



MISSOURI HOUSE OF REPRESENTATIVES
WITNESS APPEARANCE FORM

BILL NUMBER: HB 1040		DATE: 3/24/2025	
COMMITTEE: Emerging Issues			
TESTIFYING: <input checked="" type="checkbox"/> IN SUPPORT OF <input type="checkbox"/> IN OPPOSITION TO <input type="checkbox"/> FOR INFORMATIONAL PURPOSES			
WITNESS NAME			
INDIVIDUAL:			
WITNESS NAME: ARNIE C."HONEST-ABE" DIENOFF-STATE PUBLIC ADVOCATE		PHONE NUMBER:	
BUSINESS/ORGANIZATION NAME:		TITLE:	
ADDRESS:			
CITY:		STATE:	ZIP:
EMAIL: arniedienoff@yahoo.com	ATTENDANCE: In-Person		SUBMIT DATE: 3/24/2025 11:17 PM

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I am in Support of this Bill and its intension of limiting admissibility of a Defendants creative expression.



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WITNESS NAME			
BUSINESS/ORGANIZATION:			
WITNESS NAME: EVIE CRAIG		PHONE NUMBER: 913-706-1469	
BUSINESS/ORGANIZATION NAME: THE ARTS ASYLUM		TITLE: EXECUTIVE DIRECTOR	
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CITY: KANSAS CITY		STATE: MO	ZIP: 64131
EMAIL: evie@theartsasylum.org	ATTENDANCE: Written		SUBMIT DATE: 3/23/2025 1:45 PM

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As Executive Director of The Arts Asylum, I am writing to express support for HB1040/HB1389, which protects First Amendment creative freedoms by balancing public safety and First Amendment freedoms to apply to ALL forms of creative expression. HB1040/HB1389 is not a ban on admitting creative expression as evidence but is designed to protect artistic expression from being misused as direct evidence in criminal proceedings. This is especially urgent due to a troubling national trend where figurative creative works—particularly in music—are being treated as literal confessions in court. HB1040/1389 addresses a growing crisis due to new technologies for creating, sharing, and searching for creative works. While this practice has been in place for decades, the practice has exploded in popularity among prosecutors in recent years. Numerous cases have been overturned on appeal in the past 12 months for improper admission/use of creative expression, including in GA, TX, and TN. The bill passed the MO House unanimously in 2023, and got through the MO Senate Judiciary Committee that same year; it just didn't get a vote in the MO Senate before the end of session. Missouri needs to stay competitive with states like California and Louisiana that have signed bills into law advancing creative freedoms. Other states like GA, MD, and NY are working on identical bipartisan-sponsored legislation as well. US Bureau of Economic Analysis estimates the creative economy is responsible for \$11.5 billion to Missouri's GDP every year and supports more than 94k jobs. HB1040/HB1389 would apply to ALL forms of creative expression including music, dance, performance art, visual art, poetry, literature, and digital media. HB1040/HB1389 is NOT a ban on using creative expression in criminal cases; the bill proposes guardrails to aid the judiciary, creates a single standard, and ensures appropriate application by prosecutors. This legislation works as guardrails, initially limiting creative expression from being admitted, and only asks prosecutors to pass a common-sense test for admission in pretrial evidentiary hearings. Notably, these pretrial evidentiary hearings already take place today, and prosecutors already make arguments regarding the "probative vs. prejudicial" standard that applies to all normal evidence. There is no added administrative burden to the state or court. HB1040/HB1389 simply adjusts the standard on which the lawyers present arguments and a judge makes a ruling to better align with the First Amendment and common sense. There is no new substantive burden on the judiciary that would slow the pace of trials, and concerns from prosecutors that this creates an unfair new burden are exaggerated since they already prepare arguments today – the only thing that's changing is the focus of their arguments. Again, I urge you to support HB1040/HB1389 and protect First Amendment creative freedoms. Thank you.



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WITNESS NAME			
BUSINESS/ORGANIZATION:			
WITNESS NAME: GWEN SMITH		PHONE NUMBER: 314-324-9656	
BUSINESS/ORGANIZATION NAME: EMPOWER MISSOURI		TITLE: CRIMINAL JUSTICE POLICY MANAGER	
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As the largest and oldest anti-poverty non-profit in our state, Empower Missouri is committed to improving the quality of life for all Missouri residents through advocacy. Since our inception, Empower Missouri has focused on the criminal justice system and its impacts. Our Community Justice Coalition consists of community advocates and organizations from across the state who work with those who have been impacted by the criminal justice system. Many coalition members are formerly incarcerated or have currently incarcerated loved ones, and all are connected by a vision for a future without mass incarceration. We are providing testimony today in support of HB 1389 and HB 1040, which would establish the "Restoring Artistic Protection Act of 2025" and specify that subject to exceptions, evidence of a defendant's creative or artistic expression is not admissible against the defendant in a criminal case. This legislation will protect the First Amendment rights of all artists and content creators, including rappers, from having their lyrics wielded against them by prosecutors. In courtrooms across the country, artists' musical works are being admitted against them as evidence in criminal proceedings. Just as concerning, the mere appreciation of others' music--whether through reposting lyrics, performing, or simply listening--is also being used as evidence. Unchecked, these practices chill free expression, transform the figurative into fact, and warp criminal courts into instruments for suppressing provocative speech. Moreover, these practices ignore the foundational principle that a criminal case should be tried on the facts and not on a person's propensity to commit the crime. Empower Missouri urges this committee to take action to pass these bills into law. Thank you for your time and consideration of this matter.



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WITNESS NAME			
BUSINESS/ORGANIZATION:			
WITNESS NAME: PHIL WALOTSKY		PHONE NUMBER: 917-318-9784	
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EMAIL:	ATTENDANCE:	SUBMIT DATE: 3/24/2025 12:00 AM	

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WITNESS NAME			
BUSINESS/ORGANIZATION:			
WITNESS NAME: RON GUBITZ		PHONE NUMBER: 504-272-7662	
BUSINESS/ORGANIZATION NAME: MUSIC ARTISTS COALITION		TITLE: EXECUTIVE DIRECTOR	
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CITY: ST. LOUIS		STATE: MO	ZIP: 63132
EMAIL:	ATTENDANCE:	SUBMIT DATE: 3/24/2025 12:00 AM	

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WITNESS NAME			
BUSINESS/ORGANIZATION:			
WITNESS NAME: LOCKE THOMPSON		PHONE NUMBER: 573-634-9180	
BUSINESS/ORGANIZATION NAME: MISSOURI ASSOCIATION OF PROSECUTING ATTORNEYS		TITLE: COLE COUNTY PROSECUTING ATTORNEY	
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CITY: JEFFERSON CITY		STATE: MO	ZIP: 65101
EMAIL: locke.thompson@prosecutors.mo.gov	ATTENDANCE: Written	SUBMIT DATE: 3/24/2025 3:08 PM	
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House Bills 1040 and 1389 are titled as bills that establish “provisions relating to the admissibility of evidence of a defendant’s creative or artistic expression.” The premise is simple enough; we wish to protect a person’s right to freedom of speech and expression. However, these bills have far-reaching negative implications. Presently, under Missouri law, a defendant’s statements are generally admissible in any proceeding against them. These bills would create a significant carve-out to this rule for a defendant’s “artistic expressions”, unless a Court deems such expressions admissible by clear and convincing evidence. The unfortunate reality is that it has become increasingly common for people who engage in violent crime to either telegraph their intention to commit an act of violence (or boast about it after the fact) through “lyrics” or “poetry”, often to emulate gang culture. Rarely do these boasts fit the bill of a full, detailed confession. Nevertheless, they often provide us with insight as to the defendant’s motive, opportunity, intent, or lack of mistake in committing the crime. I can think of several major cases I have prosecuted, each of them violent offenses, where part of the State’s evidence consisted of the defendant’s somewhat vague confessions made through lyrics or poetry (i.e. they talk about committing a shooting or a murder with a certain type of weapon but don’t go into many other details). This type of evidence helps us solve difficult cases and put dangerous people behind bars. Let’s say that Person 1 and Person 2 each go out and commit a robbery. Person 1 then makes a general statement to a random person that he has just committed a robbery. Person 2 decides to go home and record a song, the lyrics of which contain general statements about him committing a robbery. Practically speaking, there is zero difference between the above scenarios. The person to whom Person 1 admitted the crime will simply be called as a witness at trial. However, unless the Person 2’s lyrics are incredibly specific, his confession will not be able to be used at trial. Why should we afford additional protection to Person 2, just because his statements were made into a microphone instead of directly to another person? These bills may have been intended to protect artistic expression, but practically speaking they do little more than create new protections for individuals who make statements telegraphing or admitting to criminal activity through such “expression”.