

# THE MEDIA COALITION INC

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## MEMO IN OPPOSITION TO SENATE BILL 300

The members of Media Coalition believe that Missouri Senate Bill 300 may threaten the distribution of First Amendment-protected material in Missouri. 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 retailers in Missouri 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.

S.B. 300 would define a business as a "sexually-oriented business" if 31 percent of revenue is generated from "sexually-oriented material." "Sexually oriented material" is defined as any visual material containing nudity, sexual activity or sado-masochistic abuse. If a business is deemed a "sexually oriented business" it can not admit any patron under 21 years old, nor hire anyone under 21, and may only operate from 10 a.m. to 10 p.m. Monday to Saturday and must close Sunday and all federal holidays. It would also allow local municipalities to enact further regulations of such businesses including licensing of employees.

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 S.B. 300 would meet this test. Given the threshold to be deemed a "sexually oriented business" it is likely that some mainstream book, music and video stores could be at risk for being subject to these regulations. However, there is little reason to believe these punishments on mainstream stores will prevent the unwanted secondary effects this bill seeks to reduce. Conversely, S.B. 300 would have a serious chilling effect on many mainstream retailers. The broad definition of "sexually oriented material" includes films such as *Schindler's List*, *Silence of the Lambs* or *Anchor Man* and many photography and health books that would count toward the 31% total to determine if a retailer is a "sexually

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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Expression

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Association

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General Counsel  
Michael A. Bamberger  
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oriented business” and would be subject to these onerous rules and regulations. This creates a difficult situation for mainstream retailers. Many would drastically limit their inventory rather than be classified as a “sexually-oriented business” and therefore, greatly restrict their hours of operation and limit their customers to those at least 21 years old. Also, many would prefer to 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 “sexually oriented business.”

Finally, the prohibition on anyone under 21 years old either working at or entering a “sexually-oriented business” is clearly overbroad. Unless material is legally obscene, it is unconstitutional to bar access by adults to material that is legal for adults. The government cannot restrict access to such material by creating an arbitrary age restriction.

Please protect the First Amendment rights of all Missourians and defeat S.B. 300.