

DELIVERED VIA EMAIL

January 9, 2014

Hon. Terrie Norelli, (terie.norelli@leg.state.nh.us)
Speaker of the House
35 Middle Rd
Portsmouth, NH 03801-4802

RE: Letter in Opposition to H.B. 110

Dear Speaker Norelli,

The members of Media Coalition believe the proposed Committee Amendment to House Bill 110 will have a substantial chilling effect on speech that will threaten the distribution of First Amendment-protected material in New Hampshire. The trade associations and other organizations that comprise Media Coalition have many members throughout the country including New Hampshire: publishers, booksellers and librarians as well as manufacturers and retailers of sound recordings, home video and video games.

H.B. 110 would require anyone who witnesses an instance of illegal animal cruelty to livestock or poultry to report it to law enforcement authorities within 48 hours. The person must also notify law enforcement that he or she has evidence of the animal cruelty. If the evidence is video or photographic, it must be retained by the reporting party for 60 days.

While animal cruelty is abhorrent, images of animal cruelty are fully protected by the First Amendment and the state cannot place any undue burden on this speech. In *U.S. v. Stevens*, the Supreme Court struck down a federal law that banned the creation, sale or possession with the intent to distribute images of cruelty to actual animals if the act of cruelty was illegal where the image was created, sold or possessed with the intent to distribute. 130 S. Ct. 1577 (2010). Chief Justice Roberts writing for the majority said, "As the Government notes, the prohibition of animal cruelty itself has a long history in American law, starting with the early settlement of the Colonies. But we are unaware of any similar tradition excluding depictions of animal cruelty from "the freedom of speech" codified in the First Amendment, and the Government points us to none." 130 S.Ct. at 1585 (internal citations omitted).

This legislation may be well intentioned but it will have a substantial chilling effect on a wide range of constitutionally protected speech. The requirement that anyone with evidence of cruelty to livestock or poultry report it to the police within 48 hours will greatly inhibit the

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ability to conduct investigative reporting or filmmaking. Book authors and documentary filmmakers often need months or years to properly report a story. They will not be able to cultivate sources if they cannot provide assurance that the source and the information they provided will not be reported to law enforcement within 48 hours. This problem is exacerbated in New Hampshire because the state has no law granting journalists a right to shield their sources. As a result, it will be that it becomes much harder for journalists to investigate suspected animal cruelty.

H.B. 110 further undermines the work of authors, writers and filmmakers by making them agents of law enforcement. This legislation would draft journalists, and the rest of the populace, into service as the eyes and ears of the police; required to report any act of cruelty to livestock or poultry within 48 hours or risk criminal prosecution. It is anathema to investigative journalists, authors and documentary filmmakers to be considered an agent of law enforcement and it makes it impossible for them to do important in-depth storytelling.

The requirement that anyone who sees an instance of animal cruelty that could be a crime act must report it to law enforcement may also be unconstitutional as compelled speech. Individuals can be compelled to give evidence about a crime but it is not clear whether the state may compel the general public, including journalists, to report any incident someone suspects to be crime under threat of criminal prosecution for failing to do so. The Supreme Court has held, “freedom of speech prohibits the government from telling people what they must say.” *Rumsfeld v. Forum for Academic and Institutional Rights, Inc.*, 547 U.S. 47, 61 (2006). The First Amendment allows speakers not only the right to communicate freely but creates the complimentary right “to refrain from speaking at all,” *Wooley v. Maynard*, 430 U.S. 705, 714 (1977). Here, the government is not telling individuals what they must say but it is compelling them to speak about a specific topic in a certain way.

If you would like to discuss our concerns about H.B. 110, please contact me at 212-587-4025 #3 or at horowitz@mediacoalition.org.

Please protect the First Amendment rights of all the citizens of New Hampshire and defeat this restriction on free speech.

Respectfully submitted,



David Horowitz
Executive Director

cc: New Hampshire House of Representatives (hrebs@leg.state.nh.us)