

SHB 1333, to criminalize free speech and independent thought in Washington state

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Key Findings

1. SHB 1333 would criminalize thought and expression under an invented category of offenses called “domestic violent extremism.”
2. Attorney General Bob Ferguson requested the bill in order to prosecute some people for words and speech, rather than for violent acts.
3. Under the bill government officials would decide whose words and whose speech would be subject to criminal prosecution.
4. The Attorney General’s office would increase surveillance of citizens for perceived violations of words and speech prohibitions.
5. Citizens would be encouraged to report friends and neighbors to the state for officially-banned phrases, thoughts and expressions.

Introduction

SHB 1333, was introduced by Representative Ramos (D-Issaquah) on the recommendation of the state Attorney General.¹ The bill is problematic in the way it addresses issues of free expression and core First Amendment concerns of state residents.

This Legislative Memo provides an overview of the bill, considers its constitutional implications, and assesses the harmful impact it would have on democracy and civic participation in Washington state.

1 HB 1333, Establishing the domestic violent extremism commission, introduced January 16, 2023, at <https://app.leg.wa.gov/billsummary?BillNumber=1333&Year=2023&Initiative=false>.

Text of SHB 1333

SHB 1333 would create a state commission to implement the recommendations issued by Attorney General Bob Ferguson in his 2022 Domestic Terrorism Report.²

This report recommends creating a new category of criminal behavior that it calls Domestic Violent Extremism (DVE). In the introductory letter to the report Attorney General Ferguson explains what he means by the term “domestic violence extremism”:

“Domestic violent extremism encompasses various forms of extremist and political violence like threats, coercion, and intimidation, online disinformation, extremist recruitment and government infiltration efforts, and the general spread of extreme white supremacy and anti-government ideologies.”³

The Executive Summary of the report says that people’s words and speech, not physical acts that are dangerous to human life and health, are the true target of the bill. The report recommends that law enforcement target “precursors [speech] to acts of domestic terrorism” such as “threats,” “online disinformation” and “white supremacist, antigovernment and other ideologies.”⁴

2 “2022 Domestic Terrorism Study,” Washington State Attorney General’s Office, accessed February 14, 2023 at <https://agportal-s3bucket.s3.amazonaws.com/2022%20Domestic%20Terrorism%20Study.pdf>.

3 Ibid, page 2.

4 Ibid, Executive Summary, pages 3-4, provide: “...A note on terminology: ‘domestic terrorism’ (DT) is an undefined term in the Revised Code of Washington, but is defined in the U.S. Code as ‘activities that (A) involve acts dangerous to human life that are a violation of the criminal laws of the United States or of any State; (B) appear to be intended (i) to intimidate or coerce a civilian population; (ii) to influence the policy of a government by intimidation or coercion; or (iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping; and (C) occur primarily within the territorial jurisdiction of the United States.’ Although this is a useful working definition, because the statutory term ‘domestic terrorism’ necessarily includes

The report proposes four recommendations:

- Recommendation Number 1 – “combat disinformation and misinformation, address early signs of radicalization, and develop public health-style responses.”
- Recommendation Number 2 – create special intervention teams to investigate “someone they suspect may be on the path of radicalization to violence.”
- Recommendation Number 3 – create a state system of surveillance and data collection on “reporting incidents of DVE’s.”
- Recommendation Number 4 – create new laws to criminalize specific forms of speech and opinion and to prosecute and punish people the state has specified a “domestic violent extremist.”⁵

Policy Analysis

The provisions of SHB 1333 face several constitutional obstacles, particularly in the areas of violating federally-protected civil rights such as freedom of speech and freedom of association.⁶

SHB 1333 seeks to label certain citizens as “domestic violent extremists,” not based on any illegal acts of violence they may have committed, but based on their views, statements and political opinions. This bill would create a system by which citizens would report their friends and neighbors to the state Domestic Violent Extremist Commission for making statements that government officials have decided represent “misinformation,” “threatening,” or a “precursor to radicalization or violence.”

‘acts dangerous to human life,’ it fails to capture the full scope of the problem Washington State faces, which encompasses other forms of extremist and political violence; threats, coercion, and intimidation; online disinformation; extremist recruitment and government infiltration efforts; and the general spread of extreme white supremacist, antigovernment, and other ideologies. Accordingly, rather than exclusively address ‘domestic terrorism’ per se, these recommendations seek to best support Washington State to respond to this panoply of challenges, which together combine to create the threat of—and indeed, are often precursors to—acts of domestic terrorism.”

5 Ibid, pages 7-11.

6 Constitution of the United States, First Amendment, at <https://constitution.congress.gov/constitution/>.

By criminalizing certain unapproved thoughts and expressions the bill would create a state-level “Ministry of Truth” through which members of the Commission would decide which political opinions are “true” and which represent illegal forms of “misinformation.” A similar effort was attempted in 2022 by the Biden Administration, but the president later dropped the effort in the face of opposition from constitutional scholars and free speech advocates.

As an independent research and educational organization supported by voluntary contributions, Washington Policy Center is particularly concerned about efforts by the state’s top law enforcement official to criminalize free expression and open debate.

Our work is focused on examining and evaluating a wide range of public policy ideas, including those proposed by powerful elected officials. Some of these policy ideas are controversial, like that proposed by SHB 1333, and spark heated debate in communities across the state. The threat of being labeled a “domestic violent extremist” by a state commission would have a chilling effect on independent thought and analysis, especially if that analysis is applied to far-reaching proposals, like SHB 1333, supported by the state Attorney General.

A similar effort was made in 2022 when Governor Jay Inslee proposed SB 5843, to make it a crime for any elected official or candidate for public office to criticize the outcome of a local or state election. In response to the bill’s constitutional problems, and a concern for civil rights protections, Democrats in the legislature killed the bill in committee.

In the same way, SHB 1333 would create a climate of fear and intimidation by seeking to suppress the views of citizens whose opinions may not align with those of a high-ranking state official.

Conclusion

SHB 1333 is constitutionally problematic because it would criminalize certain forms of expression based on what members of a state commission consider to be their definition of “domestic extremism.” Creating a state level “Ministry of Truth” would not only undermine democratic norms, it would have a chilling effect on public debate, freedom of speech and civic participation in Washington state.

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