

# THE MEDIA COALITION INC.

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## Memo in Opposition to Oregon Senate Joint Resolution 730

The members of Media Coalition believe that Oregon Senate Joint Resolution 33 potentially violates First Amendment rights of adults and minors for numerous reasons. The members of The Media Coalition represent most of the publishers, booksellers, librarians, periodical distributors, recording, movie and video game manufacturers, and recording and video retailers in Oregon and the rest of the United States. They have asked me to explain their concern. 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.

S.J.R. 33 would place an initiative on the ballot to amend the Oregon Constitution's protection of free speech to allow legislators to pass laws restricting those younger than 21 from viewing nudity or sexually explicit content. Nudity and sexual activity are not defined by the resolution nor is the context in which the nudity or sexual activity is seen. These definitions would be left to the legislature.

It is the prerogative of the legislature and the people of Oregon to amend their Constitution, however, it is not permissible to limit expression beyond that which is allowed by the First Amendment to the United States Constitution. There is nothing in this referendum to suggest that the restrictions on viewing nudity or sexual activity would not be applied to books, magazines, movies, videotapes, video games or other similar First Amendment-protected material. Under the First Amendment, speech is presumed to be protected by the First Amendment unless it falls into a few very narrow classes. As the Supreme Court said in *Free Speech Coalition v. Ashcroft*, "As a general principle, the First Amendment bars the government from dictating what we see or read or speak or hear. The freedom of speech has its limits; it does not embrace certain categories of speech, including defamation, incitement, obscenity and pornography produced with children." 535 U.S.\_\_\_\_ (2002). In Miller v. California, 413

U.S. 15 (1973), the court established a three-part test to determine if material is legally obscene and, therefore, does not merit First Amendment protection. The Supreme Court limited the application of the Miller test to a very narrow amount of sexually explicit material. S.J.R. 33 would allow legislators to prohibit adults from accessing a great deal of material without the application of any part of the test promulgated in Miller. Certainly this will prevent adults age 18 to 20 from buying, renting or borrowing material they have a First Amendment right to possess.

Also, while minors do not enjoy the protection of the First Amendment to the same extent as adults, the U.S. Supreme Court has ruled that “minors are entitled to a significant measure of First Amendment protection, and only in relatively narrow and well-defined circumstances may government bar public dissemination of protected material to them.” Erznoznick v. City of Jacksonville, 422 U.S. 212-13 (1975). In the case of Ginsberg v. New York, 390 U.S. 629 (1968), the U.S. Supreme Court established a three-part test for determining whether material is "harmful to minors" and may, therefore, be banned for sale or rental to minors. Mere nudity and even some sexually explicit material likely would not meet the Ginsberg test. Therefore, a law proscribing minors' access to such material would inevitably prevent minors from seeing or viewing books, movies, videotapes or video games that they have a First Amendment right to possess.

Please protect free speech in Oregon and reject S.J.R. 33