



SCOTUS Ruling in *Counterman v. Colorado* Protects Children from Criminalization for Innocent Speech

Human rights organization and attorneys who filed amicus brief applaud ruling

FOR IMMEDIATE RELEASE

June 27, 2023

Contact: James Dold, (202) 573-7758

Washington, D.C. — Today, the U.S. Supreme Court issued their ruling in [Counterman v. Colorado](#). The 7-2 decision held that in order to prosecute a defendant for a statement as a "true threat" unprotected by the First Amendment, the government must show that the speaker is aware that others could regard their statements as threatening violence. Justice Kagan's majority opinion struck down the Colorado statute at hand which only required that the statement be objectively threatening, regardless of the speaker's intent. The decision will help protect children across the country who, under the challenged statute, could have been prosecuted for statements made in person or online that were perceived by others to be threatening, regardless of the intent or context of the child's speech.

[Human Rights for Kids](#), a nonprofit dedicated to the protection of children's rights, filed an [Amicus Brief](#) in the U.S. Supreme Court, in partnership with the Eversheds Sutherland Law Firm, arguing that the Justices should adopt a higher standard of subjective intent before allowing children's speech to be criminalized. Because every state allows prosecutors to charge and convict children in the adult criminal justice system, every criminal case before the Supreme Court affects children, even if the criminal defendant in the case is over 18. According to a recent report by Human Rights for Kids entitled [Crimes Against Humanity: The Mass Incarceration of Children in the U.S.](#), there are approximately 32,359 people who are currently incarcerated for crimes they committed as children.

James Dold, CEO & Founder of Human Rights for Kids, said "We felt compelled to bring to the Court's attention the impact of its decision in this case on children. If statutes like Colorado's had been allowed to stand, children could have been charged with felonies because of one ill-advised statement or social media post taken out of context."

"Make no mistake, the striking down of Colorado's statute is a victory for children and will protect them from unjust prosecution in the criminal justice system," noted Dold. "The majority's opinion, however,

did not go as far as it should have. HRFK shares the concerns highlighted in Justice Sotomayor and Gorsuch’s concurrence, that: ‘Without sufficient protection for unintentionally threatening speech, a high school student who is still learning norms around appropriate language could easily go to prison for sending another student violent music lyrics, or for unreflectingly using language he read in an online forum.’”

Adam Pollet, Partner at Eversheds Sutherland, said “I was pleased to see that the Justices, especially Justice Sotomayor in her concurrence, noted that online speech makes analyzing these statements particularly fact-intensive. As we explained in our Amicus Brief, children participate in online forums where adults simply do not understand the language and motives. Justice Sotomayor explained the issue this way: ‘Different corners of the internet have considerably different norms around appropriate speech. Online communication can also lack many normal contextual clues, such as who is speaking, tone of voice, and expression. Moreover, it is easy for speech made in a one context to inadvertently reach a larger audience.’”

“While the Court ultimately adopted the recklessness standard, it is clear that the majority of the Court took to heart the issues raised in our Brief and for that, we are grateful.”

The Eversheds Sutherland Law Firm in Washington, D.C. filed the Amicus Brief on behalf of Human Rights for Kids.

###

ABOUT HUMAN RIGHTS FOR KIDS

Human Rights for Kids is a non-profit organization dedicated to the promotion and protection of the human rights of children. We use an integrated, multi-faceted approach which consists of research & public education, coalition building & grassroots mobilization, and policy advocacy & strategic litigation to advance critical human rights on behalf of children in the United States and around the world. We work to protect children from harm; reform justice systems to ensure society focuses on rehabilitating children who come into conflict with the law; protect immigrant, non-native children from harm and discrimination; promote access to quality education for all children; and promote healthy communities for children to ensure access to housing and health care.