MEDIA COALITION
DEFENDING THE FIRST AMENDMENT SINCE 1973

FOR RELEASE ON Tuesday, August 6, 2013

CONTACT: David Horowitz, 212-587-4025 x3, horowitz@mediacoalition.org

# Media Organizations Ask Supreme Court to Review New York Decision Which Approved Content-Based Tax on First Amendment-Protected Communication

New York, August 6, 2013—"May a State impose a sales tax on tickets to the Broadway musical *Mamma Mia,* while exempting tickets to *Rigoletto*?" Media organizations posed that question today in asking the United States Supreme Court to review a decision of the New York Court of Appeals which upheld a content-based tax on communication protected by the First Amendment.

In an amicus **brief** filed August 6, 2013, American Booksellers Foundation for Free Expression, Association of American Publishers, Inc., Comic Book Legal Defense Fund, Entertainment Merchants Association, and Freedom to Read Foundation, all members of Media Coalition, asked that the Supreme Court grant certiorari and hear the case on the merits, so it can reaffirm its decision in *Arkansas Writers' Project, Inc. v. Ragland*, 481 U.S. 221, 230 (1987) that "[O]fficial scrutiny of the content of [speech] as the basis for imposing a tax is entirely incompatible with the First Amendment's guarantee of freedom of the press." The case is *677 New Loudon Corp. v. State of New York Tax Tribunal,* No. 13-38.

"The Supreme Court should reaffirm the principle that legislatures and taxing authorities cannot do an end run around the Constitution and punish disfavored speech by imposing a financial burden on speech that is protected by the First Amendment," said David Horowitz, Executive Director of Media Coalition. "The state is not obligated to offer a tax break for choreographed dance performances, but if it does, then the state cannot deny the break to performances it dislikes."

The case comes to the Supreme Court from the New York Court of Appeals, which is the state's highest court. The case concerns nude dancing—not Broadway musicals or opera—but the media organizations stated in their brief that the constitutional principle is the same. The New York Court of Appeals upheld the imposition of a sales tax on non-obscene nude dance performances, even though New York's sales tax law explicitly exempts "dramatic or musical arts performances" including dance performances. In a strongly-worded dissent, Judge Robert Smith stated that while he found the dances "distasteful," discrimination on the basis of the content of speech violates the First Amendment. "I would be appalled," Judge Smith stated, "if the State were to exact from Hustler a tax that the New Yorker did not have to pay, on the ground that what appears in Hustler is insufficiently 'cultural and artistic.'" Judge Smith's dissent was joined by Chief Judge Jonathan Lippman and Judge Susan P. Read.

The amicus brief noted that two years ago, the Supreme Court had held unconstitutional a California law requiring the labeling of video games with violent content, and prohibiting the sale of such games to minors, in a case brought by Entertainment Merchants Association, *Brown v. EMA,* 131 S. Ct. 2729 (2011). The brief stated that discriminatory taxes based on the content of media posed a similar threat to free speech.

The media organizations are represented by Michael A Bamberger and Richard M. Zuckerman of Dentons US LLP, general counsel to Media Coalition.

The amicus brief and other documents in the case are available online at: mediacoalition.org/677-new-loudon-v-tax-appeals

*Media Coalition, Inc., founded in 1973, is an association that defends the First Amendment right to produce and distribute books, movies, magazines, recordings, home video and video games, and protects the American public's First Amendment right to have access to the broadest possible range of information, opinion and entertainment.*

# # #