

Committee Report

CONSENT CALENDAR

March 2, 2021

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

**The Committee on Judiciary to which was referred HB
584-FN,**

**AN ACT relative to guilt by association and defamation
by media outlets. Having considered the same, report
the same with the following resolution: RESOLVED,
that it is INEXPEDIENT TO LEGISLATE.**

Rep. Charlotte DiLorenzo

FOR THE COMMITTEE

COMMITTEE REPORT

Committee:	Judiciary
Bill Number:	HB 584-FN
Title:	relative to guilt by association and defamation by media outlets.
Date:	March 2, 2021
Consent Calendar:	CONSENT
Recommendation:	INEXPEDIENT TO LEGISLATE

STATEMENT OF INTENT

The committee feels that this bill is unconstitutional because the bill interferes with the First Amendment of the US Constitution which guarantees and protects free speech and that includes freedom of the press. The committee received written testimony from Brendan McQuaid, publisher of the New Hampshire Union Leader who wrote that: "A free press is how a free society can keep track of what their government is up to. If the press can be ordered to remove or alter their first draft of history then that free society loses a window into the behavior of their government." Similar legislation was proposed in the Rhode Island Senate in 2020 but due to difficulties in gaining support for the bill it was withdrawn by the sponsor.

Vote 20-0.

Rep. Charlotte DiLorenzo
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

CONSENT CALENDAR

Judiciary

HB 584-FN, relative to guilt by association and defamation by media outlets. **INEXPEDIENT TO LEGISLATE.**

Rep. Charlotte DiLorenzo for Judiciary. The committee feels that this bill is unconstitutional because the bill interferes with the First Amendment of the US Constitution which guarantees and protects free speech and that includes freedom of the press. The committee received written testimony from Brendan McQuaid, publisher of the New Hampshire Union Leader who wrote that: "A free press is how a free society can keep track of what their government is up to. If the press can be ordered to remove or alter their first draft of history then that free society loses a window into the behavior of their government." Similar legislation was proposed in the Rhode Island Senate in 2020 but due to difficulties in gaining support for the bill it was withdrawn by the sponsor. **Vote 20-0.**

Original: House Clerk

Cc: Committee Bill File

Voting Sheets

STATE OF NEW HAMPSHIRE
OFFICE OF THE HOUSE CLERK



1/22/2021 10:07:24 AM
Roll Call Committee Registers
Report

2021 SESSION

Judiciary

Bill #: **HB 584** Motion: ITL AM #: _____ Exec Session Date: 3/2/2021

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Gordon, Edward M. Chairman	20		
McLean, Mark Vice Chairman	1		
Sylvia, Michael J.	2		
Wuelper, Kurt F. Clerk	3		
Alexander, Joe H.	4		
Rice, Kimberly A.	5		
Silber, Norman J. Smith, Steven			
Greene, Bob J.	6		
Kelley, Diane E.	7		
Tausch, Lindsay	8		
Trottier, Douglas R.	9		
Smith, Marjorie K.	10		
Berch, Paul S.	11		
Horrigan, Timothy O.	12		
DiLorenzo, Charlotte I.	13		
Chase, Wendy	14		
Kenney, Cam E.	15		
Langley, Diane M.	16		
McBeath, Rebecca Susan	17		
Paige, Mark	18		
Simpson, Alexis	19		
TOTAL VOTE:	20		

Rep Kurt Wuelper *Kurt Wuelper*

Public Hearing

HOUSE COMMITTEE ON JUDICIARY

PUBLIC HEARING ON HB 584

BILL TITLE: relative to guilt by association and defamation by media outlets.

DATE: 2/26/2021

LOB ROOM: /Remote **Time Public Hearing Called to Order:** 10:00 AM
Time Adjourned: 10:15 AM

Committee Members: Reps. Gordon, McLean, Wuelper, Sylvia, Alexander Jr., Rice, Silber, Greene, D. Kelley, Tausch, Trottier, M. Smith, Berch, Horrigan, DiLorenzo, Chase, Kenney, Langley, McBeath, Paige and Simpson

Bill Sponsors: Rep Baldasaro

Blue Sheet **Support 0** **Oppose 13**

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Rep. Horrigan Introduced the bill

***Brendan McQuaid** NH Press Association Oppose Anyone who reads the text of this bill is obviously unconstitutional because you can't force anyone to print anything. The bill has been quickly withdrawn in a couple of other states for that reason. The reasoning behind the bill is a real concern by people who have been accused of crimes and only the accusation and everything following is virtually secret. We, the Press, do have a policy of following up with those accused, but we are open to suggestions about how we go about it. The chilling effect of the fines and other penalties would inhibit virtually any small operation. The problem here is not local media, it is Google. Unfortunately, these accusatory stories stay alive on the web and people do find these charges, often times dismissed, appearing in a Google search years later.

Q Simpson: When do you run the mug shot? A It depends. A story is a snapshot in time, and we may run the picture later, or not run anything at all. Q Chase: if something is done incorrectly or more information comes forward, do you attach a correction to the original story? A These corrections do tend to be attached online, but in print we do not repeat the same mistake because it would cause confusion for the reader. The bill prohibits publishing mug shots, but sometimes the mug shot becomes the story as in a case where it showed the accused was roughed up by police and that became the story.

***Gregory Sullivan** New England First amendment Coalition/Union Leader Corp Oppose The bill is black letter law unconstitutional. Dictating what a paper must print is the same as mandating what it must not print. It is completely impractical for the press to follow every case to completion. There is a legal standard of "Void for vagueness" and many parts of this bill would fail that test. The NH Constitution requires that freedom of the press be inviolably protected. Most press do their best to correct errors. Q Di Lorenzo: Would you say the bill has no redeeming merit? A I think the motivation is understandable, but it is up to the press to correct those problems. Q Have you heard of any other states attempting this legislation? A Only the two mentioned earlier. Several attempts to guarantee equal time or access have been stricken for the same reasons mentioned earlier.



Rep Kurt Wuelper

House Remote Testify

Judiciary Committee Testify List for Bill HB584 on 2021-02-26

Support: 1 Oppose: 13 Neutral: 0 Total to Testify: 2

Export to Excel

<u>Name</u>	<u>City, State</u> <u>Email Address</u>	<u>Title</u>	<u>Representing</u>	<u>Position</u>	<u>Testifying</u>	<u>Non-Germane</u>	<u>Signed Up</u>
McQuaid, Brendan	Manchester, NH bmcquaid@unionleader.com	A Member of the Public	Myself/New Hampshire Press Association	Oppose	Yes (5m)	No	2/25/2021 10:51 AM
Sullivan, Gregory	Hingham, MA g.sullivan@mslpc.net	A Member of the Public	Union Leader Corporation and the New England First Amendment Coalition	Oppose	Yes (5m)	No	2/25/2021 1:28 PM
Mennella, Alexandra	Hooksett, NH amennella1@protonmail.com	A Member of the Public	Myself	Oppose	No	No	2/25/2021 6:28 PM
Haas, Kimberley	Barrington, NH khaas179@gmail.com	A Member of the Public	New Hampshire Press Association	Oppose	No	No	2/25/2021 4:44 PM
Howard Jr., Raymond	Alton, NH brhowardjr@yahoo.com	An Elected Official	Myself	Support	No	No	2/26/2021 8:54 AM
Groetzinger, Tonda	Farmington, NH groetzinger6@aol.com	A Member of the Public	Myself	Oppose	No	No	2/25/2021 2:14 PM
Tetreault, Barbara	Berlin, NH barbara@berlindailysun.com	A Member of the Public	Myself	Oppose	No	No	2/25/2021 7:10 PM
Snyder, Kristina	Chester, NH khsnyder22@yahoo.com	A Member of the Public	Myself	Oppose	No	No	2/25/2021 9:53 PM
Fordey, Nicole	Litchfield, NH nikkif610@gmail.com	A Member of the Public	Myself	Oppose	No	No	2/20/2021 1:55 PM
DeMark, Richard	Meredith, NH demarknh114@gmail.com	A Member of the Public	Myself	Oppose	No	No	2/21/2021 2:51 PM
Larson, Ruth	Alton, NH ruthlarson@msn.com	A Member of the Public	Myself	Oppose	No	No	2/21/2021 10:48 PM
Zaenglein, Barbara	Amherst, NH bzaenglein@gmail.com	A Member of the Public	Myself	Oppose	No	No	2/22/2021 7:41 AM
Zaenglein, Eric	Amherst, NH henley11@comcast.net	A Member of the Public	Myself	Oppose	No	No	2/22/2021 7:42 AM

Grady, Kevin

Hooksett, NH
jaws15@hotmail.com

A Member of the Public Myself

Oppose No

No

2/24/2021 8:02 AM

Testimony

Bill as
Introduced

HB 584-FN - AS INTRODUCED

2021 SESSION

21-0448
11/04

HOUSE BILL **584-FN**

AN ACT relative to guilt by association and defamation by media outlets.

SPONSORS: Rep. Baldasaro, Rock. 5; Rep. Wallace, Rock. 12

COMMITTEE: Judiciary

ANALYSIS

This bill defines and regulates defamation-in-kind.

Explanation: Matter added to current law appears in **bold italics**.
Matter removed from current law appears [~~in brackets and struck through~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.
21-0448
11/04

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty One

AN ACT relative to guilt by association and defamation by media outlets.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 New Chapter; Defamation-In-Kind. Amend RSA by inserting after chapter 507-G the following new chapter:

CHAPTER 507-H

DEFAMATION-IN-KIND

507-H:1 Short Title. This chapter may be cited and referred to as the “Stop Guilt By Accusation Act.”

507-H:2 Definitions. As used in this chapter:

- I. “Abuse of process” means the act of bringing and following through with a civil or criminal action or case and controversy for a purpose known to be different from the purpose for which the action was designed. The term includes proceedings that are brought for ulterior reasons than sought on the surface.
- II. “Accused” means a person who is blamed for a wrongdoing before a civil court, ethics commission, criminal court, administrative court, or a military tribunal. The term includes a person who has been arrested or formally charged by an indictment, information, or presentment with a crime or ethical violation. The terms means the suspect, respondent, or defendant.
- III. “Case and controversy” means any civil, criminal, or ethical proceedings before any governmental, state, federal, and administrative court, ethics commission, military tribunal, or legislative body.
- IV. “Court of public opinion” means the general community consensus or opinion.
- V. “Defamation” means a false and unprivileged statement of fact that is harmful to someone's reputation, and published with fault, meaning as a result of negligence or malice.
- VI. “Defamation-in-kind” means the failure of a media outlet to report on the outcome of a case and controversy after it reported on the initial filings of a case and controversy in which the petitioner ended up receiving less relief than

originally sought or could have obtained, which could reasonably result in a conviction in the court of public opinion by placing the accused in a false light that causes him or her to be avoided, marginalized, and shunned by the general public.

VII. "False light" means an untrue or misleading portrayal.

VIII. "Malicious prosecution" means the act of initiating a criminal prosecution, civil suit, or other proceedings against another party with malice and without probable cause.

IX. "Media outlet" means a publication or broadcast program that provides news and feature stories to the public through various distribution channels. Media outlets include newspapers, magazines, radio stations, television stations, and certain websites on the Internet and are part of the press. A media outlet does not involve a person who does not work in the press as a profession or who does not regularly engage in the business of reporting.

X. "Mugshot" means an official photograph taken after an accused suspect is arrested for an alleged criminal violation. The intended purpose of the mugshot is to allow law enforcement to have a photographic record of the arrested individual. Mugshots are also intended to be used for identification by victims and investigators. Usually, mugshots are two-part, one side-view photo, and another front-view.

XI. "Petitioner" means a person or government body who presents a petition to a government authority in a particular case. The term means plaintiffs, claimant, or complainant.

XII. "Press" means the people such as reporters and photographers who work for newspapers, magazines, television, websites, and radio outlets.

507-H:3 Duty of a Media Outlet to Publish a Follow-Up Report on the Outcome of a Case and Controversy Under Certain Conditions Following a Timely Demand Notice.

I. A media outlet is required to provide equal coverage in comparable time, place, magnitude, prominence, scale and manner in the same format as the original reporting of a case and controversy, if:

- (a) The media outlet reported on the facts of a case and controversy and the final verdict provided less relief against the accused than originally sought by the petitioner or less than could have been obtained by the petitioner; and
- (b) The accused or the authorized agent of the accused sends an electronic or written notice demand to an authorized agent of the media outlet within 20 days after the verdict or outcome, demanding that the facts surrounding the final and actual decision or outcome be reported and published as a follow-up to the original reporting.

II. In the written notification described in paragraph I, the accused or the authorized agent of the accused must include:

- (a) The date and source of the first reporting by the media outlet.
- (b) A short description of the original allegations, the original relief sought by the petitioner, or the amount of relief that could have been obtained, and a short description of the final outcome and the relief actually awarded.
- (c) The location of the venue where the case and controversy was resolved and the docket number of the case and controversy, if one was assigned.
- (d) An acknowledgment that the positions asserted in the notice demand are declared under oath under the penalty of perjury pursuant to 28 U.S.C. section 1746.

III. In the notice demand described in paragraph I, the accused or the authorized agent of the accused may include:

- (a) A photograph of the accused that authorizes the media outlet to use at its discretion.
- (b) Internet links to or a hard copy of the original coverage published by the media outlet.
- (c) A demand to take down any unflattering pictures or mugshots of the accused that were used in the original publication.
- (d) Any other facts or pertinent information that the accused deems relevant.

IV. If a media outlet reports on the facts of a case and controversy and displays the mugshot of the accused, and the accused is acquitted, enters into a plea of no contest, or receives an outcome more favorable than originally sought by the petitioner or available to the petitioner:

- (a) The media outlet shall take down or remove the mugshot from any digital publication if possible.
- (b) The media outlet shall not display the mugshot in the follow-up publication that reports on the actual outcome of the case and controversy and shall only display images that it has the authorization to use.

V. If the result of a civil trial is settled under the terms of a private settlement agreement, the accused is not required to provide the terms of the private settlement agreement but can alert the media outlet that the case and

controversy was settled.

507-H:4 Civil Liability; Penalties; Statute of Limitations.

I. After receiving the notice demand by the accused described in RSA 507-H:3, I, a media outlet that reported on the facts of the case and controversy prior to its resolution has 10 days to comply with RSA 507-H:3, I, by publishing the follow-up story that reports on the actual outcome. The accused will have the burden of proof at a civil trial to show that the notice was timely served on the media outlet and met the requirements of RSA 507-H:3, II.

II. If the media outlet fails to comply with the notice demand within 10 days, the accused has one year to file suit from the day of non-compliance and can seek the following relief in a court of competent jurisdiction against the media outlet:

- (a) Statutory damages of \$10,000.
- (b) Attorneys fees and costs.
- (c) Actual damages.
- (d) Other forms of equitable and injunctive relief.

III. If multiple media outlets fail to comply with the notice demand subjected to the jurisdiction of the court, such media outlets can be added as co-defendants in a consolidated case to preserve judicial economy.

IV. If the media outlet, displayed the mugshot of the accused in the original publication as described in RSA 507-H:3, IV, in a digital format, the accused can seek injunctive relief to have the media outlet remove the image.

507-H:5 Immunity, Exceptions, And Exemptions.

I. A media outlet shall be immune and exempt from liability under this chapter if it:

- (a) Is known to publish satire or parody or admits that it is a fake news outlet that is purposed to traffic in fiction peddling for comedic or entertainment purposes.
- (b) Reports on the facts of the outcome in comparable time, place, magnitude, prominence, scale and manner of the original publication prior to receiving the notice demand from the accused.
- (c) Receives an untimely notice demand 20 days after the day of the verdict by the accused.
- (d) Never reported on the case and controversy prior to the decision being reached.

II. The petitioner has no standing under this statute to make a media outlet report on the outcome of a case and controversy regardless of the outcome. Neither the petitioner nor the accused have standing to compel a media outlet to report on the case and controversy after it is filed.

III. If a media outlet reported on a case a controversy involving one or more felony charges and the accused was convicted or pled guilty to one felony count, the accused lacks standing to enforce this chapter.

IV. This chapter does not apply to a media outlet that publishes a documentary, film, or an extensive investigative report regarding a case and controversy.

507-H:6 Waiver of Rights.

I. An accused has the right to waive his rights under this chapter as a part of a negotiated settlement.

II. A court of competent jurisdiction may refuse to acknowledge any waiver of rights described in paragraph I if there is any evidence that the waiver was coerced.

507-H:7 Construction and Purpose. The purpose of this chapter is to:

I. Prevent unchecked media outlets from acting as slander machines by engaging in defamation-in-kind, abusing the general public, and degrading the integrity of our institutions of justice through selective reporting on cases and controversies that cultivates false narratives to the point that it unduly injures the accused by eroding their civil liberties causing them to be shunned and avoided by the general public due to a cloud of suspicion of wrongdoing that does not exactly align with the original allegations or the relief provided in a case and controversy lodged before a government body.

II. Protect the integrity of the press and encourage good character of the members of the press core.

III. Deter malicious prosecution, abuse of process in general, prosecutors from overcharging defendants, and plaintiffs from seeking excessive reliefs in the original cause complaint.

IV. Promote a mercy-centric justice system because no human is perfect.

V. Deter convictions in the court of public opinion that do not necessarily align with convictions by institutions of justice.

3 Effective Date. This act shall take effect upon its passage.

LBA
21-0448
1/12/21

**HB 584-FN- FISCAL NOTE
AS INTRODUCED**

AN ACT relative to guilt by association and defamation by media outlets.

FISCAL IMPACT: State County Local None

STATE:	Estimated Increase / (Decrease)			
	FY 2021	FY 2022	FY 2023	FY 2024
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable	Indeterminable	Indeterminable
Funding Source:	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

METHODOLOGY:

The Judicial Branch indicates this bill would regulate certain activities by media outlets and creates certain new civil liabilities for media outlets that fail to comply with a timely notice of demand issued against it. The Branch assumes the bill would generate civil litigation, which would result in a fiscal impact. It is not possible to determine how many cases, or the nature of the cases, at this time, and is therefore unable to determine the fiscal impact.

It is assumed that any fiscal impact would occur after July 1, 2021.

AGENCIES CONTACTED:

Judicial Branch