

# THE MEDIA COALITION INC.

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March 28, 2003

Governor Huckabee  
Governor's Office  
State Capitol Room 250  
Little Rock Arkansas 72201

Re: Arkansas House Bill 1525

Dear Governor Huckabee,

The members of The Media Coalition believe that Arkansas House Bill 1525 threatens the distribution of First Amendment-protected material in Arkansas. Media Coalition members represent most of the publishers, booksellers, librarians, periodical wholesalers and distributors, recording, movie and video game manufacturers, and recording and video retailers in Arkansas and the rest of the United States. The members of Media Coalition are

The American Booksellers Foundation for Free Expression  
The Association of American Publishers  
The Freedom to Read Foundation  
The Interactive Digital Software Association  
The International Periodical Distributors Association  
The Magazine Publishers of America  
The Motion Picture Association of America  
The National Association of Recording Merchandisers  
The Publishers Marketing Association  
The Recording Industry Association of America  
The Video Software Dealers Association.

H.B. 1525 requires that material that is harmful to minors be placed behind a restricted counter area in blinder racks and segregated in a way that physically prohibits minors access to the material. This provision is onerous for retailers and is likely unconstitutional because it restricts the access of adults to material which is constitutionally protected as to them.

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Although the courts have ruled that some limitation on the display of material "harmful to minors," as defined by the Supreme Court in Ginsberg v.

New York, 390 U.S. 629 (1968), is permissible, they have also ruled that these limitations may not unreasonably hinder the access of adults to such material. H.B. 1525 would require retailers to create an "adults only" section that would force them to pejoratively label a part of their inventory. They would inevitably lose patrons who, without being aware that the material in this section is protected by the First Amendment, will refuse to enter places that deal in "dirty books or magazines." Some retailers would have little choice but to stop carrying all work with sexual content, including much mainstream art, health and sex education material rather than risk up to six months in prison, a \$500 fine, or both. As a result, H.B. 1525 would exercise an unconstitutional "chilling effect" on the sale of legally protected speech and significantly impair adults' access to material which they have a First Amendment right to read, see or hear. Additionally, H.B. 1525 presents great practical difficulty for retailers of books, magazines, movies and music. The task of reviewing thousands of new items received by a store each year to determine what may be harmful to minors and must be segregated is difficult, time consuming for staff and expensive for the proprietor. Then, requiring retailers to segregate such material behind blinder racks in an area that physically prohibits access to minors would only add to the practical problems in hiring and allocating store staff and cause them to lose adult customers who may not want to purchase material without browsing.

Because it threatens the distribution of constitutionally protected works, H.B. 1525 will be vulnerable to a legal challenge if it is enacted. If the law is overturned, the state could be ordered to pay the plaintiffs' attorneys' fees. In one case brought by the members of Media Coalition, more than \$100,000 in fees were awarded to the plaintiffs.

The members of Media Coalition strongly urge you to defend the First Amendment rights of retailers and all the citizens of Arkansas and veto H.B. 1525.

Sincerely,

David Horowitz,  
Executive Director

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