



# MEDIA COALITION, INC.

DEFENDING THE FIRST AMENDMENT SINCE 1973

American Booksellers Association Association of American Publishers, Inc. Comic Book Legal Defense Fund Entertainment Merchants Association  
Entertainment Software Association Freedom to Read Foundation Motion Picture Association of America, Inc. Recording Industry Association of America, Inc.

April 15, 2015

Members of the Alabama House Judiciary Committee  
State Capitol  
Montgomery, Alabama 36130

Media Coalition is concerned that a possible amendment to Senate Bill 197 will limit the exemption for expressive works in the version of the bill passed by the Senate. This potentially threatens the rights of creators, producers and distributors of First Amendment protected material. The trade associations and other organizations that comprise Media Coalition have many members throughout the country, including Alabama: publishers, booksellers and librarians as well as manufacturers and retailers of recordings, films, videos and video games.

S.B. 197 creates a right of publicity in an individual's name, voice, signature, image or likeness. Section 4 of the bill provides an exception to the right for certain expressive uses. It protects artistic and creative works and allows books, plays, magazines, newspapers, music, film, radio, television and other media to use a living or deceased individual's name or likeness in a range of fictional and non-fictional works. This exception for non-commercial works has been included in almost every recent state law granting a right of publicity. We are very concerned that the possible amendment to S.B. 197 will carve out certain uses from the list of exceptions and that any protection for those uses will be contingent on whether that use is protected by the First Amendment to the U.S. Constitution and free speech protections in the Alabama Constitution.

Amending S.B. 197 to add this carve out will have a substantial chilling effect on First Amendment protected speech by increasing the likelihood that publishers, filmmakers and others will be forced to litigate to vindicate their First Amendment rights. The purpose of the list of exceptions in Section 4 is to avoid the threat of such costly litigation for creators and distributors of what is plainly non-commercial speech. The carve out means that some non-commercial speech does not qualify for the statutory legal protections against frivolous litigation otherwise provided in the legislation. Instead, it requires a court to rule that the speech is not subject to the right of publicity because of the First Amendment as a predicate for gaining any benefit from the exceptions to the right under Section 4. As a result, any such amendment to S.B. 197 will increase the likelihood of an expensive lawsuit by any individual or surviving family that is unhappy with a book, movie, article or show. A noted public figure, or his or her heirs, upset about an uncomplimentary book or film, could force the publisher or producer to establish their

**Executive Director:** David Horowitz **Chair:** Barbara Jones, Freedom to Read Foundation  
**Immediate Past Chair:** Tom Foulkes, Entertainment Software Association **Treasurer:** Sean Bersell, Entertainment Merchants Association  
**General Counsel:** Michael A. Bamberger and Richard M. Zuckerman, Dentons US LLP

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First Amendment rights in court to distribute the work, rather than being able to rely on the list of exceptions in Section 4 to lessen the time and cost of the litigation. Such lawsuits can take years to decide and cost hundreds of thousands of dollars or more. The mere threat of costly and prolonged legal battle will lead to self-censorship by producers and distributors of biographies, histories, documentaries and other important social commentary who do not have the financial means to defend themselves in court. If such an amendment is adopted and S.B. 197 becomes law, Alabama could become a magnet for plaintiffs looking to sue to stop a media that includes content that has been carved out of Section 4, because almost every other state that grants a statutory right of publicity has the list of exceptions for non-commercial uses without this carve out.

If you would like to discuss further our concerns about this bill, please contact me at 212-587-4025 #3 or at [horowitz@mediacoalition.org](mailto:horowitz@mediacoalition.org).

We urge you to protect the First Amendment rights of all the people of Alabama and reject amendments to S.B. 197 that will undermine the constitutional rights of creators, producers and distributors of media.

Respectfully submitted,

A handwritten signature in black ink that reads "David Horowitz". The signature is written in a cursive style with a long horizontal flourish extending to the right.

David Horowitz  
Executive Director