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ACLU OF RI POSITION: OPPOSE

TESTIMONY ON 24-H 7101, RELATING TO CRIMINAL OFFENSES – ELECTRONIC IMAGING DEVICES February 15, 2024

As we deal in this brave new world of artificial intelligence,¹ it will be no surprise to anyone that attempts to reconcile the proliferation of AI with First Amendment rights present extremely complicated issues. While the ACLU of RI appreciates efforts to address the new role that AI inhabits in our society, we are concerned about the constitutional implications of this proposed legislation.

First, it is important to note that the ACLU had, and continues to have, constitutional concerns about the current iteration of the statute. In fact, then-governor Gina Raimondo first vetoed a similar version of this current law before acquiescing to its passage two years later.

The major concern that we had with the law at the time – and the way in which it deviates from the majority of other state “revenge porn” laws that have been enacted – was the absence of a requirement that the person disseminating the sexually explicit image of another person did so with the intent to harm that individual. Instead, the law allows a person to be convicted solely because the dissemination is deemed to show a “reckless disregard for the likelihood that the depicted person will suffer harm.” To illustrate the concerns that the lack of an “intent” requirement raised – and continues to raise – a newspaper would have to think twice before publishing an iconic photo like the Vietnam “napalm girl” because the dissemination of such a photo could run afoul of the law depending on a jury’s view of its “newsworthiness.” This flaw in the current statute is only exacerbated by the expansion that H 7101 proposes.

Perhaps the best way to illuminate the questionable reach of the bill is to provide a few examples. Just a few weeks ago, there was a controversy on social media with the dissemination of digitized nude photos of Taylor Swift. As unfortunate and inadvisable as the use of artificial intelligence for this juvenile purpose might be, it is troubling to recognize that, as this bill is written, *any* person disseminating such a picture would be guilty of a criminal offense.

Having this law apply to digitized images is troubling in another significant respect. The image need only be identifiable to an individual, but it does not matter if one can easily see that the image itself has been artificially generated. Thus, one can imagine any number of images of well-known public figures in a state of nudity, which are clearly artificially generated yet remain

¹ “Artificial intelligence” in this testimony refers broadly to use of all AI tools, including generative artificial intelligence technologies.

subject to the criminal restrictions of this legislation because they are “identifiable” to an individual. While the statute does have an exemption for dissemination of images “related to a public figure,” it is tied to a requirement that it “constitute a matter of public concern,” which many could argue is a standard not met by most such pictures, which would often be frivolous in nature.

And to the extent an image is clearly artificially generated, application of the bill to other individuals is also problematic, especially if it does not meet the statutory definitions of obscenity. Dissemination of a fake nude image of a person should no more be subject to *criminal* penalties than a doctored photo of a person with an elongated nose or other caricatured features that might cast the individual in a poor light.

In that same vein, the legislation’s criminal penalties would apply to images that are clearly satirical or parodic in nature, or generated for artistic purposes, something that we submit the First Amendment simply does not allow.

In short, we do not wish to minimize the sincere goals behind this legislation, But criminalizing the dissemination of artificially generated sexually explicit images has the potential to impact a wide variety of digital material that is, and should be, protected by the First Amendment. For these reasons, we respectfully urge the committee’s opposition to this bill.