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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 ONGLEY

**UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA**

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Defendant.

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DECLARATION OF DAVID ONGLEY

I, David Ongley, do declare:

1. I am the President of the Alaska Library Association (“AKLA”), a plaintiff in this action. I submit this declaration on behalf of AKLA, its members, and the librarians, employees and users of its member libraries and their websites, 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. AKLA is a professional association for individuals who work in libraries throughout Alaska. AKLA has more than 400 members, including both individuals and institutions. Members include university and school libraries, public libraries, special libraries,

government and court libraries, commercial vendors of books and other library media, electronic resources, equipment, services and supplies, and the employees of these institutions. Many of the libraries who are members of AKLA or at which members work carry materials with depictions which, though constitutionally protected, could be deemed harmful to minors and therefore subject to the Act. Many of the libraries maintain websites. In addition, AKLA itself has a website, located at <http://www.akla.org/>, which discusses challenged books and has links to other websites on the Internet.

3. Plaintiff AKLA and its library and librarian members serve as both access and content providers on the Internet. Because the Internet offers their patrons a unique opportunity to access information for free, many libraries provide their patrons with facilities that patrons can use to access the Internet. Many libraries also have their own websites and use the internet to provide access to their online book catalogues, to post information about current events, to sponsor chat rooms, to provide textual information or art, or to post online versions of materials from their library collections. Patrons can, for example, access the websites of certain libraries from anywhere in the country to peruse the libraries' book catalogues, review an encyclopedia reference, or check a definition in the dictionary.

4. Some of the materials provided or made available by libraries contain nudity or sexual content. For example, AKLA member libraries' online book catalogues include such works as *Egon Schiele: Drawings and Watercolors* by Jane Kallir, and *Our Bodies, Ourselves* by the Boston Women's Health Book Collective.

FEAR OF PROSECUTION UNDER THE AMENDED ACT

5. AKLA members' right to learn about, acquire and distribute material describing or depicting nudity and sexual conduct, and their patrons' right to such materials, will be

seriously infringed by the Amended Act if it is not enjoined because AKLA members will be forced to self-censor or risk prosecution under the Amended Act.

6. AKLA has more than 400 members in the State of Alaska. The Amended Act would affect the availability of books in libraries in Alaska. Application of the “harmful to minors” restriction would restrain and ultimately preclude the otherwise lawful dissemination to minors of such popular, acclaimed, and socially important books as *The World of Picasso* by Lael Tucker Wertenbaker and *The R. Crumb Coffee Table Art Book* by R. Crumb.

7. The members of plaintiff Alaska Library Association offer to their borrowers thousands of books, both in print and ebook form, as well as DVDs, receiving new material on a regular basis. There is no practical way for them to read or review each title completely. Since there is no requirement in the Amended Act that Alaska Library Association members and their employees know the character and content of the material that the library is lending, nor that they know that the recipient is under 16, they are at risk of prosecution for unknowingly distributing material which may be deemed to be harmful to minors to persons they do not know to be under 16, a risk which will likely chill their desire to lend or purchase protected materials. The chill is heightened by the fact that ordinary library staff are liable under the Amended Act.

Internet Use by AKLA Members is Interstate in Nature

8. Much of the Internet use by libraries is interstate in nature. For example, any library’s Web page can be accessed by Internet users not only throughout the United States, but throughout the world. Similarly, AKLA members communicate with Internet users across the country, via e-mail. Thus, both instate and out-of-state AKLA 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.

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

10. AKLA has the same concerns as to its website and its members' websites, 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.

11. If the Amended Act and the Prior Act are not enjoined and AKLA members are forced to self-censor, they and the librarians, employees and users of its member libraries and their websites will suffer immeasurable injury. The users of its libraries will be denied access to constitutionally protected materials. Its members, themselves, and their librarians and employees will be faced with prosecution for performing their duties and displaying and disseminating such constitutionally protected materials.

CONCLUSION

12. For all the reasons stated above, AKLA's members fear prosecution under the Amended Act and the Prior Act. If the Amended Act and the Prior Act are not enjoined, they will be forced either to self-censor materials available on their websites and in their libraries or to 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 30
day of August, 2010.

A handwritten signature in black ink that reads "David Ongley". The signature is written in a cursive style with a prominent loop at the end of the last name.

David Ongley

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