

Submitter: Joshua Marquis
On Behalf Of: self
Committee: Senate Committee On Judiciary
Measure, Appointment or Topic: SB1516

I was to make clear I am speaking entirely in my private capacity, not as the public official I was - and would have been, as defined by this proposed legislation. I have been an active member of the Oregon State Bar for over 44 years.

For 25 years I was the elected District Attorney in Astoria, served as President of the Oregon DA's Association in 2001, Vice President of the National DA's Association after that, and was probably the most outspoken DA in the state for many years on criminal justice matters.

As a longtime, and often controversial former public official, who received harsh criticism, including harassing phone calls, letters, and emails, I am writing in strong opposition to this bill and a companion bill that would carve out a special - and likely unconstitutional crime for conduct that is defined as "harassing" certain public officials. The Oregon Supreme Court has repeatedly struck down legislation that sought to criminalize verbal (or written) threats that were not imminent. We do not have the right, as either public official or citizens, not to be "offended."

My former colleagues may disagree with me, but I am First Amendment absolutist and while I agree with Oliver Wendell Holmes that while "shouting fire in a crowded theater" can cross the line, I think criminalizing speech against an already entitled class of people is very dangerous. I say this as someone who received many personal threats to my personal safety and my family. I went to considerable lengths while I was a DA to keep my home address out of public records, using a post office box and taking advantage of a number of existing rules that allow certain officials to exempt their personal addresses from DMV, voter, and other public data spaces.

I want to make clear that as an elected official (as DA) I felt an serious obligation to be reachable, so I never concealed my mailing address (a post office box) my email, or my personal cell phone number.

The idea that a wide swath of officials, from legislators to prosecutors, and water board members could essentially wall themselves off from any public contact I find frightening.. I agree other witness' legal analysis that the Oregon Supreme Court, having repeatedly struck down Harassment when it involved offensive speech, is highly likely to look at this proposed law with a jaundiced eye, as they should.

As a long-time elected official, I was sometimes deeply offended by comments made about me in the press and blogosphere, but I never felt that any of them should

involve criminal action. I had family members of defendants in several cases after a jury had convicted them approach me in open court and yell that they "were coming for me" or that "I would get it" for sending their loved one to prison. I took precautions, but I never felt the need for special legislative protection.

I find it particularly disturbing that people in state legislative office believe they have a right not to be offended, but now to even the ability of constituents to reach out to their supposed "citizen legislators."

The language "intentionally subjects the public official to alarm..." seems to directly violate long-standing interpretations of Oregon's protections of the First Amendment.

I understand that many of my colleagues might disagree with my position, but as someone who was very outspoken, controversial, and at times adversarial, I have always felt that people like me need to be able to listen to angry folks that disagree with them and to quote the famous aphorism, "their right to swing their fist ends where my nose begins."