REPORTERS COMMITTEE
FOR FREEDOM OF THE PRESS

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Senator Ron Latz
Judiciary Committee, Minnesota Senate
95 University Avenue W., Room 2109
St. Paul, MN 55155

Rep. Peggy Scott
Civil Law and Data Practices Committee, Minnesota House of Representatives
437 State Office Building
St. Paul, MN 55155

VIA EMAIL

Re: HF 3994 and SF 3609

Dear Rep. Scott and Sen. Latz:

The Reporters Committee for Freedom of the Press writes to express its concerns regarding HF 3994 and SF 3609, two bills that would establish a property right in a person's name, voice, signature, photograph, or likeness. As drafted – although we know changes are being made – the narrow list of "exceptions" to the broad statutory right that would be created by these bills are insufficient to protect First Amendment rights. The bills should explicitly avoid regulating any form of political, artistic or other socially relevant expression by limiting themselves to commercial products that imply an endorsement or other connection to the individual.

If passed, the new law would substantially weaken First Amendment rights by subjecting individuals to lawsuits for engaging in protected speech. As a representative of the news media, the Reporters Committee writes to emphasize the importance of considering the First Amendment implications of enacting either of these bills and urge the Minnesota Legislature to amend both bills to provide safeguards for constitutional rights. The Reporters Committee (www.rcfp.org) is an association of reporters and editors that has been defending the First Amendment rights and freedom of information interests of the news media since 1970.

The right of publicity is a narrow exception to the First Amendment, not *vice versa*. HF 3994 and SF 3609 confuse this principle by providing a broad statutory right of publicity and only carving out a few specific exceptions.

As the U.S. Supreme Court has stated, "[b]ecause First Amendment freedoms need breathing space to survive, government may regulate in the

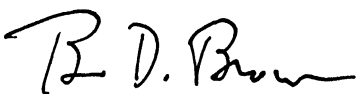
area only with narrow specificity." *NAACP v. Button*, 371 U.S. 415, 433 (1963). The Minnesota Legislature should limit HF 3994 and SF 3609 to the intended target of right of publicity laws — curtailing the unauthorized use of one's likeness in commercial activity or advertisements. In these situations, consumers could reasonably believe the individual was endorsing a product or participating in the production of the advertisement. These false implications may be barred by the right of publicity because the First Amendment does not protect fraudulent commercial endeavors.

However, the First Amendment does shield a significant amount of expression not currently contemplated by HF 3994 and SF 3609. The "fair use; exceptions" provision contained in Subdivision 6 immunizes limited uses of an individual's name, image, or likeness, but it does not account for a vast amount of constitutionally protected expression. Individuals speaking about public members of the community — Prince, for example — or an issue of public importance is not included in Subdivision 6 and may be subject to litigation. This cannot stand under the First Amendment's commitment to "uninhibited, robust, and wide-open" debate on public issues. *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964). The right of publicity should not be transformed into a right of censorship used to prevent dissemination of matters of public importance. Indeed, the freedom to discuss public affairs is precisely the type of speech the First Amendment was designed to protect.

Enacting the bills as constructed would blur the line between protected and unprotected expression in the right of publicity context. The chilling effect generated by subjecting First Amendment-protected expression subject to a right of publicity law would stifle speech and diminish the marketplace of ideas. The First Amendment should never be subordinated to an individual's pecuniary interests. Believing the government should not infringe on individual expression, Supreme Court Justice Thurgood Marshall wrote that "above all else, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content." *Department of Chicago v. Mosley*, 408 U.S. 92, 95 (1972). Minnesota HF 3994 and SF 3609 overstep legislative authority by sweeping First Amendment expression into the ambit of liability.

The Reporters Committee strongly urges the Minnesota Legislature to preserve this nation's tradition of protecting free expression by strictly limiting the reach of both bills to safeguard constitutional rights.

Sincerely,



Bruce D. Brown, Executive Director
The Reporters Committee for Freedom of the Press