

TESTIMONY OF PHILLIP COSBY SUPPORTING **HB 2403**  
STAE DIRECTOR AMERICAN FAMILY ACTION OF KANSAS AND MISSOURI  
KANSAS HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE March 2021

Chairman Barker and honorable members of the Federal and State Affairs Committee, my name is Phillip Cosby. A native of Kansas and State Director for American Family Action of KS and MO. I am honored to speak to you in support of **HB 2403, “The Community Defense Act” (CDA)**, statewide regulation of sexually oriented businesses (SOB) through constitutionally sound Time, Place and Manner restrictions.

These past eighteen years I have spoken to thousands of Kansas and Missouri citizens and civic officials concerning the negative effects of Sexually Oriented Businesses (SOB) on communities.

Kansas’ twenty strip clubs and scores of pornography outlets are spread throughout the state. Topeka is home to three clubs. Kansas Strip clubs and pornography outlets have mostly avoided legal and legislative remedies.

**This legislative body did recognize the harms** of pornography with its 2017 resolution No. 6016... *”Be it resolved: That we recognize pornography is a public health hazard that lead to a broad spectrum of individual and public health impacts and societal harms; and Be it further resolved: That we recognize the need for additional education, prevention, research and policy change at the community and societal levels, and we urge this chamber and other governing bodies to take appropriate steps to ensure progress is made.”* March 30 2017, signed Speaker of the KS House, Ron Rychman. Also a **2011 House 91-28 Vote** in support of CDA.

**Kansas Attorney General Schmidt’s** SB 61 Human Trafficking bill Page 98 lines 1-6 which reads:

**“interests of this state, including, but not limited to: (1) To mitigate the adverse secondary effects of sexually-oriented businesses; ...**(3) to limit harm to minors; and (4) to reduce prostitution the sale of sexual relations , crime, juvenile delinquency, deterioration in property values and lethargy in neighborhood improvement efforts.”****

**Recognizing and reacting to the cause and effect** relationship of the sex industry and its related negative secondary effects is critical. 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 to make a constitutional stand to address this growing public safety and health crisis.

**The evidence of harm is not anecdotal**; the lawful regulation of the sex industry is based on real negative effects on communities and has been constitutionally upheld for nearly fifty years. The deleterious effects are primarily increased crime, increased STD’s, blight, property devaluation, prostitution, human and drug trafficking. Sex trafficking is now the international #2 moneymaker for organized crime, behind illegal drugs.

**Included** with this testimony are Kansas news stories of tax evasion, human trafficking and 1,500 pages of detailed court upheld studies of forty-three cites and twenty-two court cases all awarding 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. This bill has all the same regulatory elements as the recently court tested SOB restrictions in Missouri. All restrictive measures were found to not offend either the 1<sup>st</sup> or 14<sup>th</sup> amendments to the U.S. Constitution. The Missouri Supreme Court 9-0 unanimously ruled all restrictions as reasonable and constitutional.**

In 1973 the SCOTUS stated **“legislators are entitled to rely, in part on an appeal to common sense”**

**We all sense it.** Every day the news relays stories of abductions, child molestations, human trafficking, solicitations, sexual misconduct at the highest levels of sacred and secular trust, urban blight, rising STD rates, fantasy driven rape and even murder. Our sense of safety, wholesomeness and innocence is evaporating.

**SOB attorneys oppose any restrictions with misstatements like;**

- *SOB's are a financial asset to communities.* ( see electronic file of 43 Land Use summaries with 20 detailed summaries, documenting the economic drain on communities)
- *SOB regulation is unconstitutional.* (see electronic file with 22 court cases ruling otherwise)
- *Litigation is a certainty and too costly.* (If CDA is passed, litigation will be a onetime showdown as opposed to the train of multiple community litigations, intimidating communities).
- *Where are the studies on Kansas?* The courts 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”. Missouri was not required a new statewide study.
- *The “legislating morality” or “infringing of the 1st amendment free speech”* arguments are a red herring. The CDA’s reasonable restrictions and the court’s rulings are solidly based on the evidence of “Negative Secondary Effects” on communities. The Kansas CDA is content neutral.
- *Arguments of government intrusion on business* is a diversion. SOBs are not like any other class of business. SOB’s are recognized as toxic and distinct by definition as outlined in Kansas Statue 12-770.

**Communities are overwhelmed or intimidated by an industry that boasts that their annual US revenue is greater than all professional sports; football, baseball and basketball combined.** States, like Missouri have come to the aid of outgunned communities with constitutionally upheld community defense acts.

How can communities contend against the pervasive, aggressive and well-funded sex industry? Many counties and communities in Kansas have marginal or no regulatory protection in place. SOB attorneys threaten and do file lawsuits. Such intimidation strategies more often than not, do work.

Would it be good public policy if there were a polluted water source to simply instruct a home to install their own filter? **Barbers and dry cleaners are more regulated in Kansas than these harmful SOBs.**

*“This is an industry that depends upon all 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 vulnerabilities of others. So silence is complicity... you can be the of hero for which this state so deeply hungers.”* Dr. Mary Ann Layden

**This is a real pocketbook issue;** sex crimes represent a large segment of criminal activity, at a cost of \$30,000 annually per prisoner. 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. We have is an epidemic and we must act in concert with communities. Citizen polling data consistently supports like regulatory efforts in the 67 % range. HB 2403 is a compelling governmental interest.

**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 SOB friendly / faux SOB ordinances that have the restraining power of cobwebs. One city has an “arcades” only shell, not much in effect, but it would 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 a monopoly for preexisting SOBs.

This state statute was crafted by one of the most successful constitutional SOB ordinance attorneys in the nation. . Attorney Scott D. Berghold, Chattanooga, TN, 423.899.3025 [www.adultbusinesslaw.com](http://www.adultbusinesslaw.com)  
**Mr. Berthold is the attorney who successfully defended the 9-0 Missouri Supreme Court Ruling**

Encl: Negative Effects Studies/Court Rulings, Wichita, Lawrence, Salina news stories, MO law and KS bill restriction comparison, 2017 House Resolution on Harms of Pornography, 2011 Community Defense Act - House vote, 91-28

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