



AMERICANS for TAX REFORM

722 12th Street N.W.

Fourth Floor

Washington, D.C.

20005

T: (202) 785-0266

F: (202) 785-0261

www.atr.org

Governor Jon Huntsman, Jr.
Utah State Capitol Complex
350 North State Street, Suite 200
PO Box 142220
Salt Lake City, Utah 84114-2220

March 26, 2009

Dear Governor Huntsman:

I wanted to write a note to you on behalf of Utah taxpayers commending you for the veto of H.B. 353. In vetoing such a clearly unconstitutional bill you have spared the taxpayers of your state the fate of too many others, picking up the legal tab for those that challenge the bill as such.

Your veto spared not only the legal costs states like the now nearly bankrupt California (\$282,794) and Illinois (\$545,078), but the harm to retail outlets in these difficult economic times, as well as the interference of parental rights by the state. While everyone strives to keep inappropriate materials out of the hands of children, the arbiter of what is appropriate for a child is the duty and right of parents, not government. H.B. 353 attempted to usurp that duty, infringe on that right and would have harmed Utah businesses.

I know there is a push by well-intentioned groups for a special session of the state legislature to override your veto, but that is a bad idea. Beyond the obvious First Amendment violation this bill presents and the dubious nature of making legally binding voluntary industry ratings, H.B. 353 violates the Dormant Commerce Clause of the Constitution as well. I have attached a one page explanation of how, as well as a list of the legal fees paid for by taxpayers of the various states and localities that have attempted similar unconstitutional legislation.

As you know, Americans for Tax Reform opposed passage of H.B. 353 and supported a veto. I thank you for standing up for the taxpayers of Utah in this matter and encourage you to stand strong and fight against attempts to override that veto.

Opposition, well intended or not, to this bill does not supersede the Constitutional rights of Americans. I congratulate you again for your just and courageous veto of H.B. 353 and stand with you in the hope that the legislature does not attempt to override and pass this unconstitutional and costly bill.

Onward,

Grover Norquist
President,
Americans for Tax Reform

The Perils of H.B. 353 and the Cost to Taxpayers

H.B. 353 violates the Dormant Commerce Clause of the Constitution.

- The Dormant Commerce Clause prevents states from passing legislation that obstructs the free flow of interstate commerce.
- The Bill would be struck down under the Commerce Clause because it would place an unconstitutional burden on retailers' ability to communicate with individuals who live outside of Utah regarding the video game rating system and the retailer's sales policies.
- Even if it were narrowly construed to apply only to advertisements viewed in Utah, the Bill would still impose an unconstitutional burden on interstate commerce that far exceeds its putative local benefits.
- In order to avoid the risk of being sued under H.B. 353, retailers would have to alter their nationwide advertising campaigns or suspend them entirely. H.B. 353 thus places a substantial burden on retailers' efforts to communicate with citizens of other states regarding transactions that take place wholly outside Utah's borders.
- Courts have consistently invalidated state advertising restrictions that place such burdens on nationwide advertising.
- Constitutional concerns are heightened in this case because H.B. 353 would apply even to advertisements made over the Internet, a medium that by its interstate nature cannot be regulated by a state.

Where states have tried similar legislation taxpayers get stuck with the bill

Everywhere similar unconstitutional legislation has been introduced it has been struck down by the courts as unconstitutional and states and localities have been ordered to pay the legal bills of the video game industry. There is every reason to think that, should this bill become law, Utah would be added to the list below of taxpayer dollars paid to defend unconstitutional laws.

Cost to Taxpayers ordered by courts so far		
Date	State	Amount
8/5/2008	California	282,794
7/8/2008	Oklahoma	56,367
6/30/2008	Minnesota	65,000
9/1/2007	Michigan	182,000
11/30/2006	Louisiana	91,900
11/29/2006	Illinois	34,550
8/11/2006	Illinois	510,528.00
7/15/2004	Washington	344,000
9/25/2002	St. Louis County	180,659
3/1/2001	Indianapolis	318,000
	Total	2,065,798