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June 28, 2011

The Hon. Teresa Paiva Weed
Senate President
State House
Providence, RI 02903

RE: **H-5094A and S-733A**

Dear President Paiva Weed:

Under two companion bills being scheduled to be voted on by the Senate tomorrow, children who engage in “sexting” could potentially face felony child pornography charges, including lifetime registration as a sex offender! I write to urge you to have these bills amended on the floor to eliminate this possibility.

As we understood it, the goal of this legislation, as initially explained by the Attorney General and others at the first committee hearing, was to create a new, separate offense of “sexting” so as to *prevent* minors from being charged with child pornography for engaging in this activity. However, the bill **does not** preclude minors from being charged under the child pornography statute or from being labeled a sex offender for engaging in sexting. Rather, the bill only provides that “any minor **adjudicated** under subsection (b) [i.e., the sexting ban] shall not be charged under section 11-9-1.3 [child pornography]...” That is, the bill protects minors from being charged with child pornography **only if** they have been adjudicated of violating the sexting statute for the same conduct. Put another way, all that the bill does is prevent minors from being charged with **both** sexting and child pornography for the same conduct.

We had suggested changing that language to instead read: “The conduct prohibited under subsection (b) shall not be deemed a violation of section 11-9-1.3...” This alternative language made clear that the act of sexting, as defined in the bill, does not constitute child pornography and thus a minor who engaged in this conduct could not be charged under that more draconian statute.

However, at a Judiciary Committee hearing yesterday where the bills were voted out, the Attorney General’s office strenuously opposed this amendment. Despite their alleged concern at the first hearing for wanting the bill in order to protect children from serious felony charges, they claimed yesterday that police still needed the “discretion” to decide whether to charge a minor who takes photos of him/herself with the crime of child pornography. In other words, they want to be able to consider treating a young kid who engages in this dumb teenage activity the same as a 50-year old man who photographs a 10-year old having sex. They want to be able to charge kids with a felony, label them as sex offenders, and require them to register as one for life merely

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for engaging in this widespread (if unfortunate) teenage phenomenon. It is important to emphasize that the only conduct we are talking about is children transmitting pictures of *themselves*, not other minors.

With respect, we cannot imagine any reason why a minor should have to fear facing child pornography charges for this conduct. We urge you to consider having these bills amended on the floor to prevent this from happening. Thank you for considering this.

Sincerely,

Steven Brown
Executive Director