



March 16, 2021

Thank you Chairman Patton and members of the Committee for the opportunity to speak today. My name is Elizabeth Patton, Deputy State Director of Americans for Prosperity Kansas. AFP is the nation's largest grassroots organization dedicated to breaking barriers to opportunity. On behalf of AFP activists all across Kansas, I urge you to support House Bill 2366 which bolsters essential due process protections in our criminal justice system.

H.B. 2366 codifies evidence discovery requirements constitutionally mandated by the U.S. Supreme Court. The bill ensures that prosecutors fulfill their duty to disclose the substance of planned testimony by incentivized witnesses, sometimes called "jailhouse informants" to courts and the defense. These are individuals that provide testimony regarding conversations or other information they've obtained while the defendant and the witness are both in some sort of detention setting such as a prison or jail. Incentivized witnesses, who testify against defendants in exchange for a benefit, have a notorious track record as a leading cause of false convictions. A comprehensive nation-wide survey of exonerations found that incentivized witnesses were responsible for almost a fifth of known false guilty verdicts. ¹ Even more seriously, incentivized witnesses are the leading cause of all wrongful capital convictions. ²

H.B. 2366 requires the prosecution to inform the court of how a prospective incentivized witness stands to benefit from his or her testimony as well as background information that can help the court assess the witness' reliability, such as whether they changed their statement or if other evidence corroborates their accusations.

The legislation also allows in certain cases for a pre-trial hearing to determine the reliability of these witnesses, where the prosecution must show, by a preponderance of the evidence (essentially more likely than not) that the witness' testimony is reliable. If witnesses pass this test and are heard, H.B. 2366 ensures that juries are properly notified of the facts and circumstances surrounding the benefit requested and/or provided by the government.

This legislation's provisions are entirely sensible protections of an individual's due process rights, a fundamental pillar of the American criminal justice system. Truthful evidence, regardless of the incentives behind it, is valuable and should be heard, but it is imperative that judges, juries, and the accused are aware of potential biases in that evidence before the government can deprive them of their liberty.

For these reasons, I urge you to support House Bill 2366.

Sincerely,

Elizabeth Patton

State Director

Americans for Prosperity-Kansas

¹ <https://www.law.umich.edu/special/exoneration/Documents/Exonerations%20in%202018.pdf>

² <http://johnwilkinson.com/files/Judging%20Innocence,%20by%20BrandonGarrett.pdf>