



TESTIMONY OF  
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IN **OPPOSITION** TO **HB 2080**  
KANSAS HOUSE COMMITTEE ON THE JUDICIARY

FEBRUARY 8, 2016

**- WRITTEN TESTIMONY ONLY -**

Thank you, Chairman Barker, and members of the Committee on the Judiciary for affording us the opportunity to provide testimony on HB 2080.

The American Civil Liberties Union (ACLU) of Kansas, a membership organization dedicated to preserving and strengthening the constitutional liberties afforded to every resident of Kansas, **opposes HB 2080**. The bill is intended to address “blackmail and breach of privacy.” The ACLU of Kansas is deeply sympathetic to the aims of the bill, which including protecting the privacy rights of Kansans and protecting Kansans from sexually-charged harassment and assault. The protection of the core right of privacy is an important part of the ACLU’s mission, and a focus of our work.

However, the ACLU maintains that in its pursuit of protecting the cherished right of privacy, HB 2080 raises serious First Amendment issues. It may be susceptible to legal challenge on those grounds. A similar piece of legislation, adopted in Arizona, was found by a court to be unconstitutional in 2015.

- **The bill does not include an exception for newsworthy content, necessary for First Amendment reasons.** Without this exception, the bill would prevent the sharing of images that include nudity even when they are directly relevant to current or historical events or topics in the public interest. Similar statutes in other states have been challenged in court because they lack these provisions.
- **The bill includes no requirement of a relationship between the person pictured and the person sharing the image.** Instead, HB 2080 only requires that the person sharing the image lacks the other’s consent to do so. As a result, individuals who lawfully obtain images and then share them, but did not secure the permission of the individual pictured, would be guilty of a crime. If HB 2080 were adopted, every Kansan who accessed and shared nude images of celebrities that became publicly available during the fall of 2014 would have been guilty of a crime.
- **HB 2080 is effectively a victimless criminal statute.** As drafted, a county attorney could bring charges against an individual without any evidence that the person pictured in the offending image ever even knew about its sharing, let alone was victimized by it. In

order to withstand scrutiny, the bill should include an actual harm element rather than merely an *intent* element. That is, the bill should require that there be evidence that *actual* harm was inflicted upon the individual pictured in the image (whether the harm is financial, severe emotional distress, or something else).

- **Existing statutes already address intentional infliction of emotional distress and many forms of invasion of privacy.** These are powerful tools that can be, and are already, used to prevent and penalize the behavior that the bill's sponsors have said it is intended to combat.

Although we strongly support the right to privacy and the desire to Kansans from harassment infliction of emotional distress, we urge you to **oppose HB 2080** on these grounds.