STATEMENT OF OPPOSITION TO HB330: COMMUNICATION INTERCEPTION AMENDMENTS

The Disability Law Center (DLC) is opposed to HB 330: Communication Interception Amendments because it will hamper DLC’s protection and advocacy efforts and frustrate the pursuit of justice all across the state.

The DLC is designated by the governor as Utah’s congressionally-mandated Protection and Advocacy agency (P&A). Our mission is to enforce and strengthen laws that protect the opportunities, choices, and legal rights of people with disabilities in Utah, and our services are available statewide and free of charge. We represent victims of discrimination on an individual basis, and provide self-advocacy assistance, disability rights education, on-site monitoring and investigation of conditions in institutions, and systemic advocacy through the courts, legislature, and public policy initiatives for the more than 300,000 Utahns with disabilities. The DLC also operates a fair housing program, which provides representation to all victims of housing discrimination and systemic advocacy through a fair housing testing program.

The ability to record wrongdoing is one of the only tools available to vulnerable populations in the pursuit of justice. The DLC uses one-party consent recordings in a wide variety of cases. For instance, DLC fair housing testers record interactions with landlords. Those recordings are then used to document discriminatory treatment of tenants or potential tenants on the basis of disability, race, color, national origin, gender, religion, familial status, sexual orientation, gender identity, and source of income. The DLC would likely need to shutter the program, or scale it back drastically, if HB 330 is passed into law. Although great care is taken to ensure that testers produce reliable and accurate written documentation, the audio or visual recordings of landlords are essential to exposing subtle or veiled discrimination, and are the best available proof of discriminatory conduct and intent. The DLC is currently litigating a case where the landlord hung up on every caller with a Hispanic name or accent; without audio recordings of these calls, the DLC would be unable to overcome the landlord’s cursory denial and the discrimination would go unaddressed.

The DLC also uses one-party consent recordings that are made by our constituents. Often, these recordings are the only available evidence to document sexual advances made by a landlord, discriminatory statements made by an employer, promises made by a school district, or harassment by a business owner. Subjecting the DLC and our clients and constituents to civil and criminal penalties would significantly impede our efforts to protect the legal rights of Utahns with disabilities and others whose civil rights are violated.

The harm caused by HB 330 does not end with the DLC, however. The ability to record wrongdoing protects domestic violence victims, bullied kids, workers exposed to dangerous conditions, people whose constitutional rights are violated by the police, and other victims and vulnerable people all over Utah. One-party consent recordings are also essential to the media’s ability to report the news.
The exemptions contained in HB 330 will not solve these problems. First, the exemptions are not broad enough to cover all victims—there is no exemption that covers civil rights violations, for instance. More importantly, HB 330 will have a chilling effect that discourages vulnerable people from making a recording, even if they may ultimately end up being acquitted or found not liable. For instance, an employee who believes they are being sexually harassed but is not sure it legally qualifies may not feel comfortable taking the risk of civil and criminal liability. As that employee’s attorneys, the DLC would feel obligated to advise the client not to make a recording based on this risk. Another example may be a woman who experiences sexual assault but knows that the claim is sometimes hard to prove—will she feel comfortable taking the risk of prosecution or liability? Quite possibly not.

Only eleven other states require two-party consent, and these states are full of cautionary tales. In Florida, a young woman made one-party recordings of her father’s sexual abuse after enduring years of torture. The trial court found the father guilty based on these recordings (there was no physical evidence). The Florida Supreme Court reversed the conviction and held that the recordings could not be introduced as evidence, despite the lack of other proof.\(^1\) In Pennsylvania, a disabled child who had endured vicious bullying at school got the guts to make a recording one day. His principal called the police and the young boy was charged with a crime for making the recording.\(^2\)

One-party recordings protect victims and those in vulnerable situations, and are good for Utah and necessary to the pursuit of justice. HB 330, even with exemptions for certain recordings, will greatly harm those seeking help and those seeking to uphold the law.

The Disability Law Center is a private non-profit organization. The DLC’s mission is to enforce and strengthen laws that protect the opportunities, choices and legal rights of Utahns with disabilities. Our services are available statewide and free of charge, regardless of income, legal status, language, or place of residence.

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\(^2\) Although the charge was ultimately dismissed (after conviction), “serious damage had already been done” to the boy. [https://www.deseretnews.com/article/865601884/Turning-the-table-on-bullies-student-fights-back-as-school-fumbles-response.html](https://www.deseretnews.com/article/865601884/Turning-the-table-on-bullies-student-fights-back-as-school-fumbles-response.html)