

THE MEDIA COALITION INC

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Memo in Opposition to Oregon Assembly Bill 3511

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.

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Expression

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The members of Media Coalition believe that Assembly Bill 3511 likely violates the First Amendment rights of retailers and their customers. The members of Media Coalition represent most of the publishers, booksellers, librarians, recording, film and video game manufacturers, recording, video, and video game retailers and film exhibitors in Oregon and the rest of the United States.

A.B. 3511 would bar any person from selling or renting to a minor any “ultra-violent video game.” An “ultra-violent video game” is defined as any video game that contains any depiction of a serious injury to a human being in a manner that is especially heinous, cruel or atrocious.

This bill is clearly constitutionally suspect. Speech is presumed to be protected by the First Amendment unless it falls into a few very narrow classes. As the Supreme Court said in *Free Speech Coalition v. Ashcroft*, “As a general principle, the First Amendment bars the government from dictating what we see or read or speak or hear. The freedom of speech has its limits; it does not embrace certain categories of speech, including defamation, incitement, obscenity and pornography produced with children.” 535 U.S.1382, 1389 (2002). None of the types of speech cited by the Supreme Court include speech with violent content alone. Violent content in otherwise constitutionally protected material is not a permissible subject of government regulation for adults or minors.

Every court that has addressed this issue has held that speech with violent content, without exception, is constitutionally protected. A series of recent decisions has reaffirmed this legal doctrine. Laws barring sale or rental of video games with violent content to minors were enacted in 2005-6 in California, Illinois, Louisiana, Michigan, Minnesota and Oklahoma and each was successfully challenged in federal court. *See ESA v. Blagojevich*, 2006 WL 3392078 (7th Cir. Nov. 27, 2006) upholding 404 F. Supp. 2d 1051 (N.D. Ill. 2005); *VSDA v. Schwarzenegger*, 401 F. Supp. 2d 1034 (N.D. Cal. 2005) (granting preliminary injunction); *ESA v. Foti*, 451 F. Supp. 823 (M.D. La. 2006) (granting a permanent injunction); *ESA v. Granholm*, 426 F. Supp. 2d 646 (E.D. Mich. 2006) (granting permanent injunction); *ESA v. Hatch*, 443 F. Supp. 2d 1065 (D. Minn. 2006) (granting permanent injunction (since re-captioned *ESA v. Swanson*)); *EMA v. Henry*, 2006 WL 2927884 (W.D. Okla. 2006) (granting a preliminary injunction). Other recent decisions that have addressed this issue have held that speech with violent content, without exception, is constitutionally protected. *American Amusement Machine Ass’n v. Kendrick*, 244 F.3d 572 (7th

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.

Cir. 2001), *cert. denied*, 122 S.Ct. 462 (2001) enjoined enforcement of an Indianapolis ordinance that limited minors' access to violent arcade video games. *Interactive Digital Software Association v. St. Louis County*, 329 F.3d 954 (8th Cir. 2003) enjoined enforcement of a county ordinance that barred the sale or rental to minors of video games with violent content. *Video Software Dealers Association v. Maleng*, 325 F. Supp. 2d 1180 (W.D. Wash. 2004) barred enforcement of a state law that barred dissemination to minors of video games that included violence against "peace officers."

Passage of this ordinance could prove costly. If a court declares it unconstitutional, there is a good possibility that the state will be ordered to pay the plaintiffs' attorneys' fees. In a recent successful challenge of a similar video game law, the state agreed to pay the plaintiffs more than \$550,000 in attorneys' fees.

Please protect the First Amendment rights of all people of Oregon and defeat A.B. 3511.