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# Missouri's S.B. 661 and H.B. 1389 Would Protect Free Expression and Artistic Freedom

*Freedom of expression and due process of law are essential elements of a free society. The use of artistic expression, such as song lyrics, as evidence in criminal proceedings threatens these core American values and undermines the rule of law. Missouri's Senate Bill 661 and House Bill 1389 would create fair and uniform standards for the admission of song lyrics and other forms of artistic expression into evidence by a prosecutor seeking to use them against a defendant.*

## Song Lyrics Are Improperly Being Used as Evidence Against Defendants.

- Literal confessions of criminal guilt should not be treated as free speech protected under the First Amendment. However, song lyrics are often not intended to be taken literally, so their admission as evidence should be scrutinized.
- Currently, the admissibility of song lyrics is determined by an unclear and inconsistently applied patchwork of constitutional principles and rules of evidence within a jurisdiction. The current framework is insufficient to guard against undue prejudice.
- Nationwide, researchers have identified more than 680 cases where song lyrics have been introduced as evidence since the 1980s. This practice presents a serious affront to the principles of free expression and artistic freedom.

## S.B. 661 and H.B. 1389 Establish Reasonable Standards for the Admission of Artistic Expression as Evidence in a Criminal Trial.

- By default, artistic expression would be inadmissible. However, a court could admit evidence of a defendant's artistic expression if they can prove by clear and convincing evidence that:
  1. (A) If the expression is original, the defendant intended a literal meaning; or  
(B) If the expression is derivative (borrowed from someone else), the defendant intended to adopt the statement as their own thought or statement.
  2. The expression refers to specific facts of the crime alleged.
  3. The expression is relevant to an issue of fact in dispute; and
  4. The expression has distinct probative value not provided by other admissible evidence.
- If artistic expression is admitted as evidence, only the exact part that meets all the above standards could be shown to a jury. Judges would also be required to give the jury clear instructions on how to interpret the evidence and caution them against misusing it.

**Bottom line:** *The state should be required to meet fair standards before using song lyrics or other forms of artistic expression as evidence to deprive a criminal defendant of their life, liberty, or property.*

### CRIMINAL JUSTICE POLICY CONTACT

- Vittorio Nastasi, Director of Criminal Justice Policy (Vittorio.Nastasi@reason.org)
- David Morgan, Legislative Affairs Associate (David.Morgan@Reason.org)

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