

THE MEDIA COALITION INC

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February 27, 1997

Hon. Carol Springer
Chair
Senate Rules Committee
1700 West Washington
Phoenix, AZ 85007

Re: Senate Bill 1433

Dear Senator Springer,

Both as introduced and as recently amended by the Senate Family Services Committee, Arizona Senate Bill 1433 violates the First Amendment by banning the rental or display to minors of CD-ROM games or video games with violent content. The members of Media Coalition are trade associations representing most of the book and magazine publishers, booksellers, librarians, magazine distributors, recording and video game manufacturers, and recording and video retailers in Arizona and the rest of the United States. They have asked me to explain their concern.

Violent content in otherwise constitutionally protected material is not a permissible subject of regulation. Every court that has addressed this issue has held that violent content is constitutionally protected speech. *Davis-Kidd Booksellers, Inc. v. McWherter*, Chancery Court, 20th Judicial District, Case No. 90-1893-III (I), February 14, 1992 struck down a restriction on the sale to minors of material containing “excess violence.” *Video Software Dealers Association v. Webster*, 773 F. Supp. 1275 (W.D. Mo. 1991) held that “unlike obscenity, violent expression is protected by the First Amendment. *State v. Johnson*, 343 So. 2d 705, 710 (La. 1977) declared that prohibiting the sale of violent materials to minors exceeded the limits placed on regulation of obscene materials by the U.S. Supreme Court. *Sovereign News Co. v. Falke*, 448 F. Supp. 306, 400 (N.D. Ohio 1977) overturned a statute defining as “harmful to minors” material describing or representing “extreme or bizarre violence.”

The regulation of violent material is not made permissible by adding it to the type of regulation at issue in *Ginsberg v. New York*, 390 U.S. 629 (1968) and *Miller v. California*, 413 U.S. 15 (1973). Both *Ginsberg* and *Miller* involved the regulation of sexually explicit material that may be constitutionally regulated.

Because it threatens the distribution of constitutionally-protected works, S.B. 1433 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.

Please protect free speech by rejecting S.B. 1433.

Thank you.

Sincerely yours,

Christopher Finan
Executive Director