



**PROSTASIA**  
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Hon. Rep. Jerrold Nadler  
Chairman  
House Judiciary Committee  
2138 Rayburn Office Bldg.  
Washington, DC 20515

August 26, 2019

### H.R. 4150, JUSTICE Act of 2019

Dear Chairman Nadler,

On behalf of Prostasia Foundation, its members, and the co-signatories listed below, we write to express our concern about shortcomings in H.R. 4150, which is currently under consideration by the Judiciary Committee. The law is motivated, we hope, by a desire to protect real children from sexual abuse, which as a child protection organization we strongly support. But as an organization that insists the measures we take to protect children should be evidence-based and constitutionally sound, we are concerned that this bill is neither of those things.

First, the bill's Congressional Findings—which assert these devices typically referred to as “sex dolls” “lead to rape” or that they “cause the exploitation, objectification, abuse, and rape of minors”—are contradicted by the world's leading researchers on this topic, whom we work with, and who assure us that there is absolutely no direct evidence to support these assertions.<sup>1</sup> In fact, scientists are actively investigating whether the *opposite* may be true: that for users of such devices who live with an abnormal sexual interest in children, the device could be an essential tool in the management of that condition, preventing them from acting out against a real child.

But even if the Congressional Findings are taken at face value, H.R. 4150 is a plainly unconstitutional way of addressing these assumed facts. Alexandra Levy Yelderman, senior staff attorney at the Human Trafficking Legal Center and Adjunct Professor of Law at the Notre Dame, has written a detailed first

<sup>1</sup> They include Dr James Cantor (Director of the Toronto Sexuality Centre), Dr Michael Seto (editor in chief of *Sexual Abuse: A Journal of Research and Treatment* and author of *Pedophilia and Sexual Offending Against Children*), Dr Craig Harper (Senior Lecturer at the Department of Psychology, based at Nottingham Trent University), and Dr Richard Siegel (Director of Modern Sex Therapy Institutes). Dr Harper will be presenting with us in November at the 2019 conference of the Association for the Treatment of Sexual Abusers on the topic of “Exploring and Understanding the Experiences of People Who Own Sex Dolls.”

amendment analysis of the CREEPER Act (the text of which is identical to the JUSTICE Act), in which she concluded:

The Court's holding in *Ashcroft* that, absent a "direct connection, the Government may not prohibit speech on the ground that it may encourage pedophiles to engage in illegal conduct" plainly renders the CREEPER Act unconstitutional.<sup>2</sup>

Aside from its First Amendment problems, the bill would also fail to pass Fourteenth Amendment scrutiny. In *Reliable Consultants, Inc. v. Earle*, 517 F.3d 738, the U.S. Federal Circuit court for the 5th circuit affirmed that there is an individual right under the Fourteenth Amendment to engage in private intimate conduct in the home without government intrusion; per *Stanley v Georgia*, 394 U.S. 557 (1969), this also includes the private use of obscene materials. In *Earle*, a Texas law that banned commercial transactions with sex toys was held to infringe this right, despite the government's attempt to justify the ban as being for the protection of minors. The court ruled, "the State's generalized concern for children does not justify such a heavy-handed restriction on the exercise of a constitutionally protected individual right," and concluded, "Whatever one might think or believe about the use of these devices, government interference with their personal and private use violates the Constitution."

Further, as introduced, H.R. 4150 is drafted in such broad and vague language that it would inevitably impact many innocent parties outside of its intended scope. Such "anatomically-correct" devices are often manufactured in smaller sizes because this makes them lighter and easier to manipulate not because they are intended to resemble children. Yet purchasers of these devices, regardless of size or appearance, have reason to fear that they might be prosecuted simply because the device in question is not tall enough, its eyes are too large, or its breasts too small. Additionally, many individuals have no intent on utilizing the device/s for sexual gratification.

It is beneath the dignity of the Congress to consider legislation regulating the intimate dimensions of sex toys. A much better approach is to allow the private sector to self-regulate the sale of smaller-scale devices of this nature, in partnership with child protection experts. As an organization advised by such experts, Prostasia Foundation is currently collaborating with this industry on a set of voluntary guidelines to ensure that they do not sell sex toys that harm children and promote or minimize the gravity of child sexual abuse.

H.R. 4150 raises—but does not convincingly answer—a very important question: do these devices lead directly to the harm of real children? We are the only child protection organization that is actively raising money to have this question answered scientifically therefore the next generation of laws dealing with this topic will be better informed. In that respect, H.R. 4150 is, at best, premature and may have actively harmful consequences by inhibiting scientific research into the potential benefits in cases when the device is utilized for sexual gratification purposes.

We urge you to place a hold on any further consideration of H.R.4150, until hearings on the issue can be

2 Alex F. Levy, "The 'CREEPER Act' Would Be Yet Another Unconstitutional Law from Congress (Guest Blog Post)," Technology & Marketing Law Blog, June 28, 2018, <https://blog.ericgoldman.org/archives/2018/06/the-creeper-act-would-be-yet-another-unconstitutional-law-from-congress-guest-blog-post.htm>.

held. We offer to testify at any such hearings, and also offer to connect you with other relevant experts and industry stakeholders. If legislation is found to be warranted after hearings have been held, such legislation should be tailored more narrowly than H.R. 4150 to avoid its manifest constitutional flaws.

Many thanks in appreciation of your attention to this sensitive and important issue.

Yours sincerely,

Jeremy Malcolm  
Executive Director, Prostasia Foundation

Ian O'Brien  
Interim Executive Director, Free Speech Coalition

Don Delano  
Founder, Mon Amour Toujours

Phil Bass  
Founder, The-Doll-House

cc: Hon. Rep. Doug Collins  
Ranking Member

cc: Hon. Rep. Karen Bass  
Chair, Subcommittee on Crime, Terrorism and Homeland Security