

TESTIMONY OF PHILLIP COSBY SUPPORTING **HB 2151**
State Director, American Family Action of Kansas and Missouri
Kansas Senate Judiciary Committee 2016

Chairman King, 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 am honored to speak to you in support of HB 2151.

Lines 31-36 In the case of grand juries impaneled pursuant to subsection (c), the judge or judges ordering the grand jury shall allow the person that filed the petition under the provisions of subsection (c)(2), and such person's attorney, to witness the instructions to the grand jury regarding its conduct and deliberations pursuant to subsection (c)(4).

The Kansas statute 22-3001 on grand juries provides for three types in Section 1.

- (a) Grand Jury ordered by district judges
- (b) Grand Jury by District or County Attorney
- (c) Grand Jury by Citizen Petition

In the spirit of Abraham Lincoln's quote: "*We the people are the rightful masters of both Congress and the courts, not to overthrow the Constitution but to overthrow the men who pervert the Constitution.*"

U.S. Constitution 1st Amendment..."right of the people to petition the government for a redress of grievances." Not address, but redress ...to remedy.

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. Possible collusion, cronyism or corruption by insiders must have a judicial remedy that is not just accessed, directed and enjoyed by institutional power.

The CGJ is a 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. Its heritage traces back exactly 800 years to the birth of the Magna Carta of 1215 when the king became subservient to the law. 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 Kansas legislature has rightfully sided with the people's petition right and the potency of the U.S. Constitution to keep power in check. Trust but verify.

For the last thirteen years I have had the privilege to partner with the Kansas legislature in rediscovering and insulating this instrument of the people. For most states the citizen's petition process has been usurped by power, rendered impotent or altogether lost to history. The Kansas legislature has rightfully discerned that the independent process must be revived. Legislative remedies have gone past the idea of nominal transparency and rightly support a robust participatory role by the petitioner.

- **Why is this particular amendment needed? In preparation as the first witness for a recent grand jury by petition, I asked for the judge's instructions. The reply I received was one of contempt and I was told via the court clerk that the petitioner would not be afforded the courtesy of instructions but the status of first witness only, nothing more.**

- **This legislature saw fit that the petitioner was the guaranteed first witness right prior to the jury's selection of legal council and investigator. As first witness it is obligatory that the petitioner provide answers to not only why the petition was necessary but to point to possible violations of law, additional witness recommendations and anything that might be cognizable to the jury.**
- **The petitioner needs to know not just the statutory rules but since the judge has liberty to interject their own rules, the first witness needs to be informed on the rules. For example; some judges have allowed juror members and witnesses to speak of their experience after the process was concluded, some have not.**
- **Furthermore, if contempt of the process is present during judicial instructions, it would be important to discern the tone relayed to jury members.**

Multiple stories of "a waste of time", contempt, indifference and bias by power compelled the Kansas legislature to intervene these recent years and set into law remedies to insulate this intentionally robust investigative process by the citizenry. It is a piece of the beauty of our checks and balance system.

Recent unrest out of Ferguson Missouri and New York City was exacerbated by the lack of confidence in a grand jury process owned solely by power. For several years the Kansas legislature has been keen to this point of possible mischief of easily influenced grand juries (indict a ham sandwich) and has provided remedy via this peoples process.

These two accusatory tools, the (b) Grand Jury by District Attorney or County Attorney and the (c) Grand Jury by Citizen petition are different in many ways and should remain distinct, respected and independent.

Those who know me would probably be correct in their assessment of my conservative leanings. However, it is my hope all would realize that this double-edged sword of justice cuts both ways.

Kansas has rediscovered and revived a Citizen Grand Jury process that the people (not power) in many states do now envy.

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