

THE MEDIA COALITION INC

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Memo in Opposition to House Bill 40

House Bill 40 threatens to suppress books, magazines, recordings, videos and video games that are protected by the First Amendment. The members of Media Coalition, who represent most of the publishers, booksellers, librarians, recording, film and video game manufacturers, recording, video and video game retailers and film exhibitors in Illinois and the rest of the United States, have asked me to explain why it would have this effect.

House Bill 40 would classify as a sex offender anyone who has been convicted of single instance of selling or exhibiting to a minor material that is “harmful to minors.” The members of Media Coalition do not dispute the legislature's right to ban the sale to minors of material that is harmful to minors as those terms have been defined by the U.S. Supreme Court. But a retailer who has sold, rented or exhibited harmful material isn't necessarily a threat to the community. He or she could be someone who has made an honest mistake.

Determining whether something is harmful to minors is difficult. Juries in these cases are required to apply a three-part test to decide whether the material, taken as a whole, appeals to prurient interest of minors, is patently offensive for minors and lacks serious literary, artistic, political or scientific value. They are asked to weigh “community standards.” These works may contain nothing more racy than nude photographs or verbal descriptions of sexual conduct. As a result, there is always a possibility that a retailer will unknowingly sell a work that a jury later decides was harmful to minors.

H.B. 40 brands a retailer who has made an honest mistake in the same way it would someone who is guilty of sexually assaulting or murdering a child. For the rest of their lives, both must register by giving a full and thorough description of themselves with law enforcement authorities. The registration must be updated any time the person stays somewhere for five days or longer. Thus, someone who once sold a *Playboy* magazine or rented an “R” rated movie to a mature-looking 17-year-old would forever have to register their whereabouts and carry the stigma of being a “sex offender.”

Such an extreme and unfair penalty would have a severe chilling effect on the sale of works that are protected by the First Amendment. Rather than risk being identified as “sex offenders” and living with legal restrictions on where they can live, work or go, retailers would discontinue the sale of many works with sexual content that have serious literary, artistic or political value and are

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.

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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

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Theatre Owners

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Treasurer
Chris Finan
American Booksellers
Foundation for
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General Counsel
Michael A. Bamberger
Sonnenschein Nath &
Rosenthal LLP

constitutionally-protected for adults. The First Amendment rights of the people of Illinois would be severely curtailed.

It is unfair and dangerous to First Amendment rights to treat harmful to minors offenses in the same way as sexual offenses in H.B. 40. The members of Media Coalition urge you to remove them.

Thank you.