

THE MEDIA COALITION INC

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Memo in Opposition to Montana House Bill 597

House Bill 597 threatens the distribution of First Amendment-protected books, magazines, recordings, films, video games and videos in Montana. The members of Media Coalition represent most of the publishers, booksellers, librarians, film, recording, and video game manufacturers, and recording, video and video game retailers and film exhibitors in Montana and the rest of the United States. They have asked me to explain their concern.

H.B. 597 would allow local governments to enact ordinances restricting the sale or display of material obscene for minors that are broader than the existing state law. It would also allow municipalities to change the definitions of what is obscene for minors, possibly in violation of the Constitution.

The members of Media Coalition do not produce or sell obscene material, nor do they dispute the right of the states to ban the sale to minors of material obscene for minors. However, they do produce, sell and exhibit First Amendment-protected books, magazines, films, recordings, videos and video games with sexual content. They are concerned by any law that would hinder the sale or exhibition of legal works.

Governments may restrict minors' access to some sexually explicit speech but it is a narrow range of material determined by a specific test. In the case of *Ginsberg v. New York*, 390 U.S. 629 (1968), the U.S. Supreme Court established a three-part test for determining whether material is "harmful to minors" ("obscene for minors" in Montana) and may therefore be banned for sale, display or exhibit to minors. Governments may also restrict the display of such material but without restricting adults' access to such material. See, *Virginia v. American Booksellers Assn., Inc.*, 488 U.S. 905 (1988). The present Montana law restricting the dissemination of material "harmful to minors" closely follows these Supreme Court decisions. If local governments were to enact ordinances that are more restrictive than the state law, they would inevitably go beyond what is permitted by the definition in *Ginsberg* and *Virginia v. American Booksellers Assn., Inc.* In turn this would force bookstores, record stores, movie theaters and video stores to either limit First Amendment-protected material in their inventories or to bring legal action to protect their right to do business.

H.B. 597 would allow local governments to change the definition of community standards by which material is judged to be illegal for minors.

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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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
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Present Montana law judges material on a statewide standard. H.B. 597 permits local governments to shrink the community to a local one. This would lead to chaos in the distribution of constitutionally protected works by permitting each county, town or smaller government division in which the materials are sold, rented or exhibited to define for itself which ones are "harmful to minors." Books, magazines, recordings, films and videos are delivered to wholesalers by national firms that would find it impossible, in any reasonable or economical way, to inquire into the standards of every community in which their works are distributed. The wholesaler, whose territory includes scores of communities, would face the same problem. If H.B. 597 becomes law, distributors and wholesalers will curtail the deliveries of material with sexual content, including non-obscene works, rather than risk mistaking local standards and distributing material that is later found to be obscene for minors.

The members of Media Coalition strongly urge you to defend the First Amendment rights of retailers and all the citizens of Montana and defeat this legislation.