

PROPONENT TESTIMONY OF PHILLIP COSBY SUPPORTING **SB 58**
State Director, American Family Action of Kansas and Missouri
Kansas Senate Judiciary Committee January 2020

Pg. 3 Line 39-42 “ *The person who filed the citizen-initiated petition and whose name, address and phone number appear on the face of each petition shall be immune from civil liability for any good faith conduct under this article.*”

**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 history of use
- (b) **Grand Jury by District or County Attorney** – Authority granted in 2014
- (c) **Grand Jury by Citizen-Initiated Petition** –1887 - 133 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 - 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**” also; *General allegations are sufficient for petition*

“...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

Of the three, the Citizen-Initiated Grand Jury (CGJ) 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 CGJ 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.

The original Grand Jury checks the Kings abuse and indifference to the law. Prosecutors who diminish it to an engine for administrative efficiencies is a sham. The CGJ is purposed as a feared, independent investigative tool. Grand Juries have devolved into efficient prosecutorial instruments. This citizen-initiated power constraining legacy is inextricably linked to Colonial America, the Bill of Rights. British Common Law, the Magna Carta and Ancient Greece.

Senate Judiciary Comm.
Date Jan 23, 2020
Attachment 3

Judicial Immunity- In the performance of their duties - Rules Adopted by the Kansas Supreme, Court Rule 223 **Immunity**. U.S. District Court, District of Kansas Rule 83.6.12 (f) Complaints, reports, or testimony in the course of disciplinary proceedings under these rules are deemed to be made in the course of judicial proceedings. All participants are entitled to judicial immunity and all rights, privileges, and immunities afforded public officials and other participants in actions filed in the courts of Kansas.

Prosecutors Absolute Immunity – In the performance of their duty. Supreme Court of the State of Kansas *NO. 85,499 Dale E. McCormick v. Cynthia J. Long, Deputy District Attorney* – “2. **Prosecutors have absolute immunity** for activities intimately associated with the judicial phase of the criminal process...” and “acts undertaken by a prosecutor in preparing for the initiation of judicial proceedings or for trial... are entitled to the **protections of absolute immunity**.” *Buckley v. Fitzsimmons, 509 U.S. 259, 113 S. Ct. 2606, 125 L. Ed. 2d 209 (1993)* **Qualified Immunity** also protects government officials from lawsuits.

***** No Immunity Language exists for “First Witness” ***** – In the performance of the statutory directive; K.S.A. 22-3001 (4) (B) The person filing the citizens' petition filed in this court **must be the first witness** you call for the purpose of presenting evidence and testimony as to the subject matter and allegations of the petition. **An immunity from civil lawsuits provides statutory “plain language” shielding the “first witness”.**

Litigation is a certainty. The Kansas courts will at some future date examine and rule on the point of “first witness” immunity, as a result of a civil suit against the citizen who filed the petition. **“Unambiguous” “Plain” language of immunity to the first witness accuser would settle the question of legislative intent.** It is superior that the legislature writes law as opposed to a future judicial ruling deciding an immunity right, or not.

**WHO IS RESTRAINED IN THE BILL OF RIGHTS?
WHO IS THE FINAL ARBITER OF POWER? WHO DID THE FOUNDERS
ULTIMATELY 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 Citizens Grand Jury's purpose was never to serve as the lapdog of power but a watchdog ...

Kansas is not inventing the Citizen-Initiated Grand Jury process; Kansas is leading in reinstating a usurped, neglected foundational historical constitutional mandate.

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

*Article 3 of the Kansas Bill of Rights...
the Peoples Right to Petition the Government for a Redress of Grievances.*