



National Press Photographers Association

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VIA EMAIL

February 18, 2022

Hon. Regina E. Cobb
Chair, House Appropriations Committee
Arizona State Capitol Complex
1700 W Washington St
Phoenix, AZ 85007
rcobb@azleg.com

Hon. John Kavanaugh
Vice-Chair, House Appropriations Committee
Arizona State Capitol Complex
1700 W Washington St
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jKavanaugh@azleg.com

Re: Opposition to HB 2319, Law enforcement activity; recording prohibition

Dear Chairwoman Cobb and Vice-Chairman Kavanaugh:

On behalf of the National Press Photographers Association (NPPA) along with the Radio and Television Digital News Association (RTDNA), the Reporters Committee for Freedom of the Press (RCFP), the Press Freedom Defense Fund (PFDF) and the twenty-three (23) organizations listed below, we write to you in opposition to HB 2319, An Act Amending Title 13, Chapter 37, Arizona Revised Statutes, By Adding Section 13-3732; “Unlawful video recording of law enforcement activity.”

The proposed bill would make it “unlawful for a person to knowingly make a video recording of law enforcement activity . . . if the person making the video recording does not have the *permission* of a law enforcement officer and is *within fifteen feet* of where the law enforcement activity is occurring” (emphasis added). Additional language regarding law enforcement activity occurring in an enclosed structure on private property permits a person who is authorized to be on the private property to “make a video recording of the activity from an adjacent room or area that is less than fifteen feet away from where the activity is occurring, unless a law enforcement officer determines that the person is *interfering* in the law enforcement activity or that it is not safe to be in the area and *orders the person to stop recording or to leave the area*” (emphasis added).

We are extremely concerned that this language violates not only the free speech and press clauses of the First Amendment, but also runs counter to the “clearly established right” to photograph and record police officers performing their official duties in a public place, cited by all

the odd-numbered U.S. Circuit Courts of Appeal¹ including the Ninth Circuit.² While such rights are not absolute and subject to reasonable time, place and manner restrictions, we believe that requiring the "permission of a law enforcement officer" and setting a minimum distance of fifteen feet in between the law enforcement officer and the person recording, would not survive a constitutional challenge and is completely unworkable in situations (such a demonstrations and protests) where there are multiple officers and people recording. It is also constitutionally infirm to grant an officer the right to order a person who is filming "to stop recording or to leave the area" under an officer's sole determination that such First Amendment protected activity constitutes interference (which is undefined under the proposed statute). Because the proposed law only applies to a law enforcement officer being recorded, we believe it would fail constitutional muster as not being "content neutral," where the U.S. Supreme Court has held that a statute which "restricts visual and auditory depictions, such as photographs, videos, or sound recordings, [because of its content] ... is presumptively invalid."³

As HB 2319's sponsor, Rep. Kavanaugh, noted in another bill he recently proposed regarding the redaction of police bodycam footage⁴ a critical element regarding filming is whether someone has a reasonable expectation of privacy in a public place. It is clear from well-established jurisprudence regarding this matter that officers performing their official duties in a public place do not have any reasonable expectation of privacy when it comes to being recorded⁵ and therefore taking enforcement action against someone who "fails to comply with a verbal warning of a violation of this section" is both impermissible and unconstitutional. As the U.S. Court of Appeals for the First Circuit noted, "[a] police officer is not a law unto himself; he cannot give an order that has no colorable legal basis and then arrest a person who defies it."⁶

Given our concerns and legal citations in opposition to HB 2319, we respectfully request that the bill not be voted out of committee and that the legislature consider withdrawing it entirely from consideration.

Please feel free to contact us should you have any questions or issues you would like to discuss. Thank you.

¹ See: *Glik v. Cunniffe*, 655 F.3d 78 (1st Cir. 2011); *Fields v. City of Philadelphia*, 862 F.3d 353 (3d Cir. 2017); *Turner v. Lieutenant Driver*, 848 F.3d 678 (5th Cir. 2017); *ACLU of Ill. v. Alvarez*, 679 F.3d 583 (7th Cir. 2012); *Smith v. City of Cumming*, 212 F.3d 1332 (11th Cir. 2000).

² *Fordyce v. City of Seattle*, 55 F.3d 436, 439 (9th Cir.1995) (recognizing a "First Amendment right to film matters of public interest.")

³ *United States v. Stevens*, 559 U.S. 460 (2010).

⁴ See: HB 2081 at [Microsoft Word - HB2081P.docx \(azleg.gov\)](#)

⁵ See: IACP Law Enforcement Policy Center, "Recording Police Activity" [RecordingPolicePaper.pdf \(theiacp.org\)](#) ("[privacy] interest is not implicated when police officers are performing their duties in public places and engaging in public communications audible to persons who witness the events." quoting *American Civil Liberties Union of Illinois v. Alvarez*, 679 F.3d 583 (7th Cir. 2012), cert. denied, No.12-318, 2012 WL 4050487 (U.S. Nov. 26, 2012).

⁶ *Iacobucci v. Boulter*, 193 F.3d 14 (1st Cir. 1999).

Very truly yours,

Mickey H. Osterreicher

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On behalf of:

American Society of Media Photographers

The Atlantic

The Associated Press

BuzzFeed. Inc.

Center for Investigative Reporting d/b/a Reveal

Committee to Protect Journalists

The Daily Beast Company LLC

The E.W. Scripps Company d/b/a KNXV-TV (Phoenix) and KGUN-TV (Tucson)

First Amendment Coalition

Freedom of the Press Foundation

Gannett Co., Inc.

Gray Television, Inc. d/b/a KPHO-TV/KTVK-TV (Phoenix) and KOLD-TV (Tucson)

The Media Institute

MediaNews Group Inc.

National Newspaper Association

News Leaders Association

News Media Alliance

The New York Times Company

Online News Association

The Seattle Times

Society of Environmental Journalists

Society of Professional Journalists

Student Press Law Center

TEGNA Inc. d/b/a KPNX-TV/12News (Phoenix)