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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 DAVID CHEEZEM**

**UNITED STATES DISTRICT COURT  
DISTRICT OF ALASKA**

**AMERICAN BOOKSELLERS FOUNDATION FOR FREE  
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**Plaintiffs,**

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**Defendant.**

Civil No.

**DECLARATION OF DAVID CHEEZEM**

I, David Cheezem, do declare:

1. I am the co-owner of David & Melissa LLC d/b/a Fireside Books (“Fireside Books”), an Alaska LLC with its principal place of business in Palmer, Alaska and a plaintiff in this action. I submit this declaration on behalf of Fireside Books, its employees, customers, and the users of its website, 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. Fireside Books operates a community bookstore in Palmer, Alaska, which carries a broad range of new and used books and recordings. It stocks over 10,000 titles in its “brick and

mortar” store. It also operates a website ([www.goodbooksbadcoffee.com](http://www.goodbooksbadcoffee.com)) (the “Website”) which currently offers a numbers of titles, including books, videos, magazines, books on tape, music and calendars. The titles that Fireside Books carries include both fiction and non-fiction works about sexual relationships, both heterosexual and homosexual, many of which include depictions.

3. The Website announces and describes recent books and other materials of interest. The Website also highlights upcoming events and offers links to other websites. The information on the Website is both written and pictorial, and includes book covers and excerpts. Some of the books described or discussed on the Website relate to sexual themes and topics. Some of the material shown on the Website may be considered by some to be “harmful to minors.”

4. Were the Amended Act to be enforced, Fireside Books would be “chilled” in determining what materials would be carried in its store and featured and described on its website, and how they would be featured and described.

#### **FEAR OF PROSECUTION UNDER THE AMENDED ACT**

5. Plaintiff Fireside Books fears prosecution under the Amended Act because it carries in its store, and its Website on occasion contains material that may be considered by some to be “harmful to minors,” and this material may be accessed by minors who browse its store or its generally-accessible Website.

6. Fireside Books uses its Website in part to list 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. Books which appear or have appeared on the Website include *The Absolutely True Diary of a Part-Time Indian* by Sherman Alexie, and *The Fountain* by Darren Aronofsky and Kent Williams.

7. Under the Amended Act, employees of Fireside Books could be prosecuted for displaying or selling books and other materials in its store, or for posting excerpts, book covers and other material to Fireside Books' Website. In order to ensure that Fireside Books does not make any "matter" that is "harmful to minors" available to a minor, it will be forced to eliminate nudity and sexually-themed images and excerpts from its store and its Website entirely. Because the Amended Act is vague as to what matter is "harmful to minors," and what may be considered harmful to a younger minor may not be considered harmful to an older minor, Fireside Books would be forced to eliminate all matter in its store and on its website that could be harmful to even the youngest minor capable of browsing its store or its Website.

8. In addition, the Amended Act criminalizes the dissemination of material that is "harmful to minors" even where the person disseminating that material does not know the character or content of the material or that the recipient is under 16. My employees and I fear prosecution for unknowingly distributing material which we may not know could be considered "harmful to minors" to a person whom we may not know is under 16.

9. Fireside Books seeks to present a wide selection of important books and other materials to the community it serves, including books and materials that are protected by the First Amendment. The Amended Act would seriously curtail its ability to do so.

10. I have the same concerns as to my website, only more so, were the Amended Act enjoined and the Prior Act, of which I 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.

11. If the Amended Act and the Prior Act are not enjoined, Fireside Books is also likely to suffer lost profits and decreased patronage. It will be forced to self-censor the books

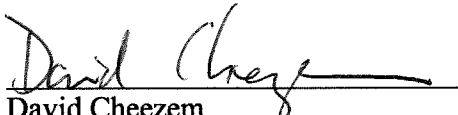
and content in its store and on its Website, thereby presenting its customers with an incomplete or inadequate presentation of books and other materials.

### CONCLUSION

12. If the Amended Act and the Prior Act are not enjoined, Fireside Books, its employees, customers, and the users of its Website will be irreparably harmed. Fireside Books will be forced either to limit the content available in its store and on its Website, denying its customers and the users of its Website access to Constitutionally-protected material, or risk criminal liability.

I declare under penalty of perjury that the above is true and correct to the best of my knowledge.

Executed on this 27  
day of August, 2010.

  
David Cheezem

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