

BILLINGS LAW FIRM^{PLLC}

COUNSELORS-AT-LAW

CHRISTOPHER L. THACKER, ESQ.
cthacker@blfky.com

145 Constitution Street
Lexington, Kentucky 40507
(o) (859) 225-5240
(f) (859) 225-5241

September 4, 2019

VIA HAND DELIVERY

Amy McGrath for Senate, Inc.
c/o Chris Patton, Registered Agent
333 W Vine St Ste 300
Lexington, KY 40507

VIA U.S. MAIL

Amy McGrath for Senate
P.O. Box 875
Georgetown, KY 40324

RE: Demand to cease and desist from the unauthorized use of the personal images and likenesses of Randy Robbins and Albrow Hall

To Whom It May Concern:

I represent Randy Robbins and Albrow Hall, two members of the Letcher County chapter of the Black Lung Association. Randy and Albrow were proud to join other members of the association on a trip to our nation's capital earlier this summer to raise awareness about black lung disease and the challenges faced by them and other miners who suffer from it.

Randy and Albrow felt that the trip was a success. They deeply appreciated the warm receptions they received from a number of elected representatives who took the time to meet with the group, including Senator Mitch McConnell. They were therefore happy to cooperate when they were contacted several weeks later to participate in the filming of a reenactment of the bus trip.

Both Randy and Albrow were led to believe that the reenactment was being done for a documentary relating the work of the Black Lung Association. **They did not know and were never told that they were being filmed for a political advertisement.**

Randy and Albrow were shocked and outraged when they later saw their images featured prominently at the beginning of the "10 Hour Bus Ride" commercial now being broadcast by the McGrath Senate Campaign. Specifically, in the opening scenes of the commercial, Randy is shown sitting on the first row visible on the viewer's left, in a gray shirt and camouflage cap, while Albrow is in the second row on the viewer's right.

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Randy and Albrow did not and do not consent to the use of their images in this campaign advertisement. Moreover, they do not believe that black lung is or should be made into a partisan political issue. Black lung does not discriminate by party affiliation, and my clients believe that people of good will from both political parties are working hard to address the needs of coal miners with black lung disease.

Randy and Albrow are not partisan political activists for either party. However, they are personally offended at seeing their images being used in a political attack ad that does not reflect their personal feelings or beliefs. It is simply wrong for the McGrath Campaign to use individual miners suffering from black lung disease as political pawns without their permission or consent.

Moreover, Kentucky courts recognize a common law right of privacy/publicity that encompasses claims for the misappropriation of an individual's likeness. *See, e.g., McCall v. Courier-Journal and Louisville Times Co.*, 623 S.W.2d 882, 887 (Ky. 1981). Kentucky law expressly protects "the interest of the individual in the exclusive use of his own identity, in so far as it is represented by his name or likeness, and in so far as the use may be of benefit to him or to others. This interest is 'in the nature of a property right.'" *Thornton v. Western & Southern Financial Group Beneflex Plan*, 797 F. Supp. 2d 796, 814 (W.D. Ky. 2011). Damages for the unauthorized use of an individual's image, such as is involved here, may include injunctive relief, compensatory damages, unjust enrichment and punitive damages. *Id.* Quite simply, Randy and Albrow have a legal right to control the use of their personal images.

Accordingly, Randy and Albrow hereby demand that the McGrath Campaign immediately cease and desist from the use of their personal images in any and all advertising and media, specially including in the misleading "10 Hour Bus Ride" commercial. Under the circumstances, we request that you please confirm by close of business on Friday, September 6, 2019, your agreement to do so. Should the McGrath Campaign refuse to do so voluntarily and promptly, my clients reserve their rights to pursue any and all legal remedies available to them.

Thank you for your prompt attention to this matter.

Sincerely,



Christopher L. Thacker

cc: Randy Robbins
Albrow Hall