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"Because public men and women are amenable 'at all times' to the people, they must conduct the public's business out in the open."
— The late Charles L. Weltner Sr., Chief Justice, Georgia Supreme Court, *Davis et al v. City of Macon* (1992)

Chairman Tyler Paul Smith
House Judiciary Non-Civil Committee
401-K State Capitol
Atlanta, GA 30334
Sent via email

RE: Letter of Concern regarding Senate Bill 27 (doxing)

Dear Chairman Smith:

We appreciate that threats and harassment, particularly those enabled by the anonymity of social media, are real and serious concerns in Georgia and throughout society. However, Senate Bill 27 presents little realistic likelihood of remedying those ills, while exposing innocent speakers and writers to arrest and prosecution that could be triggered by nothing more than publishing an already-prominent person's name.

Because "doxing" is so readily weaponized as an instrument to deter or punish unwanted speech on matters of public concern, the definition of what qualifies as "doxing" must be drawn with tight precision. Anything less will produce a statute that is facially overbroad and unconstitutional, placing innocent people at risk of selective, viewpoint-based arrest and prosecution. Outside of true threats to commit violence or attempts to incite imminent violence by others, speech is constitutionally protected, even if it is highly insulting or uncomfortable to hear.

Statutes comparable to SB 27 have been declared unconstitutionally overbroad because they criminalize harmless speech that goes beyond true threats or incitement. For instance, in *Sheehan v. Gregoire*, 272 F. Supp. 2d 1135 (W.D. Wash. 2003), a federal court struck down a Washington statute providing: "A person or organization shall not, with the intent to harm or intimidate, sell, trade, give, publish, distribute, or otherwise release the residential address, residential telephone number, birthdate, or social security number of any law enforcement-related, corrections officer-related, or court-related employee or volunteer, or someone with a similar name, and categorize them as such, without the express written permission of the employee or volunteer unless specifically exempted by law or court order." If anything, the Washington statute was more tightly drawn than SB 27, because liability was triggered only

by an intent to cause harm – and tailored only to a class of particularly vulnerable targets. Yet it still flunked constitutional scrutiny. The Supreme Court's recent decision in *Counterman v Colorado*, 143 S. Ct. 2106 (2023), does not change the analysis, because *Counterman* was about speech that the speaker himself directed to a targeted recipient with the intent to threaten or harass, while SB 27 is all about how third parties – even third parties unconnected to the speaker, beyond the speaker's control – react to speech.

SB 27 is flawed in several crucial respects. First, the breadth of the speech criminalized is so vast – encompassing even such inconsequential and seemingly harmless information as a person's name or email address, regardless of whether it is already widely publicly available – that a person could easily commit the crime of doxing unwittingly. Second, the mental state required to prosecute someone for doxing – reckless disregard, rather than intent – is insufficiently protective, given the realities of coarse incivility in contemporary online discourse; regrettably, it is always foreseeable that someone in the vast realm of internet users will misuse information in harmful ways. Finally, the injuries that SB 27 protects against are so minimal – including the anticipation of having to change one's email address, or of losing $500 worth of business – that almost any unwelcome online speech could qualify as a crime.

Consider each of these illustrative hypotheticals:

- Alex, a college football fan, posts to the X social media platform: "Al Adams cost us the SEC championship by dropping a catchable pass in the end zone." Adams receives online death threats from disgruntled fans. Alex has committed the crime of doxing, because he published Adams' name with awareness that it is common for irate fans to react to disappointment by threatening and harassing athletes.
- Barbara, a dissatisfied patient, posts an unfavorable review on the Yelp.com website, urging people to avoid her physician, Dr. Charles Cook, because he has had his license suspended several times. Even if the information is true, Barbara has committed the crime of doxing, because she has identified Cook by name in a way that would cause a reasonable practitioner to anticipate losing at least $500 in business.
- Carol, an opponent of abortion, uses a group-texting app to circulate the following message: "Dr. Bob Brown of the Macon Clinic is a murderer." Carol has committed the crime of doxing. She has disseminated information enabling people to locate Brown, with awareness that abortion clinics have been bombed, and doctors shot, such that Brown would reasonably fear for his safety.

Importantly, each of these examples fully satisfies the elements for criminal conviction under SB 27 even if no one acts upon the speech, even if the person identified by the speaker experiences no adverse consequences, and even if the person mentioned in the speech never becomes aware of it at all. The crime is completed the moment the speech is disseminated. And this is true regardless of whether – as in the example of the patient warning other consumers about the untrustworthy physician – the speech is well-intentioned and addresses a matter of public concern.

Because SB 27 provides for criminal liability even if the information is already widely available, this bill would present almost incalculable problems of proof. If a protester shows up at the Governor's Mansion and directs harassing speech at the Governor, is everyone who has shared the address of the Governor's Mansion a potential criminal defendant? Since the existence of a culpable mental state is a jury question, a blameless person might face arrest and trial, which – even if the ultimate result is exoneration – inflicts disastrous personal and professional consequences on the arrestee. The chilling

effect of such open-ended liability – opening the door to selective, viewpoint-based prosecution – is self-evident.

The existence of a "constitutional savings clause" in SB 27 is superficially reassuring, but is of minimal practical usefulness. In the first place, it is always assumed that every statute will be applied in a manner harmonizing with the Constitution, so Section (e)(1) of the bill does no real work. Beyond that, the bill places law enforcement in a no-win dilemma by defining "doxing" in a manner that – on its face – encompasses vast quantities of constitutionally protected speech (e.g., the "bad Yelp" scenario), yet instructs police not to use their authority unconstitutionally. Is the officer entitled to rely on the text of the statute – or must the officer be a constitutional scholar able to discern that the statute cannot really mean what it says?

Finally, SB 27 is not merely overbroad but also greatly underinclusive because it applies exclusively to electronically transmitted speech. To return to a prior hypothetical, "Carol" is subject to prosecution if she identifies Dr. Brown as an abortionist in a group chat, but she is beyond the reach of the law if she writes exactly the same words on paper leaflets and distributes them on the sidewalk outside Brown's home – even if the leaflets reach more recipients and even if seeing Carol outside the home is more intimidating than becoming aware of her text message. Such an irrational distinction would almost certainly render the law dead-on-arrival if challenged constitutionally.

We strongly encourage you to hold SB 27 for study, examining its provisions up against applicable First Amendment standards in light of the experience of other states that have been forced to defend comparable statutes. If it is considered essential to pass something during the 2025 session, SB 27 should be significantly narrowed with the addition of safeguards that include:

1) raising the threshold for liability to intent rather than reckless disregard;
2) narrowing the range of information that can give rise to liability so as to exclude information that is already in the public domain;
3) eliminating the provision that speech can be criminally prosecuted if it places a person in fear of mental anguish or economic harm, since a great deal of societally beneficial speech could fall within those definitions;
4) creating a categorical exclusion for disclosures made in the news media, such as that provided in Washington's analogous anti-doxing statute, Wash. Stat. § 4.24.792(2)(c); and
5) narrowing to require prosecutors show that a specific person actually was placed in fear.

We appreciate your willingness to entertain these concerns, and we will gladly serve as a resource in your continued deliberations as you work to craft a more effective and constitutionally defensible bill.

Regards,

Sarah Brewerton-Palmer
President

cc: Members of Georgia House Judiciary Non-Civil Committee