

# THE MEDIA COALITION INC

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## MEMO IN OPPOSITION TO HOUSE BILL 1536

American Booksellers  
Foundation for Free  
Expression

Association of American  
Publishers, Inc.

Comic Book Legal  
Defense Fund

Entertainment Merchants  
Association

Entertainment Software  
Association

Freedom to Read  
Foundation

Magazine Publishers of  
America, Inc.

Motion Picture  
Association of America,  
Inc.

National Association of  
Recording Merchandisers

National Association of  
Theatre Owners

Publishers Marketing  
Association

Recording Industry  
Association of America,  
Inc.

Chair  
Sean Devlin Bersell  
Entertainment Merchants  
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Immediate Past Chair  
Judith Krug  
Freedom to Read  
Foundation

Treasurer  
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American Booksellers  
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Michael A. Bamberger  
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The members of Media Coalition believe that Arkansas House Bill 1536 may threaten the distribution of First Amendment-protected material in Arkansas. The members of Media Coalition are trade associations and professional organizations that represent most of the publishers, booksellers, librarians, recording, motion picture and video game producers, recording, video and video game retailers and motion picture exhibitors in Arkansas 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, sex education material, and literary and artistic works.

H.B. 1536 would define a business as a "adult-oriented business" if a principal business purpose was the sale or rental of sexually explicit material or if it showed movies that predominantly included sexually explicit material or nudity regardless of whether it was in a sexual context. If a business is deemed a "adult-oriented business" it could not be located within 1000 feet of a residence, school, library, walking trail, place of worship, child care facility, playground or recreational area. The bill would also allow individual citizens to have a cause of action to enforce H.B. 1536.

The government has the power to regulate the "secondary effects" of sexually oriented businesses but the Supreme Court has established limits on this power. The regulation must be designed to further an important or substantial government interest; the governmental interest must be unrelated to the suppression of speech; and the regulation must be narrowly tailored to further the government interest in preventing the unwanted secondary effects. *City of Erie v. Pap's A.M.*, 529 U.S.277 (2000); *Barnes v. Glenn Theatre, Inc.*, 501 U.S. 560 (1991); *Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986).

It is questionable if H.B. 1536 would meet this test. Given the threshold to be deemed a "adult-oriented business" it is likely that some mainstream bookstores, video stores and movie theaters could be at risk for being subject to these regulations. However, there is little reason to believe these restrictions on such businesses will prevent the unwanted secondary effects that governments may seek to restrict. Conversely, H.B. 1536 would have a serious chilling effect on many mainstream retailers. The broad definition of "adult-oriented material" includes films such as *The Departed*, *Schindler's List*, *Short Cuts* or *Anchorman* and many photography and health books that could be considered a principal business purpose or a predominant type of fare to determine if a retailer is a "adult-oriented business" and would be subject to these onerous rules and

The 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, and motion picture exhibitors in the United States.

regulations. This creates a difficult situation for mainstream retailers. Many would drastically limit their inventory rather than be classified as a “adult-oriented business” and therefore, avoid the negative connotations that go with the label. Beyond the severe financial penalty, store owners fear that they would likely lose customers unwilling to shop at a “adult-oriented business.”

Please protect the First Amendment rights of all Arkansans and defeat or amend H.B. 1536.