

SC99813

IN THE SUPREME COURT OF MISSOURI

STATE OF MISSOURI ex rel. ERIC SCHMITT,

Relator,

v.

THE HONORABLE ROBIN E. FULTON,

Respondent.

Original Proceeding from a Petition for Writ of Prohibition

**BRIEF OF COMMON CAUSE
AS *AMICUS CURIAE*
IN SUPPORT OF RESPONDENT**

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INTEREST OF *AMICUS CURIAE*

Amicus curiae Common Cause is a nonpartisan, nonprofit grassroots organization dedicated to upholding the core values of American democracy, with over twenty thousand members in Missouri. Common Cause works to create open, honest, and accountable government that serves justice and the public interest and that allows all people in Missouri to make their voices heard in the political process. Common Cause is dedicated to making government at all levels more representative, open, and responsive to the interests of ordinary people.

Common Cause works to achieve greater governmental transparency to protect the core values of American democracy. One of those core values is maintaining and preserving a fair and unbiased system of justice, which is implicated by the Attorney General's position in this proceeding. *Amicus* takes a position only on the issue of the Attorney General's role in an action brought under Mo. Rev. Stat. § 547.031 (Cum. Supp. 2022), which *Amicus* believes has broad democratic implications. *Amicus* takes no position on any other issues in this case.

CONSENT OF PARTIES

All parties have consented to the filing of this brief by *amicus curiae* Common Cause.

SUMMARY OF ARGUMENT

The effective administration of justice is fundamental to a functioning democracy, and that includes the obligations of the State to admit when a mistake was made in a

criminal proceeding and to rectify a wrongful conviction. This understanding is engrained in the United States and Missouri Constitutions and was recognized by the Missouri General Assembly when it passed § 547.031, which provides a mechanism for prosecuting and circuit attorneys to move to vacate a potential wrongful conviction. Section 547.031 was enacted in response to this Court's decision in *State v. Johnson*, which noted Missouri's lack of such a statutory mechanism, and in the new statute the legislature expressly designated the prosecuting or circuit attorney as the only party who can bring such a motion on behalf of the State. The Attorney General is permitted to participate in such proceedings in a more limited role.

Despite this, the Attorney General seeks to gut the legislature's intent by usurping the authority the statute grants to the Prosecuting Attorney. He does not dispute the fact that the defendant in this case was convicted based upon discredited science and that, without that critical evidence, there is no adequate basis to support the conviction. Rather, he does not appear to accept the fundamental notion that the State has an obligation to correct its errors and to exonerate persons it has wrongly convicted. Thus, the Attorney General insists that the interest in protecting the finality of convictions overrides the interest in freeing an a wrongfully convicted defendant, a balance the General Assembly rejected in enacting § 547.031.

The Attorney General has chosen to implement his opposition to § 547.031 by challenging at every step the motion filed by the State, represented by the Washington County Prosecuting Attorney. Indeed, he asks this Court to allow him, contrary to the

statute, to refer to himself—and not the Prosecuting Attorney—as the sole representative of the State and he claims that the appropriate vehicle for litigating the motion to vacate is a separate civil case wherein the Prosecuting Attorney is the movant and the Attorney General is the respondent.

These claims seek to undermine § 547.031, as enacted by Missouri’s legislature and Governor and as enforced by the Prosecuting Attorney for Washington County. Moreover, they threaten the American understanding of the role of a prosecutor in a democratic society and the very idea of democracy itself. Accordingly, this Court should make clear that the Prosecuting Attorney—and not the Attorney General—represents the State in proceedings under § 547.031 and deny the Attorney General’s request for a writ that would prohibit Respondent from issuing rulings consistent with that correct understanding of the law.

STATEMENT OF FACTS

A. The Innocent Are Sometimes Wrongly Convicted

While the American system of justice is legitimately the envy of the world, it has nonetheless become increasingly clear over the years that, notwithstanding its many safeguards for the criminal defendant, it occasionally results in wrongful convictions. This recognition has been driven, in part, by scientific advances, which shine new light on old evidence, as well as concerns about the accuracy of eyewitness testimony and coerced confessions.

For example, in 2014 a North Carolina court vacated the murder convictions of Henry McCollum and Leon Brown—who had served nearly 31 years in prison—after DNA evidence revealed the actual perpetrator. Jonathan M. Katz & Erik Eckholm, *DNA Evidence Clears Two Men in 1983 Murder*, N.Y. TIMES, Sept. 2, 2014, <https://www.nytimes.com/2014/09/03/us/2-convicted-in-1983-north-carolina-murder-freed-after-dna-tests.html>. In 2019, Florida Governor Ron DeSantis issued a posthumous pardon to four men dubbed the “Groveland Four,” and the State of Florida later exonerated them, after examining serious deficiencies in the evidence against the men. Jacey Fortin, *Florida Pardons the Groveland Four, 70 Years After Jim Crow-Era Rape Case*, N.Y. TIMES, Jan. 11, 2019, <https://www.nytimes.com/2019/01/11/us/groveland-four-pardon-desantis.html>. And in 2002, a New York Supreme Court vacated the convictions of the “Central Park Five”—now known as the “Exonerated Five”—after DNA evidence and a confession identified the true perpetrator. Zachary Small, *Decades After the Central Park Jogger Attack, a City Marks Its Mistake*, N.Y. TIMES, Dec. 12, 2022, <https://www.nytimes.com/2022/12/12/arts/design/central-park-five-gate.html>.

Since 1992, The Innocence Project, a nonprofit organization, has worked to exonerate innocent individuals through the use of DNA evidence. *Exonerate the Innocent*, The Innocence Project, <https://innocenceproject.org/exonerate/>. To date, the organization has secured the exoneration of 375 individuals in the United States, 21 of whom served time on death row. *Id.* The National Registry of Exonerations tracks nationwide exonerations and shows a growth from approximately 40 exonerations per

year in the early 1990s to 268 exonerations in 2022. *Exonerations by Year: DNA and Non-DNA*, <https://www.law.umich.edu/special/exoneration/Pages/Exoneration-by-Year.aspx>. And in Missouri alone at least fifty-two individuals have been exonerated since 1989. The National Registry of Exonerations, <https://www.law.umich.edu/special/exoneration/Pages/detailist.aspx?View={FAF6EDD B-5A68-4F8F-8A52-2C61F5BF9EA7}&FilterField1=ST&FilterValue1=MO>.

B. The *Johnson* Case

These exonerations show the strength of the American system of justice, not its weakness, and they have led many prosecutors to create wrongful conviction units and many legislatures, recognizing the limitations of *habeas corpus* review, to provide procedural mechanisms for prosecutors to move to vacate convictions that they conclude were mistaken. However, until recently, Missouri had no such mechanism, as this Court noted in *State v. Johnson*, 617 S.W.3d 439, 441 (Mo. banc 2021). Moreover, the Missouri Attorney General, apparently based on a misplaced regard for the interest of finality over the interest of justice, has historically opposed efforts to vindicate those who claim they were wrongly convicted.

In 2019, after new evidence raised doubts about Lamar Johnson’s 1995 murder conviction, the Circuit Attorney for the City of St. Louis filed a motion for a new trial. *Id.* at 441-442. A critical eyewitness recanted his testimony and another individual confessed that he had committed the murder with someone else. The Circuit Court appointed the Attorney General, *sua sponte*, to represent the State in the proceeding “to

protect the integrity of the legal process.” *Id.* at 443. Consistent with his historical opposition to motions to exonerate, the Attorney General vehemently opposed the motion. He argued that the Circuit Attorney lacked the authority to file the motion and that, regardless, the motion was untimely. *Id.* at 442. The Circuit Court agreed with the Attorney General and dismissed the Circuit Attorney’s motion. *Id.*

The Circuit Attorney and Johnson both filed notices of appeal. *Id.* at 441. The Attorney General then filed a notice of dismissal of the Circuit Attorney’s appeal, which the Court of Appeals permitted, finding that the Attorney General had the right to represent the State in appeals. *Id.* The Circuit Attorney was permitted to participate merely as an intervenor. *Id.* After an unsuccessful appeal to the Missouri Court of Appeals, Johnson appealed to this Court. On March 2, 2021, this Court affirmed, finding that there was no statutory authority that gave the Circuit Attorney the power to file a motion for a new trial decades after the conviction. *Id.* at 445.

In their decisions, both the Circuit Court and members of this Court noted that the Missouri General Assembly did not provide a mechanism for circuit courts to entertain motions to set aside potential wrongful convictions. *Id.* at 442 n. 6 (“The circuit court explained that ‘the Missouri General Assembly has failed to pass such enabling legislation for circuit courts[]’ to consider claims of innocence from final judgments of conviction.”); *Id.* at 446 (George W. Draper III, Chief Justice, concurring) (suggesting an alternate route for relief, “[u]nless and until the legislature adopts a law authorizing a

circuit or prosecuting attorney to file a motion for new trial upon discovery of evidence indicating a wrongful conviction”).

C. The Enactment of Section 547.031

In May 2021, in response to the suggestions in this Court’s ruling in *Johnson*, the Missouri General Assembly passed § 547.031 which provides prosecuting and circuit attorneys with the ability to file a motion to vacate or set aside a judgment “if he or she has information that the convicted person may be innocent or may have been erroneously convicted.” § 547.031(1). *Only* the prosecuting or circuit attorney can file such a motion; the Attorney General cannot. As for the Attorney General, § 547.031 provides that the “Attorney General shall be given notice of hearing of such a motion and shall be permitted to appear, question witnesses, and make arguments in the hearing.” § 547.031(2). Not only can such a motion only be filed by the prosecuting or circuit attorney, but *only* the “prosecuting attorney, circuit attorney, or the defendant” can “file and maintain an appeal of the denial or disposal of such a motion.” The Attorney General has no right to appeal, but shall “have the right to intervene in any appeal filed by the prosecuting or circuit attorney or the defendant.” § 547.031(4). The structure of the statute is that it is the prosecuting or circuit attorney who represents the State of Missouri in prosecuting and appealing a motion to vacate a conviction under the statute, not the Attorney General.

D. The Wrongful Conviction of Michael Politte

This case concerns Michael Politte, who was convicted in 2002 of the 1998 murder of his mother, Rita Politte. Michael Politte was fourteen years old at the time of his mother's murder. A fire led to Rita Politte's death, supposedly caused by arson. Supposed "scientific proof" that there was gasoline on Michael Politte's shoes was "the centerpiece of the prosecution's case." E204. The shoes allegedly bearing gasoline residue were the only physical evidence tying Michael Politte to the supposed arson. In August 2016, at the request of Politte's counsel, a private forensic expert concluded that, based on his forensic analysis, there was no gasoline present on Politte's shoes. At the request of the Attorney General, the Missouri State Crime Lab, redid the experiment to test the validity of that conclusion. On November 6, 2020, the Missouri State Crime Lab agreed with the private expert, concluding that "no ignitable liquids were identified on the shoes." E203. The Crime Lab noted that its protocol for identifying gasoline has changed since Politte's conviction. This was material to the issue whether gasoline was on Politte's sneakers, as "it is now known that solvents found in footwear adhesives have similarities to gasoline," which was "not widely known" in the late 1990s. A1.

The State Crime Lab's finding thus established the falsity of "th[e] central piece" of evidence used at trial, E204, leaving little remaining evidence to support Politte's conviction. In fact, when told about this new finding, almost all of the surviving jurors swore declarations asking that Politte's conviction be overturned. In light of this, and other concerns regarding the investigation and evidence against Politte, on May 15, 2022,

the Washington County Prosecuting Attorney filed a motion on behalf of the State to vacate Politte's conviction pursuant to § 547.031.

Without disputing the fact that Politte's conviction no longer had an adequate factual basis, let alone disputing the conclusions of the State Crime Lab, the Attorney General nonetheless filed motions purportedly on behalf of the State to dismiss the motion to vacate the conviction for lack of jurisdiction and failure to state a claim or, in the alternative, to transfer the motion to a civil case. The Washington County Prosecuting Attorney objected to the Attorney General referring to himself as the State in the action. On August 30, 2022, the Respondent, the Honorable Robin E. Fulton issued an order sustaining the Washington County Prosecuting Attorney's objection. "Hence [the Attorney General's] office shall hereafter be referred to as the 'Attorney General' or 'AG' and not the State of Missouri. The [Prosecuting Attorney] represents the State of Missouri." E3.

The Attorney General filed a petition for a writ of prohibition, or in the alternative, mandamus, directing the Circuit Court to dismiss the action for lack of jurisdiction or, in the alternative, transfer the motion to a civil proceeding wherein the Attorney General is the representative of the State. The Court of Appeals granted a temporary writ of prohibition, but, after briefing, vacated that writ and denied the Attorney General's motion. The Attorney General now seeks a similar permanent writ from this Court.

Very few motions have been brought pursuant to §547.031. We are aware of only three, other than this case.¹ In each of those cases, the Attorney General has opposed the prosecuting attorneys' motions, much as he does in this case. This is consistent with the Attorney General's long history of opposition to the exoneration of the wrongly convicted. *Johnson*, 617 S.W.3d at 449 (Stith, J. concurring) (noting that the Attorney General has opposed all grants of postconviction relief and writs of *habeas corpus* issued by the Missouri Supreme Court in the past decade). The passage of § 547.031 makes it clear, however, that the State's interest in finality must, in appropriate circumstances, yield to its interest in justice for the wrongfully convicted and that both of these interests can fairly be represented by a prosecuting attorney. Nonetheless, the Attorney General rejects the language of the statute, insists that he alone can represent the State in these matters, and contends that the State's interest in finality apparently warrants keeping wrongfully convicted people in prison, sometimes for life. This is the first occasion when this Court has had an opportunity to consider these claims.

¹ See *Kevin Strickland Exonerated 42 Years After Wrongful Capital Murder Conviction in Missouri*, Death Penalty Information Center, Nov. 24, 2021, <https://deathpenaltyinfo.org/news/kevin-strickland-exonerated-42-years-after-wrongful-capital-murder-conviction-in-missouri>; Luke Nozicka, *Fate of Missouri prisoner Lamar Johnson in hands of judge. Prosecutors say he's innocent*, THE KANSAS CITY STAR, Dec. 16, 2022, <https://www.kansascity.com/news/local/crime/article269952982.html>; *State v. Johnson*, 654 S.W.3d 883, 889 (Mo. banc 2022) (denying motions to stay the execution of Kevin Johnson due to pending §547.031 proceedings).

ARGUMENT

I. The United States and Missouri Constitutions recognize that justice requires not only convicting the guilty, but exonerating the innocent.

A core component of our Constitutions and of any functioning democracy is a fair and impartial system of justice that can recognize, and remedy, its occasional errors. As Justice Blackmun once observed, “[o]ur democracy rests in no small part on our faith in the ability of the criminal justice system to separate those who are guilty from those who are not.” *Victor v. Nebraska*, 511 U.S. 1, 28 (1994) (Blackmun, J., concurring); *see, e.g., Pennekamp v. State of Fla.*, 328 U.S. 331, 353 (1946) (Frankfurter, J., concurring) (“[T]he fair administration of justice is one of the chief tests of a true democracy.”). As such, the United States Constitution provides Americans with an array of safeguards including (1) a prohibition against unreasonable searches and seizures, U.S. Const. amend. IV, (2) the right to a speedy and public trial, U.S. Const. amend. VI, (3) the right to trial by an impartial jury of their peers, *id.*, (4) the right to confront witnesses, *id.*, and (5) the right to counsel, *id.* The Missouri Constitution is to the same effect. Mo. Const. art. 1 §§ 15, 18(a), 18(b).

The U.S. Constitution’s protections do not end at safeguarding the procedures for obtaining a conviction; the Constitution also secures the writ of habeas corpus, which allows confined individuals to challenge unlawful and indefinite imprisonment. U.S. Const. art. i. § 9 (“The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.”); *see also Engle v. Isaac*, 456 U.S. 107, 126 (1982) (noting that the writ of habeas corpus

“indisputably holds an honored position in [American] jurisprudence[,] . . . claims a place in Art. I of [the U.S.] Constitution [and] . . . is a bulwark against convictions that violate ‘fundamental unfairness.’”). Indeed, even without proof of procedural errors, a defendant can use a showing of “actual innocence” to overcome a default in federal habeas court, *Murray v. Carrier*, 477 U.S. 478, 495-96 (1986), or, in certain instances, to obtain a writ of habeas corpus, *Herrera v. Collins*, 506 U.S. 390 (1993). Again, Missouri law is the same. *See State ex rel. Amrine v. Roper*, 102 S.W.3d 541, 547 (Mo. banc 2003) (allowing a convicted individual sentenced to death to bring a freestanding claim of actual innocence in a state habeas proceeding).

The American system of constitutional democracy is thus premised on a fair system of justice that provides for legitimate convictions of the guilty and the exoneration—at trial or thereafter—of the innocent or wrongly convicted. While there is, of course, a compelling interest in the finality of convictions, in enacting § 547.031, the General Assembly determined that that interest was properly outweighed by proof that a defendant was actually innocent or wrongfully convicted, even if the evidence of that error comes long after conviction.

II. The role of a prosecutor is not merely to secure convictions, but to serve justice.

Ignoring the balance between finality and innocence carefully struck by § 547.031, the Attorney General elevates the State’s interest in the finality of convictions above all else and says that he alone can protect that interest. *See, e.g.* Br. 50 (“[T]he Washington County Prosecuting Attorney cannot . . . protect the State’s interests in the finality of

Politte’s conviction.”); *id.* at 60 (“There is no reasonable basis to believe the Washington County Prosecuting Attorney can . . . fully represent[] the State’s interests in finality of Politte’s lawful conviction.”); *id.* at 60-61 (Prosecutors are “bound to zealously and ethically represent the State’s interests in enforcing a judgment of guilt rendered after a fair trial.”) (internal citations omitted).

The Attorney General fundamentally misstates the role of the prosecutor in our society. Going back to Blackstone, the English and later American systems of justice have been built upon the foundational belief that “[i]t is better that ten guilty persons escape than that one innocent suffer.” William Blackstone, 4 Commentaries on the Laws of England 27 (1769). Thus, brand-new prosecutors are taught as they begin their jobs that the State “wins its point whenever justice is done its citizens in the courts.” *Brady v. Maryland*, 373 U.S. 83, 87 (1963) (quoting address given by Judge Simon E. Sobeloff when he served as Solicitor General). Countless opinions of this Court and the U.S. Supreme Court emphasize that the role of a prosecutor is to serve the interests of justice, not just to obtain and defend convictions. *See, e.g., State ex rel. Engel v. Dormire*, 304 S.W.3d 120, 127 (Mo. banc 2010) (prosecutor’s interest “in a criminal prosecution is not that it shall win a case, but that justice shall be done”); *State v. Storey*, 901 S.W.2d 886, 901 (Mo. banc 1995) (“the prosecutor has a duty to serve justice, not merely to win the case”); *State ex rel. Jackson Cnty. Prosecuting Att’y v. Prokes*, 363 S.W.3d 71, 85 (Mo. App. 2011) (prosecutor has a duty to “refrain from improper methods calculated to produce a wrongful conviction”) (quoting *Berger v. United States*, 295 U.S. 78, 88

(1935)). A comment to the Missouri Rules setting forth the Special Responsibilities of a Prosecutor makes the same point: “A prosecutor has the responsibility of a minister of justice and not simply that of an advocate.” Mo. R. Prof. Conduct 4-3.8 cmt. 1.

In particular, the opinions of this Court and other Missouri courts recognize the need to balance the interest in the accuracy of a conviction with the interest in finality. *See, e.g., Price v. State*, 422 S.W.3d 292, 296 (Mo. banc 2014) (commenting that the rules specifying a time period for initiating post-conviction proceedings reflect a balance of a defendant’s interest in post-conviction proceedings and the public’s interest in finality); *State v. Kinder*, 122 S.W.3d 624, 631-32 (Mo. App. 2003) (statute allowing for post-conviction DNA testing balances need for finality and “real concern that DNA technology could produce exonerating results”).

The Attorney General’s obsessive focus on finality conflicts with these fundamental notions of justice. Judge Laura Denvir Stith recognized this in her concurring opinion in *Johnson* where she raised concerns over the Attorney General’s rigid interpretation of the role of a prosecutor. *Johnson*, 617 S.W.3d at 449 (Stith, J. concurring). She noted, “[i]n suggesting it is his duty, and that of the circuit attorney, as representatives of the State, to oppose a request for habeas or similar relief, the attorney general misunderstands the full extent of the prosecution’s role in the justice system. [T]he prosecutor’s role transcends that of an adversary: he is the representative not of an ordinary party to a controversy, but of a sovereignty . . . whose interest . . . in a criminal prosecution is not that it shall win a case, but that justice shall be done.” *Id.* (internal

quotation marks omitted) (citing *United States v. Bagley*, 473 U.S. 667, 675 n.6 (1985), quoting, *Berger*, 295 U.S. at 88).

This understanding is reflected in the ABA Standards and Model Rules, which this Court frequently considers and cites. *See, e.g., In re Ehler*, 319 S.W.3d 442, 451 (Mo. banc 2010); *State v. Walton*, 796 S.W.2d 374, 378 (Mo. banc 1990). ABA Criminal Justice Standard 3-1.2 addresses the functions and duties of a prosecutor. It provides that the prosecutor is “an administrator of justice,” Standard 3-1.2(a); who has “[t]he primary duty . . . to seek justice within the bounds of the law, not merely to convict,” Standard 3-1.2(b); who should seek to “protect the innocent and convict the guilty,” *id.* The Missouri rules are to the same effect. Mo. R. Prof. Conduct 4-3.8.

ABA Model Rule of Professional Conduct 3.8(g) additionally provides an affirmative rule that a prosecutor who “knows of new, credible and material evidence creating a reasonable likelihood that a convicted defendant did not commit an offense of which the defendant was convicted” must “promptly disclose that evidence to an appropriate court or authority” and—“if the conviction was obtained in the prosecutor’s jurisdiction”—the prosecutor must “promptly disclose that evidence to the defendant unless a court authorizes delay” and “undertake further investigation, or make reasonable efforts to cause an investigation, to determine whether the defendant was convicted of an offense that the defendant did not commit.” Rule 3.8(h) further provides that when “a prosecutor knows of clear and convincing evidence establishing that a defendant in the

prosecutor's jurisdiction was convicted of an offense that the defendant did not commit, the prosecutor shall seek to remedy the conviction.”²

All of this means that there is no conflict of interest here. The Prosecuting Attorney of Washington County can zealously represent the interests of the State, but, having conducted an intensive investigation of the evidence and having concluded that Politte's conviction was based on faulty and insufficient evidence, he should seek to exonerate Politte, exactly as § 547.031 permits. The Attorney General's approach—which is to oppose a motion to vacate regardless of its facial merits simply because of the State's interest in finality—is just wrong.

The Attorney General's approach is particularly problematic in this case where he has failed to put forth any reasons why the motion to vacate should be denied on the merits. He does not dispute the Prosecuting Attorney's conclusion that Politte was wrongfully convicted based on flawed scientific evidence. Indeed, it was the State's own Crime Lab, at the Attorney General's direction, that confirmed the error in reliance on the original test results. Rather than disputing this devastating conclusion, the Attorney General offers the empty argument that the Prosecuting Attorney “cannot meaningfully test his own evidence.” [Br. 49-50.] What can that possibly mean? Unless the Attorney General has evidence to challenge the conclusion of the State Crime Lab—and he offers

² The comments to the Missouri rule, adopted in 2007 before the enactment of § 547.031, note that the affirmative obligations on a prosecutor in this instance vary by jurisdiction and cites approvingly to the ABA Rules. Mo. R. Prof. Conduct 4-3.8.

none—there is no meaningful test to be had. Politte was wrongly convicted based on a meaningless test. All the fundamental standards of American justice reject the Attorney General’s position.

III. Under § 547.031, the Prosecuting Attorney of Washington County, not the Attorney General, represents the interests of the State

The General Assembly passed § 547.031 in response to this Court’s decision in *Johnson*, which recognized that Missouri lacked a statutory mechanism for a prosecuting attorney to move to vacate a potentially wrongful conviction. In § 547.031, the General Assembly provided a procedure. Notably, it limited the role of the Attorney General, apparently in reaction to his demonstrated bias against even legitimate motions to set aside a wrongful conviction. Thus, the General Assembly provided that *only* a circuit or prosecuting attorney can file a motion to vacate a potentially wrongful conviction on behalf of the State. It grants the Attorney General the mere right to “appear, question witnesses, and make arguments” at the vacatur hearing. Section 547.031 further grants *only* the circuit or prosecuting attorney the right to appeal. It grants the Attorney General merely the right to participate in an appeal as an intervenor. According to press accounts, former Missouri Supreme Court Judge Michael Wolff described the statute as follows: “The attorney general is given a lane to drive in . . . [b]ut it’s not as big of a lane as he had in the Lamar Johnson case” so that “the attorney general would not be party” in a § 547.031 proceeding. Rebecca Rivas, *St. Louis prosecutor asks court to free Lamar Johnson after nearly 30 years in prison*, MISSOURI INDEPENDENT, Aug. 31, 2022,

<https://missouriindependent.com/2022/08/31/st-louis-prosecutor-asks-court-to-free-lamar-johnson-after-nearly-30-years-in-prison/>.

By enacting § 547.031, the General Assembly clearly determined that it is *in the interest of the State* for the convictions of those who are innocent or wrongfully convicted to be vacated, that that interest outweighs any abstract interest in finality, and that there is no conflict of interest for one arm of the State—the circuit or prosecuting attorney—to see that justice is done. The mere existence of § 547.031 demonstrates the State’s interest in exoneration of the wrongfully convicted, rather than a mindless insistence on the finality of all convictions. And it clearly assigns the principal role in seeking justice—on behalf of the State—to the local prosecutor, not the Attorney General.

CONCLUSION

The Attorney General certainly has a lawful role to play in the § 547.031 proceeding brought by the Washington County Prosecuting Attorney. He may “appear, question witnesses, and make arguments.” If he knows of any reason why Politte was not wrongfully convicted, he is free to offer it—even though so far he has had nothing to say on that subject. However, by purporting to be the representative of the State and seeking to be the principal party in a § 547.031 motion, the Attorney General is overstepping that role. This Court should reject the Attorney General’s request to construe § 547.031 so that he—and not the local prosecuting attorney—represents the State of Missouri in § 547.031 proceedings, whether those proceedings are civil in nature or not.

Dated: January 13, 2023

Respectfully submitted,

s/ Bernard J. Rhodes

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CERTIFICATE OF COMPLIANCE

I certify that:

1. The brief includes the information required by Rule 55.03;
2. The brief complies with the limitations contained in Rule 84.06(b); and
3. According to the word count function of counsel’s word processing software (Microsoft Word) and excluding those portions of the brief as permitted by Rule 84.06(b), the brief contains _____ words.

s/ Bernard J. Rhodes
Attorney for *Amicus Curiae*

CERTIFICATE OF SERVICE

This is to certify that, on this 13th day of January, 2023, this Brief of Common Cause as *Amicus Curiae* in Support of Respondent was electronically filed via Case.net, which will provide notice to all counsel of record.

s/ Bernard J. Rhodes _____
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