



May 31, 2018

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

RE: REQUEST TO VETO 18-H 7452 AND 18-S 2581, THE “REVENGE PORN” BILLS

Dear Governor Raimondo:

Two years ago, you courageously vetoed a “revenge porn” bill promoted by the Attorney General that our organizations had argued raised serious First Amendment concerns. The legislation criminalized a wide array of speech that involved neither revenge or porn. In response, last year and this year, you proposed alternative legislation that we believe addressed those constitutional concerns while providing strong protections to those who were the true victims of malicious conduct. However, in its place and on its way to your desk is a “compromise” bill, based on Massachusetts legislation, that suffers many of the same constitutional infirmities as the 2016 legislation you vetoed. Because it will chill freedom of speech, especially for the media, and will likely result in a court challenge leaving no protection for victims of this conduct, our organizations – representing both the public and the media - once again urge you to veto this legislation.

As we noted in 2016, one of the key elements of a constitutional bill in this area is a requirement that there be an “intent to harm.” H-7452A and S-2581A instead only require that the publisher “recklessly disregard that harm could occur regardless of the intent of the publisher, while also retaining other very problematic language from the 2016 legislation. Like those bills, this one will force the news media to think twice about publicizing newsworthy images – whether of torture at Abu Ghraib or the Vietnam “napalm girl” – that could run afoul of the Act depending on a jury’s view of “newsworthiness” and be subject to a year in prison. We have taken the liberty of enclosing a detailed legal analysis of some of the constitutional problems raised by this bill, and we urge you to review it carefully.

Regarding the lack of an “intent to harm” standard, a broader view of other states’ actions is illuminating:

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* Of 37 states that have passed “revenge porn” laws, 26 have an intent to harm element, and five others require that serious harm actually result from the publication of an image. Only six states have no requirement that the publisher intend to, or actually cause, harm to the person in the image.

* The lack of a mandatory intent element would make Rhode Island an outlier in New England. Maine, New Hampshire and Vermont all have “intent to harm” statutes, and Massachusetts presently has no statute at all.

* The clear trend in the states is to include an intent element. In the past few years, eight of the nine states that have passed these laws have included an “intent” element, and two states have revised older laws to include a malicious intent requirement.

* There have thus far been two challenges to laws without an intent standard. In *Antigone Books v. Brnovic*, the Attorney General’s office agreed to a permanent ban on enforcement of Arizona’s law, and the revised law enacted in response to the court case added an “intent to harm” requirement. More recently, a Texas appellate court found that state’s law unconstitutional, noting, among other things, the lack of an intent requirement. *Ex Parte Jones* (May 16, 2018).

Finally, it is worth recalling that, in testifying on this issue earlier this year, both the RI Coalition Against Domestic Violence and Day One indicated that they had no objections to passing legislation with an intent element.

Our organizations were deeply appreciative of your principled stand in 2016 in vetoing the Attorney General’s bill and showing your deep support for the First Amendment. We hope that will continue that course by rejecting these bills that fail to provide the breathing room that a free press needs to perform its job well.

Thank you for considering our views.

Sincerely,

Steven Brown, Executive Director
American Civil Liberties Union of RI
128 Dorrance Street, Suite 220 - Providence, RI 02903
sbrown@riaclu.org

James Bessette, President
Rhode Island Press Association
Jamesbessette5@gmail.com

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Justin Silverman, Executive Director
New England First Amendment Coalition
111 Milk Street, Westborough, MA 01581
justin@nefac.org

David Horowitz, Executive Director
The Media Coalition
19 Fulton Street, Suite 407 – New York, NY 10038
horowitz@mediacoalition.org

cc: Claire Richards

Enclosure