

William Clardy
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L.D. 537

Senators and Representatives of the Judiciary Committee,

I am testifying neither in support nor in opposition to L.D. 537.

As initially printed, L.D. 537 includes some provisions which I think are likely to prove problematic should the bill be enacted as currently written:

1. Should the age of the alleged doxer matter? Do you think that adolescent or pubescent minors should be held to the same liability standards as adults?
2. There is no time limit for seeking relief. Is there anything which would prevent an adult victim from reaching back several years to seek damages for allegedly being doxed when they were a minor?
3. The words "disclosure" and "consent" as used in the definition of "doxing" in §9101(3) are not even vaguely defined.
 - a. Which of the following acts constitute "disclosure" sufficient to qualify as doxing?
 - i. Publication in print or broadcast media;
 - ii. Inclusion in a social media post with unrestricted visibility;
 - iii. Inclusion in a social media post with restricted visibility;
 - iv. Inclusion in an email or "text message" sent to a large distribution list;
 - v. Inclusion in an email or "text message" sent to a single person or select distribution list presumed to have a legitimate interest in the individual allegedly doxed;
 - vi. Inclusion in written notes or minutes shared with a group presumed to have a legitimate interest in the individual allegedly doxed;
 - vii. Oral recitation while speaking to a group;
 - viii. Oral recitation as part of a group discussion;
 - ix. Oral recitation as part of a one-on-one conversation.

- b. Does the disclosure have to both cause harm and be intended to cause harm? Would an intent to cause harm be actionable absent any actual harm? What about causing harm absent any intent to do so?
- c. §9101(3) specifies that a disclosure must be “without that person's consent” to constitute doxing.
 - i. Are minors empowered to consent to having their “personal identifying information” disclosed?
 - ii. Are minors’ legal guardians empowered to consent on the minors’ behalf?
 - iii. Are other “close relations” who are not a minor’s guardian empowered to consent on the minor’s behalf?
 - iv. Are there actions which a reasonable person could infer as implying consent?
 - 1. Does participation in a public performance (e.g., a play or concert) imply consent within the context of that event?
 - 2. Does participation in a public competition imply consent within the context of that competition?
 - 3. Does participation in a public protest or demonstration imply consent within the context of that event?
 - 4. Does participation in a matchmaking event or use of a matchmaking app imply or create consent for disclosure to other persons?
 - 5. Does inaction in the face of prior disclosures imply consent?
- 4. §9101(5)(F) includes “the person's legal name or prior legal name, alias, photograph or likeness, mother's name or any prior legal name” among the items defined as “personal identifying information.” Are names and pictures considered identifying information only when disclosed accompanying “medical, financial, educational, consumer or employment information or records,” or are they actionable disclosures on their own?
- 5. §9103 unconditionally grants any “family member, legal guardian or representative of a minor” a power to file suit “on behalf of the minor.” Notably absent is any prerequisite that the person bringing a civil action would normally be considered an authorized representative (e.g., a parent or guardian) or otherwise have the minor’s consent to act on their behalf.
- 6. In §9103(2), the extension of the treble-damages provision to motivation targeting any “close relation of the minor” (presumably including adult relatives) seems to be an invitation for abuse. A coarse example might be a social-media

post ridiculing the costume of a cast member in a student play and declaring that the student's parents "must be retarded to let their kid wear that." Mocking the alleged mental disability of the minor's parents would seem to check the current boxes for treble damages. Is that really your intent?

7. §9103(3) explicitly limits defenses based on constitutionally protected (or other lawful) activities to being the singular purpose for disclosure. This opens a door for penalizing constitutionally protected activity which has a mix of purposes – *e.g.*, sharing the identity of an ethnic- and/or gender-identified person who has angered a group by repeatedly disrupting their after-school meetings.

As I stated, I am not testifying in opposition to this bill. I am raising some concerns I think should be addressed more fully if your decision will be to report this bill out as "ought to pass."

Sincerely,
William Clardy
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