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Testimony from:
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In SUPPORT of Montana Senate Bill 156, regarding Incentivized Witnesses sponsored by Sen. Roger Webb of Billings, and Senate Bill 172, regarding Post-Conviction Relief Based on New Evidence sponsored by Sen. Margie McDonald of Billings

January 29, 2019

Senate Judiciary Committee

Dear Chairman Regier and members of the committee,

My name is Steven Greenhut. I am the Western Region Director for the R Street Institute, which is a Washington, D.C.-based nonprofit, nonpartisan, public policy research organization. I handle our efforts in the Western states, including Montana. Our mission is to engage in policy research and outreach to promote free markets and limited, effective government in many areas, including the criminal-justice system, which is why SB 156 and SB 172 are of special interest to us.

The goal of criminal-justice reform is to ensure that the justice system performs its job of truly dispensing justice. In this context, there are few things worse than wrongfully convicting a person of crime. As Benjamin Franklin wrote, “That it is better 100 guilty Persons should escape than that one innocent person should suffer, is a maxim that has been long and generally approved.” The government has immense powers to deprive individuals of their liberty, which is why our nation’s founders created a system filled with protections for the accused.

That philosophy explains why prosecutors are legally required to pursue justice — and not just rack up convictions. Everyone knows that wrongful convictions cause immense suffering for individuals and their families. They also deprive crime victims of justice, given that there is no solace if the wrong person languishes in prison while the guilty party roams free. Furthermore, incarcerating the wrong person wastes taxpayer dollars. Wrongful convictions also undermine public safety, given that the actual perpetrator is still on the lam.

These are obvious points. But the criminal-justice system is not always quick to correct its mistakes or to admit that it ever makes them. State legislatures need to pass targeted reforms that protect the innocent but do not unnecessarily hobble the ability of district attorneys to convict the guilty. These two bills strike a perfect balance.

SB 156 provides additional and long-needed protections against false testimony. Currently, prosecutors need only provide those accused of crimes with five days’ notice before trial. The bill extends the

required notice time to give the accused enough leeway to prepare an adequate defense and raise witness reliability issues to judges and jurors. The bill also clarifies the kind of information that the state must provide to the accused, including the disclosure of any materials related to an incentivized witness' credibility.

Incentivized witnesses receive myriad benefits from their testimony, including reduced sentences, dismissal of charges against them and various special privileges. This gives these witnesses a strong incentive to provide inaccurate information. Their testimony, however, can be extremely influential and often leads to improper guilty verdicts. The Innocence Project notes that false testimony from incentivized witnesses played a role in four of the 14 exonerations that have taken place in Montana. This situation is in desperate need of reform, and SB 156 represents a solid step in the right direction.

SB 172 is equally important. Until 2015, wrongfully convicted Montanans could bring forth new non-DNA evidence of their innocence as long as there was a "reasonable probability of non-conviction." A 2015 state Supreme Court ruling tossed out that sensible standard, which is used in a majority of states. Today, the wrongfully convicted can only get a new hearing if they provide new non-DNA evidence showing that they could not have committed the crime.

Prosecutors and government agencies are not perfect. They make mistakes. Sometimes they may even be guilty of misconduct. That is the human condition. There must be a way to right these wrongs when compelling evidence of them becomes known. It undermines the spirit of the law — and the ideas set forth by our founders — to force a person to remain in prison when substantive new evidence suggests they might be innocent. This includes a confession from the actual perpetrator as well as scientific advancements that debunk the evidence used to secure the conviction.

Both of these bills will promote true justice and will in no way hamper law enforcement's ability to prosecute the guilty. For those reasons, we strongly support these measures.

Thank you for your time and consideration. Please do not hesitate to contact me if I can ever be of assistance.

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