

# THE MEDIA COALITION INC

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## Memorandum in Opposition to Oklahoma House Bill 3004

American Booksellers  
Foundation for Free  
Expression

Association of American  
Publishers, Inc.

Comic Book Legal  
Defense Fund

Entertainment Software  
Association

Freedom to Read  
Foundation

Interactive Entertainment  
Merchants Association

Magazine Publishers of  
America, Inc.

Motion Picture  
Association of America,  
Inc.

National Association of  
Recording Merchandisers

Publishers Marketing  
Association

Recording Industry  
Association of America,  
Inc.

Video Software Dealers  
Association

Chair  
Sean Devlin Bersell  
Video Software Dealers  
Association

Immediate Past Chair  
Judith Krug  
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Foundation

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The members of The Media Coalition believe that House Bill 3004 likely violates the First Amendment rights of retailers and producers of content and others. The members of The Media Coalition represent most of the publishers, booksellers, librarians, periodical distributors, recording, movie and video game manufacturers, and recording, video, and video game retailers in Oklahoma and the rest of the United States.

H.B. 3004 would expand the definition of material harmful to minors to include certain violent content. This would make it illegal to distribute or exhibit to a minor such material.

This bill is clearly constitutionally suspect. 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.1382, 1389 (2002). None of the types of speech cited by the Supreme Court include speech with violent content alone. Violent content in otherwise constitutionally protected material is not a permissible subject of government regulation for adults or minors. A series of recent court decisions has reaffirmed this legal doctrine. Laws barring the sale or rental of video games with violent content to minors were enacted in 2005 in California, Illinois and Michigan. The laws were all successfully challenged with U.S. District Court judges granting injunctions barring the enforcement of these restrictions. *See VSDA v. Schwarzenegger*, 401 F. Supp. 2d. 1034 (ND Cal. Dec. 21, 2005) (granting preliminary injunction); *ESA v. Blagojevich*, 2005 WL 3447810 (E.D. Ill. Dec. 2, 2005) (granting a permanent injunction); *ESA v. Granholm*, 2005 WL 3008584 (E.D. Mich. Nov. 9, 2005) (granting preliminary injunction). Every prior court that has addressed this issue has held that speech with violent content, without exception, is constitutionally protected. *American Amusement Machine Ass’n v. Kendrick*, 244 F.3d 572 (7<sup>th</sup> Cir. 2001), *cert. denied*, 122 S.Ct. 462 (2001) enjoined enforcement of a city ordinance that limited minors’ access to violent arcade video games. *Interactive Digital Software Association v. St. Louis County*, 329 F.3d 954 (8<sup>th</sup> Cir. 2003) enjoined enforcement of a county ordinance that barred the sale or rental to minors of video games with violent content. *Video Software Dealers Association v. Maleng*, 325 F. Supp. 2d 118 (W.D. Wash. 2004) barred enforcement of a state law that barred dissemination to minors of video games that included violence against “peace officers.”

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

*Bookfriends v. Taft*, 233 F.Supp. 932 (S.D. Ohio, W. Div. 2002) deemed speech with violent content as fully protected by the First Amendment and enjoined enforcement of Ohio's "harmful to juveniles" law that would have criminalized dissemination to a minor of speech with violent content. *Davis-Kidd Booksellers, Inc. v. McWherter*, 886 S.W. 2d 705 (Tenn. 1993) struck down a restriction on the sale to minors of material containing "excess violence." *Video Software Dealers Assn. v. Webster*, 968 F.2d 684 (8<sup>th</sup> Cir. 1992) held that "unlike obscenity, violent expression is protected by the First Amendment." *State v. Johnson*, 343 So. 2d 705, 710 (La. 1977) declared that prohibiting the sale of violent materials to minors exceeded the limits placed on regulation of obscene materials by the U.S. Supreme Court. *Sovereign News Co. v. Falke*, 448 F. Supp. 306, 400 (N.D. Ohio 1977), while remanded on other grounds, overturned a statute defining as "harmful to minors" material describing or representing "extreme or bizarre violence."

Finally, we believe that the rationale for restricting access to media with violent content - the belief that it causes actual violence - is based on evidence that is inconclusive at best. The Surgeon General's report, *2001 Youth Violence: A Report of the Surgeon General*, was an extensive study of the many causes of youth violence. In this lengthy report, the authors briefly addressed the impact of consumption of media on children's behavior. They concluded that despite a "diverse body" of research, it was not possible to come to a conclusion about the effect of media viewing, listening or playing on minors in either the short- or long-term.

Passage of this bill could prove costly. If a court declares it unconstitutional, there is a good possibility that the state will be ordered to pay the plaintiffs' attorneys' fees. In several recent successful challenges to video game legislation, the state agreed to pay to the plaintiffs more than \$300,000 in attorneys' fees in each litigation.

We ask you to please protect the First Amendment rights of all people of Oklahoma and oppose this legislation.