



**House Judiciary Committee  
January 31, 2024**

**House Bill 2488  
Testimony of the BIDS Legislative Committee  
Presented by Emily Brandt & Laura Stratton  
Opponent**

Chairperson Humphries and Members of the Committee:

Our sympathies are with all persons impacted by suicide, and we are cognizant of the fact that suicide rates in Kansas have significantly increased in recent years, and that it is the second leading cause of death among people aged 10-44 in the state. But we cannot ignore the Constitutional implications of the bill, and therefore respectfully oppose HB 2488.

It is likely that the proposed amendments to K.S.A. 21-5407 violate the First Amendment. Minnesota passed a law which read:

Whoever intentionally **advises, encourages**, or assists another in taking the other's own life may be sentenced to imprisonment for not more than 15 years or to payment of a fine of not more than \$30,000, or both.

Similarly, the proposed amendments here read:

Assisting suicide is intentionally **advising or encouraging** another person to commit or attempt to commit suicide that causes such person to commit or attempt to commit suicide.

Assisting suicide is intentionally **advising or encouraging** another person to commit or attempt to commit suicide.

The Minnesota Supreme Court held that the statutory prohibitions against **advising and encouraging** another to commit suicide violate the First Amendment because they were not narrowly drawn to serve a compelling government interest.<sup>1</sup>

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<sup>1</sup> *State v. Melchert-Dinkel*, 844 N.W.2d 13, Syl. ¶ 4 (Minn. 2014)

There, the defendant had been in contact with two individuals on suicide websites, and, after separate discussions including email exchanges with both, the two individuals sadly completed suicide. The Court had to determine whether advising and/or encouraging suicide constituted speech protected by the First Amendment.

Laws that implicate the First Amendment must pass strict scrutiny review. That is, (1) the government must identify a compelling government interest and then (2) the law must be narrowly tailored to serve that interest.<sup>2</sup> It is obvious that the government has a compelling interest in preserving human life, but it is not obvious that the proposed law is narrowly tailored to serve that interest.

In fact, the Minnesota Supreme Court held that both “encourage” and “advise” are too broad of terms to be narrowly tailored to serve the government’s compelling interest. Specifically, the Minnesota Supreme Court recognized that the language would permit the State to prosecute general discussions of suicide.<sup>3</sup>

As an example, the amendment may result in physicians and other healthcare and hospice professionals being prosecuted for informing patients of their rights to refuse medical care. Under current United States Supreme Court case law, competent people have a constitutionally protected right to refuse lifesaving hydration and nutrition, as part of the right to self-determination.<sup>4</sup> Merely telling patients that they have this right may constitute “advice” that results in the death of the patient.

In the words of the Minnesota Supreme Court, “speech in support of suicide, however distasteful, is an expression of a viewpoint on a matter of public concern,” and is entitled to special protection.<sup>5</sup>

HB 2488 suffers from the same Constitutional deficiencies as the Minnesota law did. Thus, it is likely that the proposed amendments to K.S.A. 21-5407 are unconstitutional.

Thank you for your time and consideration.

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<sup>2</sup> *Melchert-Dinkel*, 844 N.W.2d at 21–22.

<sup>3</sup> *Melchert-Dinkel*, 844 N.W.2d at 23–24.

<sup>4</sup> *Cruzan v. Dir., Missouri Dep't of Health*, 497 U.S. 261, 262, 273 (1990)

<sup>5</sup> *Melchert-Dinkel*, 844 N.W.2d at 24.