



MISSOURI HOUSE OF REPRESENTATIVES  
**WITNESS APPEARANCE FORM**

BILL NUMBER: <b>HB 1389</b>		DATE: <b>3/24/2025</b>	
COMMITTEE: <b>Emerging Issues</b>			
<b>TESTIFYING:</b> <input checked="" type="checkbox"/> IN SUPPORT OF <input type="checkbox"/> IN OPPOSITION TO <input type="checkbox"/> FOR INFORMATIONAL PURPOSES			
<b>WITNESS NAME</b>			
<b>INDIVIDUAL:</b>			
WITNESS NAME: <b>ARNIE C."HONEST-ABE" DIENOFF-STATE PUBLIC ADVOCATE</b>		PHONE NUMBER:	
BUSINESS/ORGANIZATION NAME:		TITLE:	
ADDRESS:			
CITY:		STATE:	ZIP:
EMAIL: <b>arniedienoff@yahoo.com</b>	ATTENDANCE: <b>In-Person</b>		SUBMIT DATE: <b>3/24/2025 11:17 PM</b>

**THE INFORMATION ON THIS FORM IS PUBLIC RECORD UNDER CHAPTER 610, RSMo.**

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



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<b>WITNESS NAME</b>			
<b>BUSINESS/ORGANIZATION:</b>			
WITNESS NAME: <b>GWEN SMITH</b>		PHONE NUMBER: <b>314-324-9656</b>	
BUSINESS/ORGANIZATION NAME: <b>EMPOWER MISSOURI</b>		TITLE: <b>CRIMINAL JUSTICE POLICY MANAGER</b>	
ADDRESS:			
CITY: <b>ST. LOUIS</b>		STATE: <b>MO</b>	ZIP: <b>63116</b>
EMAIL: <b>gwen@empowermissouri.org</b>	ATTENDANCE: <b>Written</b>		SUBMIT DATE: <b>3/24/2025 8:38 PM</b>
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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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<b>WITNESS NAME</b>			
<b>BUSINESS/ORGANIZATION:</b>			
WITNESS NAME: <b>PHIL WALOTSKY</b>		PHONE NUMBER: <b>917-318-9784</b>	
BUSINESS/ORGANIZATION NAME: <b>FREE OUR ART</b>		TITLE: <b>EXECUTIVE DIRECTOR</b>	
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CITY: <b>BEVERLY HILLS</b>		STATE: <b>CA</b>	ZIP: <b>90210</b>
EMAIL:	ATTENDANCE:		SUBMIT DATE: <b>3/24/2025 12:00 AM</b>

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<b>WITNESS NAME</b>			
<b>BUSINESS/ORGANIZATION:</b>			
WITNESS NAME: <b>RON GUBITZ</b>		PHONE NUMBER: <b>504-272-7662</b>	
BUSINESS/ORGANIZATION NAME: <b>MUSIC ARTISTS COALITION</b>		TITLE: <b>EXECUTIVE DIRECTOR</b>	
ADDRESS: <b>9540 OLD BONHOMME RD</b>			
CITY: <b>ST. LOUIS</b>		STATE: <b>MO</b>	ZIP: <b>63132</b>
EMAIL:	ATTENDANCE:	SUBMIT DATE: <b>3/24/2025 12:00 AM</b>	
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<b>WITNESS NAME</b>			
<b>BUSINESS/ORGANIZATION:</b>			
WITNESS NAME: <b>LOCKE THOMPSON</b>		PHONE NUMBER: <b>573-634-9180</b>	
BUSINESS/ORGANIZATION NAME: <b>MISSOURI ASSOCIATION OF PROSECUTING ATTORNEYS</b>		TITLE: <b>COLE COUNTY PROSECUTING ATTORNEY</b>	
ADDRESS: <b>311 E. HIGH STREET, #300</b>			
CITY: <b>JEFFERSON CITY</b>		STATE: <b>MO</b>	ZIP: <b>65101</b>
EMAIL: <b>locke.thompson@prosecutors.mo.gov</b>	ATTENDANCE: <b>Written</b>	SUBMIT DATE: <b>3/24/2025 3:08 PM</b>	
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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”.