

## **Governor's Veto Message Regarding SB 175**

By the authority vested in me, pursuant to part II, Article 44 of the New Hampshire Constitution, on June 12, 2012, I vetoed SB 175.

SB 175 would codify a New Hampshire citizen's right to control and transfer to beneficiaries the commercial use of his or her identity for 70 years after death. Because I believe that this legislation is overly broad, would potentially have a chilling effect on legitimate journalistic and expressive works that are protected by the New Hampshire and United States constitutions, and would invite rather than diminish litigation over legitimate journalistic and expressive use of a person's identity, I have decided to veto this bill.

The protections for free speech that are guaranteed to all citizens under the state and federal constitutions are central to democracy and a free society. Legislation that could have the impact of restricting free speech must be carefully considered and narrowly tailored. SB 175 does not meet that test, in that it fails to distinguish clearly between commercial versus journalistic or expressive uses of identity.

Many states that have codified a person's right to control the commercial use of his or her identity have specifically exempted the use of a person's identity in conjunction with news, public affairs and expressive speech. The version of SB 175 that was passed by the Senate included these very exemptions that would have plainly established the line between expressive or journalistic and commercial use of a person's identity.

SB 175 was further amended as it moved through the legislature, and the final version of the bill contains no statutory exceptions to the right to control one's identity. I believe that the omission of legitimate, clear exceptions for news and expressive works will inhibit constitutionally protected speech and result in needless litigation to judicially establish what should have been made explicit in this bill.

While I understand that the sponsors of the legislation intended to codify the rights to control the commercial use of one's identity that has already been recognized in New Hampshire common law, SB 175 appears to go beyond the established common law and establishes the right to control the use of identity retroactively for 70 years after death. Such a result may lead to uncertainty, not finality. New Hampshire common law has not recognized a posthumous or retroactive right to transfer control of one's identity to their heirs, and in this manner I believe the bill goes beyond its stated purpose.

For all of these reasons, I have vetoed SB 175.

Respectfully submitted,

John H. Lynch

Governor

Date: June 12, 2012