

TESTIMONY OF
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WESTPORT, CONNECTICUT
ON BEHALF OF
PAUL NEWMAN AND OTHERS
BEFORE THE
JUDICIARY COMMITTEE
CONNECTICUT GENERAL ASSEMBLY
RE: RAISED BILL 6818
MARCH 21, 2007

Co-Chairman MacDonald, Co-Chairman Lawlor and Members of the Committee.

I, Paul Newman and James Naughton are grateful for this opportunity to speak to all of you about the need in Connecticut for a law to expand on a part of every human beings' personal privacy that is called the right of publicity, first recognized by our Supreme Court in 1982 in Goodrich v. Waterbury Republican, 188 Conn. 107, 488 A.2d 559.

The concept is basic. Every person, no matter who they are, no matter what they do, has the right to protect their name, image and voice from exploitation without their permission. It is true whether the use of a person's name, image or voice is for some overtly commercial purpose, for fund raising or, if it is to be used in connection with entertainment. That is the law in Connecticut today and you should not let any one try to convince you that you ought to back away from it. Then, why are we here and why HB 6818.

There are several reasons, all of them well-tested in other states. One is a need to make clear that the right of publicity is also a property right that a person can pass on to their heirs. Another is to avoid uncertainty, delay and legal improvisation by providing our courts with clear procedures for protecting the right of publicity by enjoining

invasions of the right and collecting the profits of those who perpetrate them, procedures also well-established in other states. But there is another reason – and it is even more urgent.

It is because technology has outstripped the right of publicity and increasingly threatens to overwhelm and make it meaningless, unless you act.

Computer programs that almost anyone can afford, whether controlled by someone at home or, by television and movie producers, now make it possible to use someone's actual voice to put words in their mouth they never said or would never say -- and, to use their actual image to make them seem to do things they never would do or, go places they would not willingly visit. For actors, musicians and other performers, this amounts to theft of their stock in trade, of their creative integrity, theft of the reputations and respect they may have devoted a lifetime to building. Mr. Newman and Mr. Naughton are going to have more to say about this.

You may hear from visitors to our state, the spokesman for movie studios and television networks, that it would be nothing short of First Amendment heresy to try to protect anyone who appears in any kind of entertainment from the violation of their rights of publicity.

They seem not to notice Sec. 6 of the Bill that is before you. It carefully exempts a number of media uses of a person's appearance or performance from any violation of their right of publicity. This occurs because it has long been recognized that the First Amendment makes it more important to encourage certain kinds of speech than to discourage it. News and public affairs programs are exempt in sub-section (1); any broadcast or portrayal of an elected or appointed official or a candidate for office are

carved out in sub-section (2). Coverage of events of topics of public interest are exempted by sub-section (3). So are original works of art, literary works and theatrical works, music, film, radio and television in subsequent sections, just so long as a person's actual image or voice are not modified electronically or digitally to make them say things they did not say or put them where they did not agree to be.

Each of these exemptions is based on the longstanding recognition by courts in virtually every state that the right of publicity, like other personal rights, must be balanced by the public's strong interest in free and open discussion of issues and events under the First Amendment, even to the point of parody or satire – just so long as a person's right to market the commercial rights to their person and work is not misappropriated.

These are far from novel concepts. Twenty nine states recognize them – 19 by statute. A chart attached to my testimony lists them.

Of the 29 states that protect the right of publicity, our friends from the movie and television industries have succeeded in persuading only two to exclude protection for all forms of entertainment....and in a third state, California -- where they wield even greater political influence, they succeeded in part but not entirely. The vast majority, over 90 per cent of the 28 states who have dealt with this problem, have not accepted their position.

The unfortunate truth appears to be that the Motion Picture Association of America and its members do not want any right of publicity law – unless it is one that doesn't cover them.

Allow me now, to introduce Paul Newman and James Naughton.

STATES WHICH RECOGNIZE A COMMON LAW RIGHT OF PUBLICITY:

ARIZONA

CALIFORNIA

FLORIDA

HAWAII

KENTUCKY

MINNESOTA

NEW JERSEY

PENNSYLVANIA

UTAH

ALABAMA

CONNECTICUT

GEORGIA

ILLINOIS

MICHIGAN

MISSOURI

OHIO

TEXAS

WISCONSIN

STATES WHICH RECOGNIZE RIGHT OF PUBLICITY BY STATUTE:

CALIFORNIA

ILLINOIS

KENTUCKY

NEBRASKA

NEW YORK

OKLAHOMA

RHODE ISLAND

TEXAS

VIRGINIA

WISCONSIN

FLORIDA

INDIANA

MASSACHUSETTS

NEVADA

OHIO

PENNSYLVANIA

TENNESSEE

UTAH

WASHINGTON

STATES THAT RECOGNIZE BOTH --
COMMON LAW & STATUTORY RIGHTS OF PUBLICITY:

CALIFORNIA	ILLINOIS
KENTUCKY	OHIO
PENNSYLVANIA	TEXAS
UTAH	WISCONSIN

SUMMARY:

STATES RECOGNIZING COMMON LAW RIGHT	18
STATES RECOGNIZING STATUTORY RIGHT	19
STATES RECOGNIZING BOTH	8
NUMBER OF STATES RECOGNIZING RIGHT OF PUBLICITY	<u>28</u>