

May 16, 2012

Delivered by Email

The Honorable Peter Bragdon
President, New Hampshire Senate
Statehouse, Room 302
107 North Main St.
Concord, NH 03301

RE: Senate Bill 175 – Letter in Opposition to Senate Bill 175 as amended

Dear Senate President Bragdon,

The members of Media Coalition believe that the proposed changes to Senate Bill 175 threaten the rights of creators, distributors and producers of First Amendment protected material. The trade associations and other organizations that comprise Media Coalition have many members throughout the country including New Hampshire: publishers, booksellers and librarians as well as manufacturers and retailers of recordings, films, videos and video games.

Presently, S.B. 175 provides specific exceptions to the statutory cause of action violations of an individual's right of publicity for unauthorized use of a living or deceased person's name, voice, signature, photograph or likeness for commercial purposes. The exceptions protect expressive works and allow books, plays, magazines, newspapers, music, film, radio or television program and other material that is of political or newsworthy value to use a living or deceased individual's name or likeness. The proposed amendment to S.B. 175 would remove the exceptions presently included in the bill.

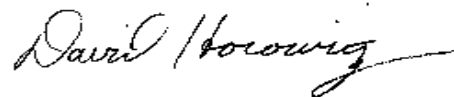
These proposed changes deleting the clear, unequivocal list of exempt material would cause uncertainty and encourage expensive litigation by any individual or surviving family that is unhappy with a book, movie, article or show. A noted public figure, or his or her family, upset about an uncomplimentary book, could force the publisher to go to court to vindicate their First Amendment rights to publish and to re-establish the exceptions previously listed in S.B. 175 to use public figure's name and likeness in the book or other media.

In turn, the threat of costly and prolonged litigation would prompt self-censorship by producers and distributors of biographies, histories, documentaries and other important social commentary. A publisher or movie producer would have to consider the cost of litigation when deciding to publish an unflattering biography or make a critical documentary about public figures such as Donald Trump, Tiger Woods, Martin Luther King, J. Edgar Hoover, Richard Nixon or the Kennedys. Such a lawsuit filed by the respective individual or their heirs could take years to decide and cost hundreds of thousands of dollars.

As a final point, we would like to observe that the protections of the New Hampshire and U.S. Constitutions are inherent in all New Hampshire statutes. As a result, S.B. 175 would remove the specific, statutory list of exempted material and replace it with general constitutional protections that are already inalienably a part of this and every New Hampshire law. If the legislature declines to restore the artistic exceptions to the bill, we believe it is important that the legislative history is absolutely clear that in removing the list in Section 6 it did not intend to abridge these inherent constitutional rights. Failing to do so would make litigation more likely and further add to the burden and expense shouldered by publishers, film producers and others as the cost of producing First Amendment protected material.

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. Again, we ask you to please protect the First Amendment rights of all the people of New Hampshire and reconsider S.B. 175.

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
Media Coalition, Inc.