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To: Representative Fred Patton, Chairman
Members of the House Judiciary Committee

From: Matthew Bretz on behalf of Brenda Sue Caselton - Widow of Charles Caselton

Date: February 20, 2019

Re: HB 2332 – An Act concerning civil actions; relating to wrongful death and personal injury actions; exemplary and punitive damages; amending K.S.A. 60-1903 and 60-1904 and K.S.A. 2018 Supp. 60-1901 and repealing the existing sections

Chairman Patton and Members of the House Judiciary Committee:

I am here to testify in support of HB 2332.

On the morning of Saturday, January 21, 2017, Jane Hart, a wealthy socialite started mixing herself margaritas, adding extra tequila to each glass. She did not keep track of how much tequila she drank, but later noted that there were multiple empty bottles on her kitchen countertop. At around noon the socialite decided that she needed trash bags so got in her car and drove to the grocery store. After buying trash bags she got back in her car. As she was driving home she turned in front of an oncoming motorcyclist causing a wreck.

The socialite did not get out of her car to check on the motorcyclist and did not call 911 to summon medical help. By the time other people arrived at the scene the motorcyclist was dead. When law enforcement arrived neighbors told them that the socialite was known to be a heavy drinker. The neighbors were proved right as blood drawn an hour and forty minutes after the wreck showed a .174 BAC - more than twice the legal limit.

The socialite was arrested but was released from jail on bond before the motorcyclist's wife was notified that she was now a widow, and before his kids learned that their father had been killed.

This was not an isolated instance of drinking and driving. In 1986 this same person rear-ended a family while driving drunk. Ironically, the day she killed the motorcyclist she twice drove past the intersection where the 1986 drunk driving wreck and arrest occurred. During a deposition the socialite admitted to driving drunk regularly for years.

In Kansas punitive damages may be assessed a person who engages in willful or wanton conduct as a way to punish the wrongdoer and to deter others from similar behavior. So, if a person gets drunk and drives and injures someone else, the drunk driver can be assessed with punitive damages.

But Kansas law has a strange quirk. The way the statute is written, if the person behaves so recklessly that she kills someone, then punitive damages cannot be assessed. So the way the law currently is written if someone gets really drunk and drives so recklessly that she kills someone, then punitive damages cannot be assessed. There is no logical reason why a drunk driver who injures someone should be assessed with punitive damages, while a drunk driver who kills someone should not. Not only is this illogical, but this is confusing, unjust, and disproportionate.

It should be noted that juries do not determine the amount of punitive damages. Rather, juries determine whether punitive damages should be awarded and then a separate hearing is conducted by the court and the judge determines the amount of punitive damages. This two-step process is not changed by HB 2332.

On behalf of the widow whose husband was killed by a repeat offender who valued trash bags over the lives of other members of the community, we ask that you fix this statute and allow punitive damages to be assessed in wrongful death cases. This amendment will carry out the public policy of this state, punishing those who act in a willful or wanton manner causing injuries, and deterring others from similar conduct.

Sincerely,

Matthew L. Bretz
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