



## **STATEMENT OPPOSING A3864 (TUCKER) UNLESS AMENDED**

### *A combined bill including A3938 (Huttle) & 2998 (Dancer)*

The New Jersey Press Association (“NJPA”) is a non-profit organization incorporated in 1857 under the laws of the State of New Jersey. It has a membership of 20 daily newspapers, over 160 weekly newspapers, over 50 digital news sites, as well as over 60 corporate and non-profit associate members. NJPA opposes A3864 unless amended.

The Assembly Committee Substitute for A3864, A3938 and A2992 amends N.J.S.A. 2C:14-9, providing, in relevant part:

(2) An actor commits a crime of the fourth degree if, knowing that he is not licensed or privileged to do so, he photographs, films, videotapes, records, or otherwise reproduces in any manner, the image of the undergarment-clad intimate parts of another person, without that person’s consent under circumstances in which a reasonable person would not expect to have his undergarment-clad intimate parts observed.

c. An actor commits a crime of the third degree if, knowing that he is not licensed or privileged to do so, he discloses any photographs, film, videotape, recording or any other reproduction of the image, taken in violation of subsection b. of this section, of: (1) another person who is engaged in an act of sexual penetration or sexual contact; (2) another person whose intimate parts are exposed; or [who is engaged in an act of sexual penetration or sexual contact] (3) another person’s undergarment-clad intimate parts, unless that person has consented to such disclosure.

The Bill also amends N.J.S.A. 2A:58D-1, regarding civil actions for invasions of privacy, consistent with the amendments in the Bill to N.J.S.A. 2C:14-9.

While the Bill’s stated intent is “to protect a person’s right to privacy underneath their clothing by establishing the crime of ‘upskirting,’” the Bill has much broader implications. It would prohibit the news media from photographing and/or video recording people involved in newsworthy events, in which those people happen to be partially dressed.

For example, the news media may be present at the scene of a burning building and capture a photograph of a person running from the building, dressed only in his or her undergarments. Such a photograph, and its dissemination, would violate the Bill.

The devastating impact such a consequence would have on news reporting is obvious. For this reason, the Supreme Court of the United States has held that provisions, such as the ones in this Bill, that punish the dissemination of lawfully obtained truthful information about matters of public significance are unconstitutional, absent a need to further a state interest of the highest order. See, Florida Star v. B.J.F., 491 U.S. 524 (1989).

It is the news media's responsibility to report on events, such as the example given, which are often unexpected, chaotic and traumatic. They are events in which the people involved do not necessarily expect to have their undergarment-clad intimate parts observed and in which there is no time for the news media to obtain consent from those people prior to taking photographs and/or video recordings of the event.

NJPA believes the news media was not intended to be captured by the terms of A3864. As written, however, we do believe A3864 is overly broad and unconstitutional in that it punishes the publication of lawfully obtained truthful information about matters of public concern.

Should the Legislature nonetheless determine to move forward with S3864, NJPA strongly suggests that the following language be added to the Bill, so that the Bill does not create an unconstitutional prior restraint on the gathering of news:

**Nothing in this act shall be construed to impose liability on the news media, as defined in N.J.S.A. 2A:84A-21a, acting in the course of pursuing their professional activities, as also defined in N.J.S.A. 2A:84A-21a.**

For the foregoing reasons, NJPA respectfully requests A3864 be amended as set forth above. If A3864 is not so amended, NJPA will be forced to oppose the Bill.

Thank you for your consideration

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