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**IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF ALASKA**

**AMERICAN BOOKSELLERS FOUNDATION FOR FREE  
EXPRESSION; AMERICAN CIVIL LIBERTIES UNION  
OF ALASKA; ASSOCIATION OF AMERICAN  
PUBLISHERS, INC.; COMIC BOOK LEGAL DEFENSE  
FUND; ENTERTAINMENT MERCHANTS  
ASSOCIATION; FREEDOM TO READ FOUNDATION;  
DAVID & MELISSA LLC d/b/a Fireside Books; BOOK  
BLIZZARD LLC d/b/a Title Wave Books; BOSCO'S, INC.;  
DONALD R. DOUGLAS d/b/a Don Douglas Photography;  
and ALASKA LIBRARY ASSOCIATION,**

**Plaintiffs,**

**v.**

**DANIEL S. SULLIVAN, in his official capacity as  
ATTORNEY GENERAL OF THE STATE OF ALASKA,**

**Defendant.**

Civil No. 3:10-cv-00193-RRB

**DECLARATION OF CHRISTOPHER FINAN**

**UNITED STATES DISTRICT COURT  
DISTRICT OF ALASKA**

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**Defendant.**

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**DECLARATION OF CHRISTOPHER FINAN**

I, Christopher Finan, do declare:

1. I am the President of the American Booksellers Foundation for Free Expression (“ABFFE”), a plaintiff in this action. I submit this declaration on behalf of ABFFE, its members, and their customers, in support of the plaintiffs’ request for a declaration of unconstitutionality and preliminary and permanent injunctive relief prohibiting enforcement of AS 11.61.128 as amended by SB 222 (the “Amended Act”), and as prior to amendment (the “Prior Act”).

2. ABFFE is incorporated in Delaware and has its principle place of business in New York, New York. ABFFE is affiliated with the American Booksellers Association (“ABA”), the leading association of general interest bookstores in the United States with over 1,300 bookstore members, including 11 in the State of Alaska.

3. ABFFE was formed in February 1990 to combat escalating threats to the First Amendment freedoms of booksellers, publishers, librarians and other distributors of books, magazines, records, films and videos. The purpose of ABFFE is to inform and educate booksellers, other members of the book industry, and the public about the dangers of censorship, as well as to promote and protect the free expression of ideas, particularly in the choice of reading materials.

4. ABFFE has traditionally been a strong supporter of the First Amendment and has been at the forefront of insuring public access to information. Since its inception, ABFFE has been an active champion of First Amendment rights through its support of the National Endowment for the Arts and the Salman Rushdie Defense Committee USA, its service as *amici* in a number of Supreme Court cases involving First Amendment issues, its distribution of educational materials on current First Amendment issues, its production and distribution of materials to celebrate Banned Books Week each year, and various other efforts.

5. ABFFE has hundreds of bookseller members who are located from coast to coast, as well as in the State of Alaska, many of whom sell materials that contain depictions of nudity or sexual conduct, and which deal frankly with the subject of human sexuality. ABFFE's members are not "adult bookstores."

6. Many ABFFE member bookstores are active users of the Internet. Over 1,000 ABA member bookstores currently have active websites on the World Wide Web ("Web"), and many who have such sites are members of ABFFE. Indeed, some bookstores have no physical location and rely on their Internet websites to make their products available to consumers. This is not surprising, given that books have become the second largest selling item on the Internet (software being the largest selling item).

7. Bookstores with websites utilize the Internet in several ways. Many member bookstores use the Internet and electronic communications to obtain information and excerpts of books from publishers. For example, member booksellers may review popular titles such as *Sex: A Natural History* by Joann Ellison Rodgers, *The World of Picasso* by Lael Tucker Wertebaker, and *The Joy of Sex* by Alex Comfort, which include images depicting nudity and sexual conduct. Some member bookstores also have their own web pages that discuss the contents of books sold in stores. Obviously, bookstores use their websites to list and sell books. They also use their websites to promote events, to advertise book signings, and to share information with other bookstores about various titles. For many small bookstores, the Internet offers an inexpensive marketing tool that they cannot replace. A small bookstore might not be able to take out a full-page advertisement in a national newspaper, yet through the Internet that same bookstore can advertise nationally (indeed, globally). In addition, while a television or newspaper advertisement might be overlooked by many readers not interested in purchasing books, the individuals accessing a bookstore website do so specifically because they are interested in making a book purchase or obtaining information about books.

8. ABFFE itself has a website, located at <http://www.abffe.com/> which discusses challenged books and has links to other websites on the Internet.

9. The online information that ABFFE members provide serves both adults and minors.

10. Online users anywhere in the world can access the content provided by ABFFE and its members on the Web and via e-mail.

## **Fear Of Prosecution Under the Amended Act**

11. ABFFE members' right to learn about, acquire and distribute material depicting nudity and sexual conduct, and their patrons' right to purchase such materials, will be seriously infringed by the Amended Act if it is not enjoined because ABFFE members and the publishers with whom they transact business will be forced to self-censor or risk prosecution under the Amended Act.

12. ABFFE members own and operate five bookstores in the State of Alaska. The Amended Act would affect the sale and display of books in bookstores by retailers in Alaska. Application of the "harmful to minors" restriction would restrain and ultimately preclude the otherwise lawful sale of, and dissemination to, adults and minors of popular, acclaimed, and socially important books, including art, photography and sex education books that contain images of nudity or sexual conduct, such as *It's Perfectly Normal: A Book about Changing Bodies, Growing Up, Sex, and Sexual Health* by Robie Harris, *The Life and Times of Renoir* by Janice Anderson, and even *Where's Waldo?* by Martin Handford.

13. In addition to affecting retail bookstores within the state of Alaska, the Amended Act also affects bookstores' websites nationwide. Users of the Internet can often access actual images from these books at bookstores' websites. ABFFE bookstore members often also offer links through their websites to the websites of publishers, who also often place images from their books on the Internet. Some of the depictions in those excerpts would invariably be subject to the Amended Act.

14. Many bookstores use their websites to list their available titles and show book covers. Some of these titles or book covers may contain material which depicts sexual activity or sexual excitement, making their appearance on the Web subject to the Amended Act. For

example, the celebrated book *The Joy of Sex* by Alex Comfort contains images depicting sexual activity, and books examining famous art often contain nudity.

15. As shown by the banned books materials on ABFFE's website, throughout United States history art, photography and sex education books that contain images of nudity and sexual conduct have been banned by different local communities who labeled them "harmful". ABFFE fears that the Amended Act essentially works to ban dissemination of many books, both in stores and over the Internet.

#### **Internet Use by ABFFE Members is Interstate in Nature**

16. Much of the Internet use by booksellers is interstate in nature. For example, any bookseller's Web page can be accessed by Internet users not only throughout the United States, but throughout the world. Similarly, ABFFE members from across the country communicate with one another, as well as with Internet users across the country, via e-mail. Moreover, ABFFE members cannot effectively prevent their websites or discussion groups from being accessed by Alaska users. Thus, both in-state and out-of-state ABFFE users -- who post information which may be considered "harmful to minors" as established by the Amended Act on websites, chat rooms and discussion groups -- must comply with the Amended Act or risk criminal prosecution in Alaska.

17. The only certain method of compliance with the Amended Act is for ABFFE and its members to exclude from their websites anything which might possibly fall under the purview of the Amended Act, thus severely constricting the usefulness and informational content of the websites. ABFFE strongly believes that adults are constitutionally entitled to unrestricted access to all First Amendment-protected material, even that which contains sexual activity or excitement.

18. ABFFE has the same concerns as to its website, only more so, were the Amended Act enjoined and the Prior Act, of which it was previously unaware, reinstated. The Prior Act does not consider the material taken as a whole and applies to material having serious value to minors.

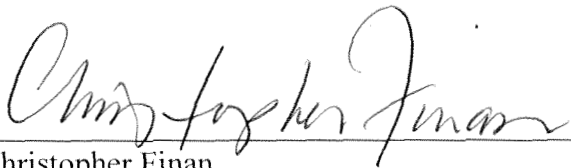
19. Both the Internet and retail locations are important sources of business for ABFFE members. As discussed above, booksellers conduct business over the Internet in a variety of ways. If the Amended Act and the Prior Act are not enjoined and ABFFE members are forced to self-censor, they will suffer immeasurable injury through significant loss of sales and recognition otherwise generated by use of their Internet websites with respect to both censored and uncensored materials and resources. Additionally, if a bookstore must self-censor certain books, it will likely lose the profits from the sale of those books generated both by its presence in the store and by the book's listing on the bookseller's website. It will likely lose even more business because it will appear that the bookstore has an incomplete or inadequate listing of books in its inventory. Customers will choose to buy their books elsewhere.

**Conclusion**

20. For all the reasons stated above, ABFFE and its members fear prosecution under the Amended Act and the Prior Act . If the Amended Act and the Prior Act are not enjoined, we will be forced either to self-censor our communications to a great degree or to risk criminal liability.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 24<sup>th</sup> day of August 2010.

  
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Christopher Finan