

# THE MEDIA COALITION INC

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## Memorandum in Opposition to Illinois House Bill 4078

The members of The Media Coalition believe that House Bill 4078 probably violates the First Amendment rights of producers and retailers. The trade associations and other organizations who comprise Media Coalition have many members throughout the country including Illinois: book and magazine publishers, booksellers and librarians as well as manufacturers and retailers of recordings, films, videos and video games and their consumers.

H.B. 4078 would require that any person who has been elected to any office who is convicted of any kind of felony or is convicted of a misdemeanor involving a violation of the oath of office must forfeit any financial reward from any book, movie, television, radio program, or Internet story detailing the crime. The requirement that any economic gain be forfeited extends to the term of a prison sentence, period of probation, parole, or mandatory supervised release.

The U.S. Supreme Court has repeatedly held that a content-based restriction is presumptively invalid. *See, e.g. R.A.V. v. City of St Paul*, 505 U.S. 377, 382 (1992). In 1991, it ruled that a law similar to H.B. 4078, New York's "Son of Sam" law, was unconstitutional for several reasons, *Simon and Schuster, Inc. v. Members of the New York State Crime Board*, 502 U.S. 105. The statute was invalid because it was not content-neutral, because it singled out speech on a specific topic and because it imposed a financial burden on such speech that was not placed on speech generally nor on the public official's other income. The court found that New York did not have a compelling state interest in limiting compensation to crime victims solely to the proceeds of the criminal's speech. Finally the court ruled that the law was not sufficiently narrowly tailored in addressing the state's compelling interest. More recently the California Supreme Court adopted the same reasoning in finding unconstitutional a section of that state's "Son of Sam" law, *Keenan v. Superior Court of Los Angeles City*, 27 Cal. 4<sup>th</sup> 413 (2002).

This legislation shares the same constitutional infirmities as the New York and California laws. First, it clearly is a content-based restriction on speech and thus is immediately constitutionally suspect. It would only place a financial burden on the speech of a convicted public official about crime for which he or she was convicted. Second, it is unlikely that the state can satisfy the compelling state interest requirement to justify for this legislation. The state may have an interest in

The Media Coalition is a trade association that defends the First Amendment rights of publishers, booksellers, librarians, recording, motion picture and video games producers, and recording, video, and video game retailers and consumers in the United States.

American Booksellers  
Foundation for Free  
Expression

Association of American  
Publishers, Inc.

Comic Book Legal  
Defense Fund

Entertainment Consumers  
Association

Entertainment Merchants  
Association

Entertainment Software  
Association

Freedom to Read  
Foundation

Independent Book  
Publishers Association

Magazine Publishers of  
America, Inc.

Motion Picture  
Association of America,  
Inc.

National Association of  
Recording Merchandisers

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preventing an elected official convicted of a crime from profiting from that crime but the bill does not allow the state to seek forfeiture of other income derived in any way from the crime. If the state's interest is in recovering the cost of a prosecution, why does the bill not apply to all income of the convicted official? Third, H.B. 4078 is not sufficiently narrowly tailored to survive First Amendment scrutiny. It would punish speech by a convicted public official that touches on any detail of the crime even if it is a minor part of an otherwise extensive autobiography but it would not apply to a public official's memoir that detailed crimes for which he or she had not been convicted or even accused.

If you would like to discuss further our position on this bill, please contact David Horowitz at 212-587-4025 #11 or at [horowitz@mediacoalition.org](mailto:horowitz@mediacoalition.org).

Please protect the First Amendment rights of all producers and retailers of content in Illinois and reject this legislation.