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Testimony in Opposition to Senate Bill 489, An Act Concerning Unlawful Dissemination of an Intimate Image of Another Person

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Senator Coleman, Representative Fox and distinguished members of the Judiciary Committee, I'm Sandra Staub, Legal Director of the American Civil Liberties Union of Connecticut. I'm here to testify in opposition to Senate Bill 489, An Act Concerning Unlawful Dissemination of an Intimate Image of Another Person.

The ACLU recognizes that when someone shares intimate images that were meant to be kept private the impact can be devastating, particularly in the context of an intimate partner sharing images without permission as "revenge porn." Yet laws concerning this issue must be narrowly and carefully tailored to address the harm of revenge porn without chilling protected speech, which includes taking and communicating photographs and other images. This can be achieved with legislation that criminalizes only wrongful actors who violate a reasonable agreement or understanding of confidentiality in sharing the image, gives clear definitions of what images may and may not be shared and respects protected speech. I urge you to reject or amend Senate Bill 489 because it does not meet these criteria in its current form.

Courts have consistently held that the First Amendment protects third parties from penalties for disseminating information, as long as they obtained the information without engaging in any illegal actions themselves. This bill would violate this rule by making it a crime for third parties to share images, even if they had no involvement in or knowledge of the initial violation of privacy. To impose criminal penalties on uninvolved third parties sharing legally obtained images in this manner violates the core principles of freedom of speech and of the press.

As written, this bill criminalizes sharing certain images without consent of the subject, regardless of whether there was ever an understanding or agreement that the images would be kept private. This is a critical omission. It's not difficult to imagine situations in which people who voluntarily displayed nudity or partial nudity in public might later be alarmed or annoyed by distribution of the photographic evidence. Miley Cyrus, for example, might someday regret the deliberate exposure of certain parts of her anatomy in her televised "twerking" video. But that doesn't mean anyone should be prosecuted for distributing the video or photographs, even if it is done to annoy or alarm Ms. Cyrus.

The overly broad definition of what sorts of pictures require consent to be shared only increases the potential for inappropriate prosecutions. The legislation forbids distribution of pictures showing images of the buttocks or, for women, "any portion of [the] breast below the top of the nipple." A woman who is photographed in public wearing a short top that displays the lower part of her breast should not be

able to criminalize publication of the photo by objecting to it after the fact. Someone being ridiculed on a blog for what he wore on a public beach should not be able to have the blogger arrested. Criminalizing distribution of images that could be taken openly at a beach, fashion show or celebrity gala creates an unacceptable risk of chilling valuable speech in violation of the First Amendment.

Clearly, this bill was not intended to give overexposed and underdressed celebrities, or anyone who chooses to show the world more than might be considered appropriate, the means to suppress images obtained in public or with obvious consent. To avoid this pitfall, this committee must limit the crime to situations where distribution of the image violates an understanding or agreement that it would be kept private. The bill must also remove references to parts of the body that may legally be displayed in public, even if some people find it objectionable.

While the intent of this legislation is undoubtedly good, it would inadvertently but substantially violate the First Amendment, chill protected speech and potentially criminalize valuable speech. I therefore urge you not to pass this bill without amending it to more narrowly tailor it to protect both victims of revenge porn and the constitutional right to freedom of speech.