

TESTIMONY OF PHILLIP COSBY SUPPORTING *HB 2054*
State Director, American Family Action of Kansas and Missouri
KANSAS HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE 2013 Session

Mr. Chairman, and honorable members of the Federal and State Affairs 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 2054, "The Community Defense Act" (CDA), implementing court tested and constitutional statewide Time, Place & Manner restrictions on sexually oriented businesses (SOB's).

These past ten years I have spoken to thousands of Kansas citizens and civic officials concerning the negative effects of Sexually Oriented Businesses (SOBs) in communities. This bill has twice enjoyed a super majority vote in this House only to fail in the Senate by the narrowest of margins. Sixteen of the eighteen Senators who had been oppositional on past CDA votes did not run or advance past the primary. It is a new day, and I believe the Senate is ready to join you. Citizen polling data consistently support regulatory efforts in the 67 % range.

You have been provided with the same ample court rulings and land use studies that the "show me state" Missouri legislature was provided and was scrutinized by the Missouri Supreme Court who ruled in a 9 to 0 unanimous decision upholding the constitutionality of the law on all points. Upon appeal the SCOTUS echoed their agreement on its constitutionality by rejecting the appeal. This Kansas CDA is a twin of the Missouri law.

You have summaries of negative secondary effect studies of forty-three cities, court rulings and a CD containing 1,800 pages of detailed court upheld studies and twenty-three court cases all awarding lawmakers the constitutional right to regulate SOB's thus reducing negative secondary effects. Negative effects, which constitute a substantial government interest in regulating the Time, Place and Manner restrictions of SOB's. The evidence of harm is not anecdotal; the lawful regulation of the sex industry is based on real negative effects on communities.

The deleterious effects on communities are primarily increased crime, increased STD's, blight, property devaluation, prostitution, human and drug trafficking. In 1973 the SCOTUS stated, "legislators are entitled to rely, in part on an appeal to common sense". SOBs are not engines of prosperity, but a community resource liability.

Knowing the toxic effects of SOBs on communities. Topeka's Police Chief Ron Miller granted me permission to restate his complete support for CDA and added that the midnight closing time of SOB's is one of the easiest things for an officer to check for compliance.

Two famous examples of the effects on community among scores are (1) the cleaning up of NYC's Times Square and the subsequent decrease in crime and increase of tourism, and (2) the current reputation of Atlanta Ga. as the sex trafficking capital of the US. These are not my words but the words of Atlanta's mayor, Shirley Franklin. (*Atlanta Journal-Constitution March 21st 2007*) Strip clubs promised Atlanta GA. prosperity and an "upscale cosmopolitan" appeal as they expanded to accommodate the International Olympics. What Atlanta inherited was a series

of strip clubs that breed prostitution and sexual trafficking. The FBI reports that 13 is the average age of sex trafficking victims and now the #2 moneymaker for organized crime.

On a softer note, the newly minted Kansas Human Trafficking Bill generates resources' for the Human Trafficking Assistance Fund. Municipal Courts must remit \$ 2,500 for each violations of prostitution. Promoting prostitution can add \$ 5,000. Patronizing a prostitute can add \$ 5,000. The KS AG's office estimates revenue of \$ 636,000 in 2014, rising to \$ 1,272,000 in 2015. In addition, the Governors budget includes additional funding of \$3 million for community corrections treatment to reduce the number of probationers from entering prison.

The CDA is the other half of a remedy to confront the curse of Human Trafficking. The CDA deals with demand reduction of the sex trade and its negative effects on communities while tools like the Kansas Human Trafficking bill serves the aim of harm reduction to victims. One pulls struggling casualties from a rivers flood while the other seeks to remedy who is throwing them in. Today's strip club performers were once 13 and more likely than not sexually abused. Missouri could benefit from Kansas's two pronged approach, turning victims into survivors.

Communities are intimidated by a sex industry that boasts an annual US revenue greater than all professional sports; football, baseball and basketball combined. Many communities in Kansas have no regulatory protection in place. SOB's often ambush unprotected areas, seeking the path of least resistance, especially along a highway system or main streets of cities. SOB's boldly declare that there is nothing the community can do and if they do enact SOB regulations, their attorneys do file lawsuits. Such intimidation strategies more often than not, do work. If civic leaders do muster the will to enact SOB ordinance protection, lengthy litigation is a certainty. In the case of Abilene Kansas, litigation was in its fifth year , at a cost of \$ 1,000,000 when faced with another five years of effort and expense, their will was broken, case closed. What city would chose to run a similar gauntlet? SOB ordinance law is not a specialty of city and county attorneys who lack the resources to litigate against a lucrative and experienced industry. SOB attorneys always oppose restrictions with misstatements like;

- *SOB's are a financial asset to communities.* (see attached 43 Land Use summaries and the CD with 20 detailed summaries, documenting the economic drain on communities) The evidence shows that these establishments are not engines of economic prosperity.
 - *SOB regulation is unconstitutional.* (see CD with 23 court cases ruling otherwise) Ask them about the recent Missouri Supreme Court unanimous ruling on all points.
 - *Litigation is a certainty and too costly.* (If the CDA is passed, litigation will be a onetime showdown as opposed to the current endless gravy train of multiple community litigations fattening attorney's bank accounts and intimidating communities).
 - *Where are the studies on Kansas?* They repeat this in every town. The courts for the most part are satisfied that "this leopard does not change its spots" and do not require new evidence on the repeatable and predictable outcomes. Important to this statement is the study "Rural Hotspots" in your folder. Missouri was not required a state wide study.
- **Beware of clever "poison pill" amendments that will cripple the CDA. Poison pills like...** An amendment to "Let cities with pre existing SOB restrictions be exempt" The problem with this is that Kansas is peppered with faux SOB ordinances that have the

restraining power of cobwebs. One city has an "arcades" only shell, not much in effect but it does qualify as preexisting. Large cities can't just say to rural Kansas, "I've got mine".

Or the poison pill ... "Let the Community Defense Act affect new Sexually Oriented Businesses only." What this would do is insure an unchecked monopoly for currently existing SOBs.

Legislative bodies on many levels are behind the curve in recognizing and reacting to the cause and effect relationship of the sex industry and its interconnected negative secondary effects. These brick and mortar sex businesses may be the tip of the iceberg of a larger problem of easy cyber access to pornography and obscenity but at least it is a place where case law has driven a stake and makes a constitutional stand to address this growing public safety and health crisis.

Too often the disingenuous drum beat sounds like; this is a parental responsibility or let local communities contend with the problem on their own. How can families and communities contend against this pervasive, aggressive and well funded sex industry? Would it be good public policy if there were a polluted water source to simply instruct a household to install their own filter?

Many states have come to the aid of outgunned communities with constitutionally upheld community defense acts. Even Denmark with its infamous anything goes approach to sex has corrected its misdirection with regulations stemming the tide of correlating negative effects. This is a real pocketbook issue; sex crimes represent a large segment of criminal activity. You can't raise enough taxes, build enough prisons and buy enough ankle bracelets for this tsunami. The Center for Disease Control reported that 26% of teenage girls are now infected with a sexually transmitted disease. The list of STD's has now grown to over twenty-nine. Ladies and gentlemen what we have is an epidemic and we must act in concert with families and communities. HB 2054 is a compelling governmental interest.

"This is an industry that depends upon all of us to be silent about what we know to be true. By our silence we allow those who are psychological cannibals to prey upon the psychological vulnerabilities of others. So silence is complicity. So I say to the strip club bosses, the pornographers, the pimps and sex traffickers who make money by hurting people and damaging our communities, you will never have the comfort of my silence again. I hope the same is true for you as well. And if it is true, you can be the kind of hero for which this state so deeply hungers." Dr. Mary Ann Layden

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- Talking points attached

The Kansas Community Defense Act was crafted by one of the most successful constitutional SOB ordinance attorneys in the nation. Law Office of Scott D. Bergthold, Chattanooga, TN. 423-899-3025 www.adultbusinesslaw.com

Mr. Bergthold is the attorney who defended the 9-0 Missouri Supreme Court ruling.

