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New England First Amendment Coalition

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SENT VIA EMAIL TO
SLEGISLATION@RILEGISLATURE.GOV

ATTN: Rhode Island Senate
Committee on Judiciary
Robert A. Ricci, Clerk

May 9, 2017

Dear Members of the Senate Committee on Judiciary,

On behalf of the New England First Amendment Coalition, I'm writing in opposition to Senate Bill 0401 "An Act Relating to Criminal Offenses — Electronic Imaging Devices." NEFAC is a regional non-profit organization that advocates for First Amendment freedoms and the public's right to know.

If passed, S.0401 will have a chilling effect on Rhode Island news organizations and their reporting. While the privacy interests this bill seeks to address are legitimate and in need of protection, S.0401 lacks necessary First Amendment safeguards. The legislation places the burden on news publishers to prove their reporting is in the public interest, a burden that will undoubtedly lead to self-censorship. Senate Bill 0765, in contrast, removes that burden and more narrowly focuses on the intended targets of both bills — those publishing so-called "revenge pornography" — and not those publishing the news.

We want to again emphasize the seriousness in which our organization views the privacy interests at stake in both bills. These privacy interests should be protected, though they need to be protected in a way that does not infringe on the First Amendment rights provided by our Constitution. This balancing of interests certainly makes crafting legislation more difficult, but it is a legal framework our federal Constitution requires us to work within.

S.0401, however well-intended, fails to meet that standard. If S.0401 becomes law, a news organization would risk criminal charges every time it chose to show nude images. Though there are exclusions in the bill — for publishing photos when "in the public interest," for example — reasonable juries can disagree on whether those exclusions apply. This uncertainty will lead news organizations to self-censor rather than publish images they otherwise would.

S.0765 more effectively addresses this First Amendment conflict by including an intent requirement. This requirement is used by many states with "revenge porn" legislation and more adequately protects the constitutional rights of news organizations. It leaves the determination of newsworthiness to editors rather than juries.

We respectfully ask that you oppose S.0401. Instead, please consider legislation that protects the privacy of Rhode Islanders while at the same time protecting the First Amendment rights of the press.

Sincerely,

Justin Silverman
Executive Director

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