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Media Coalition Submits Testimony to Hawaii Senate Tourism Committee Ahead of Hearing on Bill to Hold Publishers Liable for Readers' Actions

March 22, 2011 (NEW YORK) – Media Coalition submitted [testimony](#) to Hawaii's Senate Committee on Tourism ahead of a hearing today, urging its members to respect the First Amendment by amending or opposing [House Bill 548 HD 3](#). The bill would impose civil liability on writers and publishers of travel guides that depict or describe an attraction or activity if a reader suffers an injury or dies after trespassing to reach the site. The bill also imposes on guidebooks and websites a duty to warn readers of any dangerous conditions "typical to the area" where the attraction or activity is located. If enacted, the legislation would apply to traditional print media like books and magazines as well as to websites and advertisements.

Third-party liability has a substantial chilling effect on publishers, authors, website operators, and other speakers, and the requirement that authors warn readers of potential dangers presents additional constitutional problems. "If this legislation passes, authors and publishers will be hesitant to produce Hawaiian travel guides for fear that they will be held responsible for the actions of tourists and private landowners," said David Horowitz, executive director of Media Coalition. "We understand that Hawaii's legislators are concerned about the well being of tourists, but shifting liability onto writers and publishers is not the answer." Courts have repeatedly barred or dismissed suits seeking civil damages against content creators and distributors as a result of an injury the victim claims was facilitated by speech. Even in cases where a person mimicked what he read or saw, courts have been unwilling to suspend the First Amendment and hold a writer liable for the actions of her audience.

The mandate that guidebooks and websites have a "duty to warn" readers about potentially dangerous conditions is also likely unconstitutional as compelled speech. "Guidebooks and websites are not products like aspirin or shampoo. They are protected by the First Amendment, and the state cannot tell authors or publishers how they must describe scenic locations and activities in Hawaii," Horowitz added. Courts have struck down efforts by governments to put labels or warnings on speech and requirements that speakers offer other points of view in the interest of balance.

Executive Director: David Horowitz **Chair:** Judith Platt, Association of American Publishers
Immediate past Chair: Chris Finan, American Booksellers Foundation for Free Expression **Treasurer:** Vans Stevenson, Motion Picture Association of America
General Counsel: Michael A. Bamberger, SNR Denton US LLP

Media Coalition has [submitted testimony](#) opposing H.B. 548 at each hearing since it was originally introduced in late January. The testimony advises lawmakers that this legislation is unconstitutional and based on the relevant case law and urges them to respect the First Amendment rights of publishers, authors, and website operators by amending or opposing the legislation. Prior to today's hearing in the Senate Judiciary Committee, the bill was heard in the House Tourism Committee on January 31 and again February 7; in the House Water, Land, and Ocean Resources Committee on February 14; and in the House Judiciary Committee on March 1. Three other bills that would have imposed third-party liability on publishers and authors - H.B. 552, S.B. 1207 and 1208 - have all been deferred or have died for this legislative session. Media Coalition's testimony in opposition to S.B. 1207 is available on its [website](#) along with further information on the proposal, including each piece of testimony on H.B. 548 submitted thus far.

Media Coalition is a trade association that defends the First Amendment right to produce, sell, and consume the broadest possible range of opinion and entertainment in books, movies, magazines, recordings, DVDs, and video games. More information on Media Coalition's efforts on behalf of content producers and distributors is available at mediacoalition.org.

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