for this body's great work to provide compensation for the wrongfully convicted, and also Olin "Pete" Coones, whose family received compensation after he died tragically in 2021, just 108 days after his exoneration. We want to thank this committee for its leadership and past work enacting a compensation law for exonerees and for continuing to work towards preventing wrongful convictions in the future.

We oppose HB 2780, which, in its current form, would remove the ability of individuals who were exonerated on the basis of an ineffective assistance of counsel claim from collecting compensation for their time spent wrongfully convicted. According to the National Registry of Exonerations, 27% (955 of 3,481) of all exonerations involve claims of inadequate legal defense. Each of these individuals spent years behind bars for crimes they did not commit because they were not provided their constitutional right to an adequate legal defense under the Sixth Amendment. Yet, under this proposed bill, none of those individuals would ever be compensated.

There is no meaningful reason to distinguish between individuals exonerated on ineffective assistance of counsel grounds versus other constitutional violations. Take for example the case of our client, Ricky Kidd, who was wrongfully convicted just over the state line in Kansas City, Missouri. In 1997, Ricky was convicted of a double murder, despite the fact that he had an ironclad alibi – he was at the sheriff's department applying for a gun permit at the time of the murder. He had also stopped at his sister's office – a financial institution with strict visiting rules – where he had to sign in and was videoed on camera. Yet, the jury never understood the alibi because trial counsel failed to investigate and present it, meaning she never secured the log-in sheets or the camera footage and was unable to combat the state's theory that the date on the application was the date the background check was run and not the date Ricky applied. (An investigation proved it did not matter – the background check was always run on the same date of application, but the jury never heard this.) Under this legislation, someone like Ricky would not be compensated if he had been exonerated based on his counsel's ineffectiveness.

Floyd Bledsoe would have similarly been barred from compensation had the federal district court's reversal of his conviction stood up on appeal to the 10th Circuit. In 2007, a federal district court reversed Floyd's conviction, and he was released after the district court found he had received ineffective assistance of counsel. Unfortunately for Floyd, the 10th Circuit reversed that ruling, and he had to turn himself in 9 months later. Had he been exonerated at that time and been spared the additional six years of wrongful incarceration before DNA once again proved his innocence, he would have been home but uncompensated for the seven years already stolen from him.

The strength of one's innocence and the harms they suffer because of a wrongful conviction do not change simply because of the reason the Court chooses to overturn a conviction. Indeed, in most exoneration cases, the defendant raises a number of constitutional

claims, most often including ineffective assistance of counsel, due process violations, and/or state misconduct claims. A court may choose just one to overturn a conviction, and in so doing, can decline to even review the other claims – meaning, it is not that the defendant’s rights were violated in multiple ways, but that the court only needs one to reverse. Under this bill, innocent Kansas exonerated through ineffective assistance of counsel claims would receive nothing, even if the court could have chosen to reach other substantive claims but chose not to because it did not need to.

This committee worked hard to review and pass the legislation that put compensation in place for wrongfully convicted Kansans. And that legislation has successfully worked to address the harms it was aimed to begin to heal since its passage in 2018. We ask this committee to continue to let the statute do its work and oppose HB 2780 as written.