



June 15, 2016

The Hon. Gina Raimondo
Governor
State House
Providence, RI 02903

RE: VETO 16-H 7537/16-S 2540

Dear Governor Raimondo:

On behalf of the ACLU of Rhode Island, the Rhode Island Press Association, and the New England First Amendment Coalition, we are writing to urge your veto of 16-H 7537 and 16-S 2540, the so-called “revenge porn” bills.

We recognize the legitimate and serious privacy issues that are implicated by “revenge porn.” However, this bill is so breathtakingly broad in its reach that it criminalizes activity that involves neither revenge nor porn. It criminalizes activity that harms no one and is not intended to harm anyone. It turns hundreds, if not thousands, of young people into criminals. And it creates a potentially chilling effect on the exercise of free speech by the media, which face criminal penalties if they fail to prove to a jury that photos they disseminated were not “in the public interest.” At a time when a major Presidential candidate is attacking, and calling for the repeal of protections for, the nation’s press, now is not the occasion to enact a law that, however unintended, plays into that rhetoric.

All of these concerns are real because, unlike the laws of virtually every other state on this subject, these bills do not require a photo’s dissemination to cause harm to any person or even be intended to cause harm in order to violate the law.

That is why national organizations like the Media Coalition, which includes the American Booksellers Association and the Association of American Publishers, have also vigorously opposed the legislation. There is a very real concern about its potential impact on matters of legitimate news, commentary, and historical interest, such as – to give just one example – the dissemination of the photos of the prisoners at Abu Ghraib.

In a meager attempt to avoid this chilling impact on First Amendment rights, the bill contains exemptions for the dissemination of information “made in the public interest” or “on a matter of public concern.” But that is too little, too late. If a news publisher must weigh the value of publishing a photo against the potential ignominy of a criminal charge and trial in order to prove there was a “public interest” in making that decision, the chilling impact is clear.

After all, some juries might easily conclude that some of the Abu Ghraib photos were unnecessarily graphic and media dissemination of them served no public purpose. (In response to this example, the Attorney General has made the deeply troubling, and very

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contestable, assertion that the detainees had no expectation of privacy and therefore the dissemination of their nude photos would be protected under the bill for that reason.)

And once Anthony Weiner expressed objection to the further public dissemination of his photos, should anybody who retweeted them be considered a criminal because their distribution did not constitute “a matter of public concern”?

Even in situations where there is admittedly no public interest, some of the conduct encompassed by this legislation simply does not deserve to be treated as a crime. The hacking two years ago of nude photos of Jennifer Lawrence and other celebrities was understandably deplorable (and already punishable under other laws). But under this bill, any teenager or adult who looked for and shared any of those photos after they had been posted online and publicized would be a criminal.

Every other state in New England that has enacted this type of legislation has passed much narrower versions to mitigate these constitutional concerns. In fact, the overwhelming majority of states nationwide with such laws have included an “intent” requirement that is conspicuous by its absence in this bill.

“Revenge porn” should be punished, but when a bill like this misappropriates and distorts the term, and puts the media and others at risk of criminal prosecution for engaging in activity that is a far cry from the bill’s purported intent, we firmly believe a veto is in order.

Thank you in advance for considering our views.

Sincerely,

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cc: Eric Beane
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