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Improving the Jury System in Kansas: A Call for Jury Patriotism Legislation

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A few years ago, the Kansas Supreme Court authorized the creation of a program known as The Kansas Citizens Justice Initiative (KCJI) to consider ways to improve Kansas' jury system. The KCJI Report concluded that "[j]uries are a key feature of American democracy. Almost unique in the world is the American practice of providing jury trials to determine guilt or innocence in criminal cases and to determine the facts in civil disputes. How well juries do their job is central to the success of the justice system."¹

The KCJI's Report echoes an American tradition that embraces trial by jury as a fundamental right of a democratic people. In *The Federalist Papers*, the right to a jury trial was praised as a "valuable safeguard to liberty" and "the very palladium of free government."² A century and a half ago, national observer Alexis de Tocqueville wrote about the jury system's importance in preserving a free and democratic society.³

Recent national polls indicate that Americans continue to hold the jury system in high regard. According to an American Bar Association (ABA) opinion poll, 78 percent of the public rate our jury system as the fairest method of determining guilt or innocence; sixty-nine percent consider juries to be the most important part of the justice system.⁴

Yet, despite the strong support Americans have for the jury system, many in the public seek to avoid jury service at virtually every opportunity. According to an American Judicature Society study, on average, about twenty percent of those summoned to jury duty each year in state courts do not respond.⁵ In at least one rural area, sheriffs' deputies were recently forced to round up people shopping in the local Wal-Mart to fill the jury box.⁶

Given this apparent conflict, it is important to consider why citizens have such negative feelings about jury service and to find ways to relieve their concerns. The American Legislative Exchange Council (ALEC), the nation's largest bipartisan organization of state legislators, has developed model legislation – the Jury Patriotism Act – that reflects on these issues and seeks to remove the barriers that frustrate jury service in Kansas and elsewhere.⁷

The Jury Patriotism Act finds support across the political spectrum. Just a few of its supporters include the Council of State Governments, the AFL-CIO, the National Black Chamber of Commerce, the National Association of Manufacturers, and the

National Association of Wholesaler-Distributors. Elected officials have responded to this broad-based support. Within months after its development, laws based on the model Jury Patriotism Act were enacted in Arizona, Louisiana, and Utah.⁸

This article highlights several key problems with the current jury system in Kansas. It then explains how the ALEC model act would address these issues. It concludes that jury service improvements legislation based on ALEC's model act should be enacted in Kansas.

I. WHY KANSANS AVOID JURY SERVICE

A. Easy Ways Out

Kansas law currently allows any juror to avoid service "for reasons of compelling personal hardship or because requiring service would be contrary to the public welfare, health or safety."⁹ This language is so broad and ambiguous that it may exempt whole categories of people. For example, it has been reported that one Kansas county reads the "contrary to the public welfare, health or safety" clause as an automatic exemption for all physicians to opt out of service.¹⁰ Anderson County interprets the clause to allow an exemption for all truck drivers.¹¹ Those called for jury duty, particularly professionals, may abuse the lax "personal hardship" or "public welfare, health or safety" standards to avoid their obligation to serve.

Kansas' porous hardship standards "not only reduce the inclusiveness and representativeness of a jury panel, but also place a disproportionate burden on those who are not exempt," most notably blue-collar workers and retired and unemployed citizens.¹² When some groups of people are regularly dismissed from jury service, others bear more than their fair share of the burden. The privileged should not be allowed to escape jury duty and leave those with less political or financial clout with the burden of service. As a report of the ABA Commission on the 21st Century Judiciary recently concluded: "Meaningful steps should be taken to ensure that every jury pool represents a fair cross-section of the community from which it is drawn."¹³

Furthermore, the absence of certain individuals from jury pools eliminates many important perspectives. A jury that lacks doctors or other professionals, or is disproportionately composed of the unemployed, may lack the collective knowledge of a more representative jury. It is also possible that this small slice of our society may not evaluate or properly weigh complex technical, scientific, or other evidence. Such jurors may even believe that their role is to transfer wealth and not render justice on the merits of the case.

Plaintiffs and defendants would all benefit from the diverse experience, values, and education of a truly representative jury.

B. The Length and Inflexibility of Jury Service

Ask almost anyone why they want to avoid jury service and they will tell you it is a headache – jury service is inconvenient and the system is not very “user friendly.” In Kansas, citizens summoned for jury duty must be prepared to serve one term of court. Depending on where the prospective juror lives, this term can be rather lengthy. It is no wonder that some citizens cringe upon opening the jury summons, fearful of the possible disruption to their lives. Citizens have jobs that require their presence, children or other family members for whom they are responsible, travel plans that cannot be altered without penalty, and other commitments. Although some courts provide for a substantially shorter term, as in Sedgwick County where jurors are “on call” for a week, such terms still represent an interruption of personal, business, and family commitments.

The inconvenience of jury duty is exacerbated by the lack of flexibility provided to potential jurors. Summoned jurors are instructed to appear on a certain date and are not provided with an easy means of rescheduling their service should they have a conflict. Therefore, those summoned are left with three options: drop all other commitments during the allotted time, request that the court excuse them from service for hardship, or, if the other two alternatives are not available, ignore the jury summons.

C. Loss of Income

Another major reason that people seek to avoid jury duty is the financial burden service may impose. Kansas pays jurors a ten dollar daily fee (plus reimbursement for mileage).¹⁴ This amount may barely cover the cost of transportation, parking, and lunch.¹⁵

The ABA has recognized that “[f]ew persons making more than the minimum wage can afford [the] . . . sudden and involuntary cut in pay” imposed by jury service.¹⁶ Likewise, an opinion survey of Kansas jurors authorized by the Kansas Supreme Court found that one out of three jurors in the lowest income bracket consider the economic loss associated with jury service to be a “hardship.”¹⁷

As a result, courts must excuse from service many laborers, salespersons, and parents with childcare expenses because of the economic hardship that they may suffer. Those who remain in the jury pool are primarily those who are not employed or whose employers will continue to pay their salary. Consequently, the basic democratic right to be tried by a jury of one’s peers may be largely illusory to many litigants. Non-diverse and unrepresentative juries may produce arbitrary results for plaintiffs, defendants, and prosecutors. Equally important, many people who would like to serve on a jury, and have both a right and obligation do so, are not, in practice, able to

