



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

JAMES E. DOYLE
ATTORNEY GENERAL

Burneatta L. Bridge
Deputy Attorney General

123 West Washington Avenue
P.O. Box 7857
Madison, WI 53707-7857

Charles D. Hoornstra
Assistant Attorney General
hoornstracd@doj.state.wi.us
608/266-9945
FAX 608/267-2223
TTY 608/267-8902

May 29, 2001

The Honorable Gary R. George
State Senator
Box 7882
Madison, Wisconsin 53707-7882

Re: Comments on Assembly Amendment 2 to 2001 Assembly Bill 60

Dear Senator George:

I have your request to comment on the provisions in this amendment that would authorize punitive damages even in the absence of compensatory damages. The purpose of this bill is to protect individual privacy interests in nudity. It would become part of the state's law against invasion of privacy, which presently provides for compensatory damages but does not expressly provide for punitive damages. *See* Wis. Stat. § 895.50. The court of appeals has declined to address the question whether punitive damages are recoverable in an invasion of privacy action. *See Gianoli v. Pfleiderer*, 20 Wis. 2d 509, 527-28, n.4, 563 N.W.2d 562, 569 (Ct. App. 1997). Assembly Amendment 2 would authorize punitive damages even when compensatory damages are not awarded.

The general common law rule in Wisconsin is that punitive damages cannot be awarded unless compensatory damages also are awarded. *See Barnard v. Cohen*, 165 Wis. 417, 418, 162 N.W. 480, 481 (1917) (there can be no recovery of punitive damages if only nominal compensatory damages are found). The rationale for the rule is that society has little interest in having the unlawful, but otherwise harmless conduct deterred through punitive damages if the individual cannot show actual harm. *See Maxwell v. Kennedy*, 50 Wis. 649, 649, 7 N.W. 657, 659 (1880).

Despite this general rule, the Wisconsin Supreme Court has acknowledged that exceptions should be made in appropriate cases. *See Jacque v. Steenberg Homes, Inc.*, 209 Wis. 2d 605, 563 N.W.2d 154 (1997). "[A] right is hollow if the legal system provides insufficient means to protect it." *Id.*, at 618, 563 N.W.2d at 160. Accordingly, the court allowed punitive damages for intentional trespass to land where only \$1 in nominal damages was awarded, noting both the landowner's interest against trespass as well as society's. *See id.* at 617-19, 563 N.W.2d at 159-61. Thus, Wisconsin common law already recognizes the appropriateness of awarding punitive damages without compensatory damages. In addition, it is notable that federal civil

May 29, 2001
Page 2

rights law long has recognized that punitive damages may be appropriate even in the absence of compensatory damages. See *Endicott v. Huddleston*, 644 F.2d 1208, 1217 (7th Cir. 1980).

It falls within the discretion of the Legislature whether to continue or modify the common law. The Wisconsin Constitution provides that the common law "shall be and continue part of the law of this state until altered or suspended by the legislature." Wis. Const. Art. XIV, § 13. The supreme court recently stated, "The legislature's authority includes the power to define and limit causes of action and to abrogate common law on policy grounds." *Aicher v. WI Patients Compensation Fund*, 2000 WI 98, 237 Wis. 2d 99, ¶ 51, 613 N.W.2d 849. Only recently the court of appeals applied this principle to uphold the Legislature's decision to impose a damage cap on the recovery of non-economic damages in medical malpractice cases. See *Guzman v. St. Francis Hosp., Inc.*, 2001 WI App 21, 240 Wis. 2d 559, ¶¶ 7, 9, 12-13, 623 N.W.2d 776.

In sum, it is my view that whether to permit punitive damages, if no compensatory damages are awarded, is a policy choice the Legislature is free to make.

Sincerely,


Charles D. Hoonstra
Assistant Attorney General



**WISCONSIN LEGISLATIVE COUNCIL
STAFF MEMORANDUM**

TO: SENATOR GARY R. GEORGE

FROM: Ronald Sklansky, Senior Staff Attorney 

RE: 2001 Assembly Bill 60

DATE: May 7, 2001

This memorandum, prepared at your request, describes 2001 Assembly Bill 60, relating to the prohibition against making, possessing, distributing or exhibiting a representation that depicts nudity. On March 20, 2001, the Assembly passed Assembly Bill 60 on a vote of Ayes, 97 and Noes, 0. In particular, you have asked for a discussion of Assembly Amendment 2 to the bill.

CURRENT LAW

Section 944.205 (2), Stats., provides that whoever does any of the following is guilty of a Class E felony:

1. Makes a visual representation or reproduction depicting nudity without the knowledge and consent of the person who is depicted nude, if the maker of the representation or reproduction knows, or has reason to know, that the depicted person does not know of and consent to the action.
2. Possesses or distributes a visual representation or reproduction depicting nudity that was taken without knowledge and consent, if the possessor or distributor knows, or has reason to know, that the representation or reproduction was made without knowledge and consent.

In *State v. Stevenson*, 236 Wis. 2d 86, 613 N.W.2d 86 (2000), the Wisconsin Supreme Court held that s. 944.205, Stats., is unconstitutionally broad.

ASSEMBLY BILL 60

The bill generally provides that a person who does any of the following is guilty of a Class E felony:

1. Captures a representation depicting nudity without the knowledge and consent of the person who is depicted nude while that person is nude in a circumstance in which he or she has a reasonable expectation of privacy, if the person knows, or has reason to know, that the depicted person does not know of and consent to the capture of the representation. The term "captures a representation" means to take a photograph, make a motion picture, videotape or other visual representation, or record or store in any medium data that represents a visual image.
2. Makes a reproduction of a representation that the person knows, or has reason to know, was captured in violation of the provisions in item 1., above, if the depicted person did not consent to the making of the reproduction.
3. Possesses, distributes or exhibits an unlawful representation or reproduction, if the person knows, or has reason to know, that the representation or reproduction is unlawful and if the depicted person did not consent to the possession, distribution or exhibition.

Assembly Bill 60, as amended by Assembly Amendment 2, also affects current law that provides a statutory civil cause of action for invasion of privacy under s. 895.50, Stats. This statute defines the term "invasion of privacy" for purposes of the civil action. The bill makes a violation of the criminal prohibitions of the bill regarding the depiction of nudity an invasion of privacy under the statutory civil cause of action. In other words, the conduct that is prohibited by the criminal sanction in Assembly Bill 60 also constitutes an invasion of privacy. In addition, the invasion of privacy can occur regardless of whether there has been a criminal action and regardless of the outcome of any criminal action.

Finally, under the current statutory cause of action for invasion of privacy, one whose privacy is unreasonably invaded is entitled to: (1) equitable relief; (2) compensatory damages based either on plaintiff's loss or defendant's unjust enrichment; and (3) reasonable attorney fees. Assembly Bill 60 provides that punitive damages may be awarded in a statutory civil action for invasion of privacy when the invasion is based on the illegal depiction of nudity. Under the bill, punitive damages may be awarded to a plaintiff seeking recovery against the person who invaded the plaintiff's privacy, regardless of whether the plaintiff proves compensatory damages resulting from the invasion of privacy.

AWARD OF PUNITIVE DAMAGES

You have asked for a statement of arguments for and against the inclusion in Assembly Bill 60 of the provision affording punitive damages in a civil cause of action regardless of whether the plaintiff proves compensatory damages resulting from the invasion of privacy that occurs through the depiction of nudity.

The arguments against the inclusion of the punitive damages provision include the following:

1. The right of privacy protected in s. 895.50, Stats., specifically provides for the following relief: (a) equitable relief to prevent and restrain an invasion; (b) compensatory damages based either on plaintiff's loss or defendant's unjust enrichment; and (c) a reasonable amount for attorney fees. Thus, punitive damages are not now afforded to any person whose right of privacy has been invaded. Assembly Bill 60, it can be argued, makes an unwarranted exception to this general rule.

2. Ordinarily, punitive damages may not be awarded in the absence of compensatory damages. Again, it can be argued that Assembly Bill 60 makes an unwarranted exception to the general rule.

The arguments in favor of the punitive damages provision include the following:

1. A victim of the unlawful depiction of nudity may not suffer any measurable monetary damage and the violator may not monetarily profit from the invasion of privacy. Consequently, it would be difficult to measure an appropriate award of compensatory damages to the victim. Allowing punitive damages to be assessed against the violator would serve both deterrent and retributive purposes in the absence of making an award for compensatory damages.
2. The unlawful depiction of nudity is such a gross violation of privacy rights that the award of punitive damages without compensatory damages is justified.

If I can be of any further assistance in this matter, please feel free to contact me.

RS:ksm;jal



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

TO: REPRESENTATIVE MARK GUNDRUM

FROM: Don Dyke, Senior Staff Attorney

RE: Recovery of Punitive Damages In the Absence of Compensatory Damages Under Assembly Amendment 2 to 2001 Assembly Bill 60

DATE: March 16, 2001

Among other things, Assembly Amendment 2 to 2001 Assembly Bill 60 provides that punitive damages may be awarded to a plaintiff in a civil action for invasion of privacy under s. 895.50, Stats., when the privacy invasion is based on a violation of the criminal prohibitions of Assembly Bill 60. The amendment further provides that punitive damages in this situation may be awarded regardless of whether the plaintiff proves compensatory damages resulting from the invasion of privacy.

At the March 14, 2001 Assembly Judiciary Committee Executive Session on Assembly Bill 60, it was noted that, ordinarily, punitive damages may not be awarded in the absence of compensatory damages. The question was raised whether the Legislature may, as a matter of policy, enact exceptions to the general rule requiring compensatory damages as a precondition of punitive damages or whether doing so might raise constitutional issues. It appears that the Legislature may make the policy choice that in the invasion of privacy actions under discussion, compensatory damages need not be awarded in order for punitive damages to be awarded.

Recently, the Wisconsin Supreme Court held, as a matter of policy, that punitive damages may be awarded in a case of intentional trespass to land despite the absence of compensatory damages. [*Jacque v. Steenberg Homes, Inc.*, 209 Wis. 2d 605, 563 N.W.2d 154 (1977).] In *Jacque*, the plaintiff was awarded only nominal damages, but that was sufficient for an award of punitive damages. (In general terms, nominal damages are awarded to a plaintiff who establishes a substantive right to relief and may be awarded where actual damages are not sufficiently established or there is no actual loss. [*Polebitzke v. John Week Lumber Company*, 173 Wis. 509, 181 N.W. 730 (1921); *White v. Benkowski*, 37 Wis. 2d 285, 155 N.W.2d 74 (1967).])

The plaintiff in *Jacque* argued that “both the individual and society have significant interests in deterring intentional trespass to land, regardless of the lack of measurable harm that results.” [563 N.W.2d at 159.] The Wisconsin Supreme Court agreed: “An examination of the individual interests

invaded by an intentional trespass to land, and society's interests in preventing intentional trespass to land, leads to the conclusion that the . . . rule [of no punitive damages without compensatory damages] should not apply when the tort supporting the awarded is intentional trespass to land." [*Id.*] The court also cited favorably the Restatement (Second) of Torts, SECTION 163, Comment C (1979), which indicates that nominal damages support an award of punitive damages "when a tort, such as trespass to land, is committed for an outrageous purpose, but no significant harm has resulted." [*Id.* at 161.] I have furnished your office with a copy of the *Jacque* case for your further review.

Note that punitive damages can involve constitutional issues. The U.S. Supreme Court has held that the due process clause prohibits the imposition of a "grossly excessive" punishment on a tortfeasor. [*BMW of North America, Inc. v. Gore*, 116 S. Ct. 1589 (1996).] In determining whether a punitive damage award is grossly excessive, the Court established a three-part test: (1) the degree of reprehensibility of the conduct; (2) the disparity between the actual or potential harm suffered and the amount of the punitive damage award; and (3) the difference between the punitive damage award and any statutorily imposed state civil or criminal punishment for comparable conduct." [*Gore*, 116 S. Ct. at 1598-99, 1603.]

In *Jacque*, there is no indication that allowing punitive damages when only nominal damages are awarded raises due process concerns. The Wisconsin Supreme Court did in fact discuss the *Gore* case in connection with the amount of damages awarded to the plaintiff in *Jacque*, but not in connection with the issue under discussion.

Another example of a common law exception to the general rule of no punitive damages in the absence of compensatory damages is found in certain defamation actions. Certain categories of defamatory statements are actionable without alleging or proving compensatory damages; i.e., the statements are considered defamatory as a matter of law. [See, e.g., *Bauer v. Murphy*, 191 Wis. 2d 518, 530 N.W.2d 1, at 3 and 4 (Ct. App. 1995).] Therefore, nominal and punitive damages are available for defamation *per se* without proof of special (compensatory) damages. [*Valley Bancorp v. Auto Owners Ins.*, 212 Wis. 2d 609, 569 Wis. 2d 345 at 350 (Ct. App. 1997).]

Thus, under Wisconsin common law courts have established, on policy grounds, exceptions to the general rule that punitive damages may not be awarded unless compensatory damages are proved. Presumably, the Legislature may also establish exceptions through legislation.

If you have any questions or need additional information, please contact me directly at the Legislative Council Staff offices.

DD:rv:ksm;tlu



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

JAMES E. DOYLE
ATTORNEY GENERAL

Burneatta L. Bridge
Deputy Attorney General

123 West Washington Avenue
P.O. Box 7857
Madison, WI 53707-7857

Charles D. Hoornstra
Assistant Attorney General
hoornstracd@doj.state.wi.us
608/266-9945
FAX 608/267-2223
TTY 608/267-8902

May 29, 2001

The Honorable Gary R. George
State Senator
Box 7882
Madison, Wisconsin 53707-7882

Re: Comments on Assembly Amendment 2 to 2001 Assembly Bill 60

Dear Senator George:

I have your request to comment on the provisions in this amendment that would authorize punitive damages even in the absence of compensatory damages. The purpose of this bill is to protect individual privacy interests in nudity. It would become part of the state's law against invasion of privacy, which presently provides for compensatory damages but does not expressly provide for punitive damages. *See Wis. Stat. § 895.50*. The court of appeals has declined to address the question whether punitive damages are recoverable in an invasion of privacy action. *See Gianoli v. Pfleiderer*, 20 Wis. 2d 509, 527-28, n.4, 563 N.W.2d 562, 569 (Ct. App. 1997). Assembly Amendment 2 would authorize punitive damages even when compensatory damages are not awarded.

The general common law rule in Wisconsin is that punitive damages cannot be awarded unless compensatory damages also are awarded. *See Barnard v. Cohen*, 165 Wis. 417, 418, 162 N.W. 480, 481 (1917) (there can be no recovery of punitive damages if only nominal compensatory damages are found). The rationale for the rule is that society has little interest in having the unlawful, but otherwise harmless conduct deterred through punitive damages if the individual cannot show actual harm. *See Maxwell v. Kennedy*, 50 Wis. 649, 649, 7 N.W. 657, 659 (1880).

Despite this general rule, the Wisconsin Supreme Court has acknowledged that exceptions should be made in appropriate cases. *See Jacque v. Steenberg Homes, Inc.*, 209 Wis. 2d 605, 563 N.W.2d 154 (1997). "[A] right is hollow if the legal system provides insufficient means to protect it." *Id.*, at 618, 563 N.W.2d at 160. Accordingly, the court allowed punitive damages for intentional trespass to land where only \$1 in nominal damages was awarded, noting both the landowner's interest against trespass as well as society's. *See id.* at 617-19, 563 N.W.2d at 159-61. Thus, Wisconsin common law already recognizes the appropriateness of awarding punitive damages without compensatory damages. In addition, it is notable that federal civil

May 29, 2001

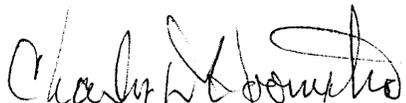
Page 2

rights law long has recognized that punitive damages may be appropriate even in the absence of compensatory damages. See *Endicott v. Huddleston*, 644 F.2d 1208, 1217 (7th Cir. 1980).

It falls within the discretion of the Legislature whether to continue or modify the common law. The Wisconsin Constitution provides that the common law "shall be and continue part of the law of this state until altered or suspended by the legislature." Wis. Const. Art. XIV, § 13. The supreme court recently stated, "The legislature's authority includes the power to define and limit causes of action and to abrogate common law on policy grounds." *Aicher v. WI Patients Compensation Fund*, 2000 WI 98, 237 Wis. 2d 99, ¶ 51, 613 N.W.2d 849. Only recently the court of appeals applied this principle to uphold the Legislature's decision to impose a damage cap on the recovery of non-economic damages in medical malpractice cases. See *Guzman v. St. Francis Hosp., Inc.*, 2001 WI App 21, 240 Wis. 2d 559, ¶¶ 7, 9, 12-13, 623 N.W.2d 776.

In sum, it is my view that whether to permit punitive damages, if no compensatory damages are awarded, is a policy choice the Legislature is free to make.

Sincerely,


Charles D. Hoornstra
Assistant Attorney General

State of Wisconsin



GARY R. GEORGE
SENATOR

April 4, 2001

The Honorable Kimberly M. Plache
State Senator
21st Senate District
Room 415 South, State Capitol
Madison, WI 53707

Dear Senator Plache:

Thank you for writing our office to request a public hearing on Assembly Bill 60, which relates to: the prohibition against making, possessing, or distributing a representation that depicts nudity, and providing a penalty.

We will ask our Legislative Council attorney to prepare a memo describing the bill and will review that memo before taking any action to schedule the bill.

Sincerely,

A handwritten signature in cursive script that reads "Gary R. George".

GARY R. GEORGE
State Senator
Sixth Senate District
Chair Senate Committee on Judiciary,
Consumer Affairs and Campaign Finance Reform



KIMBERLY M. PLACHE

STATE SENATOR • TWENTY FIRST SENATE DISTRICT

March 27, 2001

Senator Gary George, Chair
Senate Committee on Judiciary, Consumer Affairs and
Campaign Finance Reform
State Capitol, Room 118 South
Madison, WI

Dear Senator George: 

Following up on my recent conversation with Dan from your office, I am writing to formally request a hearing on Assembly Bill 60, which unanimously passed the Assembly on March 20th and was referred to the Senate Committee on Judiciary, Consumer Affairs and Campaign Finance Reform on March 22nd.

This legislation fixes the constitutional flaws of the state's video voyeurism law which was struck down by the Wisconsin Supreme Court last year as overbroad. The law was enacted to protect unsuspecting victims from voyeurs who invade their privacy by videotaping them while they are nude without their consent. The Court said the law went too far by prohibiting all depictions of nudity made without consent, including artistic, political, and newsworthy depictions that are protected by the First Amendment.

Developed in conjunction with the Attorney General's office, Assembly Bill 60 tightens up the language of the original law by setting forth four hurdles the prosecution must overcome to meet its burden of proof. Under the bill, the prosecutor must prove:

- (1) the victim was nude at the time the image was captured on film, videotape or computer disk;
- (2) the victim had a reasonable expectation of privacy under the circumstances;
- (3) the perpetrator committed the offense without the knowledge and consent of the victim; and
- (4) the violator knew or had reason to know the victim was unaware of the privacy intrusion and had not consented to it.

This proposal also prohibits reproductions and distributions of these materials without the consent of the victim and provides a civil remedy.

I look forward to working with your office on returning to prosecutors an important tool to hold voyeurs accountable for these serious breaches of privacy.

Sincerely,

Kimberly M. Plache
State Senator

KP/das



KIMBERLY M. PLACHE

STATE SENATOR • TWENTY FIRST SENATE DISTRICT

March 27, 2001

Senator Gary George, Chair
Senate Committee on Judiciary, Consumer Affairs and
Campaign Finance Reform
State Capitol, Room 118 South
Madison, WI

Dear Senator George: 

Following up on my recent conversation with Dan from your office, I am writing to formally request a hearing on Assembly Bill 60, which unanimously passed the Assembly on March 20th and was referred to the Senate Committee on Judiciary, Consumer Affairs and Campaign Finance Reform on March 22nd.

This legislation fixes the constitutional flaws of the state's video voyeurism law which was struck down by the Wisconsin Supreme Court last year as overbroad. The law was enacted to protect unsuspecting victims from voyeurs who invade their privacy by videotaping them while they are nude without their consent. The Court said the law went too far by prohibiting all depictions of nudity made without consent, including artistic, political, and newsworthy depictions that are protected by the First Amendment.

Developed in conjunction with the Attorney General's office, Assembly Bill 60 tightens up the language of the original law by setting forth four hurdles the prosecution must overcome to meet its burden of proof. Under the bill, the prosecutor must prove:

- (1) the victim was nude at the time the image was captured on film, videotape or computer disk;
- (2) the victim had a reasonable expectation of privacy under the circumstances;
- (3) the perpetrator committed the offense without the knowledge and consent of the victim; and
- (4) the violator knew or had reason to know the victim was unaware of the privacy intrusion and had not consented to it.

This proposal also prohibits reproductions and distributions of these materials without the consent of the victim and provides a civil remedy.

I look forward to working with your office on returning to prosecutors an important tool to hold voyeurs accountable for these serious breaches of privacy.

Sincerely,

Kimberly M. Plache
State Senator

KP/das

**Senate Committee on Judiciary, Consumer Affairs and Campaign
Finance Reform**

Request for Paper Ballot Executive Action on 2001 Assembly Bill 60

The Senate Committee on Judiciary, Consumer Affairs and Campaign Finance Reform was unable to hold an Executive Session on Assembly Bill 60 as planned. We would like to conduct a paper ballot on the bill. **Please return your ballot to Sen. George's office (Room 118 South) by 3:00 PM Wednesday, May 2, 2001.**

Introduction and Adoption of Senate Amendment (LRB a0468/1):

_____ Moved (Optional -- Please check if you wish to Move Introduction and Adoption of the Amendment)

_____ Seconded (Optional -- Please check if you wish to Second Introduction and Adoption of the Amendment)

Aye (In Favor of Adoption of the Amendment)

_____ No (Oppose Adoption of the Amendment)

Passage of Assembly Bill 60 As Amended:

_____ Moved (Optional -- Please check if you wish to Move Passage of the Bill as Amended)

_____ Seconded (Optional -- Please check if you wish to Second Passage of the Bill as Amended)

Aye (In Favor of Passage of the Bill as Amended)

_____ No (Oppose Passage of the Bill as Amended)

Signed: _____

Robert Weirch

May 2, 2001

Please return to Sen. George's Office by 3:00 PM, Wednesday, May 2, 2001.

State of Wisconsin



GARY R. GEORGE
SENATOR

TO: Members, Senate Committee on Judiciary and Consumer Affairs and
Campaign Finance Reform

FROM: Dan Rossmiller, Clerk
Senate Committee on Judiciary and Consumer Affairs and Campaign
Finance Reform

RE: PAPER BALLOT EXECUTIVE SESSION-- Assembly Bill 60, relating to:
the prohibition against making, possessing, or distributing a representation
that depicts nudity, and providing a penalty.

DATE: May 1, 2001

Attached please find a PAPER BALLOT for AB 60.

Please return the ballot by 3:00 PM tomorrow (Wednesday).

Assembly Bill 60 relates to the prohibition against making, possessing, or distributing a representation that depicts nudity, and providing a penalty and is being referred to by some as the "video voyeurism" bill.

Attached also, please find a copy of as amendment to Assembly Bill 60 (LRB a0468/1). This amendment removes the provisions relating to punitive damages that were added by Assembly Amendment 2, as affected by Assembly Amendment 1 to Assembly Amendment 2. Those provisions would allow a plaintiff in a case under the civil action created under the bill to receive punitive damages regardless of whether compensatory damages were awarded.

Thank you for your cooperation.

**Senate Committee on Judiciary, Consumer Affairs and Campaign
Finance Reform**

Request for Paper Ballot Executive Action on 2001 Assembly Bill 60

The Senate Committee on Judiciary, Consumer Affairs and Campaign Finance Reform was unable to hold an Executive Session on Assembly Bill 60 as planned. We would like to conduct a paper ballot on the bill. **Please return your ballot to Sen. George's office (Room 118 South) by 3:00 PM Wednesday, May 2, 2001.**

Introduction and Adoption of Senate Amendment (LRB a0468/1):

- _____ Moved (Optional -- Please check if you wish to Move Introduction and Adoption of the Amendment)
- _____ Seconded (Optional -- Please check if you wish to Second Introduction and Adoption of the Amendment)
- _____ **Aye** (In Favor of Adoption of the Amendment)
- _____ **No** (Oppose Adoption of the Amendment)

Passage of Assembly Bill 60 As Amended:

- _____ Moved (Optional -- Please check if you wish to Move Passage of the Bill as Amended)
- _____ Seconded (Optional -- Please check if you wish to Second Passage of the Bill as Amended)
- _____ **Aye** (In Favor of Passage of the Bill as Amended)
- _____ **No** (Oppose Passage of the Bill as Amended)

Signed: _____

May 2, 2001

Please return to Sen. George's Office by 3:00 PM, Wednesday, May 2, 2001.

State of Wisconsin



GARY R. GEORGE
SENATOR

TO: Members, Senate Committee on Judiciary and Consumer Affairs and
Campaign Finance Reform

FROM: Dan Rossmiller, Clerk
Senate Committee on Judiciary and Consumer Affairs and Campaign
Finance Reform

RE: PAPER BALLOT EXECUTIVE SESSION-- Assembly Bill 60, relating to:
the prohibition against making, possessing, or distributing a representation
that depicts nudity, and providing a penalty.

DATE: May 1, 2001

Attached please find a PAPER BALLOT for AB 60.

Please return the ballot by 3:00 PM tomorrow (Wednesday).

Assembly Bill 60 relates to the prohibition against making, possessing, or distributing a representation that depicts nudity, and providing a penalty and is being referred to by some as the "video voyeurism" bill.

Attached also, please find a copy of an amendment to Assembly Bill 60 (LRB a0468/1). This amendment removes the provisions relating to punitive damages that were added by Assembly Amendment 2, as affected by Assembly Amendment 1 to Assembly Amendment 2. Those provisions would allow a plaintiff in a case under the civil action created under the bill to receive punitive damages regardless of whether compensatory damages were awarded.

Thank you for your cooperation.

**Senate Committee on Judiciary, Consumer Affairs and Campaign
Finance Reform**

Request for Paper Ballot Executive Action on 2001 Assembly Bill 60

The Senate Committee on Judiciary, Consumer Affairs and Campaign Finance Reform was unable to hold an Executive Session on Assembly Bill 60 as planned. We would like to conduct a paper ballot on the bill. **Please return your ballot to Sen. George's office (Room 118 South) by 3:00 PM Wednesday, May 2, 2001.**

Introduction and Adoption of Senate Amendment (LRB a0468/1):

_____ Moved (Optional -- Please check if you wish to Move Introduction and Adoption of the Amendment)

_____ Seconded (Optional -- Please check if you wish to Second Introduction and Adoption of the Amendment)

_____ **Aye** (In Favor of Adoption of the Amendment)

_____ **No** (Oppose Adoption of the Amendment)

Passage of Assembly Bill 60 As Amended:

_____ Moved (Optional -- Please check if you wish to Move Passage of the Bill as Amended)

_____ Seconded (Optional -- Please check if you wish to Second Passage of the Bill as Amended)

_____ **Aye** (In Favor of Passage of the Bill as Amended)

_____ **No** (Oppose Passage of the Bill as Amended)

Signed: _____

May 2, 2001

Please return to Sen. George's Office by 3:00 PM, Wednesday, May 2, 2001.