

THE MEDIA COALITION INC

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Memo in Opposition to House Bill 153

As expressed to Representative Williams in February, the members of Media Coalition believe that H.B. 153 threatens the distribution of First Amendment-protected material in Alabama. The members of Media Coalition represent most of the publishers, booksellers, librarians, recording, film and video game manufacturers, recording, video, and video game retailers in the state and the rest of the United States. They neither produce nor sell works that are legally obscene. However they do disseminate a wide variety of material with sexual content, including art and photography books, mainstream movies and music, and literary and artistic works.

H.B. 153 would impose a 30% tax on “sexually oriented materials” that are “sexually oriented in nature” and material that is legally obscene for adults. Our concern is about the use of “material” in the definition of “Adult Novelty Items” which could apply to books, magazines, movies and other content that is sexually oriented but is protected by the First Amendment.

A government can bar or tax material that is obscene for adults because such material is not protected by the First Amendment. However, to the extent this bill would tax First Amendment-protected material, which includes material that is obscene for minors, based on its content it is likely unconstitutional. This would include material that is protected for adults but obscene for minors. In 1983, the Court held that the power to single out the press with special taxes could be used to coerce or even destroy it and therefore violates the First Amendment, *Minneapolis Star v. Minnesota Commission of Revenue*, 460 U.S. 575. In 1991, it held that a statute is presumptively inconsistent with the First Amendment if it imposes a financial burden on speakers because of the content of their speech, *Simon and Schuster, Inc. v. Members of the New York State Crime Board*, 502 U.S. 105. In 1987, the court ruled that “official scrutiny of the content of publications as the basis for imposing a tax is entirely incompatible with the First Amendment’s guarantee of freedom of the press,” *Arkansas Writer’s Project, Inc. v. Ragland*, 481 U.S. 221, 230. Also to tax material that is obscene, the material must be judged obscene by a court that includes all the due process safeguards required by the Constitution in a criminal prosecution otherwise the tax amounts to an “informal censorship.” *Bantam Books v. Sullivan*, 372 U.S. 58 (1963).

If you would like to talk more about the bill or the legal cases in this area, please feel free to contact David Horowitz, Media Coalition’s Executive Director, at (212) 587-4025 x11, or by email at horowitz@mediacoalition.org.

Please protect the First Amendment rights of all the people of Alabama and defeat this legislation.

Media Coalition is a trade association that defends the First Amendment rights of publishers, booksellers, and librarians, recording, motion picture and video games producers, recording, video, and video game retailers in the United States.

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Expression

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