In the Matter of:)
LEONARD TAYLOR)
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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, & PHILLIPS BLACK

The Midwest Innocence Project, the Innocence Project, and Philips Black respectfully request Governor Parson appoint an independent board of inquiry pursuant to § 552.070 RSMo., to evaluate the conviction and death sentence of Leonard "Raheem" Taylor. Taylor has always maintained his innocence; he was 1,800 miles away at the time of the crime. Yet, despite credible evidence of his innocence at the time of trial, as well as new compelling pieces of evidence since discovered, no factfinder has ever been presented with Taylor's claim of actual innocence—due to no fault of his own. *See infra,* Section III. It would be an intolerable injustice for Leonard Taylor to be executed without a full and fair resolution on the question of his guilt or innocence. A Board of Inquiry would provide that resolution—requiring that all of the evidence, exculpatory and inculpatory, be reviewed in its totality for the very first time,[1] and is necessary to ensure the public can have faith in our criminal justice system.

[1] 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.

Leonard Taylor was initially a suspect in the murders of Angela Rowe and her three children because he was the victim's boyfriend and the only member of the household not home at the time of the murder. From there, the police focused solely on Taylor—to the exclusion of other suspects—and failed to follow any other (more credible) leads. Indeed, the State's initial forensic review supported Taylor's claim of innocence, indicating the crime occurred when the state stipulated, and has never disputed, Taylor was out of state, over 1,800 miles away. Taylor would not have been convicted but for the State's last minute change to the time of death—a change that was unconstitutionally withheld from the defense, who did not learn of the game-changing revision until trial, and which had no basis in science. The State's sleight of hand might not have convicted Taylor, however, if he had effective representation at trial. But he did not. Taylor's trial counsel failed to retain a pathologist expert, despite the fact that the time of death was critical to Taylor's alibi. And none of Taylor's subsequent appointed attorneys retained a forensic pathologist to review the medical examiner's shifting conclusion about time of death *until just one week ago*—a mere two weeks before Taylor's execution date—despite having repeatedly asserted in pleadings to the courts that Taylor was innocent. Now we know that an independent forensic pathologist—Dr. Jane Turner—concluded that the medical examiner's change to the time of death conclusion is without a scientific basis.[2]

At trial, once the State expanded the time of death to make it possible Taylor could have committed the crime before flying to California, the State relied on Taylor's older brother Perry Taylor to convict him. Perry made a videotaped statement to police that Taylor called him and confessed to this crime. But Perry recanted immediately after making this statement and repeatedly

[2] Dr. Turner wrote in her report, dated January 25, 2022: "Although I need to perform a thorough review of the autopsy report, photographs, and related investigative materials there is significant probability that a full review would discredit Dr. Burch's trial testimony" that the deaths occurred as much as two to three weeks earlier. Ex. D (Affidavit of Dr. Jane Turner) at ¶7.

and consistently explained that his statement was false. He only made the tape because police coerced him, threatened him and his mother, beat him, and told him what to say. Indeed, Perry's statement has all the red flags of a false confession or false witness statement, as explained by former D.C. homicide detective and interrogation expert James Trainum, *see* Ex. E (Report of James Trainum), including that several significant details are wrong, and the details that are accurate were all known to police before they interrogated him multiple times over multiple days. As with the time of death, it does not appear that trial counsel did anything to investigate or rebut Perry's statement that Taylor confessed. And Taylor's subsequent counsel in the over twelve years since his conviction have also failed to investigate or retain an expert to analyze these interrogaitons and resulting statement, despite their clear professional and ethical obligations to do so.

Leonard Taylor, throughout every level of his state and federal proceedings, has had the misfortune of being represented by ineffective counsel who did little, if any, investigation on his behalf and, as a result, failed to appropriately litigate his claims or present his actual innocence. For all of these these reasons, detailed below, Leonard Taylor's case warrants the Governor's serious consideration and intervention.

We recognize the timing of this request is far from ideal, and we wish it was not necessary. *See infra*, section III. But the undersigned innocence organizations did not become aware of Taylor's credible claim of innocence until very recently because (1) Taylor's post-conviction counsel has never presented his claim of actual innocence to any court, so there is no public filing presenting his claim and evidence of innocence; (2) post-conviction counsel never investigated Taylor's innocence (or anything else about his case) until late 2022, and did not produce any new evidence of innocence until January 3, 2023, January 25, 2023, and January 26, 2023. Once the undersigned organizations learned of the credible evidence supporting Taylor's claim of

innocence, the multiple avenues for investigating additional, thus-far unexplored evidence of innocence, and the unconscionably poor quality of legal representation received by Taylor at trial and in post-conviction, the undersigned organizations felt compelled to bring this request forward. Without a Board of Inquiry, there is a very real chance that an innocent man may be executed without his case ever receiving a full investigation or presenting his evidence of innocence to any factfinder.

INTERESTS OF THE MIDWEST INNOCENCE PROJECT, THE INNOCENCE PROJECT, & PHILIPS BLACK

The Midwest Innocence Project, the Innocence Project (New York), and Phillips Black 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 71 innocence organizations around the country and the world, the Midwest Innocence Project and the 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, 3,367 innocent men and women have been exonerated for crimes they did not commit, including 52 individuals exonerated in the State of Missouri, including 4 from Missouri's death row.[3] Those 3,367 exonerations also include the exoneration of 190 death sentenced individuals. When compared to the number of individuals who have been executed, this equals a rate of one exoneration of an individual from death row for roughly every 8 individuals executed.[4]

[3]Nat'l Registry of Exonerations, *Contributing Factors and Type of Crime*, https://www.law.umich.edu/special/exoneration/Pages/about.aspx.

[4] Death Penalty Info. Ctr ("DPIC"), *Sentencing Data*, https://deathpenaltyinfo.org/facts-and-research/sentencing-data/death-sentences-in-the-united-states-from-1977-by-state-and-by-year. Of the 8,770 individuals sentenced to death, 1,558 were executed. DPIC, *Execution Database*, https://deathpenaltyinfo.org/executions/execution-database.

Flawed forensic evidence, like the time of death testimony here, was a factor in 23% of the total number of exonerations known by the Exoneration Registry, 46% of exonerations achieved with the use of DNA testing, and 42% of exonerations of persons who were charged with murder.[5] False confessions were also a factor in 393 (12%) of known exonerations, 135 (24%) of DNA exonerations, and 269 (23%) of known exonerations for murder.[6]

Phillips Black is a nonprofit, public interest law practice dedicated to providing the highest quality of legal representation to incarcerated individuals in the United States sentenced to the severest penalties under law. Phillips Black further contributes to the rule of law by consulting with capital counsel, conducting death penalty clinical training, and developing research on the administration of criminal justice.

Because of their expertise, the Midwest Innocence Project, the Innocence Project, and Philips Black 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.

I. LEONARD TAYLOR IS INNOCENT

A. The Victims were Alive after Leonard Taylor Flew to Los Angeles on November 26, 2004

It is undisputed that Taylor flew to California a week before the victims were found. Multiple witnesses—including multiple relatives of the victims and a neighbor (a pastor)—spoke

[5] Nat'l Registry of Exonerations, *Interactive Data Display*, https://www.law.umich.edu/special/exoneration/Pages/Exonerations-in-the-United-States-Map.aspx; The Innocence Project, *DNA Exonerations in the United States*, https://innocenceproject.org/dna-exonerations-in-the-united-states/.

[6] Nat'l Registry of Exonerations, *% Exonerations By Contributing Factor*, https://www.law.umich.edu/special/exoneration/Pages/ExonerationsContribFactorsByCrime.aspx.

and interacted with the victims after Taylor left town for California, confirming they were all alive when he left. The police investigation, including extensive interviews of Angela Rowe's family, friends, employer, and officials from the children's school, made clear that they could not have been killed until the week of November 29, the week after Thanksgiving.

- The Rowes' neighbor, pastor Elmer Massy, saw Angela outside her home on the weekend after Thanksgiving. He also saw a light-skinned Black man going in and out of her home during the week of Nov. 29.
- Angela's sister, Gerjuan Rowe, told police that she spoke to Angela on the phone and also met her in person to borrow money on November 27 and 28. Angela repeated these facts in her sworn deposition. She recently confirmed these dates in an interview with an investigator.
- The paternal aunts of the Rowe children, Beverly and Sherry Conley, told police that they had spoken to one of the children and to Angela on November 27th and November 28th.

All of this evidence was discovered by police *before* they knew that Taylor had an airtight alibi from November 26 through December 3 (the day the victims were found deceased). This evidence is reliable because it was contemporaneous with the crime, and there is thus no risk that it was contaminated or tainted by events after the crime (such as media, investigative actions, or other).

New evidence further corroborates Taylor's alibi, providing additional compelling evidence the victims were still alive after he left St. Louis and flew to Southern California on November 26, 2004. On the weekend after Thanksgiving, Taylor located a daughter, Deja Taylor, who he fathered with his girlfriend in California thirteen years prior, but had yet to meet.[7] Taylor's November 26 flight was to California was to visit Deja at her home in Compton on the Friday or Saturday after Thanksgiving and meet her for the very first time. Deja, who was thirteen years old in 2004, recently provided a sworn declaration about the details of her introduction to her father. *See* Ex. A (Sworn Declaration of Deja Taylor). Deja recounts that during their visit Taylor called

[7] Taylor was in prison for federal drug charges after his daughter's birth.

his girlfriend Angela in St. Louis to tell her that he had found and met his long-lost daughter. Taylor put Deja on the phone during that conversation, and she briefly spoke to Angela and one of the children. These events are corroborated by declarations from Deja's mother, Mia Perry, and her sister, Ashley Winfrey, none of whom have an incentive to lie for Taylor. Ex. B (Sworn Declaration of Mia Perry, Deja's Mother), Ex. C (Sworn Declaration of Ashley Winfrey, Mia's Aunt).

B. Forensic Pathologist Dr. Jane Turner Discredits the Medical Examiner's Trial Testimony Regarding the Time of the Victims' Death

The inconsistency of Medical Examiner Dr. Burch's trial testimony regarding the time of the victims' death tainted Taylor's trial. At a pretrial deposition in 2006, Dr. Burch proffered his expert opinion that the victims' time of death ranged from one to three days.. He provided an outter limit of up to one week plus a day or two, stating anything further would be "highly unliklely". However, during the trial and to the surprise of defense counsel,[8] Dr. Burch radically enlarged this opinion to two or three *weeks* before the bodies were found. There was no scientific basis for this change. This unsubstantiated change to his opinion about the time of death, which was a major component of Taylor's defense, violated Taylor's right to due process and resulted in a conviction bolstered by an unsupportable change in testimony. Indeed, all of the pathologists consulted by undersigned counsel expressed deep concern for Dr. Burch's change to his original opinion; the proferred explanation for which has no apparent basis in science. Outside of science, however, a reason becomes clear: Dr. Burch's expert opinion shifted *after* a pre-trial meeting with the

[8] Defense counsel, Karen Kraft, in her opening statement, told the jury that Dr. Burch would testify that the time of death was two to three days before their bodies were found, and as a result, Taylor could not be the murderer.

prosecution, and his new-found opinion placed time of death in a window that was critical to the State's case.[9]

Significantly, because defense counsel failed to consult with and retain their own pathologist, the jury was left with no testimony to challenge this change or explain how there was no scientific reason for Dr. Burch's opinion to have changed. Had defense counsel consulted with a forensic pathologist, the jury would have been presented with expert testimony that the pathology evidence supported a time of death when Taylor could not have committed the crime because he was in another state. For example, Dr. Jane Turner, who reviewed both Dr. Burch's testimony and findings regarding the time of the death of the victims, challenges the change in Dr. Burch's trial testimony and concluded the evidence supports a time of death proximite in time to when the victim's bodies were found. Ex. D. Nevertheless, without any forensic pathology expert to counter Dr. Burch's testimony, the jury was left only with his new opinion that it must have been two to three weeks, without any understanding that there was no scientific basis for the change in time. *Id*.

In light of Dr. Turner's review of Dr. Burch's erroneous findings, the St. Louis Prosecuting Attorney indicated in a recent letter that the office supports the delay of Taylor's execution to allow the Dr. Turner and the St. Louis Medical Examiner time to review further the autopsy report, photographs, and additional investigative material.[10] Both the prosecution and defense agree—more time is needed to get to the truth. Only the Governor is vested with the power to grant that

[9] During cross examination at trial, defense counsel asked Dr. Burch if he met with the prosecutors before trial to discuss his testimony and Dr. Burch admitted he did. (Tr. 1201). In a follow-up question, defense counsel asked Dr. Burch if he was informed by the prosecutors of petitioner's alibi. Although having just admitted he remembered the meeting, Dr. Burch responded that he could not recall. *Id.*

[10] *See* Ex. F (Letter from St. Louis Prosecuting Attorney's Office to the Supreme Court of Missouri).

time and appoint a Board of Inquiry to ensure this truth seeking function is fulfilled. We urge the Governor to do so.

C. Perry Taylor's Statements to the Police Incriminating His Brother are Demonstrably Unreliable and Expert James Trainum, a Law Enforcment and Interrogations Expert, Discredits his Recorded Statement to Police

Taylor was convicted primarily on the basis of a statement that police coerced from Taylor's older brother, Perry, because there was no actual evidence tying him to this crime. But Perry's statement has all the hallmarks of a false, coerced confession. The evidence shows that the interrogating officers used psychologically coercive tactics known to produce false confessions, several critical details are demonstrably false, and the details of his statement that are accurate were all known to police before the interrogations.

Law enforcement expert James Trainum, a former D.C. homicide detective who now trains law enforcement on interrogations and how to avoid coerced and/or unreliable confessions, reviewed Perry's statement and subsequent testimony and he concluded that the police interrogation of Perry was "overly coercive … using tactics no longer approved by the leading interrogation school in the U.S. because they have been shown to lead to false statements." Ex. E at 1. Trainum further concluded that there "red flags" regarding the reliability of Perry's statement, or lack thereof, and indicators that his statement was "contaminat[ed]" by police. Contamination occurs when police provide witnesses (or suspects) information about the crime, and it is often unintentional and interrogators may not even realize it occurred.[11] *See* Ex. E at 3-4.

[11] Trainum is personally familiar with the real possibility of unintentionally contaminating a suspect's confession because he realized he did it as a D.C. homicide detective, in a case of wrongful conviction that was ultimately overturned. D. Kim Rosso, Criminal Investigative Failures, Chapter 10: A False Confession to Murder in D.C. (205-217), CRC Press, Boca Raton (2009).

In his sworn testimony at deposition and trial, Perry explained why he falsely said his brother confessed to him. He said police repeatedly threatened him, both with criminal prosecution and prison time, and with physical harm; police threatened his mother; he was detained at gunpoint; and police told him what they needed him to say. Much of this is actually documented in the videotape. On the recording, police threaten him with long term imprisonment but promise to release him if he implicates his brother. Indeed, he was charged with hindering prosecution and faced a prison term of up to seven years. The interrogating officer repeatedly told Perry to consider this charge a threat. The interrogating officer also told Perry: "the answers that you [give] probably in the next fifteen or twenty minutes are probably going to dictate the next good portion of what happens to the rest of your life." The tape leaves no question that Perry heard and felt the threats, he said: "you have threatened me with my job, my future, my freedom."

In Perry's sworn testimony, he provided even more details about the coercion. Perry described the circumstances regarding his arrest and being jailed before he was interrogated at the Jennings Police Station. Perry told trial counsel that, before his videotaped statement, the police took him out of his cell and put him in a car in the parking lot and told him what he needed to say to obtain his release from jail. Perry testified that police even threatened his mother—she lived in a high-rise apartment, and the police told him she might have an accident where she may fall off her balcony or fall out a window if Perry wouldn't cooperate.

It is important to note that all of this happened on the *third* time that police arrested, detained, and interrogated Perry in the five days, across three states, leading up to his arrest and interrogation in Jennings. In his deposition, Perry described his first encounter with the police investigating this case. Police found him at truck stop in Georgia, dragged him out of his truck and beat him. They searched his truck, apparently thinking Taylor might be hiding there. Different police then found him in New Jersey, took him to a local police station, fingerprinted him, searched

his car, and interrogated him. During both of these the Georgia and New Jersey interrogations, Perry adamantly maintained that he did not know anything about these murders.

Law enforcement expert Trainum noted that the Georgia and New Jersey encounters with police are "important when considering Perry's mindset" when he ultimately gave the statement because encounters that "involve such overwhelming physical control of a subject have a cumulative effect when during a later interrogation the subject is threatened with inevitable consequences if they do not provide the information that the investigators want to hear." Ex. E at 5.

The physical control and coercion only increased at the December 8 interrogation in Jennings. Expert Trainum reviewed the documentation and summarized that Perry reported he was arrested at a gas station when he was fueling his truck. He testified that he was surrounded by police who pointed their weapons at him, and he was thrown in the back of a police car and taken to the station. Perry explained that one of the officers told him what he was going to say when they got to the station. If he didn't, something would happen to his mother. The police reports document that they accused Perry of lying in the previous interrogations, and that they could prove it "beyond a reasonable doubt." They told him he was under arrest for hindering a prosecution and "there was only way to make this right." At one point, when Perry did not provide them an answer they liked, they told Perry that the answers he was going to give in the next several minutes would dictate what happens to the rest of his life."

As highlighted by Trainum, Perry's ultimate statement was provably false in several ways. First, Perry told the police that Taylor called him on November 22, 2004, and confessed that he killed Angela and the children. However, this could not be true, because school records indicate that all three children went to school on that date and the following day. Second, Perry told the police that Taylor told him that he shot Angela after she came at him and cut him with a knife.

Again, this could not hold true, because upon Taylor's arrest, the Madisonville, Kentucky police and the Major Case Squad stripped him naked and photographed his body. Not a single mark as alleged was on him. If Taylor had been stabbed or wounded in a knife attack, then physical evidence would support Perry's description. Also, at the scene of the crime, no blood recovered matched Taylor. Third, Perry told the police that Taylor said he shot Angela in the stomach before shooting her in the head. However, the autopsy revealed that the only bullet wounds on her body were to the head, her arms, and upper left chest. She was never shot in the stomach.

To the extent that Perry provided any testimony that did comport with the facts, all of those facts were known to police prior to his statement, meaning that all of them could have been provided, even unintentionally, by investigating officers. Indeed, a review of multiple DNA exonerations revealed that defendants convicted for "knowing facts only the perpetrator could know" often had been interrogated for hours, with police coercing the defendant into parroting back information or phrases as part of the defendant's "confession."[12]

[12] Fabiana Alceste et al., *Facts Only the Perpetrator Could Have Known? A Study of Contamination in Mock Crime Interrogations*, 44 L. & Hum. Behav. 128 (2020). For example, David Vasquez was wrongfully convicted for murder after hours of police interrogation where officers fed him information, as evidenced by following excerpt from the interrogation:

> Det. 1: Did she tell you to tie her hands behind her back?
> Vasquez: Ah, if she did, I did.
> Det. 2: Whatcha use?
> Vasquez: The Ropes?
> Det. 2: No, not the ropes. Whatcha use?
> Vasquez: Only my belt.
> Det. 2: No, not your belt… Remember being out in the sunroom, the room that sits out to the back of the house? ...and what did you cut down? To use?
> Vasquez: That, uh, clothesline?
> Det. 2: No, it wasn't a clothesline, it was something like a clothesline. What was it? By the window? Think about the Venetian blinds, David. Remember cutting the Venetian blind cords?
> Vasquez: Ah, it's the same as rope?
> Det. 2: Yeah.

Without Perry's statements, the police would have lacked any evidence against Taylor. In fact, the only direct evidence connecting Taylor to the crime comes from his brother. This explains the extraordinary lengths that police took in searching Perry, and the extraordinary measures they took to secure the false statements.

II. LEONARD TAYLOR HAS NEVER RECEIVED A CONSTITUTIONAL TRIAL.

Leonard Taylor's trial counsel provided constitutionally deficient representation when they failed to retain, consult with, and present a forensic pathologist to rebut and discredit the shifting conclusion about time of death from the medical examiner. The victims' time of death is dispositive in this case; if the victims died 1-3 days before found, and it is undisputed that Taylor was in California for the duration of the window in which it is possible that the victims died, then his innocence is proven; it is impossible that Taylor shot the victims while over 1,800 miles away. While counsel was surprised at trial that the medical examiner expanded the time of death to one to three weeks prior to discovery, they were on notice that the medical examiner had expanded his original time of death (1-3 days prior) to one week plus a day or two because the testified to this in his 2006 pre-trial deposition. There is simply no excuse for not working with an expert on this issue; it was the crux of the case.

> Det. 1: Okay, now tell us how it went, David – tell us how you did it.
> Vasquez: She told me to grab the knife, and, and, stab her, that's all.
> Det. 2: (voice raised) David, no, David.
> Vasquez: If it did happen, and I did it, and my fingerprints were on it…
> Det. 2: (slamming his hand on the table and yelling) You hung her!
> Vasquez: What?
> Det. 2: You hung her!
> Vasquez: Okay so I hung her.

Branden Garrett, *Appendix: Characteristics of False Confessions*, CONVICTING THE INNOCENT: WHERE CRIMINAL PROSECUTIONS GO WRONG (2011), available at https://convictingtheinnocent.projects.law.duke.edu/wp-content/uploads/sites/7/2016/10/garrett_false_confessions_appendix.pdf

Similarly, Perry Taylor's recorded statement to police that Taylor confessed the crime to him was essentially the only evidence presented at trial. There can be no question that it influenced the jury and affected the outcome. In the direct appeal opinion affirming Taylor's conviction and death sentence, the Missouri Supreme Court began its summary of the evidence in this case with Taylor's alleged confession and discussed it in detail for three paragraphs, *Taylor v. State*, 298 S.W.3d 482, 489-90 (2009), making clear that the alleged confession was paramount to that Court's conclusion that the evidence of Taylor's guilt was "overwhelming," *Taylor v. State*, 382 S.W.3d 78, 78 (2012). Counsel should have consulted with and presented an interrogation and confession expert at trial. And counsel should have moved to suppress Perry's statement.

There are several other investigative leads that trial counsel could and should have pursued, some of which are listed below in the next section. Without the full file in this case, however, the undersigned organizations are not able to confirm which, if any, of these investigative steps were taken by counsel before trial. But what is clear is that no one has yet to fully investigate Taylor's claims of innocence. And without that, the public can have no faith in the reliability of the criminal justice system. That faith can be restored with the appointment of a Board of Inquiry.

III. LEONARD TAYLOR'S CURRENT COUNSEL EFFECTIVELY ABANDONED HIM, FAILING TO INVESTIGATE AND PRESENT EVIDENCE OF TAYLOR'S INNOCENCE AND ABIDICATING THEIR DUTIES AS COUNSEL TO THE ST. LOUIS PROSECUTING ATTORNEY.

Compounding the failures of trial counsel to present this critical evidence of innocence to the jury, Taylor's current counsel Kent Gipson and Kevin Shriener ("Counsel-of-Record") also failed to investigate or properly plead Taylor's claims in throughout their representation of him in both state and federal courts, effectively abandoning him. Although Counsel-of-Record maintained Taylor's innocence in the narrative of their prior pleadings, they failed to conduct a full investigation into the evidence of his innocence and to present either a gateway innocence

claim under *Schlup v. Delo*, 513 U.S. 298 (1995) or a freestanding claim of innocence pursuant to *Amrine*.

Further, once a date of execution was set, Counsel-of-Record justified their continued failures to do so by abdicating their duties as Taylor's counsel to the Office of the St. Louis Prosecuting Attorney—the very office that convicted Taylor and secured his death sentence. Despite repeated requests from Taylor that Counsel-of-Record file a Motion for Stay of Execution and other pleadings, Counsel-of-Record declined to do so, until just yesterday, stating to advocates in email that, "If [the St. Louis Prosecuting Attorney] does not [file a motion to vacate], he is the one responsible for the execution." But that is not true—it is defense counsel's obligation to advocate for Taylor, including thoroughly investigating and presenting to courts his claims of innocence in these proceedings, not the prosecutor's. Yet, not only did Taylor's counsel repeatedly fail to conduct this investigation over the 10 years it represented him, it also failed to provide the St. Louis Prosecuting Attorney's office with the very information necessary to conduct a full and meaningful review into Taylor's claim of innocence, turning over the limited information it did have on January 3, 2023—just 35 days before Taylor's scheduled execution date—far too late for any meaningful review to be completed and without adequate explanation for the delay.

Counsel-of-Record informed the Missouri Supreme Court that it was aware of the importance of this investigation and review by the prosecutor on August 23, 2022 in Taylor's Suggestions in Opposition to the State's Motion to Set an Execution Date. They wrote: "The motion should be denied because Mr. Taylor is availing himself of a new post-conviction remedy enacted by the General Assembly and signed by the Governor that went into effect on August 28, 2021, that gives prosecutors the authority to file a motion to set aside a conviction if the prosecutor believes there is 'clear and convincing evidence of actual innocence or constitutional error at the

original trial or plea that undermines confidence in the judgment.'"[13] And yet, while Counsel-Of-Record reported to the Court in August that they had submitted an application to the St. Louis Prosecuting Attorney Wesley Bell's Conviction Integrity and Incident Review Unit ("CIRU") on Taylor's behalf shortly after the statute was enacted, Counsel inexplicably waited until January 3, 2023—34 days before Taylor's scheduled execution—to submit any supporting information to the CIRU, despite the fact that (1) litigation ended on May 31, 2022, when the U.S. Supreme Court denied Taylor's petition for a writ of certiorari, (2) Counsel informed the Court of its intentions to seek relief under section 547.031 on August 23, 2022 (133 days prior to the submission to the CIRU), and (3) the Missouri Supreme Court set the execution date on October 18, 2022 (over two months before the submission to the CIRU). Upon receiving the late submission, the CIRU set a deadline for Counsel-of-Record to provide any remaining information or requests, indicating that they would not accept or consider anything submitted to them after January 15, 2023.

Further, while at the same time arguing it was the prosecutor's job to advocate that Taylor's conviction be overturned, Counsel-of-Record missed even that deadline, ultimately submitting multiple additional pieces of new evidence to the CIRU, including potentially critical expert reports over 10 days later, on January 25 and 26, 2023.

Counsel-of-Record also ignored Taylor's repeated pleas to file a motion to stay of execution until January 31, 2023, one week before his execution date (even after Taylor provided Counsel-of-Record a fully drafted and well-searched motion himself weeks earlier, on January 16).

But these are just the latest of Counsel-of-Records's failures—failures which ensure that without the Governor's intervention, no factfinder will have ever heard the full breadth of evidence

[13] Sugg. in Opp. to State's Mtn to Set an Execution Date at 1.

of innocence in this case. Indeed, while Counsel-of-Record have represented Taylor for over a decade, having first being appointed by the federal court in December of 2012, they failed to investigate Taylor's actual innocence until the late summer and fall of 2022, well past any procedural deadlines to present that evidence and past any proceeding in which they could ask for additional funds for an investigator. Thus, they relied upon an investigator for the Nevada Capital Habeas Unit,[14] and doing so resulted in significant delay due to the investigator's case load. Yet, by then it was far too late. This inaction is inexcusable. There is no doubt Counsel-of-Record knew there was an innocence claim to be made: despite the lack of any investigation, Counsel-of-Record maintained Taylor's innocence in every filing in federal court. But those mere assertions were meaningless with any new evidence to substantiate Taylor's claim – that he is factually innocent.

At a minimum, they should have taken the following investigative steps ten years ago, but which they began a mere two weeks before Taylor's execution date: consult with a forensic pathologist to review Dr. Burch's shifting conclusion regarding the time of death, and consult with a police interrogation expert to evaluate the evidence of coercion during the interrogations of Perry Taylor and the reliability of his police-induced statement. The victims' time of death is dispositive in this case; if the victims died in the days before their bodies were found, and it is undisputed that Taylor was in California for the duration of the window in which it is possible that the victims died, and thus his innocence is proven; it is impossible that Taylor shot the victims while over 1,800 miles away. There is simply no excuse for not taking this basic investigative step long ago. They were on notice of the issue, and that it was the crux of the case.

Similarly, Perry Taylor's recorded statement to police that Taylor confessed the crime to him was essentially the only evidence presented at trial. There can be no question that it influenced

[14] Suggestions in Opp. to State's Mtn. to Set an Execution Date at 3.

the jury and affected the outcome. In the direct appeal opinion affirming Taylor's conviction and death sentence, the Missouri Supreme Court began its summary of the evidence in this case with Taylor's alleged confession and discussed it in detail for three paragraphs, *Taylor v. State*, 298 S.W.3d 482, 489-90 (2009), making clear that the alleged confession was paramount to that Court's conclusion that the evidence of Taylor's guilt was "overwhelming," *Taylor v. State*, 382 S.W.3d 78, 78 (2012).

The basic investigative steps that Counsel-of-Record could and should have taken as appointed capital habeas counsel include, but are not limited to,

- Consult with and obtain a case review by an independent pathologist regarding the critical issue of the victims' time of death;
- Consult with an expert on police interrogations and coerced statements to review the statements Perry Taylor made to police;
- Retain an expert psychologist to evaluate Perry Taylor (before his death in 2015), specifically his suggestibility to police interrogation and risk of contamination;
- Retain an expert in landline phone records and Charter policies at the time of this crime;
- Retain a forensic expert to analyze the biological material identified on Taylor's glasses, and pursue retesting of that evidence with modern scientific methods;
- Retain an expert regarding cognitive bias in forensic science and the role it played here;
- Review evidence from case & determine whether there is any additional forensic testing, DNA testing or otherwise, that could be done;
- Investigate Dr. Burch's credibility and whether he had any documented history of unreliable or false conclusions in other criminal cases (Counsel-of-Record has discovered Dr. Burch's role in the wrongful conviction of Patricia Stallings, but there is no reason that evidence could not have been discovered earlier, and conduct further investigation to see if Dr. Burch may have had a pattern and practice of providing unreliable conclusions and/or being influenced by the police or prosecution to amend his conclusions);
- Investigate the law enforcement officers involved in the investigation, particularly those who interrogated Perry Taylor, to determine if any have a pattern and practice of coercing and/or contaminating witnesses or suspects, tunnel vision in their investigations, or any other deficient police practice proven to contribute to wrongful convictions;

- Interview and potentially obtain notarized affidavits from witnesses, including but not limited to the following:
    - **Perry Taylor** (before his 2015 death) regarding the coercion, physical abuse, threats, and fact-feeding he experienced from police;
    - **Taylor's Mother** (before her 2020 or 2021 death): rebuttal that she would corroborate that Taylor confessed to his brother;
    - **Debrine Williams** (Taylor's ex-wife): rebuttal that she would corroborate that Taylor confessed to his brother;
    - **Friends/Family of Deja Taylor**: corroborate Deja's affidavit, signed in 2022, proving that the events set forth in her affidavit are true and were reported to others at the time;
    - **Betty Byers** (before her 2019 death): regarding her interactions with police and knowledge of alleged confession;
    - **Elizabeth Williams**: regarding her interactions with Taylor on 11/26;
    - **Interviews regarding alibi**: Conduct field investigation to identify any additional witnesses who could corroborate that Taylor was in California from 11/26 – 12/03 and/or that the victims were alive after Taylor's departure on 11/26; and
    - **Jurors**: interview regarding whether it would have made a difference to their verdict if (1) the time of death was 1-3 days before victims found by police, (2) there was expert testimony that Perry Taylor's statement to police was coerced and unreliable, and (3) any other new evidence turned up with adequate investigation.

Because counsel abandoned their duties under the Sixth Amendment and abdicated their role to the prosecutor, no court has ever been presented with Taylor's claim of innocence, let alone a fully investigated one, nor has any conflict-free counsel ever worked with a prosecutor's office to support its investigation necessary to comply with the prosecutor's constitutional and ethical obligations to ensure that "justice shall be done." *Berger v. United States*, 295 U.S. 78, 88 (1935); *see also* ABA Model R. 3.8(g)-(h). Under these circumstances, Leonard Taylor deserves a full and fair examination of his claims of innocence to rectify injustice done upon him. For the public to retain faith in the criminal justice system, the Governor must provide one.

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. Most recently, on August 22, 2017, then-Governor Eric Greitens appointed a Board of Inquiry and stayed the execution of Marcellus Williams just hours prior to Wiliam's scheduled execution. a Board of Inquiry to examine Williams' claim that he was innocent of the 1998 murder of Felicia Gayle. Like in Taylor's case, no forensic evidence or eyewitness testimony tied Williams to the crime. Instead, the case, like here, was made up of circumstantial evidence and testimony about alleged statements made by the defendant.While Williams still remains on death row, the appointment of the Board was critical to the public's faith in the rule of law and the criminal justice system.

Similarly, Governor Carnahan twice used his executive powers to appoint Boards of Inquiry, halting the executions of Lloyd Schlup in 1993 and William Boliek in 1997. In the case

of Lloyd E. Schlup, although Schlup made a plausible claim of innocence in a factually complex case, the courts had declined to hold a hearing in order his innocence claim for procedural reasons. Then-Governor Mel Carnahan thus appointed a Board of Inquiry to conduct a hearing into Schlup's claim. Notably, the Board's role in the case became moot when the United States Supreme Court ordered a judicial hearing on Schlup's claim, and found he had established a "gateway claim" of innocence, permitting his procedurally defaulted constitutional claims to be heard.

The appointment of a Board of Inquiry does not mean the Governor believes the defendant is innocent—indeed, that is for the Board to determine. Nor does it mean the defendant's will ultimately be exonerated—all three recipients remained incarcerated (although William's inquiry is still on going). But in all three instances, the appointment of a Board was necessary to support the public's faith in the criminal justice system and the rule of law. Like in Schlup's, Boliek's, and William's cases, Leonard Taylor's execution has been set despite the fact that no factfinder has ever heard the full evidence of their innocence. And like in Schlup's, Boliek's, and William's cases, those failures were not a rejection of the evidence, but rather that a Court was never properly presented with them. Without a Board of Inquiry the clear and compelling evidence of Leonard Taylor's innocence will go unreviewed unless the Governor exercises his inherent power to stay the execution and convene a board of inquiry.

CONCLUSION

The Midwest Innocence Project, the Innocence Project, and Phillips Black have grave concerns that Missouri is going to execute an innocent man. Without a Board of Inquiry, Leonard Taylor will be executed without a single factfinder ever reviewing the evidence of his actual innocence. Thus, we request that, pursuant to § 552.070 RSMo. (1986), and in the interest of justice, Governor Parson appoint an independent Board of Inquiry to examine Leonard Taylor's conviction and death sentence. The Governor has the power to grant Leonard Taylor a reprieve

and the hearing he deserves. Failing his exercise of that power, Missouri may execute an innocent man on February 7th.

Submitted this 7th day of February, 2023.

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