In the Matter of:
WALTER BARTON **)**
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REQUEST TO APPOINT AN INDEPENDENT BOARD OF INQUIRY PURSUANT TO § 552.070

FILED BY THE MIDWEST INNOCENCE PROJECT
&
THE INNOCENCE PROJECT
&
MACARTHUR JUSTICE CENTER

The Innocence Project, the Midwest Innocence Project, and the Roderick & Solange MacArthur Justice Center respectfully move Governor Parson, pursuant to § 552.070 RSMo. (1986) to appoint an independent board of inquiry to evaluate the conviction and death sentence of Walter Barton. Mr. Barton has maintained his innocence since day one; because the case against Mr. Barton was so weak, it took the state five tries to actually convict him and sentence him to death, "improv[ing its case] time after time because they find more snitches"[1]– and, even then Missouri's highest court affirmed his conviction only by the narrowest of margins, with multiple justices strongly dissenting. His conviction rests entirely upon evidence now known to be two of the leading causes of wrongful conviction: incentivized jailhouse informant testimony and blood spatter evidence, an infamously unreliable forensic "science." Today, there is new, reliable evidence, casting even more doubt on his already troubling conviction. Mr. Barton's case is marred by prosecutorial misconduct, as well as ineffective assistance of counsel, from beginning to end.

[1] *State v. Barton*, 240 S.W.3d 693, 716 (Wolff, J., dissenting) (citing the trial court's statement at evidentiary hearing on Mr. Barton's 29.15 post-conviction motion)

Mr. Barton's case has the hallmarks of a wrongful conviction. For all these reasons, which are set forth in more detail below, Mr. Barton's case warrants the Governor's serious consideration and intervention.[2]

Interests of Innocence Project, Midwest Innocence Project, and MacArthur Justice Center

The Innocence Project, the Midwest Innocence Project, and the Roderick & Solange MacArthur Justice Center (Missouri) ("RSMJC") have a unique and critical role in protecting the rights of innocent prisoners around the country. As members of the Innocence Network, a collection of 70-organizations around the world, the Innocence Project and the Midwest Innocence Project are dedicated to providing pro bono legal and investigative services to prisoners, whose actual innocence can be proven through post-conviction evidence. To date, 2,614 innocent men and women have been exonerated for crimes they did not commit. National Registry of Exonerations, https://www.law.umich.edu/special/exoneration/Pages/about.aspx. Out of the 367 individuals exonerated by DNA evidence, 21 were exonerated from death row.[3] 62 of the DNA exonerations involved jailhouse informants.[4] Nearly half (44 percent) of the DNA exonerations involved misapplication of a forensic science, like blood spatter evidence. Because of their expertise, the Innocence Project, the Midwest Innocence Project, and RSMJC have dedicated themselves to improving the reliability of the criminal justice system and preventing wrongful convictions by researching their causes and pursuing reforms to enhance the truth-seeking functions of the criminal justice system.

[2] The State of Missouri intends to put Walter Barton to death on May 19. Today, the District Court for the Western District of Missouri stayed the execution to permit the court time to consider the merits of Mr. Barton's petition for writ of habeas corpus, which includes a claim of actual innocence. *Barton v. Stange*, 4:20-cv-08001, Doc. 14 (May, 15, 2020). The Attorney General has already appealed. *See* Eighth Circuit Court of Appeals, Case No. 20-1985.
[3] Innocence Project, DNA Exonerations in the United States, https://www.innocenceproject.org/dna-exonerations-in-the-united-states/.
[4] *Id.*

Walter Barton, an Innocent Man, is the Victim of the Prosecutor's Tunnel Vision

Walter Barton has maintained his innocence since day one. He has never wavered, even turning down a plea deal which would have taken the death penalty off the table. And the evidence against Mr. Barton has always been weak and circumstantial—so weak it took the state five tries over the course of 15 years—to convict and sentence him to death. Just two pieces of evidence were used to secure Mr. Barton's conviction, both of which have now been fatally undermined. First was the blood spatter evidence, the only physical evidence that purportedly connects Mr. Barton to this crime, that new expert analysis now invalidates. And second, a jailhouse snitch, who years after the crime, claimed that Mr. Barton had made admissions to her. The jailhouse snitch, who did not come forward until years after Mr. Barton's alleged admissions, both perjured herself and received a deal in which pending criminal charges against her were dropped in exchange for her testimony.[5]

Mr. Barton was convicted for the 1991 murder of Gladys Kuehler in her trailer home in Ozark, Missouri. She was stabbed more than fifty times and discovered in a bloody crime scene. Mr. Barton was friends with Ms. Kuehler and many other residents of the trailer park and had visited Ms. Kuehler earlier that day to borrow money, which she gave him. He and two others found her body later that day. In discovering her, a small spot of Ms. Kuehler's blood got on Mr. Barton's shirt, a fact that was unsurprising given that Mr. Barton had discovered the victim as she bled out in her bedroom and had pulled the victim's granddaughter off of the victim's body—an

[5] That snitch now goes by a different name and is currently incarcerated in federal prison for mail fraud and identify theft, which involved a year and a half long scheme defrauding ten individual and eleven financial institutions. *See* United States District Court, Southern District of Indiana Case number 16-00094, Docs. 1 and 46.

account the granddaughter confirmed to police on the day of the crime, but backed away from by the time of trial. Mr. Barton had no other blood or injuries on him.

As a Missouri Supreme Court Justice has questioned: "How could Barton have perpetrated the kind of violent, forceful attack that killed Ms. Kuehler and walked away quite unstained by the effort?"[6] Multiple witnesses confirm that Mr. Barton never changed his clothes that day, and witnesses who saw him soon after he visited the victim reported that there was no visible blood on him or his clothing. While the State suggested that Barton had cleaned himself up in his friend's bathroom, the sink and towels were tested for blood and none was found.

1. The Prosecution's Repeated Attempts to Convict Mr. Barton Are Marked by Unreliable Manufactured Evidence and Prosecutorial Misconduct

The State's dogged pursuit of a man who is likely innocent has left "a trail of mishaps and misdeeds that, taken together, reflect poorly on the criminal justice system," as a dissenting justice observed in Mr. Barton's 2007 Missouri Supreme Court opinion.[7] Each of the State's failed attempts to secure a conviction relate in one way or another to the weakness of the case against Mr. Barton and the persistent misconduct of the prosecutors.

Mr. Barton's **first trial** ended in a mistrial after the jury was selected and sworn because the prosecutor—no newbie to the game—had failed to endorse any witnesses, a basic requirement of state procedural rules. Whether the prosecutor induced a mistrial in order to buy time to shore up the state's weak case—and therefore whether Mr. Barton should have been afforded *Oregon v. Kennedy* double jeopardy protection—is an issue the Missouri Supreme Court has never addressed to this day.[8]

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[6] *State v. Barton*, 240 S.W.3d 693, 713 (Mo. 2007) (Wolff, J., dissenting, with Stith, C.J. & Teitleman, J.).
[7] *Id.* at 711-712.
[8] *Id.*

Mr. Barton's **second trial** resulted in a hung jury, with jurors unconvinced by the state's presentation of evidence. Mr. Barton's **third trial** resulted in a conviction that was reversed on direct appeal because the trial court had restricted defense counsel's closing argument, which pointed out a decisive discrepancy in the timeline of the state's case.[9]

Instead of reading the writing on the wall – that this case was too flimsy for conviction, much less a death sentence – the State took new and desperate measures to conjure evidence. After three trials and multiple appeals, the State manufactured a jailhouse informant.

The conviction and death sentence resulting from Mr. Barton's **fourth trial** were once again overturned, this time because the prosecutor had engaged in multiple acts of misconduct, including the knowing use of perjured testimony of a jailhouse informant, failing to disclose the full (and lengthy) criminal history of the jailhouse informant, and failing to disclose favorable treatment that the informant received in exchange for her testimony.

This same jailhouse informant testified at Mr. Barton's **fifth trial** and was permitted to repeat the same egregious lies that the state post-conviction court had found "critical to the prosecution's case," in granting Mr. Barton a new trial.[10] At this fifth trial – which is the basis for Mr. Barton's death sentence – now 15 years after the crime, the State not only presented unreliable evidence from the jailhouse snitch, it also presented misleading expert evidence on

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[9] *State v. Barton*, 936 S.W.2d 781 (Mo. 1996) (en banc). Defense counsel had argued that the testimony established that the decedent's, Ms. Kuehler's, granddaughter had spoken to Ms. Kuehler on the phone for 20-25 minutes after the time that Mr. Barton had been in Ms. Keuhler's trailer and answered her phone. The prosecutor objected by stating, erroneously, "There is no such conclusion possible from that evidence." 936 S.W.2d at 783, 788. This language was particularly "troublesome," according to the Missouri Supreme Court, because "[b]y sustaining the objection, the judge not only precluded the defense from driving the point home, but effectively gave the prosecutor's statement, that the defense's argument was impossible, the court's stamp of approval." *Id*. at 788. Defense counsel's argument was significant because it established that "when Barton was at Mrs. Kuehler's trailer, she was alive and well." *Id*. at 787. "Further, with Selvidge speaking to her grandmother on the phone until 3:25, the jury could have found that there was not enough time for Barton to have committed this brutal and bloody murder, clean himself, dispose of the weapon, and then walk to Carol Horton's trailer by 3:30." *Id.*

[10] Findings of Fact and Conclusions of Law and Judgment, *Barton v. State*, No. CV-199-453CC (Benton Cty Cir. Ct., Jan. 30, 2004).

blood pattern analysis—which has been debunked; and the State's witnesses changed their testimony about the timeline of events to make the case against Mr. Barton plausible (and defense counsel failed to impeach these witnesses with their contradictory testimony at his earlier trial).

In other words, by the time of the State's fifth attempt to prosecute Mr. Barton, as the divided Missouri Supreme Court pointed out, "the numerous reversals and errors in this case ha[d] allowed the state years and years in which to build its case," while simultaneously "compromise[ing] Barton's ability to mount a defense."[11] "Prosecutorial misconduct has plagued Barton's trials from the outset and . . . allowed the state numerous opportunities to bolster its evidence."[12]

2. The Misconduct in Mr. Barton's case is part of a pattern and practice of the Missouri Attorney General's Office at that time.

Mr. Barton's case was prosecuted by a special unit under then Attorney General Jeremiah "Jay" Nixon. The unit traveled throughout the state to step in for local prosecutors in county courthouses in order to conduct capital cases. Robert Ahsens, one of the most infamous assistants in the unit, prosecuted four of Mr. Baron's trials. Mr. Barton's first trial was barely underway when the defense moved for a mistrial because Mr. Ahsens—a seasoned prosecutor—failed to take the most basic step in a criminal prosecution and endorse any witnesses, thereby inducing the defense to move for a mistrial. At Mr. Barton's third trial, Mr. Ahsens cut off defense counsel in the middle of her argument to the jury that the State's timeline of events did not support a conviction, by stating prejudicially and erroneously that no such conclusion was possible from the evidence. The Missouri Supreme Court reversed Mr. Barton's conviction

[11] *State v. Barton*, 240 S.W.3d 693, 717 (Wolff, J., dissenting, with Stith, C.J. and Teitelman, J.)..
[12] *Id*. at 716.

because the trial court had sustained Mr. Ahsen's objection and thereby endorsed his incorrect statement about the evidence. Mr. Barton's fourth trial was reversed once again because of Mr. Ahsens' misconduct. This time he failed to disclose powerful impeachment evidence against the jailhouse snitch whose testimony the court found to be critical to the State's case.

After Mr. Ahsens finally recused himself due to his own misconduct, the unit stayed on, replacing him with Assistant Attorney General Michael Bradley. The unit had a well-established pattern and practice of gravely unethical and unconstitutional tactics. Many of these instances resulted in several wrongful murder convictions and resultant exonerations.

Joshua Kezer spent sixteen years in prison before he was exonerated in 2009. In granting his writ of habeas corpus and ordering his release, the Cole County circuit court found that unit "prosecutors repeatedly misstated the evidence" to the jury and hid exculpatory evidence. Findings of Fact, Conclusions of Law, and Judgment at 2–3, 19, 31–33, 44, *Kezer v. Dormire*, No. 08AC-CC00293 (Cole Cty., Feb. 17, 2009) (*citing Brady v. Maryland*, 373 U.S. 83 (1963)). Richard Clay's death sentence and conviction were vacated in 2001 by a federal district court because the prosecution lied to the jury about the existence of a plea deal with a state's witness. *Clay v. Bowersox*, 367 F.3d 993, 997 (8th Cir. 2004). Though Clay's conviction and sentence were reinstated by the federal circuit court on procedural grounds, in 2009 Governor Nixon commuted Clay's death sentence.

Dale Helmig was exonerated in 2010 and released from prison after serving seventeen years, when a DeKalb county court judge ruled that the unit prosecutor knowingly presented false testimony to the jury and then used it to make "highly improper" arguments as to the defendant's guilt. Findings of Fact and Conclusions of Law at 55, 79–80, 85, 87–89, *Helmig v. Denny*, No. 09DK-CC00110 (Dekalb Cty., Nov. 3, 2010). In 2013, the Missouri Supreme Court

reversed the conviction of Mark Woodworth, who was tried by the unit in 1995 and, after a reversal, in 1997. *State ex rel. Woodworth v. Denney*, 396 S.W.3d 330, 345 (Mo. 2013), *as modified* (Jan. 29, 2013). The court found that a unit prosecutor failed to disclose secret letters between himself, the judge, and the surviving victim and withheld police reports involving the victim and another suspect.

Robert Ahsens himself was a serial offender with a history of obtaining death sentences only to have them reversed due to prosecutorial misconduct. In 2008, defendant Michael D. Taylor's death sentence was reversed because Mr. Ahsens failed to disclose material evidence regarding deals with and the lack of credibility of a key prosecution witness. *State v. Taylor*, 262 S.W.3d 231, 240-48 (Mo. 2008) (en banc). In *Tisius v. State*, 183 S.W.3d 207, 211 (Mo. 2006) (en banc), the motion court remanded the petitioner's case for a new penalty phase on the grounds that Mr. Ahsens failed to disclose evidence to the petitioner and presented false and misleading evidence to the jury. Mr. Forrest argued that Mr. Ahsen's history of misconduct supported his *Brady* claim because it exposed the state's willingness to repeatedly hide evidence from defendants in order to win convictions and death sentences at any cost.

3. New Evidence of Innocence Casts Doubt on Mr. Barton's Already Troubling Conviction and Death Sentence

The only physical evidence that arguably connected Walter Barton to this crime was a small spot of blood found on his shirt that matched the victim's blood. As explained above, there was a good explanation for that, corroborated by a witness, until she flipped and changed her story at trial. At trial, the state presented testimony from a "blood-pattern expert" that this blood spot came from "high velocity" spatter, as the victim was assaulted. The expert further definitively testified that the blood spot could not have come from casual contact, as Mr. Barton suggested. This evidence was critical at trial because this blood pattern analysis lent a sense of scientific

certainty to an otherwise equivocal set of facts and a mess of circumstantial evidence that was, in a Missouri Supreme Court Justice's words, "full of glaring inadequacies."[13] But the state's "expert" has now been fatally undermined.

A preeminent, well-respected forensic scientist who specializes in crime scene investigation, Lawrence Renner, has now evaluated the blood evidence in this case and concluded with certainty that the blood spots could not have come from high velocity spatter.[14] Instead, they are transfer stains, which is consistent with what Mr. Barton has always said: that the blood must have gotten on his shirt when he, with two other people, found the victim's body and pulled the victim's granddaughter away from her body. Renner further testified that the nature of this crime meant that "there would have undoubtedly been a large amount of blood spattered around the scene and upon Ms. Kuehler's assailant," and that the clothing taken from Mr. Barton, which witnesses consistently confirm he wore all day, "could not have been the clothing worn by Ms. Kuehler's assailant."[15]

Mr. Barton is not alone in his wrongful conviction on the basis of junk "expert" testimony regarding blood spatter analysis. Erroneous blood spatter testimony has contributed to several recent wrongful convictions.[16] A groundbreaking National Academy of Sciences study published

[13] *State v. Barton*, 240 S.W.3d 693, 713 (Mo. 2007) (Wolff, J., dissenting, with Stith, C.J., & Teitleman, J.)
[14] The authors can make any additional materials, including Mr. Renner's affidavit as well as affidavits regarding juror investigation referenced herein, available to you, if interested.
[15] Renner also confirmed that there was no blood on any of Mr. Barton's other clothing or his boots, despite some inconsistent state testimony about this at trial.
[16] For example, Indiana state trooper David Camm found his wife and two children shot to death in their home in 2000 and was subsequently convicted of their murders based on the testimony of bloodstain-pattern analysts that eight specks of blood found on the T-shirt Camm wore on the night of the crime were, as here, "high-velocity impact spatter" from the shooting. The defense produced its own bloodstain experts, who argued that the specks in question were actually "transfer stains" — blood that blotted Camm's T-shirt as he tried to render aid. Camm was acquitted in 2013 at a third trial, after spending 13 years behind bars. "Bloodstain Analysis Convinced a Jury She Stabbed Her 10-Year-Old Son. Now, Even Freedom Can't Give Her Back Her Life." Pamela Colloff, ProPublica, Dec. 20, 2018 (also noting that "From Oregon to Texas, from North Carolina to New York, convictions that hinged on the testimony of a bloodstain-pattern analyst have been overturned and the defendants acquitted, or the charges dropped," and in 2018 a Missouri judge vacated the conviction of Brad Jennings for the 2006 murder of his wife,

in 2009 regarding serious deficiencies in the field of forensic science in the United States noted that "the uncertainties associated with bloodstain-pattern analysis is enormous."[17] The authors of the study concluded that "in general, the opinions of bloodstain pattern analysts are more subjective than scientific." In 2018, the Texas Forensic Science Commission held a one-day hearing regarding bloodstain-pattern evidence and, as a result, decided to create an accreditation requirement for bloodstain-pattern-analysis experts in Texas. Missouri should consider a similar requirement. Until it does so, it should not rush to execute a man whose conviction hinges on this debunked "science."[18]

Absent the blood evidence – the only physical evidence allegedly tying Mr. Barton to the crime – all that remains of the State's case is the snitch testimony from Katherine Allen, which was unreliable on its face. Of the 367 DNA exonerations in the United States to date, jailhouse informants played a role in nearly one in five of the underlying wrongful convictions.[19] In fact, jailhouse snitch testimony has been found to be the leading cause of wrongful convictions in capital cases.[20] Today, nearly a quarter of death-row exonerations – 22 percent – involved prosecutor reliance on a jailhouse informant.[21] As in Mr. Barton's case, informants most frequently appear in cases with weak evidence, because they simply are not needed where there is robust forensic

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obtained in part based on blood spatter testimony, after evidence emerged that supported his claim that his wife committed suicide.)

[17] National Resource Council of the National Academies, "Strengthening Forensic Science in the UnitedStates: A Path Forward" (2009). *See also* Leora Smith, *How an Unproven Forensic Sciecne Became a Courtroom Staple*, The New York Times Magazine (5/31/18), available at https://www.nytimes.com/interactive/2018/05/31/magazine/bloodstain-pattern-analysis-timeline.html

[18] *Id.*

[19] Innocence Project, DNA Exonerations in the United States, https://www.innocenceproject.org/dna-exonerations-in-the-united-states/.

[20] *The Snitch System*, Center on Wrongful Convictions (2005), available at http://www.law.northwestern.edu/legalclinic/wrongfulconvictions/documents/SnitchSystemBooklet.pdf

[21] Pamela Coloff, *How This Con Man's Wild Testimony Sent Dozens to Jail, and 4 to Death Row*, The New York Times Magazine (12/4/19), available at https://www.nytimes.com/2019/12/04/magazine/jailhouse-informant.html

evidence or witness testimony.[22] Against this backdrop, it is perhaps unsurprising that, after three failed trials and a paucity of evidence, the prosecutor chose to take the jailhouse informant route.

It is questionable whether the jury even believed or relied upon this snitch testimony. One juror has recently said she relied on (what we now know to be erroneous) blood evidence to convict.[23] But, even to the extent the jury did rely upon her testimony, they were deprived of critical information impeaching her due to the ineffectiveness of Mr. Barton's trial counsel. Despite the fact that there was an appellate opinion spelling out the damning problems with Ms. Allen's testimony at Mr. Barton's fourth trial, including the fact that she received a deal in exchange for her testimony wherein pending criminal charges were dismissed, as well as the fact that she had 29 prior convictions for offenses involving dishonesty and fraud, at Mr. Barton's fifth trial counsel inexplicably did not ask Allen whether she received a deal, whether pending criminal charges against her were dismissed, or about any of the 29 prior convictions except for a measly twelve. That error is inexcusable and could not possibly have been the result of any reasonable trial strategy.

We do not have to entirely speculate about what the jury would have done had it known what we know now. Mr. Barton's current legal team was in the process of interviewing jurors about whether the new expert opinion about the blood evidence would have impacted their guilty verdict when the pandemic began. Nonetheless, three jurors have already come forward who believe this new evidence is "compelling" and would have impacted deliberations. Specifically, one Juror felt, at time of trial, that the state's blood spatter expert testimony "was the State's strongest evidence against [Barton]", especially since Fifth Trial defense counsel did not do

[22] *Id.*
[23] *See Barton v. Stange*, Case No. 4:6:20-CV-3130, Doc. No. 1, Appendix K (Affidavit of Juror) and Appendix V (Affidavit of Juror. *See also* Doc. No. 1 at p. 27.

much to counter that evidence; however, having now seen expert Lawrence Renner's affidavit regarding his analysis of the evidence, the Juror now believes "Mr. Renner's testimony to be compelling as it directly contradicts the State's theory that the blood stains on Mr. Barton's clothing were impact spatter, and supports the defense theory that they were transfer stains…."[24]

4. Exculpatory Evidence at the Time of Trial Corroborates New Evidence of Innocence

There is other exculpatory evidence that has never been explained. A hair was found on the victim's stomach that did not match Barton,[25] and biological material found underneath the victim's nails did not match Barton (or the victim) either.[26] This is significant given that the victim was killed in a close-range violent confrontation, stabbed dozens of times making it likely she may have fought for her life and scratched her assailant.[27] As the dissenting Missouri Supreme Court Justice observed, "[i]n order to reach its result, the majority of the court . . . must imagine that the evidence is better than it is."[28] These words are even truer today than when written in 2007. A man should not be executed on imaginary evidence, particularly where additional forensic evidence testing is possible and could identify the real perpetrator.

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"From the first mistrial in 1993 through three completed trials, post-conviction proceedings, multiple appeals, there is a trail of mishaps and misdeeds that, taken together, reflected poorly on the criminal justice system."[29] The system, and all of its players from countless corrupt state actors to Mr. Barton's own defense attorneys, has failed Mr. Barton. This is not the

[24] Again, the authors would be happy to provide additional materials such as this juror affidavit.
[25] Presumably this hair could be DNA tested using more modern, updated technology than was available at the time of trial and the DNA profile run through CODIS, in an attempt to identify the real perpetrator. The authors are unaware of reasons why current counsel for Mr. Barton has not sought this type of forensic testing.
[26] This evidence, is preserved, could also be DNA tested and run through CODIS.
[27] Testimony from the coroner at trial also confirmed that the victim had defensive wounds.
[28] *State v. Barton*, 240 S.W.3d 693, 718 (J. Wolff, dissenting with Stith, C.J. & Teitelman, J.).
[29] *Id.* at 711-12 .

record upon which to sentence a man to death, particularly while he still has a habeas petition pending in federal court and active investigation is ongoing, yet stymied by COVID-19 shelter-in-place orders over the past two months. We respectfully ask that you appoint a Board of Inquiry to evaluate Mr. Barton's shaky conviction and death sentence.

The Governor's Authority to Appoint a Board of Inquiry

The Missouri Constitution bestows upon the Governor the power to grant reprieves, commutations and pardons:

> The governor shall have power to grant reprieves, commutations and pardons, after conviction, for all offenses except treason and cases of impeachment, upon such conditions and with such restrictions and limitations as he may deem proper, subject to provisions of law as to the manner of applying for pardons. The power to pardon shall not include the power to parole.

Mo. Const. Art. IV sec. 7.

The General Assembly, in furtherance of the Governor's constitutional powers, has given the Governor the discretion to appoint a Board of Inquiry to "gather information, whether or not admissible in a court of law, bearing on whether or not a person condemned to death should be executed, reprieved or pardoned, or whether the person's sentence should be commuted." § 552.070 RSMo. (1986). The statute imposes a duty on all persons to cooperate with the Board's investigation, and imposes on the Board a duty to receive and hold information in strict confidence.

There is precedent for a Missouri Governor to appoint a board of inquiry to hear evidence on a condemned prisoner's evidence of innocence and application for executive clemency. In the case of Lloyd E. Schlup, the prisoner made a plausible claim of innocence in a factually complex case. At the time of Mr. Schlup's petition, the courts had declined to hold a hearing in order his innocence claim for procedural reasons. Then-Governor Mel Carnahan appointed a Board of Inquiry to conduct a hearing into Mr. Schlup's claim of innocence. The Board's role in the case

became moot when the United States Supreme Court ordered a judicial hearing on Mr. Schlup's claim.

The manner in which Governor Carnahan appointed a five-member Board is further instructive. He personally made one selection, and he asked counsel for Mr. Schlup and counsel for the State of Missouri each to nominate two Missouri Circuit Judges to serve the Board. Both cases involve a court's refusal to hear evidence of innocence, rather than a court's rejection of such evidence. Much like in Mr. Schlup's case, clear and compelling evidence of Mr. Barton's innocence will go unreviewed unless the Governor exercises his inherent power to stay the execution and convene a board of inquiry.

More recently, on August 22, 2018, Governor Greitens convened a Board of Inquiry in Marcellus Williams's case to look into evidence of his innocence.

At a minimum, Governor Parson should follow the lead of his Republican counterparts in Texas and Tennessee who have recently delayed executions – six in Texas and one in Tennessee – due to the COVID-19 pandemic,[30] and do the same.[31]

Conclusion

The Innocence Project, the Midwest Innocence Project, and the MacArthur Justice Center respectfully have deep concerns that Missouri is going to execute an innocent man. Thus, we request that, pursuant to § 552.070 RSMo. (1986), in the interest of justice, Governor Parson appoint an Independent Board of Inquiry to examine William Barton's conviction and death

[30] *See, e.g.*, Austin Sarat, The First Execution of the Pandemic: Missouri is Pushing Ahead to Execute a Possibly Innocent Man, Slate (5/13/20), available at https://slate.com/news-and-politics/2020/05/missouri-pandemic-execution-walter-barton.html.

[31] Though the Missouri DOC has indicated its intent to move forward with the execution, undersigned are not aware of any efforts on the part of the DOC to modify its execution protocol and policies to address Covid-related concerns. For example, the DOC procedure manual provides that the Director and the State "shall" invite a total of eight citizen witnesses and three media witnesses, in addition to the discretionary witnesses that the defendant and the Director "may" call. Yet, the federal government has cautioned against ten or more persons convening.

sentence, including evaluating exculpatory blood evidence. The Governor has the power to grant Mr. Barton a reprieve and the hearing he deserves. Failing his exercise of that power, Missouri will execute an innocence man on May 19.

Respectfully Submitted,

Tricia J. Bushnell, #66818
Midwest Innocence Project
605 W. 47th Street, #222
Kansas City, MO 64112
(816) 221-2166/(888) 446-3287(fax)
tbushnell@themip.org

Vanessa Potkin
Innocence Project, Inc.
40 Worth Street, Suite 701
New York, New York 10013
(212) 364-5340

Megan G. Crane, #716124
Roderick and Solange MacArthur Justice Center
3115 South Grand Blvd., Suite 300
St. Louis, MO 63118
(314) 254-8541
Megan.crane@macarthurjustice.org