

29 January 2019 - SB 18
NEUTRAL TESTIMONY OF PHILLIP COSBY
State Director, American Family Action of Kansas and Missouri
Kansas Senate Judiciary Committee January 2019
NEUTRAL TESTIMONY

Chairman Wilborn, and honorable members of the Senate Judiciary Committee, my name is Phillip Cosby. I am a native of Kansas, and State Director of the American Family Association / Action of KS & MO.

I rise to submit neutral testimony and a request for two amendments on SB 18. Relating to diversion agreements: In particular, their effect on K.S.A. 22-3001 (c) the Citizen-Initiated Grand Jury and any true bill indictments from the work of that Grand Jury.

1. Request that Sec. 2. K.S.A. 218 Supp. 22-2909 as it pertains to SB 18 be amended to read; following line 32:

Diversion agreements will not be entered into by the County , District Attorney or Attorney General in the event of a true bill of indictment from a Citizen-Initiated Grand Jury. K.S.A. 22-3001 (c).

2. A corresponding amendment to Article 30 – Grand Juries K.S.A. 22-3011 (d) will also be necessary as follows;

(d) A grand jury impaneled pursuant to K.S.A. 22-3001(c) *Citizen-Initiated Grand Jury*, and amendments thereto, ~~may~~ **shall** request that the attorney general prosecute the case arising from an indictment found by such grand jury if, ~~in the opinion of the grand jury, the prosecuting attorney would not diligently prosecute such case.~~ ***the local prosecutor chooses not to proceed with the prosecution of a true bill indictment within 30 days of its delivery.*** The court shall notify the attorney general of such request and the attorney general may prosecute such case. ***Diversion agreements will not be entered into in the event of a true bill of indictment from a Citizen-Initiated Grand Jury.***

Why are these two amendments necessary?

After sixteen years of successful efforts of communities delivering Promotion of Obscenity indictments, they are summarily dispatched with a diversion of a \$ 100 fine, one year probation, tailored to the sale of specific item(s) identified as obscene.

We the people are the rightful masters of both Congress and the courts... Lincoln

Kansas statute 22-3001 provides for three types of Grand Juries. Interestingly they correspond to the three separate branches of government.

- (a) Grand Jury ordered by district judges
- (b) Grand Jury by District or County Attorney – Authority granted in 2014
- (c) Grand Jury by Citizen Petition

Of the three, the Citizen Grand Jury (CGJ) by petition is the oldest and closest to the original intent chiseled in the U.S. Constitution as a restraining mechanism for possible abuse by institutional power. A natural tension is present when citizens pursue a citizen's grand jury remedy. Resorting to a grand jury by petition implies that someone in authority is not doing their job, or worse.

The KANSAS COUNTY AND DISTRICT ATTORNEYS ASSOCIATION MAGAZINE – *The Kansas Prosecutor* – correctly states in - “**Gimme A Grand Jury**” - Winter 2010 Jan Satterfield, Butler County Attorney

*“The other form of a grand jury is a citizen’s grand jury initiated by a petition of the citizens. Typically, a citizen’s grand jury is convened to investigate **criminal activity involving government or a perceived failure of the prosecutor or system to charge or investigate a particular person or entity.** A grand jury has two functions: to charge and investigate.”*

For the last sixteen years the Kansas legislature has rediscovered and insulated this instrument of the people from usurpations by power. For most states it is lost to history. The Citizens Grand Jury by Petition renewal in Kansas is a unique gem that a nation needs to rediscover. The CGJ improvements these past sixteen years are a result of institutional prosecutorial bias or judicial rulings that have short-stopped the process.

No. 118,410 IN THE COURT OF APPEALS OF THE STATE OF KANSAS In the Matter of the PETITION TO SUMMON A GRAND JURY Filed by STEVEN DAVIS

“Grand juries during colonial times exercised broad powers. “Through presentments and other customary reports, the American grand jury in effect enjoyed a roving commission to ferret out official malfeasance or self-dealing of any sort and bring it to the attention of the public at large” 408 F.3d at 1191. The Founding Fathers deemed this power of the people to be so important that they carried the grand jury process over to our Constitution through the Bill of Rights.”

"One can find no less than a dozen and a half published cases around the United States that repeat the maxim that a grand jury would indict a ham sandwich if asked to by a prosecutor." *McGill v. Superior Court*, 195 Cal. App. 4th 1454, 1498, 128 Cal. Rptr. 3d 120 (2011). It was apparently the opposite belief, that a prosecutor could just as easily thwart a grand jury process, that was the impetus for the changes that were made to the Kansas grand jury process in 2013.”

Kansas is not inventing the Citizen Grand Jury process, we are rediscovering it.

Law Review Journal dated 1955 – ***Grand Jury Under Attack*** – (electronically submitted) chronicles the early 1900's demise of the citizen-initiated grand jury in America. It is an historical look from the birth of the Magna Carta up to the 1st and 5th Amendments to the U.S. Constitution. The Citizen-initiated Grand Jury was once the norm in the majority of states. It was usurped by **“A movement that substituted a legal expert for an unwieldy body of laymen”**. The 1900's arguments against such usurpations by institutions of power prophesied of professional and judicial tyranny. The gradual usurpation and centralization of power from the citizenry was hastened by the slowness of horse drawn buggies, Americas vast expanses, dispersed populations, a lack of highways and the Great Depression. All contributing factors to the citizen-initiated grand juries demise with calls of replacement of “inefficiency, ignorance and traditional bias of grand jurors”

Touting the economic advantages of a grand jury, the Kansas DA/CA Association lobbied successfully in 2013 / 14 for their own grand jury authority and now enjoy year-round DA/CA grand juries delivering 100% successful indictments. An efficient process which in their own testimonies promised “administrative relief” and “economy” of process, “saving money” by avoiding costly evidentiary hearings. One has to wonder why the founders of this nation chose words like “justice” over today's arguments of “administrative relief”. What sounds true?

I am advocating for the original purpose of the CGJ, as a constitutional link in the chain that restrains tyranny. The Citizens Grand Jury's purpose was never to serve as the lapdog of power but a watchdog, tracing back 804 years to the birth of the Magna Carta in 1215 when the law became king. The CGJ chafes against such phrases as “prosecutorial discretion” and “administrative relief”. It was crafted to challenge the Kings indifference to the law and is much more than a tool for administrative efficiencies. The CGJ was purposed as a feared, independent, investigative tool but now wielded as an efficient prosecutorial instrument.

The Kansas legislature has been keen to this point of mischief, with easily dismissed and improperly influenced citizen grand juries. This body has enacted about a dozen statutory remedies in as many years. These two amendments are in that same spirit.

***The Right of the People to Petition the Government for a Redress of Grievances.
1st Amendment to the U.S. Constitution***

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