

PROPONENT TESTIMONY OF PHILLIP COSBY SUPPORTING **SCR # 1608**
“We The People” Constitutional Amendment
State Director, American Family Action of Kansas and Missouri
Kansas Senate Judiciary Committee February 2021

Section 3 , Kansas Bill of Rights ; *“Right of peaceable assembly: petition. The people have the right to assemble, in a peaceable manner, to consult for their common good, to instruct their representatives, and to petition the government, or any department thereof, for the redress of grievances, including by citizen-initiated grand jury”*

**We the people are the rightful masters of both Congress and the Courts... Lincoln
All political power is inherent in the people”...KS Constitution 1959**

Three types of Kansas Grand Juries; K.S.A.22-3001

- (a) **Grand Jury ordered by district judges** – No known history of use
 - (b) **Grand Jury by District or County Attorney** – Authority granted in 2014
 - (c) **Grand Jury by Citizen-Initiated Petition** –1887 – Kansas - 134 years ago
- **May 2008 - The citizen-initiated grand jury process was ruled Constitutional**
- *KANSAS SUPREME COURT – No. 99,951; 99,972; 100,042 Sedgwick County*
 - **June 2019 – Statute on citizen-initiated Grand Juries Reaffirmed** (*No. 118,410 Douglas County ,IN THE COURT OF APPEALS OF THE STATE OF KANSAS ...*“**When a statute is plain and unambiguous, an appellate court should not speculate about the legislative intent behind that clear language”... “Shall means shall”**

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

The Citizen-Initiated Grand Jury (CIGJ) by petition is the oldest and closest to the original intent chiseled in the 5th amendment U.S. Constitution as a restraining mechanism for abuse by institutional power. The CIGJ chafes against such phrases as “prosecutorial discretion“ and “administrative relief“. What sounds true?

A natural tension is present with institutional power when citizens pursue an independent grand jury remedy. Resorting to a grand jury by petition implies at the very least that someone in authority is not doing their job. Worse yet: corruption, indifference, collusion, bias, a wink and a nod...are of grave concern.

- **Highlighted spreadsheet** showing KS legislative improvements since 2004.
- Historical reference: **1955 Northwestern Law Review** illuminating late 19th century / early 20th century debates and chronicling the gradual demise of the citizens investigatory process. It was the era of increasing centralized authority. Common arguments were centered on **efficiencies** and **who is worthy of trust?**
- Contemporary scrutiny: **If It’s Not a Run Away, It’s Not a Real Grand Jury.** A look back at the original intent, what was then and what is now. Exposing today’s common grand jury as no longer the original robust independent investigative process, but now simply an efficient prosecutorial tool.

WHY IS THIS “*We The People*” BILL OF RIGHTS AMENDMENT NEEDED?

- Nationwide civil unrest continues to fester. Kansas has a judicial “relief valve” as originally intended is in the U.S. Bill of Rights 5th amendment. A remedy hiding in plain sight!
- Judicial reform is not just about social remedies, sentencing guidelines, overcrowding and recidivism. We must also examine our present day increasingly expensive, complicated and detached judicial system.
- Although the citizen-initiated grand jury is contained the Kansas Statutes, it remains obscure, under-utilized and disparaged by most prosecutorial authorities.
- Personal injury lawyers aggressively advertise their services. How much more then should we just as zealously broadcast to the average citizen their right to avail themselves of this lever of power? Citizens need not only to be heard but also respected as truly “We The People”.

The original Grand Jury checked the Kings abuse and indifference to the law. A prosecutor diminishing it to an engine for administrative efficiencies is a sham. Grand Juries have devolved into efficient prosecutorial instruments not unlike “Star Chambers”. The CIGJ is purposed as a feared, independent investigative tool. This citizen-initiated power constraining legacy is inextricably linked to the Bill of Rights, Colonial America, British Common Law, the Magna Carta and Ancient Greece.

Scale of harm? What if a citizen-petitioner is not acting in good faith? After securing sufficient signatures, will they likely sway fifteen jurors, which are less prone to have an axe to grind? Scale of harm? Ever heard of a less than truthful attorney that resulted in harm? Or a judge who got it wrong? A wrongful imprisonment? A court that missed the mark? Dred Scott decision, Plessy v. Ferguson, Carr Brothers Case... Scale of harm?

WHO IS RESTRAINED IN THE BILL OF RIGHTS, PEOPLE OR POWER? WHO IS THE FINAL ARBITER OF POWER? WHO DID THE FOUNDERS DECISIVELY TRUST AND DISTRUST?

Thomas Jefferson. “I know no safe depository of the ultimate powers of the society but the people themselves; and if we think them not enlightened enough to exercise their control with a wholesome discretion, the remedy is not to take it from them, but to inform their discretion by education...”

Patrick Henry - “The Constitution is not an instrument for the government to restrain the people, it is an instrument for the people to restrain the government – lest it come to dominate our lives and interests.”

This sword cuts both ways. The Grand Jury’s purpose was never to serve as the lapdog of power but a watchdog. Enough of this experiment of professional elitism, America needs this “relief valve” again.

Kansas is not inventing the Citizen-Initiated Grand Jury process; **Kansas is leading** in reinstating a usurped and almost forgotten historical constitutional right.

We the people... A Government of, by and for the people” ... ”