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The Honorable Christopher L. Smith
The Florida Senate
202 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Re: CS/SB 248 Public Records/Audio or Video Recording Made by a Law Enforcement Officer

Dear Senator Smith:

We are writing to express our serious concerns regarding CS/SB 248, creating a public records exemption for certain audio and video recordings made by law enforcement officers through the use of body cameras. Of primary concern is the unwarranted breadth of this exemption, which presents unnecessary restrictions to the public's right of access. We strongly oppose the bill in its current form, and urge it be amended to reflect the concerns below.

First, the language in subsection 119.071(2)(g)1., lines 38 – 42, is problematic. Though the required duty to redact may be implied, the wording of this provision may encourage agencies to withhold an entire record even if only a part of the record is exempt. The language should be amended to include the phrase "*portions of an audio or video recording . . .*"

Additionally, it is doubtful whether interiors of residences should be categorically exempt as provided in subsection (2)(g)1.a., line 44. Though privacy is a concern, an individual's right to privacy must be weighed against the public's need and ability to hold both law enforcement and citizens accountable. This *per se* exemption would shield, for example, video showing whether police are using excessive force when executing arrests or search warrants, or whether such force was justified.

The exemption in subsection (2)(g)1.b., lines 45 – 46, relating to health care facilities, is far too broad. Perhaps this exemption could be warranted if the footage captures information that discloses personal medical information or medical treatment – though personal medical information is generally exempt from public disclosure – but any person may walk through a hospital

and observe what is happening in the hallways. This particular exemption, therefore, is poorly tailored and over-inclusive.

The provision that follows, relating to the scene of a medical emergency, is equally problematic. Subsection (2)(g)1.c., line 47. The relevant provision states audio or video footage “taken at the scene of a medical emergency” is exempt from disclosure. Such an exemption is overbroad and ripe for abuse, as any incident where a person claims some kind of injury could be deemed to satisfy the exemption. The exemption of audio and video recordings within schools suffers from the same problem. Subsection (2)(g)1.e., lines 50 – 53. The exemption effectively excludes from disclosure all recordings on school campuses or inside schools, because students are, or could be, everywhere within the school and it would be difficult in many situations to determine whether a student is younger than 18 or even whether that person is a student. Moreover, the exemption targeting minors 14 years of age and younger, in any location, would likely be used to withhold records any time a minor is ever in a video frame, even incidentally.

Subsection (2)(g)2. raises concerns as it provides that all exemptions to the public records law are applicable to police recordings. The provision specifically indicates, “[i]f a recording is exempt pursuant to another exemption in this section, that exemption applies and determines under which circumstances . . . the recording may be disclosed.” But this all-encompassing language presents serious concerns, as it would allow, for example, a video to be declared part of an ongoing criminal investigation and thus exempt from prompt disclosure.

Lastly, the proposed bill states that a person not depicted in the audio or video recording may only inspect that recording “if inspection is authorized by all persons recorded or depicted in the recording.” But this provision is absurd, for it would seem to require consent from all parties shown in a video if a member of the public wanted to see any portion of the recording. Categorically requiring consent for the release of any recording would create an administrative nightmare, but more importantly, would operate as a *de facto* bar to public access.

Law enforcement officials in Florida and around the nation have supported providing their officers with body cameras for two primary reasons: to allow the public an opportunity to gauge the performance of their police officers in cases where deadly force is used or abuse is claimed; and to protect their officers from false or overwrought accusations of brutality. In short, the intent is to provide accountability and enable transparency. For that to happen, exemptions should be both rare and narrowly construed.

Many law enforcement agencies in Florida already equip their officers with body cameras. To date, body camera video showing stops, interrogations, arrests, and use of force has been available to the public without controversy or objection. While the First Amendment Foundation agrees that a statewide policy on access to law enforcement body camera video is preferable to the piecemeal adoption of policies by individual cities and counties, the Foundation also believes the Legislature should not impose overbroad exemptions where there currently are none.

This proposed bill suffers from a myriad of potentially unconstitutional problems and issues, Senator Smith. The vague, imprecise, and categorical language of the bill creates overly broad exemptions that violate the letter and spirit of the Public Records Act and our constitutional right of access. Proposed exemptions to our right of access must meet the constitutional standard of specificity as to stated public necessity and be no broader than necessary to achieve its purpose. We urge you to reconsider CS/SB 248 and make adjustments to reflect Florida's long-standing commitment to robust government oversight and accountability.

Thank you for your prompt attention to our concerns, Senator Smith. If you have any questions, please do not hesitate to contact us.

Sincerely,



Barbara A. Petersen

CC: The Honorable Andy Gardiner, President, Florida Senate
The Honorable Greg Evers, Chair, Committee on Criminal Justice, Florida Senate
Jon Kaney, General Counsel, First Amendment Foundation