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*Attorney for Defendant John J. Burns, in his
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**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.

JOHN J. BURNS, in his official capacity as ATTORNEY GENERAL OF
 THE STATE OF ALASKA

Defendant.

CIVIL ACTION
 NO.:

3:10-cv-00193-
 RRB

STIPULATED [REDACTED] ORDER FOR CERTIFICATION

The Plaintiffs have brought a challenge to an Alaska statute, AS 11.61.128. Defendant John J. Burns, in his official capacity as Attorney General for the State of Alaska, moved this Court to certify questions of law regarding the interpretation of AS 11.61.128 to the Alaska Supreme Court. This Court granted the motion for certification and directed the parties to confer and file a stipulated proposed order for certification. The parties submit this proposed order, with the Plaintiffs reserving the right to argue that certification is not appropriate.

It is respectfully requested that the Alaska Supreme Court answer the following questions.

The facts relevant to the Questions Certified are pled in the Complaint, a copy of which is being transmitted with this Order for Certification.

- A. What elements are included in the crime defined by AS 11.61.128?
1. Must the state prove that the defendant knew that the distributed material depicted the actual or simulated conduct set forth in AS 11.61.128(a)(1)?
 2. Must the state prove that either (i) the defendant knew that the recipient of the material was a child under 16 years of age, or (ii) the defendant believed that the recipient of the material was a child under 16 years of age?
 3. If the defendant was not physically in Alaska at the time the material was distributed, must the state prove that the defendant knew that the recipient of the material was in Alaska?
 4. Does AS 11.61.128 apply only when a defendant purposefully distributes the material directly to a specific child (or children) under 16 years of age (or to a specific person (or persons) whom defendant believes to be a child (or children) under 16 years of age), so that the Statute would not apply to material posted on a website, distributed through a mailing list or listserv, communicated in an open chat room, or through any similar communication?
- B. What material is covered by AS 11.61.128?

1. Does the word “depicts,” as used in AS 11.61.128, refer only to non-verbal material, such as photographs, drawings, or paintings? Can a defendant be convicted under the Statute for distributing material that verbally describes such conduct, through spoken or written words?
2. AS 11.61.128(c) provides that material must be “taken as a whole.”
 - a. If the AS 11.61.128 is limited to non-verbal depictions, such as photographs, paintings, and drawings, when such depictions appear in a work which also contains spoken or written words (such as an illustrated book), does the material “taken as a whole” encompass the entire work, including the spoken or written words?
 - b. How does “taken as a whole” apply to electronic communications? For example, if AS 11.61.128 can apply to material on a website, does “taken as a whole” refer to the entire website? If AS 11.61.128 can apply to material transmitted by email, does “taken as a whole” refer to all of the material transmitted in a single email, to which there may be many attachments?
3. Does AS 11.61.128 apply only where the material distributed has no serious literary, artistic, educational, political, or scientific value for any legitimate minority of normal, older adolescents?

Dated: April 29, 2011

/s/ Michael A. Bamberger
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SO ORDERED: ~~May~~ ^{April} 29, 2011

RS/RRB
RALPH R. BEISTLINE
UNITED STATES DISTRICT JUDGE