



MEMORANDUM IN OPPOSITION TO
A. 08155
by the
NATIONAL PRESS PHOTOGRAPHERS ASSOCIATION

The National Press Photographers Association (“NPPA”) strongly opposes A.08155, amending New York State’s civil practice law and rules and civil rights laws, by among other things, establishing the right of publicity for both living and deceased individuals. If enacted, such legislation will cause serious economic harm to our New York State members who photograph people as part of their jobs, whether doing so as employees of news organizations or as freelancers. These “publicity rights” will unconstitutionally deprive photographers and others of the right to exercise property and copyright interests in their still, filmed and recorded images.

The NPPA is a 501(c)(6) non-profit organization dedicated to the advancement of visual journalism in its creation, editing and distribution. NPPA’s approximately 7,000 members include television and still photographers, editors, students and representatives of businesses that serve the visual journalism industry. A significant portion of published and broadcast newsworthy images in New York are created and licensed by NPPA members. Since its founding in 1946, the NPPA has been the Voice of Visual Journalists – vigorously promoting and defending the rights of photographers and journalists, including intellectual property rights, as well as freedom of speech and of the press in all its forms, especially as it relates to visual journalism.

As the heart of the media industry, New York State, has always been at the forefront in upholding the First Amendment and its concomitant rights. Substantially expanding the breadth of a statutory right of publicity, creates a burdensome statute that will have a crippling and chilling effect on expressive speech. Such legislation will create a requirement that photographers, their representatives and copyright holders of images or photographs depicting *any individual* (not just celebrities) living or deceased, “regardless of their place of domicile, residence or citizenship” to obtain “the written consent” of that individual, his or her successors or assigns, or, in the case of a minor, of his or her parent or guardian before such use within this state for advertising purposes, for the purposes of trade or for purposes of fund-raising or solicitation of donations, may occur.

No such right of publicity has previously existed. Instead of heirs inheriting these rights, it is more likely that a corporation, with no interest in New York State, and whose only interest is in exploiting publicity rights and restricting the use and licensing of such images, will benefit from this newly created ex post facto right. Photographers, licensing representatives and copyright holders will suddenly lose a right they have had for more than 100 years, with this unconstitutional taking.

We are also extremely concerned about the proposed language explicitly addressing “Photographers” which states, “nothing contained in this article shall be so construed as to prevent any person practicing the profession of photography, from exhibiting specimens of the work of such photographer, unless the same is continued by such person after written notice objecting thereto has been

given by the individual portrayed.” Unclear is what happens after the “individual portrayed” sends “written notice objecting” to the exhibition of “specimens of the work of such photographer” and the photographer continues to do so? What about displaying online as most photographers do these days? We fear that this bill raises more questions and creates more problems than it constructively addresses.

The language of this bill is overbroad, ambiguous and vague. It invites unnecessary and burdensome litigation. The proposed legislation will most certainly increase the costs and burdens of licensing images, requiring increased fees and burdensome approvals for previously permitted uses. Photographers and their representatives will likely bear the undue burden of researching and locating the owner(s) of such rights and securing approvals, which may never be possible. Most individuals and companies can ill afford these costs with the result being fewer images licensed, and fewer jobs in New York State.

The consequences of departing from clearly established legislation and jurisprudence is too important to be set aside in order to satisfy the desire of a few celebrities’ agents seeking to unreasonably exploit this issue. The constitutional concerns, undue burdens and litigation risks such a law would impose on our members are far too high to justify any benefits that may result.

For the above stated reasons, the NPPA strongly opposes A.08155 and requests that this legislation be held.

Respectfully submitted,

Mickey H. Osterreicher
General Counsel
National Press Photographers Association (NPPA)

June 5, 2017