ACLU
AMERICAN CIVIL LIBERTIES UNION
Rhode Island

June 27, 2025

The Hon. Daniel McKee   VIA MAIL AND EMAIL
Governor
State House
Providence, RI 02903

RE: REQUEST TO VETO 25-H 5046 and 25-S 136, ACTS RELATING TO CRIMINAL OFFENSES -- ELECTRONIC IMAGING DEVICES

Dear Governor McKee:

The ACLU of Rhode Island respectfully requests that you veto 25-H 5046 and 25-S 136, legislation that would criminalize the dissemination of digitally created sexually explicit images of another person without their consent.

Attempts to reconcile the proliferation of artificial intelligence with First Amendment rights present extremely complicated issues. While the ACLU of RI appreciates this bill's attempt to address the issue, we are concerned about the constitutional implications of the proposed legislation.

It is important to note that we believe that the *current* statute, even without this addition, raises serious legal concerns. In 2016, then-Governor Gina Raimondo initially vetoed a similar version of the current statute before acquiescing to its passage two years later. The major concern that we had with the law at the time and continue to have – and the way in which it deviates from similar laws whose constitutionality have been upheld elsewhere – is the absence of a requirement that the person disseminating a sexually explicit image of another person do so with the intent to harm that individual. Instead, the law allows a person to be convicted solely if 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 raises, a newspaper's publication of an iconic photo like the Vietnam "napalm girl" could run afoul of the law depending on a jury's view of its "newsworthiness." That flaw in the statute remains in this legislation, and is only exacerbated by the proposed expansion of the law.

Perhaps the best way to illuminate the troubling reach of the bill, while acknowledging the sincerity of its goal, is to provide a very simple example. Last year, there was a well-publicized reaction on social media to the dissemination of digitized nude photos of Taylor Swift generated by artificial intelligence. As unfortunate and inadvisable as the use of artificial intelligence for this juvenile purpose was, it is troubling to recognize that, as this bill is written, *any* person who shared

such a picture with others would be guilty of a criminal offense. Under this legislation, tens of thousands of teenagers nationwide, and undoubtedly hundreds in Rhode Island, would have become criminals in sharing the image with friends.

Having this law apply to digitized images is troubling in another significant respect. The image need only be identifiable to an individual, but it doesn't matter if one can easily see that the image itself has been artificially generated. Thus, to give an obvious example in light of the court cases he has been the subject of, one can easily imagine the circulation of clearly artificially generated images of President Trump in a state of nudity, which would be subject to the criminal restrictions of this legislation because they are "identifiable" to an individual. While the statute has 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 such a picture, which would often be frivolous in nature.

In that same vein, the legislation's criminal penalties 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 – without a requirement of an intent to harm – has the potential to adversely impact a wide variety of digital material that is, and should be, protected by the First Amendment. For these reasons, we respectfully urge your veto of this bill.

Sincerely,

Steven Brown
Executive Director

cc: Claire Richards