



June 8, 2012

The Honorable John Lynch
Governor
State of New Hampshire
Statehouse
107 North Main St.
Concord, NH 03301

RE: Senate Bill 175 – Request for veto

Dear Governor Lynch,

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. More information about our organization is available here: www.Mediacoalition.org

S.B. 175 creates a Right of Publicity in part codifying the common law tort of Invasion of Privacy by Appropriation. The Right of Publicity allows a person to control the commercial use of his or her identity. The legislation confers the Right for the life of a person plus 70 years and is retroactive for anyone who predeceased the enactment of the bill. S.B. 175 does not include a specific exception to the Right of Publicity for expressive works to protect the right to use the name or likeness of a living or deceased individual in books, plays, magazines, newspapers, music, film, radio or television program and other material that is of political or newsworthy value.

The legislation included an exception for expressive works but it was removed by the House. The decision to delete the clear, unequivocal list of material exempted from the Right of Publicity will 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 heirs, 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 produce a critical documentary about controversial public figures such as Donald Trump, Tiger Woods, Martin Luther King, Jr., J.

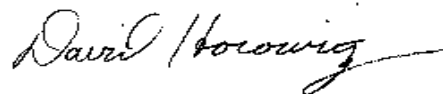
Executive Director: David Horowitz Chair: Judith Platt, Association of American Publishers
Immediate past Chair: Chris Finan, American Booksellers Foundation for Free Expression Treasurer: Vans Stevenson, Motion Picture Association of America
General Counsel: Michael A. Bamberger, SNR Denton US LLP

Edgar Hoover, Richard Nixon or the Kennedys. A book or film exploring the life of any of these public figures would be unquestionably protected by the First Amendment. However, a lawsuit filed by the respective individual or their heirs could take years to decide and cost hundreds of thousands of dollars. The risk of expensive litigation is heightened in New Hampshire because there is very little case law that directly or indirectly addresses the Right of Publicity as it would be codified in this legislation. New Hampshire courts have acknowledged the common law tort of invasion of privacy by appropriation but there is very little case law defining the contours of the use of the name or image of a public figure and their commercial uses. This lack of case law is an invitation to those seeking to stifle free speech with the added burden of litigation.

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 full 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 force publishers, film producers and others to vindicate those rights 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 veto 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, sweeping underline.

David Horowitz
Executive Director
Media Coalition, Inc.