



SENT VIA EMAIL TO ALL MEMBERS OF THE R.I. HOUSE OF REPRESENTATIVES

State of Rhode Island General Assembly
82 Smith Street
Providence, RI 02903

May 16, 2025

RE: Opposition to H 5655 “An Act Relating to Criminal Offenses — Stalking”

Dear Representative,

We are writing on behalf of the New England First Amendment Coalition and the Rhode Island Press Association. NEFAC is a nonprofit nonpartisan advocate for journalists in Rhode Island. Its Board of Directors and advisors include many leading reporters and media attorneys in the region.¹ The Rhode Island Press Association is a nonprofit organization that promotes the interests of newspapers, magazines and other publications, and advances journalism standards and educational opportunities.²

While we acknowledge the importance of a strong anti-stalking law and the recourse this gives to victims of harassment, H 5655 is written too broadly and will potentially criminalize the act of newsgathering. The bill recently passed out of committee and we expect a floor vote soon. We respectfully ask that you oppose this legislation.

As media law professors Erin Coyle and Eric Robinson wrote in their 2017 article “Chilling Journalism: Can Newsgathering Be Harassment or Stalking?”:³

[T]he character of some attempted applications of these laws to journalists, particularly threats of charges or charges brought by government employees or candidates for public office, raise questions about whether harassment or stalking complaints may be used as attempts to stifle newsgathering and limit speech protected by the First Amendment.⁴

Though the authors found instances of journalists being charged under harassment or stalking laws uncommon, they did provide several examples of when reporters were forced to defend themselves nevertheless. They also examined the shortcomings of the laws that allowed journalists to be prosecuted in the first place and described deficiencies similar to those in H 5655.

H 5655 expands the Rhode Island anti-stalking statute’s definition of harassment to include:

“a knowing and willful course of conduct directed at a specific person that a reasonable person would consider **seriously annoying** or seriously tormenting and that **serves no legitimate purpose** and includes, but is not limited to, the **act or acts of repeatedly following someone and using an electronic device to record their movements in any public or private place.**”⁵ (emphasis added.)

¹ Visit nefac.org to learn more about the coalition and view a full list of directors and advisors.

² Visit ripressassociation.org to learn more about RIPA.

³ *Chilling Journalism: Can Newsgathering Be Harassment or Stalking?*; Communication and Law Policy, 22:1, 65-122; Erin Coyle and Eric Robinson (2017); <https://doi.org/10.1080/10811680.2017.1250571>.

⁴ *Id* at 120.

⁵ Full text of bill can be found at: <https://webserver.rilegislature.gov/BillText/BillText25/HouseText25/H5655.pdf>

Protection of Newsgathering

Journalists routinely follow newsworthy individuals — particularly government officials — in public with cameras or other electronic recording devices. Approaching these individuals in this manner is often the only way to ask important questions and seek accountability that would otherwise be evaded. It is also a practice protected by the First Amendment. As the U.S. Court of Appeals for the First Circuit explained, a "citizen's right to film government officials ... in the discharge of their duties in a public space is a basic, vital, and well-established liberty safeguarded by the First Amendment."⁶ Section 11-59-1-2 of H 5655 directly implicates this long-standing and constitutionally-protected journalism practice.⁷

"When a journalist is attempting to serve as a check on a powerful institution and provide true information, particularly when that information might cast a person in a negative light," Coyle and Robinson wrote, "a journalist must communicate to or about another person more than once or make multiple attempts to communicate with persons directly related to that institution."⁸

As of 2017, at least 26 anti-stalking or harassment statutes included explicit exceptions for activities protected by the U.S. or state constitutions.⁹ Section 11-59-1 currently exempts "constitutionally protected activity" from the law's scope, but courts have come to different conclusions about whether activities commonly used for newsgathering are constitutional.¹⁰ A carve-out in H 5655 specifically for newsgathering would prevent any confusion and potentially save journalists the financial and emotional burden of having to defend themselves in court.

Legitimate Purpose

The bill's focus on actions that serve "no legitimate purpose" might intend to be a journalism safeguard but it likely won't prevent abuse of the law. At least 25 stalking statutes in 2017 included a "legitimate purpose" exception or similar variation.¹¹ Despite these exceptions, journalists were still prosecuted under their state's respective law. One freelance journalist in Georgia, for example, found himself in Superior Court after asking questions of a political candidate during a public forum.¹² The candidate received a protective order against the journalist under the state's anti-stalking law. A judge ultimately dissolved the order because the questioning served a "legitimate purpose" but the decision came with the burden of procuring a legal defense — and the potential chilling effect legal threats can have on investigative journalism.

The definition of a "legitimate purpose" is also not always clear. The Supreme Court of New Hampshire had to at least twice determine whether the activities of a defendant in a stalking case served such a purpose.¹³ Presumably to avoid any ambiguity, Nevada's anti-stalking statute expressly protects newsgathering communications.¹⁴ Similarly, the cyberstalking statutes of Louisiana, Mississippi and North Carolina all exempt "any peaceable, nonviolent, or nonthreatening activity intended to express political views or to provide lawful information to others."¹⁵ Though we are not necessarily endorsing the specific language of these examples, it is important to note that H 5655 does not provide any guidance on what activities may have a "legitimate purpose" never mind explicitly covering newsgathering. Without such language, the likelihood of journalists being prosecuted will increase.

⁶ *Glik v. Cunniffe*, 655 F.3d 78 (1st Circ. 2011).

⁷ It should also be noted that Rhode Island is a "one-party consent state" with respect to recording others. This means that a single individual *cannot* unilaterally prevent the recording from occurring when there is no reasonable expectation of privacy. See R.I. Gen. Laws § 11-35-21.

⁸ *Chilling Journalism*, *supra* at 119.

⁹ *Id* at 110.

¹⁰ *Id* at 110-111.

¹¹ *Id* at 116.

¹² *Id* at 117.

¹³ *Id*.

¹⁴ *Id.* at 118.

¹⁵ *Id*.

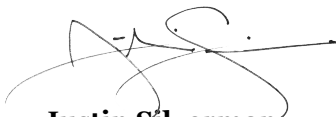
“Seriously Annoying” Low Bar

Another shortcoming of H 5655 is the use of “seriously annoying” to, in part, legally define harassment in the state’s anti-stalking law. The current law requires substantial emotional distress or a reasonable fear of bodily injury, a standard that would likely prevent journalists from being wrongfully prosecuted for doing their job. H 5655, however, lowers that bar considerably. One can easily imagine how often public figures consider regular scrutiny and press presence to be an annoyance. Without the higher bar that currently exists, this bill would allow those individuals to respond to such annoyance with criminal charges. Journalists would bear the burden of defending themselves in court or avoid confrontational interviews altogether for fear of prosecution. Both scenarios are a threat to the free press.

This concern is even more acute given the current political environment and the growing animosity shown toward journalists. Polls show an increasing distrust of news organizations.¹⁶ Government officials and public figures continue to call into question the legitimacy of national media and such sentiment typically trickles down to those at the state and local level. In this climate one can foresee public figures using the changes in H 5655 to claim annoyance by the questioning of “illegitimate” journalists and using the law to prevent those journalists from engaging in First Amendment-protected activity. It is for all these reasons that the bill should be opposed.

Thank you for your time and consideration.

Sincerely,



Justin Silverman
New England First Amendment Coalition



Linda Lotridge Levin
Rhode Island Press Association

¹⁶ *Americans’ Trust in Media Remains at Trend Low*, Gallup News (Oct. 14, 2024), <https://news.gallup.com/poll/651977/americans-trust-media-remains-trend-low.aspx>.