



# National Press Photographers Association

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## VIA EMAIL

March 10, 2013

Hon. Joseph M. Souki  
Hawaii State Capitol  
Room 431  
415 S. Beretania Street  
Honolulu, HI 96813

### **Re: Opposition to SB 465 SD1**

Dear House Speaker Souki,

As general counsel for the National Press Photographers Association (NPPA) I write to you on behalf of the organizations listed below to voice our strong opposition to proposed bill, SB 465 SD1, the “Steven Tyler Act.” While it is our understanding that the original language of the bill has been amended by the Senate Judiciary Committee, we are concerned that despite the desire to help your state’s tourism and film industries by encouraging famous people to come to Hawaii without fear of being photographed in certain situations or settings, the bill still tramples upon the First Amendment rights of citizens and journalists.

We believe the creation of a civil cause of action for “constructive invasion of privacy” is overly broad and vague and imposes greater civil penalties upon otherwise protected forms of speech and expression. We are also concerned that remedies for invasion of privacy and trespass are already properly addressed by current Hawaii statutes and that special and punitive treble damages will further chill free speech. Additionally, the definition of “commercial purposes” fails to recognize a newsgathering exception and in fact penalizes publishers and broadcasters along with visual journalists and innocent tourists.

In another well-meaning but ill-conceived case involving similar language, the U.S. Supreme Court ruled in *U.S. v. Stevens*, 130 S.Ct. 1577 (2010), that the Animal Crush Video Prohibition Act of 2010 was an unconstitutional abridgment of the First Amendment right to freedom of speech.

To paraphrase the Court in *Stevens*, depictions of persons engaging in a personal or familial activity are not, as a class, categorically unprotected by the First Amendment. Because SB 465 SD1 explicitly regulates expression based on content, it is “presumptively invalid” Accordingly, the First Amendment has permitted restrictions on a few historic categories of speech, including obscenity, defamation, fraud, incitement, and speech integral to criminal conduct. Visual images, sound recordings, or other physical impressions of another person who is out in public where there is no reasonable expectation of privacy must not be added to that list.

Depictions of animal cruelty are most likely offensive to a reasonable person, but the *Stevens* Court found that in the balance of relative social costs and benefits, even such images could not justify the restrictions sought to be imposed when weighed against the benefits derived under the First Amendment. What is more

telling is that Act was struck down by the Court even though it contained a subsection that stated it did “not apply to any depiction that has serious religious, political, scientific, educational, journalistic, historical, or artistic value;” whereas SB 465 SD1 not only makes no such distinction but specifically seeks to lessen the protections traditionally afforded to journalistic activities.

SB 465 SD1 still imposes civil penalties of alarming breadth and burdens substantially more speech than is necessary to advance a “governmental interest,” which in this case is far from compelling and appears to be more private in nature. While we recognize the right of privacy, we oppose a broadening of those protections by abridging the clearly established tenets of First Amendment Jurisprudence.

It is for these reasons that we respectfully ask you and your colleagues to defeat this bill rather than act in star-struck haste. Thank you for your attention in this matter.

Very truly yours,

*Mickey H. Osterreicher*

Mickey H. Osterreicher  
General Counsel

*On behalf of:*

Reporters Committee for Freedom of the Press (RCFP)  
American Society of Media Photographers (ASMP)  
American Society of News Editors (ASNE)  
Associated Press Media Editors (APME)  
Society of Professional Journalists (SPJ)  
Bay Area News Group  
Newspaper Association of America (NAA)  
Radio Television Digital News Association (RTDNA)

North Jersey Media Group  
Raycom Media, Inc.  
Hearst Television Inc. d/b/a KITV  
KHNL/KGMB, LLC  
Media Law Resource Center (MLRC)  
Lin Television Corporation d/b/a KHON-TV  
Picture Archive Council of America (PACA)  
Association of Alternative Newsmedia (AAN)

cc: (all via email)

Hon. John M. Mizuno (Vice Speaker)  
Hon. Scott K. Saiki (Majority Leader)  
Hon. Karen Awan a (Majority Floor Leader)  
Hon. Romy M. Cachola (Majority Whip)  
Hon. Sharon E. Har (Majority Whip)  
Hon. Ken Ito (Majority Whip)  
Hon. Calvin K.Y. Say (Speaker Emeritus)  
Hon. Aaron Ling Johanson (Minority Leader)

Hon. Beth Fukumoto (Minority Floor Leader)  
Hon. Gene Ward (Minority Leader Emeritus)  
Hon. Cynthia Thielen (Assistant Minority Leader)  
Hon. Lauren Kealohilani (Minority Whip)  
Hon. Richard Lee Fale (Minority Whip)  
Hon. Karl Rhodes (House Judiciary Committee Chair)  
Hon. Angus L.K. McKelvey (House CPC Committee Chair)  
Hon. Sylvia Luke (House Finance Committee Chair)