# CP- Revenge Porn

## 1NC

### 1NC- DA

#### Constitutional law permits “revenge porn” as protected form of speech- multiple cases prove

**Koppelman 16** [Andrew Koppelman, 2016, "Revenge Pornography and First Amendment Exceptions," Emory University School of Law, <http://law.emory.edu/elj/content/volume-65/issue-3/articles/revenge-pornography-first-amendment-exceptions.html>] NB

In Reed v. Gilbert, the Court made preexisting doctrine more rigid by categorically declaring that “regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed.” 11 This implies a presumption of invalidity: “A law that is content based on its face is subject to strict scrutiny regardless of the government’s benign motive, content-neutral justification, or lack of ‘animus toward the ideas contained’ in the regulated speech.” 12 This works a revolution in free speech law, calling into question a huge range of government regulations, such as almost all of securities law. “The majority opinion in Reed effectively abolishes any distinction between content regulation and subject-matter regulation,” Judge Frank Easterbrook observes. “Any law distinguishing one kind of speech from another by reference to its meaning now requires a compelling justification.” 13 If a law is unconstitutional if its restrictions “depend entirely on the communicative content” 14 of what is regulated, then any restriction of revenge pornography is in deep trouble8. The First Amendment’s protection of free speech does not apply to “low value” categories of speech, such as threats and incitement. 15 These categories are exceptions to the otherwise strong protection of speech. This much is familiar doctrine. In United States v. Stevens, in which the Court invalidated a law criminalizing depictions of the illegal killing of animals, Chief Justice Roberts announced that there would henceforth be no new categories of unprotected speech: Every established exception to free speech protection, Chief Justice Roberts declared, is based upon “a previously recognized, long-established category of unprotected speech.” 17 Before speech can be regulated, the state must show a “long-settled tradition of subjecting that speech to regulation.” 18 There is no tradition of regulating dogfighting videos, so the Court invalidated a law that criminalized them. 19 All this is bad news for laws against revenge pornography, even ones as skillfully drawn as Citron’s. Like the statute in Stevens, a prohibition of revenge pornography is “presumptively invalid” because it “explicitly regulates expression based on content.” 20No established exception is likely to be helpful here. Geoffrey Stone observes that there is “no long-standing tradition of regulating the publication of non-newsworthy private information.” 21 The Court has never addressed the constitutionality of the tort of disclosure of private facts. Even if the tort is permissible—it has been around for a long time 22 —Citron’s statute is different because it specifies the content of the speech that is restricted. Moreover, the forbidden content is truthful information, a record of what did in fact occur. Exposure of that information often leads to unfair treatment of the person photographed. That is, after all, what the person who distributes the photograph is hoping to accomplish. But “the ‘fear that people would make bad decisions if given truthful information’ cannot justify content-based burdens on speech.” 23 It is even arguable that the proposed statutes are prior restraints on speech, which are very heavily disfavored, because they require the distributor to obtain the consent of the person who was photographed. John Humbach observes that “a law that grants private individuals the absolute discretion, utterly unconstrained by the democratic process, to totally block dissemination of disfavored speech creates a system of censorship that would seem to be even more questionable than one controlled by public officials.” 24 The deep problem is viewpoint discrimination. With the animal cruelty statute at issue in Stevens, the United States noted in its reply brief, Congress “was concerned about the harms these depictions would cause even if they had no viewers at all—the harm to living animals occurring in the creation of the depictions, as well as associated harms arising from these acts of violence.” 25 The harm of revenge pornography, on the other hand, occurs only when the material is made available for viewers. Even worse, it is a harm primarily because some people believe that the display of one’s naked body to a camera is shameful. Not everyone has that view. Another recent Court decision suggests that the state has no power to remedy harms caused by speech, if the harm consists in the communication of a viewpoint that the law deems repellent.

#### Revenge porn produces horrible impacts for individual rights

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A recent illustration is the new phenomenon of “revenge pornography”—the online posting of sexually explicit photographs without the subject’s consent, usually by rejected ex-boyfriends. The photos are often accompanied by the victim’s name, address, phone number, Facebook page, and other personal information. They are sometimes shared with other websites, viewed by thousands of people, and become the first several pages of hits that a search engine produces for the victim’s name. The photos are emailed to the victim’s family, friends, employers, fellow students, or coworkers. They are seen on the Internet by prospective employers and customers. Victims have been subjected to harassment, stalking, and threats of sexual assault. Some have been fired from their jobs. Others have been forced to change schools. The pictures sometimes follow them to new jobs and schools. The pictures’ availability can make it difficult to find new employment. Most victims are female. 1

### 1NC- PIC

#### Text: The \_\_\_\_\_ should criminalize revenge porn, but allow all other types of free speech.

**Citron 14** [Citron, Danielle K. "Criminalizing Revenge Porn." Wake Forest Law Review No 2014-1, 9 May 2014. Web. <http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2368946>. Associate Professor of Law, University of Miami School of Law. NB 11/7/14]

A criminal law solution is essential to deter judgment-proof perpetrators. As attorney and revenge porn expert Erica Johnstone puts it, “Even if people aren’t afraid of being sued because they have nothing to lose, they are afraid of being convicted of a crime because that shows up on their record forever.”97 Nonconsensual pornography’s rise is surely related to the fact that malicious actors have little incentive to refrain from such behavior. While some critics believe that existing criminal law adequately addresses nonconsensual pornography, this Part highlights how existing criminal law fails to address most cases of revenge porn.

## 2NC

### 2NC- PIC Solvency

#### Solves better- deters perpetrators

**Citron 14** [Citron, Danielle K. "Criminalizing Revenge Porn." Wake Forest Law Review No 2014-1, 9 May 2014. Web. <http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2368946>. Associate Professor of Law, University of Miami School of Law. NB 11/19/14]

Criminal law has long prohibited privacy invasions and certain violations of autonomy. Criminal law is essential to send the clear message to potential perpetrators that nonconsensual pornography inflicts grave privacy and autonomy harms that have real consequences and penalties.98 ¶ While we share general concerns about overcriminalization and overincarceration, rejecting the criminalization of serious harms is not the way to address those concerns. To argue that our society should not criminalize certain behavior because too many other kinds of behavior are already criminalized is at best a non sequitur. Only the shallowest of thinkers would suggest that the question whether nonconsensual pornography should be criminalizedindeed, whether any conduct should be criminalizedshould turn on something as contingent and arbitrary as the number of existing laws. Rather, the question of criminalization should be a question about the seriousness of the harm caused and whether such harm is adequately conceptualized as a harm only to individuals, for which tort remedies are sufficient, or should be conceptualized as a harm to both individuals and society as a whole for which civil penalties are not adequate, thus warranting criminal penalties.99

### AT: RP Not Protected

#### Where laws against revenge porn have been enacted they typically attempt to avoid constitutional constraints by focusing on harmful intent rather than content, which makes them harder to enforce as it is difficult to prove intent.

#### Err neg on definitions debate – the Supreme Court has said no new free speech exceptions can ever be considered

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The Court has declared that no new free speech exceptions can be considered, ever again. With that declaration, it has transformed the idea of free speech, one of the great achievements of modern law, into a set of rules to be blindly followed. Legal rules inevitably tend to become more definite over time as precedents accumulate. This growing clarity is valuable. Notice is a central element of the rule of law. The complex web of free speech rules that the Supreme Court has crafted is an important safeguard against the abuse of government power, one that could not be duplicated by vague standards. But these judge-made rules should not be placed beyond reconsideration.