State of Rhode Island and Providence Plantations
State House
Providence, Rhode Island 02903-1196
401-222-2080

Gina M. Raimondo
Governor

June 20, 2016

TO THE HONORABLE, THE PRESIDENT OF THE SENATE:

In accordance with the provisions of Article IX, Section 14 of the Constitution of the State of Rhode Island and Section 43-1-4 of the Rhode Island General Laws, I transmit, with my disapproval, 2016-S 2540, "An Act Relating to Criminal Offenses – Electronic Imaging Devices."

This legislation is intended to combat "unauthorized dissemination of indecent material," and would criminalize the dissemination of a sexually graphic image of another person without their affirmative consent. The bill also would criminalize the sharing of such images by third parties who know that dissemination occurred without affirmative consent.

The authors of this legislation are attempting to address a very real and serious issue. As digital technology has come to pervade every aspect of our society, opportunities to harass, humiliate, and threaten others have expanded considerably. I strongly support efforts to keep people safe from unwarranted intrusions and exploitation. The State has an interest in protecting the privacy that individuals have a right to enjoy in their personal lives, and in ensuring that the internet and social media are not used for wanton harassment. That is why 26 other states have passed statutes to tamp down on unauthorized electronic dissemination of sexually explicit images.

However, First Amendment lawyers and advocates have expressed concerns that this particular bill is overbroad and vague, and, if enacted, will turn Rhode Island into an outlier on the protection of free speech. While the bill contains exceptions if the image is disseminated "for a lawful purpose" or "in the public interest" or when the dissemination of the image is a "matter of public concern," none of these terms are defined, making it unclear what conduct is prohibited. Ultimately, that determination would be left to a jury in a criminal case. The bill is apparently intended to curb the dissemination of private sexual material over the internet, but its sweep is much broader – it could also cover works of art that depict the human body. And, unlike virtually all other similar state statutes, S 2540 does not include basic safeguards such as the requirement that "intent to harass" be demonstrated for conduct to be criminal.

This breadth and lack of clarity may have a chilling effect on free speech. As many opponents of this bill have noted, this law could criminalize important acts of political speech, such as the sharing of pictures of abuse from Abu Ghraib, wartime atrocities, or humanitarian disasters like famine. The third-party provision of the law imperils any member of the public who might seek to share information that is already in the public domain, not just an individual out for personal revenge.

This legislation could also expose the State to significant litigation risk. First Amendment protections are the bedrock of American civil society. Our courts therefore appropriately demand an extremely high standard for content-based restrictions on speech. Even when states successfully demonstrate that they have a compelling interest in imposing restrictions on speech, they must show that such laws are as narrowly tailored as possible to achieve the desired goal. For all of the reasons previously mentioned, there is a significant chance that this bill would fail that standard, exposing the state to costly and unsuccessful litigation while impeding our broader goal of protecting victims from damaging and unjustified privacy violations.

We do not have to choose between protecting privacy rights and respecting the principles of free speech. The right course of action is to follow the example of other states, and craft a more carefully worded law that specifically addresses the problem of revenge porn, without implicating other types of constitutionally protected speech. I would welcome the opportunity to work with victims' advocates, the Attorney General, and the General Assembly to introduce such a bill in the next legislative session.

Sincerely,

Gina M. Raimondo
Governor