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Capital Closeup: Three states in Midwest allow for citizen-initiated grand juries

By [Tim Anderson \(/kc/users/tim-anderson/\)](/kc/users/tim-anderson/) | Wednesday, October 17, 2018 at 03:24 PM

Today, grand juries are viewed mostly as a tool for prosecutors, a means of gathering evidence and seeking indictments. But they have long had a second important function as well — to control the government and its power to prosecute.

Six states, including Kansas, Nebraska and North Dakota in the Midwest, have laws on the books that put a twist on this government-checking role: Allow local citizens themselves to form grand juries. The target of these state statutes is not overzealous prosecutors, but inactive ones.

“Prosecutors typically have discretion on where to direct their investigations and resources, on what cases to pursue,” notes Richard Levy, the J.B. Smith Distinguished Professor of Constitutional Law at the University of Kansas.

Not so with citizen-initiated grand juries, Levy says, adding that these state laws raise a question: “Should citizens themselves be given this investigatory tool?”

Since 1887, the answer in Kansas has been “yes.” The adoption of citizen-initiated grand juries in that state came with the rise of the temperance movement. Local officials didn’t want to prosecute saloon owners under Kansas’ newly adopted prohibition law; some local residents did.

And with the signatures of 200 county taxpayers, the people themselves could summon a grand jury.

“As soon as the first grand jury met, every whisky joint, about 75 in the county, and every drug store selling without a license had disappeared,” one Kansas state senator noted at the time about the effects of the new law.

Kansas’ law on citizen-initiated grand juries has been altered over the years, including a change in the signature requirements. Under the current statute, 2 percent of electors in a county, plus 200, must sign the petition.

This threshold, however, is still lower than it is in the two other Midwestern states that allow for citizen-initiated grand juries — 10 percent of a county’s registered voters in Nebraska and 25 percent in North Dakota (the number of required signatures cannot exceed 5,000 in North Dakota).

Compared to other states, too, the use of citizen-initiated grand juries in Kansas has received considerable attention in recent years.

Over the past decade-and-a-half, for example, petitions have led to the formation of grand juries to investigate Planned Parenthood, adult bookstores and late-term-abortion provider George Tiller. Indictments have rarely come out of these citizen-initiated juries, [Slate magazine noted in a 2013 article \(https://slate.com/news-and-politics/2013/10/the-outrageous-effort-in-kansas-to-use-a-citizen-grand-jury-to-indict-a-sculpture.html\)](https://slate.com/news-and-politics/2013/10/the-outrageous-effort-in-kansas-to-use-a-citizen-grand-jury-to-indict-a-sculpture.html) on this trend in Kansas.

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Most recently, a group of citizens in the Kansas county of Douglas signed a petition for a grand jury to investigate Secretary of State (and 2018 gubernatorial candidate) Kris Kobach. This petition was filed by Steve Davis, a Democrat who ran for a Kansas House seat in 2016 and who is running again this year. He alleges that Kobach, a Republican, committed election crimes based on the handling of voter registration information.

Kobach has said the allegations are baseless, [the Lawrence Journal-World reports](http://www2.ljworld.com/news/2018/aug/31/kansas-supreme-court-agrees-douglas-county-must-summon-grand-jury-to-investigate-kobach/) (<http://www2.ljworld.com/news/2018/aug/31/kansas-supreme-court-agrees-douglas-county-must-summon-grand-jury-to-investigate-kobach/>), and “relate to a short period of time in 2016 when certain online voter registration systems were malfunctioning.”

In June, [the Kansas Court of Appeals ruled](http://www.kscourts.org/Cases-and-Opinions/opinions/CtApp/2018/20180608/118410.pdf) (<http://www.kscourts.org/Cases-and-Opinions/opinions/CtApp/2018/20180608/118410.pdf>) that a grand jury should be summoned, noting that Davis’ petition met the necessary statutory requirements — that it include “the subject matter of the prospective grand jury, a reasonably specific identification of areas to be inquired into and sufficient general allegations.”

In her written decision, Judge Karen Arnold-Burger said the court was “making no judgment regarding the validity of the claims made by Davis.” She also noted the “serious personal and professional consequences” faced by individuals who have grand juries formed to investigate them “without probable cause” and “without the guiding hand of a professional prosecutor.”

“But the Kansas Legislature has determined that it wants to provide for citizen-initiated grand juries,” she concluded, “and it wants them to have broad powers to investigate possible criminal activity.”

Capital Closeup (https://www.csamidwest.org/policyresearch/policy_statefederal.aspx) is an ongoing series of articles focusing on institutional issues in state governments and legislatures. Information on the history of Kansas’ law on citizen-initiated grand juries came from the June decision of the state Court of Appeals.

Attachment

	Size
 Stateline Midwest: October 2018 (http://knowledgecenter.csg.org/kc/system/files/1018-slmw_4.pdf)	3.82 MB

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