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MEDIA CONTACT

Miriam Krinsky

krinskym@krinsky.la

818-416-5218

More Than 60 Criminal Justice Leaders Call on Fifth Circuit Court of Appeals to Uphold Order Blocking Texas’ Proposed Drag Ban

Texas’ newly enacted ban threatens to criminalize drag performances and drain vital public resources from efforts to address serious crime

Yesterday, 62 public safety and criminal justice leaders filed an [amicus brief](#) urging the U.S. Court of Appeals for the Fifth Circuit to affirm a lower court’s order holding that Texas Senate Bill 12 (S.B. 12) is unconstitutional and unenforceable. If allowed to stand, S.B. 12 would create a broad and vague category of criminalized speech called “sexually oriented performances” with no exception for those that have artistic, literary or political value. The law, which was crafted to target drag performers, would penalize individuals and business owners who host performances where anyone under 17 might be present, regardless of whether parents provide consent. The signatories to the brief – which include current and former elected prosecutors and law enforcement leaders, state and federal judges, state Attorneys General, U.S. Attorneys and U.S. Department of Justice officials – argue that the law would undermine public safety by using inherently limited law enforcement resources and eroding trust in the justice system, particularly among vulnerable groups of people.

“Freedom of artistic expression is a cornerstone of a democratic society; when we specifically target and criminalize performances by members of the LGBTQ+ community, we betray the fundamental values that our legal system is meant to uphold and erode community trust in the process,” said **Miriam Krinsky, Executive Director of [Fair and Just Prosecution](#)**, the organizer of the brief, and a former federal prosecutor. “By enacting this legislation, Texas lawmakers are sending a chilling message that law enforcement should be more concerned with oppressing vulnerable communities than devoting scarce resources to addressing serious criminal activities.”

The signatories stress that because the law is impermissibly broad and vague, it will be challenging for police officers and prosecutors to ensure it would be applied uniformly and fairly: “*S.B. 12 is littered with undefined terms and nebulous principles, calling on law enforcement to determine what is a ‘sexually oriented performance’ that ‘appeals to the prurient interest in sex’ without any clear, objective delineation of what constitutes a criminal offense, let alone who is a ‘performer’ against whom the law should be enforced and what level of intent justifies intervention or an arrest.*”

“Criminalizing creative performances would place everyday police officers and prosecutors in the impossible position of judging what constitutes acceptable or ‘tasteful’ expression, inevitably

leading to selective enforcement and immersing law enforcement in activity that will only undermine the public’s trust in us,” said **Mecklenburg County (Charlotte, NC) Sheriff Garry McFadden**, a signatory to the brief. “Our limited law enforcement resources need to be used to address the most serious crimes in our communities like fentanyl deaths and gun violence, instead of trying to monitor public performances for content that some individuals may find offensive.”

Furthermore, signatories to the brief warn that this law threatens to negatively impact public safety by both creating mistrust between law enforcement and vulnerable communities and simultaneously legitimizing those who would harm them: *“Policies such as those underlying S.B. 12 create troubling and destructive barriers between members of the LGBTQ+ community and law enforcement and will only increase the risk of discrimination, threats and violence that these individuals face.... Indeed, bills like S.B. 12 target a particular community, potentially imprinting a state-sanctioned bullseye on members of that community and tacitly giving public approval to hateful acts.”*

“By attempting to outlaw deep-rooted forms of expressions like drag, we are pushing the LGBTQ+ community further into the shadows, where they’re less likely to seek help or coordinate with law enforcement for fear of persecution or discrimination,” said **Pima County (Tucson, AZ) Attorney Laura Conover**, a signatory to the brief. “And when we oppress vulnerable people in our community, we are substantially increasing their risk for violence, making us all less safe.”

In addition to a number of current and former local elected prosecutors, other signatories include former **Attorneys General Douglas Chin** (Hawaii), **Patricia Madrid** (New Mexico) and **Stephen Rosenthal** (Virginia); current **Sheriffs Jerry L. Clayton** (Washtenaw County, Mich.) and **Kristin Graziano** (Charleston County, S.C.); former **Police Chiefs RaShall Brackney, Joseph Brann, Jim Bueermann, Chris Burbank, Brendan Cox, Chris Magnus, Abdul Pridgen, Norm Stamper and Darrel Stephens**; former **U.S. Attorneys David J. Hickton and Richard Pocker**; former judges **Bobbe J. Bridge** (Washington Supreme Court), **William Royal Furgeson, Jr.** (U.S. District Court, Western District of Texas) and **T. John Ward** (U.S. District Court, Eastern District of Texas); and former U.S. Associate Deputy Attorney General **Shay Bilchik**.

Read the brief [here](#); see below for a list of *amici*.

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Fair and Just Prosecution is a national network of elected prosecutors working towards common-sense, compassionate criminal justice reforms. To learn more about FJP’s work, visit our [website](#) and follow us on [Facebook](#), [Twitter](#), [LinkedIn](#), and [Threads](#).

List of Amici

Roy L. Austin, Jr.

Former Deputy Assistant Attorney General, Civil Rights Division, U.S. Department of Justice
Former Deputy Assistant to President Obama for the Office of Urban Affairs, Justice, and Opportunity (White House Domestic Policy Council)

Wesley Bell

Prosecuting Attorney, St. Louis County, Missouri

Buta Biberaj

Former Commonwealth's Attorney, Loudoun County, Virginia

Shay Bilchik

Former Associate Deputy Attorney General, U.S. Department of Justice
Former Administrator of the Office of Juvenile Justice and Delinquency Prevention,
U.S. Department of Justice

Chesa Boudin

Former District Attorney, City and County of San Francisco, California

RaShall Brackney

Former Chief, Charlottesville Police Department, Virginia

Joseph Brann

Former Chief, Hayward Police Department, California
Former Director, Community Oriented Policing Services (COPS Office),
U.S. Department of Justice

Bobbe J. Bridge

Former Justice, Washington Supreme Court

Jim Bueermann

Former Chief, Redlands Police Department, California
Former President, National Police Foundation

Chris Burbank

Former Chief, Salt Lake City Police Department, Utah

Douglas Chin

Former Attorney General, Hawaii
Former Lieutenant Governor, Hawaii

John Choi

County Attorney, Ramsey County (St. Paul), Minnesota

Jerry Clayton
Sheriff, Washtenaw County (Ann Arbor), Michigan

Dave Clegg
Former District Attorney, Ulster County, New York

Laura Conover
County Attorney, Pima County (Tucson), Arizona

Brendan Cox
Former Chief, Albany Police Department, New York
Director of Policing Strategies at LEAD National Support Bureau

Kara Davis
District Attorney, Gilliam County, Oregon

Parisa Dehghani-Tafti
Commonwealth's Attorney, Arlington County and the City of Falls Church, Virginia

Michael Dougherty
District Attorney, Twentieth Judicial District (Boulder), Colorado

Matt Ellis
District Attorney, Wasco County, Oregon

Ramin Fatehi
Commonwealth's Attorney, City of Norfolk, Virginia

William Royal Furgeson, Jr.
Former Judge, U.S. District Court, Western District of Texas

Gil Garcetti
Former District Attorney, Los Angeles County, California

Stan Garnett
Former District Attorney, Twentieth Judicial District (Boulder), Colorado

George Gascón
District Attorney, Los Angeles County, California
Former District Attorney, City and County of San Francisco, California
Former Chief, San Francisco Police Department, California
Former Chief, Mesa Police Department, Arizona

Sarah F. George
State's Attorney, Chittenden County (Burlington), Vermont

Sim Gill

District Attorney, Salt Lake County, Utah

Deborah Gonzalez

District Attorney, Western Judicial Circuit (Athens), Georgia

Kimberly Graham

County Attorney, Polk County (Des Moines), Iowa

Kristin Graziano

Sheriff, Charleston County, South Carolina

David J. Hickton

Former U.S. Attorney, Western District of Pennsylvania

Elizabeth K. Humphries

Commonwealth's Attorney, City of Fredericksburg, Virginia

Natasha Irving

District Attorney, Sixth Prosecutorial District, Maine

Justin F. Kollar

Former Prosecuting Attorney, County of Kaua'i, Hawaii

Lawrence S. Krasner

District Attorney, Philadelphia, Pennsylvania

Miriam Aroni Krinsky

Former Assistant U.S. Attorney, Criminal Appellate Chief, and General Crimes Chief,
U.S. Attorney's Office for the Central District of California
Former Chair, Solicitor General's Advisory Group on Appellate Issues

Patricia Madrid

Former Attorney General, New Mexico

Chris Magnus

Former Chief, Tucson Police Department, Arizona

Brian Mason

District Attorney, Seventeenth Judicial District, Colorado

Beth McCann

District Attorney, Second Judicial District (Denver), Colorado

Garry L. McFadden

Sheriff, Mecklenburg County (Charlotte), North Carolina

Mary Moriarty
County Attorney, Hennepin County (Minneapolis), Minnesota

Richard Pocker
Former U.S. Attorney, District of Nevada

Josh Pond
District Attorney, Columbia County, Oregon

Abdul Pridgen
Former Chief, San Leandro Police Department, California
Former Chief, Seaside Police Department, California

Ira Reiner
Former District Attorney, Los Angeles County, California
Former City Attorney, Los Angeles, California

Eric Rinehart
State's Attorney, Lake County (Waukegan), Illinois

Jeff Rosen
District Attorney, Santa Clara County, California

Stephen Rosenthal
Former Attorney General, Virginia

Marian Ryan
District Attorney, Middlesex County, Massachusetts

Jacqueline Sartoris
District Attorney, Cumberland County (Portland), Maine

Dan Satterberg
Former Prosecuting Attorney, King County (Seattle), Washington

Eli Savit
Prosecuting Attorney, Washtenaw County (Ann Arbor), Michigan

Mike Schmidt
District Attorney, Multnomah County (Portland), Oregon

Carol Siemon
Former Prosecuting Attorney, Ingham County (Lansing), Michigan

Eric Sparr
District Attorney, Winnebago County, Wisconsin

Norm Stamper

Former Chief, Seattle Police Department, Washington

Darrel Stephens

Former Executive Director, Major City Chiefs Association

Former Chief, Charlotte-Mecklenburg Police Department, North Carolina

Matthew Van Houten

District Attorney, Tompkins County (Ithaca), New York

Cyrus R. Vance

Former District Attorney, New York County (Manhattan), New York

T. John Ward

Former Judge, U.S. District Court, Eastern District of Texas

Law Enforcement Action Partnership (LEAP)