

THE MEDIA COALITION INC

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DAVID HOROWITZ
Executive Director

February 20, 2007

American Booksellers
Foundation for Free
Expression

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

Association of American
Publishers, Inc.

Comic Book Legal
Defense Fund

Entertainment Merchants
Association

Re: Arkansas Senate Bill 182 - Request for Veto

Entertainment Software
Association

Dear Governor Beebe,

Freedom to Read
Foundation

The members of Media Coalition believe that Arkansas Senate Bill 182 is unconstitutional and threatens the distribution of First Amendment-protected material in Arkansas. Media Coalition members represent most of the publishers, booksellers, librarians, recording, film and video game manufacturers, and recording, video and video game retailers and film exhibitors in Arkansas and the rest of the United States.

Magazine Publishers of
America, Inc.

Motion Picture
Association of America,
Inc.

S.B. 182 bars the display of any material with content that is harmful to minors allowing an affirmative defense for books, magazines, or other material kept behind blinder racks. This provision is unconstitutional because it restricts the access of adults to material which is constitutionally protected as to them. It is also onerous for retailers.

National Association of
Recording Merchandisers

National Association of
Theatre Owners

Publishers Marketing
Association

Recording Industry
Association of America,
Inc.

The previous law barring display of material harmful to minors was found unconstitutional in *Shiple v. Long*, 454 F.Supp 2d 819 (E.D. Ark. 2004), a challenge brought by some members of Media Coalition. In the *Shiple* case, the Supreme Court of Arkansas held that "display" of harmful to minors material applies to the content of material, even if there is nothing objectionable about the cover and the content is not viewable. 359 Ark. 208, 220-21 (Ark. Sup. Ct. 2004). Given this definition of "display," U.S. District Court Judge Eisele ruled that the law violates the First and Fourteenth Amendments as overbroad and as a prior restraint of constitutionally protected material. S.B. 182 does not cure these constitutional infirmities and thus would again make it illegal for bookstores, libraries and newsstands to place such books, periodicals and other material on shelves even though they are constitutionally protected for adults.

Chair
Sean Devlin Bersell
*Entertainment Merchants
Association*

Immediate Past Chair
Judith Krug
*Freedom to Read
Foundation*

Treasurer
Chris Finan
*American Booksellers
Foundation for
Free Expression*

Additionally, S.B. 182 presents substantial practical difficulty for librarians

General Counsel
Michael A. Bamberger
*Sonnenschein Nath &
Rosenthal LLP*

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.

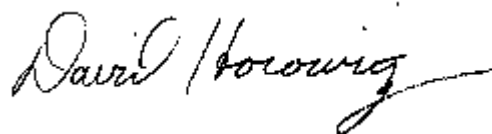
Governor Beebe
Page 2
February 20, 2007

and retailers of books, magazines, movies and music. The task of reviewing thousands of new items received by a store each month to determine what may be harmful to minors and must be blindered is difficult, time consuming for staff, and expensive for management. Then, requiring librarians and retailers to segregate such material behind blinder racks would be a significant practical problem. Large bookstores often carry hundreds of thousands of different books and could be forced to put scores or even hundreds of titles behind blinders. Also, stores and libraries would likely lose adult customers who may not want to purchase material without browsing.

Because it threatens the distribution of constitutionally protected works, S.B. 182 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 *Shipley v. Long*, more than \$60,000 in fees were paid 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 S.B. 182.

Sincerely,

A handwritten signature in black ink that reads "David Horowitz". The signature is written in a cursive style with a long horizontal flourish extending to the right.

David Horowitz,
Executive Director