

## HB 2023

Opponent – Webex

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Dear Mr. Chairman and Committee Members,

As an advocate for Kansas election integrity, today I stand in opposition to HB 2023.

I would like to note that Kansas has a criminal threat law already as well as a disorderly conduct penalty under election crimes. Additionally, the Kansas Secretary of State handed over all his prosecutorial authority to the Attorney General, so I find it interesting that he is asking you all to determine what a threat is without bringing you any data or specific situations to critically discuss and address here.

First, I don't see the need for HB 2023. Secondly, this bill absolutely attempts to bring broad prosecution. I have attached K.S.A. 21-5415 and 25-2413 to my testimony as it is provided by ksrevisor.org. It is not okay nor is it legal for anyone to threaten someone with violence or intended violence. I would like to know why this bill is such a pressing issue if we have not heard about election interference in the past, and to that point there is no way the Kansas Reflector or any other liberal media outlet would miss a story like that.

Please stop writing election laws that do not have specific definitions. It is beyond frustrating to have such ambiguous nonsense littering the laws that govern our right to elect a representative government. Please define **“interference”**, and please explain if election interference is refusing to allow unlawful election processes? Our elections are supposed to be open to the public, and allow for poll agents to be present during any part of them, so how are poll agents able to protect their privileges to witness and verify lawful practices if we are going to slam down such ambiguous interpretations?

Section 1 is very broad using the words **“intimidating”** or **“attempting to intimidate”**, and as for the penalty of this bill a severity level 7 felony, 2 levels higher than the current crime of criminal threat in K.S.A. 21-5415 and additionally 2 levels higher than a proposed bill floating around regarding human trafficking and sexual assault which you can reference in SB 71 currently headed to the Senate floor.

Additionally, Kansas has criminal intimidation laws, so where exactly does the intent of this bill fit within the scope of current criminal intimidation crimes? This bill is so poorly written that it is unclear to what extent it is intended to charge someone with a felony possibly stripping someone of their right to vote or bare arms. Felony charges come

with very serious consequences and a rushed bill like this during such a short legislative session and bill packed committee hearing feels destructive in nature.

Please define “**retaliate**” in (a)(2), will this committee commit to equally protecting poll agents and the public from such retaliation? I believe it is vital that elections are protected and can be fair in all aspects of execution and prosecution.

Following the law is very important and I am sure that we all can agree on that. However, there is a very unequal set of standards in chapter 25 as I see it. When reading the election laws, you will likely encounter a bunch of shalls, but what you won’t find is any penalty for violating any of those. I hear legislators ask, who is enforcing this, and why isn’t something being enforced. The Secretary of State’s office will constantly attest that they are not an enforcement agency, and so they leave it up to local law enforcement by providing election laws that are very poorly written!

During the November 2024 election, officials in my county taped a box on the floor to limit my ability to oversee the election as an authorized poll agent. Please ask Chairman Proctor to share the photos I sent him personally. I have been denied access to witness the tabulator tapes from our election machines once polls are closed, and during both 2024 elections I was told I would be kicked out at 7 p.m. before I even had the opportunity to arrive at the election center. So where is the bill that equally protects poll agents against unlawful and untransparent election procedures? Where is the bill protecting poll agents from intimidation and retaliation?

The Secretary of State has told all of you that he hears the complaints from the county clerks, but how serious are these complaints, and are these complaints actual threat situations? I would personally expect that criminal threats of any valid nature can already be prosecuted by Kansas law enforcement as well as disorderly conduct. So, the fact that no serious examples of threat have been provided to this committee leads me to believe that this bill is an attempt to criminalize folks broadly at the behest of any claim of intimidation.

Lastly, I would direct the committee to research the rulings in the annotations of K.S.A. 21-5415, and the question of what is a “true threat” that was determined in *Counterman v. Colorado*.

As such I ask this committee not to pass this bill without equally passing a bill to protect the rights of poll agents and the public against interference with their rights as well. Chilling any election transparency, accountability, and oversight seems to be the goal here and I will never stand in support of anything like it. I urge you to understand the horrible outcome this bill will cause in further destroying the faith in the Kansas election process.

Thank You,

- Missy Leavitt

## **STATUOTY INFORMATIONAL ATTACHMENT:**

**25-2413. Disorderly election conduct.** Disorderly election conduct is willfully: (a) Disturbing the peace in or about any voting place on election day;

(b) leaving or attempting to leave a voting place in possession of any ballot, except as is specifically permitted by law;

(c) approaching or remaining closer than three feet to any voting booth, voting machine or table being used by an election board except as admitted for the purpose of voting or by authority of the supervising judge;

(d) interrupting, hindering or obstructing any person approaching any voting place for the purpose of voting;

(e) engaging in any of the following activities within 250 feet from the entrance of a polling place during the hours the polls are open on election day:

(1) solicitation of contributions; or

(2) conduct of advisory elections other than those specifically authorized by law, including the exercise of home rule power, to be conducted by a county election officer.

Disorderly election conduct is a class B misdemeanor.

**History:** L. 1974, ch. 157, § 7; L. 1985, ch. 118, § 11; July 1.

### **No. 22-138 In the Supreme Court of the United States BILLY RAYMOND COUNTERMAN, PETITIONER v. THE PEOPLE OF THE STATE OF COLORADO ON WRIT OF CERTIORARI**

#### **QUESTION PRESENTED**

Whether, to establish that a statement is a “true threat” unprotected by the First Amendment, the government must show that the speaker subjectively knew or intended the threatening nature of the statement, or whether it is enough to show solely that an objective “reasonable person” would regard the statement as a threat of violence.

It's important to note that the Kansas Supreme Court recently ruled that part of the -state's criminal threat statute violated the First Amendment. This ruling means that a **defendant can no longer be charged with and convicted of a criminal threat charge based on making a threat in “reckless disregard” of causing fear in another person.** However, the specific impact of this ruling on individual cases can vary depending on factors such as the way prosecutors charged the crime, the facts and circumstances of the case, and the language in the jury's verdict or the plea agreement.

**21-5415. Criminal threat; aggravated criminal threat.** (a) A criminal threat is any threat to:

(1) Commit violence communicated with intent to place another in fear, or to cause the evacuation, lock down or disruption in regular, ongoing activities of any building, place of assembly or facility of transportation, or in reckless disregard of the risk of causing such fear or evacuation, lock down or disruption in regular, ongoing activities;

(2) adulterate or contaminate any food, raw agricultural commodity, beverage, drug, animal feed, plant or public water supply; or

(3) expose any animal in this state to any contagious or infectious disease.

(b) Aggravated criminal threat is the commission of a criminal threat, as defined in subsection (a), when a public, commercial or industrial building, place of assembly or facility of transportation is evacuated, locked down or disrupted as to regular, ongoing activities as a result of the threat.

(c) (1) A criminal threat is a severity level 9, person felony.

(2) Aggravated criminal threat is a severity level 5, person felony.

(d) As used in this section, "threat" includes any statement that one has committed any action described by subsection (a).

**History:** L. 2010, ch. 136, § 50; July 1, 2011.

**Source or Prior Law:**

21-3419, 21-3419a.

**CASE ANNOTATIONS**

1. Statute is not unconstitutionally vague by using the word "fear." *State v. White*, 53 Kan. App. 2d 44, 60, 384 P.3d 13 (2016).

2. Defendant's two convictions for criminal threat were not multiplicitous under the unit of prosecution test. *State v. Hirsh*, 310 Kan. 321, 338-42, 446 P.3d 472 (2019).

3. The portion of K.S.A. 21-5415(a)(1) allowing for a conviction if a threat of violence is made in reckless disregard for causing fear is unconstitutionally overbroad. *State v. Boettger*, 310 Kan. 800, 822-23, 450 P.3d 805 (2019).

4. Appellate decision declaring a portion of statute unconstitutional applies to case pending on direct review. *State v. Lindemuth*, 312 Kan. 12, 470 P.3d 1279 (2020).

5. Mental state of recklessness is sufficient to establish a true threat not protected under the 1 st Amendment; *Counterman v. Colorado*, 600 U.S. 66, 143 S. Ct. 2106 (2023) effectively overruled *State v. Boettger*, 310 Kan. 800, 450 P.3d 805 (2019). *State v. Phipps*, 63 Kan. App. 2d 698, 707, 539 P.3d 227 (2023), rev. granted (Jan. 29, 2024).