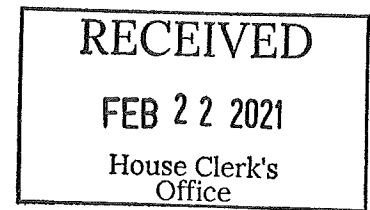


COMMONWEALTH OF KENTUCKY
KENTUCKY GENERAL ASSEMBLY
House of Representatives
Impeachment Committee



IN RE: State Representative Robert Goforth

MOTION TO SUPPLEMENT AND CORRECT THE RECORD

Come the Goforth Impeachment Petitioners, by counsel, and in response to the surprise expert testimony relied upon by this Impeachment Committee (IC) to dismiss their Petition, move to correct the record as follows:

Goforth is accused of strangling and hogtying his wife with an ethernet cord in front of his young children. Police have “lost” crucial evidence, jeopardizing pending court proceedings, since the Petition was filed.

Concerned Kentucky citizens petitioned this IC for “recognition, intervention and effective counseling and prevention” of domestic violence. **Goforth Petition**, at p. 2.

Instead, IC Chair Jason Nemes selected two UK Law Professors to deliver identical opinions declaring the IC to be without power to grant the requested relief. Professor Josh Douglas called the horrifying allegations “disturbing but irrelevant.” **Testimony of Professor Josh Douglas**, 2\11\21, p. 1. Both Professor Douglas and Professor Paul Salamanca insisted that Goforth could only be “expelled,” not “impeached.”

The media immediately reported the erroneous expert opinions as fact:



But the Professors are in error because they ignore the power of the House to **discipline** its own members. The House is not limited to choosing between expelling a member or taking no action, and any legal opinion to the contrary is fundamentally flawed. ALL legislative chambers have the inherent power to discipline members, completely apart from the power to “expel,” and that power should be exercised here.

The specific Kentucky rules ignored by the Professors include KRS 6.050 and KRS 6.070, (a member may be “censured”), as well as in **Mason’s Manual of Legislative Procedure**, Section 561, “Power of Legislatures to Discipline Members,” (not to be confused with Section 562 “Right of Legislatures to Expel Members.”) For the uninitiated, Mason’s is applicable to

House proceedings pursuant to House Rule 74, and is routinely invoked as the dispositive authority in the House.

The Professors also ignore precedent from the Kentucky Legislative Ethics Commission. LEC is charged with ensuring that legislators follow all ethical rules, and takes a hard line in favor of the House acting promptly and forcefully in deterring member misbehavior.

As the LEC Executive Director said during the last House censure inquiry into member conduct:

Under the Kentucky Constitution, each chamber of the General Assembly is empowered to censure, **discipline** or expel its members, and of course, at any time, the House can adopt a Simple Resolution expressing its sentiments about any issue of public concern.

See: Email from LEC Executive Director John Schaaf to Speaker's Chief-of-Staff and Counsel, Re: Ethics Resolution Urging Reopening of Hearing, 4/15/14, appended hereto as Exhibit 1, (emphasis supplied.)

The same holds true here: The House certainly has the power to discipline Robert Goforth, and this IC should recommend action in any report it may make to the full House. The Professors wrongly insist that Goforth can only be "expelled" or "removed" which ignores the obvious solution: The IC should recommend mandatory counseling for the protection of the Goforth family and the public.

Citizens and House members demand proper behavior from Representatives. The House already requires all members to "complete workplace harassment training at the beginning of each session of the General Assembly." See: House Rule 22A. It is clearly appropriate for additional counseling and training to be mandated for Rep. Goforth to ensure that he is able to conform his behavior to the standards expected of public officials.

The IC's continual skirting of Open Meetings requirements has allowed unsound advice to guide this Committee. Had the Chair simply given notice of the testimony and afforded Petitioners an opportunity to be heard, the glaring errors in the Professors' testimony would have been immediately corrected. Instead, the Chair rushed to dismiss the Petition based upon the untested opinions of his selected experts. This is a disservice to the House.

The expert opinions of the Professors do not even have the advantage of achieving some desirable end. No injustice is averted, no harm is prevented by following the advice to "do nothing." The opinions are merely an academic exercise preventing action on a critical issue. The Professors cannot even seriously contend that any Court would fault the House for taking any action it chose to control the danger presented by Goforth. Put plainly, if the IC wants to do the right thing and grant the relief as requested by the concerned citizens, no other power could alter that. It is for the House to decide what action to take, not a court, and not "experts."

It is the province of the legislature to regulate the actions of its members and to protect the citizens who elect them. This IC has clear power and duty to recommend that the full House act to protect the Goforth family and send a strong message to the state that the House does not tolerate domestic violence and will take action to ensure that victims and perpetrators receive the assistance they need to avoid future incidents. The IC should recommend that Goforth attend anger management and domestic violence counseling. The Petitioners have clearly documented this domestic violence crisis, submitting evidence that non-fatal strangulations correlate to an 8-fold increase of "becoming a completed homicide." See; Journal of Emergency Medicine, **Non-Fatal Strangulation is an Important Risk Factor for Homicide of Women**, Goforth Petition, p.1.

By accepting the mistaken advice from the Professors, this IC creates an unfortunate public impression that it seeks an excuse for inaction in a case alleging brutal strangulation. The IC can correct this by simply recommending to the full House that it require mandatory domestic violence counseling for Representative Robert Goforth.

The Professors' contention that this IC cannot act has made a crisis worse. This is no time to search for excuses justifying inaction. Rather, this IC should exercise its power and recommend corrective action to the full House.

The IC Chair should poll the IC members to determine if any member wishes to take the lead on this action. If so, that recommendation should be incorporated into any report the IC makes to the full House and the member should be so identified. Alternatively, the IC may recommend in its report to the full House that House Leadership take appropriate action to protect the mental health of its members and the safety of their families.

The Petitioners urge the IC to consider these supplements and corrections to the official record in reaching a proper resolution of this matter.

This is a "communication directed to the Chair" as permitted by Impeachment Committee Rule ("I.C.R.") 11, and therefore "shall become part of the record." *Id.* It is to be made public pursuant to I.C.R. 12(d).

Respectfully Submitted,

/s/ Anna Stewart Whites

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing was this day served on the IC via the House Clerk, and on House Speaker David Osborne and House Minority Leader Joni Jenkins, this the 22nd day of February, 2021.

/s/ Anna Stewart Whites

Sent: Tuesday, April 15, 2014 12:39 AM
To: Whites, Pierce (LRC)
Cc: Collins, Steve (LRC)
Subject: RE: Ethics resolution urging reopening of hearing

Pierce and Steve -

Thanks very much for the heads-up on the resolution. My only personal editorial comment is that I think it's ridiculous and hypocritical to say the Ethics Commission's public hearing and vote on the Arnold complaints brought "shame" on the House, especially in the absence of any House action against Arnold.

Under the Kentucky Constitution, each chamber of the General Assembly is empowered to censure, discipline, or expel its members, and of course, at any time, the House can adopt a Simple Resolution expressing its sentiments about any issue of public concern.

The Legislative Ethics Commission was created in 1993 to bring an independent perspective to ethics matters, but nothing altered the authority of the House to take action against one of its members, or make a statement about a former member who actually brought shame upon that chamber.

Now that the complaints have been fully described, under oath and in public, the House certainly has all the evidence it needs to express an opinion on Arnold's conduct. In the absence of such a statement from the House . . . The "dog that did not bark", if you will, I will continue to be frustrated at the way this has been mishandled.

Maybe the old five-member bi-partisan committee should have another meeting and reconsider their dissolution!

Send the resolution over, and we'll distribute it to the Commission members prior to the next meeting.

Many thanks,

John Schaaf

From: Whites, Pierce (LRC)
Sent: Monday, April 14, 2014 7:44 PM
To: Schaaf, John (Leg. Ethics)
Cc: Collins, Steve (LRC)
Subject: Ethics resolution urging reopening of hearing

John,

Attached please find a resolution proposed by a member of the House urging LEC to reconvene on the Arnold matter.

We anticipate this being offered for consideration by the House tomorrow, and welcome the input or thoughts of LEC prior to that time.

Thank you,

Pierce Whites