



**TESTIMONY OF MICAH W. KUBIC
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IN OPPOSITION TO HB 2084

KANSAS HOUSE COMMITTEE ON UTILITIES AND TELECOMMUNICATIONS

FEBRUARY 19, 2015

Thank you, Chairman Seiwert, and members of the committee for affording us this opportunity to provide testimony on HB 2084, the Kansas Prepaid Telephone Security Act. My name is Micah Kubic, and I serve as the executive director of the American Civil Liberties Union of Kansas, a membership organization dedicated to preserving and strengthening the constitutional liberties afforded to every resident of Kansas.

We strongly oppose HB 2084 because it raises significant legal issues, it is an unwarranted invasion of the privacy of members of the public, and it would have devastating consequences for some of the most vulnerable residents of Kansas.

- **HB 2084 raises significant legal issues, and is highly vulnerable to a challenge in federal court.** In 2011, the government of Puerto Rico adopted a law very similar to the one being heard today. That law, the Registry Act, required sellers of prepaid cellular telephones to collect the names and addresses of purchasers of phones. The sellers of the phones were then required to provide that information to the government of Puerto Rico, which compiled a registry of the purchasers. The act was explicitly justified by legislators and the government of Puerto Rico as necessary in order to combat the use of prepaid phones in criminal activity.

The association representing the wireless communications industry challenged the law in federal court. Late last year, the United States Court of Appeals for the First Circuit struck down Puerto Rico's law. The court held that the law was preempted by a federal law, the Secure Communications Act. The federal court held that the Stored Communications Act restricts the ability of wireless communications providers to release customer information to governmental entities. As a result, federal law took precedence, the Puerto Rican legislation was struck down, and the creation of a prepaid telephone registry was precluded. [See *Telecommunications Regulatory Board of Puerto Rico v. CITA-Wireless Ass'n*, 752 F.3d 60, 1st Cir. 2014]

HB 2084 is very similar to the law adopted in Puerto Rico, and it possesses an identical set of legal vulnerabilities. It would mandate sellers of prepaid telephones to collect and release to the government the same types of information that federal courts have already found problematic. As a result, adopting HB 2084 would leave the State of Kansas highly vulnerable to a challenge in federal court.

- **The bill would represent a significant, and unwarranted, breach of privacy.** By requiring each purchaser of a prepaid cellphone to provide a government-issued identification, name, and address, the privacy of individuals is significantly breached. Such intrusiveness is highly unusual for routine commercial transactions. Individuals are not compelled to disclose personal information when securing email addresses, purchasing many other communications devices, or acquiring any of the virtually unlimited goods that might theoretically be used to engage in criminal activity. Government should protect the privacy of residents, not constantly seek new ways to breach it.
- **The bill would have an immediate, serious, and chilling effect on anonymous speech.** By requiring purchasers of prepaid cellphones to provide their names and addresses, the possibility of anonymity is stripped away. The courts have consistently held that the First Amendment unambiguously protects anonymous speech. (See, for example, *McIntyre v. Ohio Elections Comm'n* [1995], where the Court held that “Under our constitution, anonymous [speech] ... is not a pernicious, fraudulent practice, but an honorable tradition of advocacy and dissent.”) This bill is akin to requiring anonymous pamphleteers to register with the government, a practice that would be constitutionally untenable.
- **Many people—including domestic violence survivors and victims of other crimes—have legitimate and important reasons for wanting anonymous prepaid phones.** There are many people who understandably would not want their real names and addresses recorded in a registry of prepaid phones, regardless of how secure that registry might be designed to be. Survivors of domestic violence, crime victims, whistleblowers, journalists, and those who call the tip lines operated by law enforcement all have good reason to want the limited protection afforded by anonymity. With public payphones now virtually impossible to find, prepaid cellphones are the primary method that these individuals can use to make phone calls that protect their safety via anonymity.
- **Requiring a government-issued identification card in order to obtain a cellular telephone would have a hugely adverse impact on vulnerable groups.** The primary users of prepaid phones are low-income individuals, individuals with poor or no credit histories, young people, and senior citizens. These individuals are more likely to pursue prepaid telephones because they either cannot afford, or cannot receive approval for, more traditional cellular telephone accounts. These are also the groups that are least likely to be able to produce a valid, government-issued identification card. If HB 2084 were adopted, individuals who lack a government-issued identification card—for reasons that often include cost, time, and bureaucratic error—would be unable to obtain a cellular phone. This would significantly limit their access to job opportunities, ability to communicate in an emergency, and capacity for civic engagement. With many vulnerable populations increasingly using cellular phones as their primary access point to the Internet, it would also contribute to the widening of the digital divide.

HB 2084 would have significant and enormously harmful unintended consequences. Although the goals of more effectively combating crime and creating safer communities are noble ones, the strong likelihood that the act would be preempted by federal law and would create immense hardship for innocent Kansans causes us to urge you to oppose it.