



Good morning, Chairman Manning, Vice Chair Reynolds, Ranking Hicks-Hudson and members of the Senate Judiciary Committee. My name is Shannon Black, and I am a policy fellow at the Ohio Innocence Project (OIP), which is part of the College of Law at the University of Cincinnati. My supervisor, Pierce Reed, is the director of policy for OIP. Thank you for the opportunity to provide written proponent testimony on Senate Bill 101.

Dale Johnston died this year on October 28th at the wonderful old age of 91. If the State of Ohio had had its way, however, Mr. Johnston would have died several decades ago, by execution, for a crime he did not commit.

I learned Mr. Johnston's name and his story through my research and education on wrongful convictions – especially wrongful convictions which resulted in innocent people ending up on death row.

Since 1989, 113 Ohioans have been exonerated after being wrongly convicted of crimes they did not commit. The deprivation of liberty and freedom impacts not only the individuals who are imprisoned, but also their families, communities, and Ohio's taxpayers, whose dollars are spent on imprisoning an innocent person. The cost to taxpayers only goes up when the innocent person is sent to death row.

Overall, 11 of the exonerees in Ohio were exonerated from death row. Mr. Johnston was one of them.

S.B. 101 would help people like Mr. Johnston who were wrongfully convicted by ensuring they are not also wrongly sentenced to death row.

In 1986, Mr. Johnston was wrongfully convicted of the brutal double homicide of his stepdaughter and her fiancé. The two went missing and their dismembered bodies were found 10 days later spread throughout a cornfield near the Hocking River. Police believed the motive was that Mr. Johnston did not approve of his stepdaughter's engagement, and with that motive in mind, they lasered in on proving his guilt.

That desire to give peace to a grieving family can overwhelm a person's ability to take a few steps back and take a look at the full picture. To prove his guilt, the state engaged in some investigative tactics that were questionable and likely would not be accepted today. In their hearts, the police felt that their tactics were correct, but humans are fallible. But forensic science is ever growing, and forensic professionals often abandon techniques and tests that those professionals now recognize are incorrect, improper, or not grounded in

good law enforcement and forensics practices.

Moreover, the State did not investigate other suspects, and those suspects were not disclosed to the defense in violation of *Brady v. Maryland*, in which the United States Supreme Court ruled that the fundamental right to a fair trial in America includes the right to have government disclose exculpatory information during a prosecution. Those alternative suspects clearly were important – one was a butcher by training and was reported to have been infatuated with Mr. Johnston’s stepdaughter, the other was seen lurking by the crime scene and had severe injuries the day after murders. The jury never knew those suspects existed. Instead, Mr. Johnston was convicted and sentenced to death row.

Being placed on death row is never a good thing, but to be frank, Mr. Johnston was one of the luckier ones. He only served 2 years on death row before the Court of Appeals overturned his conviction and removed him from death row. Mr. Johnston was no longer an innocent man awaiting his execution.

Although prosecutors sometimes suggest that exonerations like Mr. Johnston’s are “technicalities” or based on “procedural” issues, the reality is that no one is likely to be exonerated on those grounds. In Mr. Johnston’s case, the government violated a fundamental constitutional right of Mr. Johnston’s, and denied an impartial jury the right to consider all evidence that could prove beyond reasonable doubt whether Mr. Johnston committed this crime.

Mr. Johnston was released from prison after four years – two of them on death row – for a crime he didn’t commit. In an interview with *The Guardian* in 2015, Mr. Johnston said that “Death row’s the most horrible place anybody could be. Especially when you know they’re wanting to kill you for something you didn’t do.” Although his exoneration returned Mr. Johnston to a family who was still grieving the murders and who had faced economic ruin due to his imprisonment, he had an opportunity to attempt to rebuild his life.

Ohioans benefited from his release as well. The exoneration of Mr. Johnston led to renewed investigation, and ultimately, the conviction of Chester McKnight. Mr. McKnight confessed that he had murdered the victims while high on drugs that night. He was convicted subsequently and sentenced to life imprisonment.

If the Court of Appeals had not determined that uncovered exculpatory evidence was enough to take him off death row, Mr. Johnston would have been executed for a crime he didn’t commit – adding more grief to a family who had already lost so much. The Johnstons’ close-knit rural community also suffered from the crime and its aftermath. The exoneration helped both the Johnston family and the community heal. Mr. Johnston lived free for decades – spending time with family and loved ones, training horses, and dedicating himself as the head usher of his Baptist church.

Humans are fallible – police can put the pieces of a puzzle together incorrectly in a rush to soothe a grieving family. Innocent people can go to jail and spend years there before their claims of innocence are given a second look. A second look that sometimes allows

us to discover new evidence or learn that the old ways of doing things weren't always the best. This is an injustice we should always strive to fix.

Innocent people sitting on death row, however, face a higher burden. They not only may spend years in prison – they may lose their lives entirely before anyone gives their case a second look. Until we can remove all traces of fallibility in humanity, we should not be rushing to put people to death. Death row is “the most horrible place anybody could be,” and we should not be comfortable putting people there. S.B. 101 would ensure we do not commit the grievous error of sentencing an innocent person to death. It would benefit the wrongfully convicted, their families and communities, and all citizens and taxpayers of Ohio. It also benefits victims of the horrific crimes that lead to the death penalty because no victim benefits from the execution of an innocent person.

I am so grateful to have learned Mr. Johnston's story, and to learn of the full life he lived post-conviction. But Mr. Johnston is one of the lucky ones. The State of Ohio and the people living within it have so much to gain by ensuring that we do not sentence any innocent person to death or, even worse, execute an innocent person. And the only way to do that is with Senate Bill 101 – by removing the death penalty entirely from our wonderful state, and protecting our citizens, including people like Dale Johnston.

I urge you to vote favorably on Senate Bill 101.