

June 30, 2020

The Honorable Brian P. Kemp
Governor
State of Georgia
206 Washington Street
Suite 203, State Capitol
Atlanta, Georgia 30334

Dear Governor Kemp:

We write to urge you to veto three harmful bills that passed out of the Georgia General Assembly last week and to reject the budget approved by the legislature until it includes greater revenue expansion to offset the lost tax receipts facing the State of Georgia.

First, Senate Bill 402 is an unconstitutional attack¹ on judges' discretion to permit pre-trial release using signature bonds. This bill rolls back the progress of Governor Deal's criminal justice reforms which aimed at lowering the cost of our carceral system.² This law would increase costs to city and county governments, make Georgia an outlier in southern states reforming cash bail systems, and make Georgia a target for future litigation.

Moreover, as we fail to contain the spread of COVID-19 in our communities, needlessly retaining people in jails for being too poor to post bail puts them at greater risk of exposure and endangers the community at large, including officers and staff at our jails. Therefore, we ask that you veto Senate Bill 402.

Second, we urge you to veto House Bill 838, which handcuffs police departments and sheriff's offices that seek to discipline officers accused of misconduct. The overwhelming majority of Georgians support reforms that would provide more accountability for officers' conduct in their community. This bill fails to deliver that accountability and instead would shield officers from disciplinary actions. No other worker in government or the private sector is afforded these procedural protections from the consequences of their own misconduct.

¹ The United States Supreme Court has held that the Constitution, as a general rule, prohibits "detain[ing] a person prior to a judgment of guilt in a criminal trial." Courts have repeatedly found unconstitutional laws authorizing pretrial detention where, as here, there are insufficient procedural protections to ensure that detention is truly necessary. *United States v. Salerno*, 481 U.S. 739, 749–50 (1987). *Lopez-Valenzuela v. Arpaio*, 770 F.3d 772, 780–81 (9th Cir. 2014) (en banc).

² <https://www.wabe.org/governor-signs-bail-reform-bill/>

Between 2007-2017, over 3,600 law enforcement officers have been decertified in the state of Georgia after being investigated for serious misconduct.³ Georgia’s law enforcement officers enjoy other protections within the state’s code, most recently with the 2017-2018 “Back the Badge” legislation. HB838 simply muddles the law and the protections afforded to officers now.⁴ In the wake of the historic passage of HB426, the new hate crimes statute, and ongoing extra judicial killings of unarmed Black people in our state, we urge you to veto House Bill 838.

Third, Senate Bill 359 gives employers and service providers extra protections if they ignore safety guidelines and act irresponsibly. This bill was passed in the middle of this pandemic when the numbers of people contracting COVID-19 surpassed previous records in Georgia.⁶ Therefore, this bill weakens the public’s confidence⁷ in the safety of our community and healthcare institutions⁸ during the pandemic and places people at greater risk. As we have seen, merely reopening the economy does not bring back customers or jobs. People need to feel confident that they will be safe. A recent national poll found that 60% of respondents believe that companies would take fewer precautions to keep people safe if they knew they could not be sued.⁹ Senate Bill 359 does not address key issues of safety – it does not provide for randomized testing, contact tracing, personal protective equipment, paid sick leave, or a way to design safer public spaces. This bill simply reduces accountability for businesses who will cut corners to save costs at the expense of the lives of our community members.

Additionally, the immunity provided by this bill is based on the false assumption that people we are encouraging to go out into public can know enough about viral transmission, health safety, and what precautions are being taken at local businesses or hospitals in order to “assume the risk” of patronage. It likewise ignores the very real fact that any individual’s risk is not the point. One person exposes a network of family, friends, and coworkers. The approach taken by this bill shows shockingly little understanding of how public health works and what must be done to confront community health risks.

Nowhere is this truer than in our hospitals. In April, four of five adults worried about becoming infected with COVID-19 from another patient or visitor while at the emergency room. Nearly a third of those adults had actively delayed or avoided seeking medical care because they were concerned with contracting the virus.¹⁰ We need to encourage people to seek medical assistance to ensure we are testing and treating the spread of coronavirus in our state. However,

³ <https://www.usatoday.com/in-depth/news/investigations/2019/04/24/biggest-collection-police-accountability-records-ever-assembled/2299127002/>

⁴ <https://www.ajc.com/news/state--regional-govt--politics/aclu-georgia-police-protections-bill-weakens-penalty-for-killing-officer/vb1oCJogFVEixqUMvjieKP/>

⁵ <https://investigations.ajc.com/overtheline/ga-police-shootings/>

⁶ <https://www.ajc.com/news/local-govt--politics/georgia-reports-new-weekly-record-for-coronavirus-cases/e8NVLDCAZjLFnneH6llWuL/>

⁷ <https://www.washingtonpost.com/us-policy/2020/05/03/congress-coronavirus-legal-liability/>

⁸ <https://news.bloomberglaw.com/corporate-governance/insight-business-immunity-will-prevent-covid-19-litigation-crisis-7>

⁹ <https://www.iustice.org/news/new-national-poll-reveals-broad-bipartisan-opposition-corporate-liability-immunity-related>

¹⁰ <https://www.emergencyphysicians.org/article/covid19/public-poll-emergency-care-concerns-amidst-covid-19>

by permitting hospitals to remain unaccountable, Senate Bill 359 discourages high risk individuals from seeking care until it is far too late. We have already callously allowed many residents of our nursing homes to die and suffer during this pandemic. We must not repeat that mistake with our hospitals. Protect Georgians and veto Senate Bill 359.

Finally, the budget passed by the legislature will irrevocably harm children, people with behavioral and developmental diseases, and those who need to access our public safety net. This harm is not necessary. In 2017, Georgia's per capita revenue was more than \$2,500 below the national average.¹¹ We can capture new revenues from those individuals and businesses that can afford it. Doing nothing is legislative cowardice. We urge you to veto the budget until the legislature puts in the hard work of searching for ways to cover for the revenue losses Georgia will experience.

Sincerely,

Margaret Huang
President and CEO
SPLC Action Fund

¹¹ <https://www.urban.org/policy-centers/cross-center-initiatives/state-and-local-finance-initiative/projects/state-fiscal-briefs/georgia>