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*Attorneys for Plaintiffs*

**UNITED STATES DISTRICT COURT  
 DISTRICT OF ALASKA**

**AMERICAN BOOKSELLERS FOUNDATION FOR FREE  
 EXPRESSION, et al.**

**Plaintiffs,**

**v.**

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

**Defendant.**

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

**DECLARATION OF MICHAEL A. BAMBERGER**

MICHAEL A. BAMBERGER declares:

1. I am a member of SNR Denton US LLP, attorneys for Plaintiffs, and have been admitted *pro hac vice* in this action. I have personal knowledge of the facts set forth in this Declaration, which I make to advise the Court of recent proceedings in *American Booksellers Foundation for Free Expression v. Coakley*, No. 10-11165-RWZ (United States District Court, District of Massachusetts) (“*ABFFE v. Coakley*”), which challenged the constitutionality of a

Massachusetts statute similar to the Alaska statute at issue here. My firm is counsel to plaintiffs in *ABFFE v. Coakley*. Some of the Plaintiffs in this action are also plaintiffs in the Massachusetts action.

2. We previously advised this Court<sup>1</sup> that the federal court in Massachusetts preliminarily enjoined enforcement of the Massachusetts statute. *ABFFE v. Coakley*, 2010 WL 4273602 (D. Mass., Oct. 26, 2010).

3. In response to that preliminary injunction, the Attorney General of Massachusetts, with the cooperation of the plaintiffs in *ABFFE v. Coakley*, requested that the Massachusetts Legislature amend the statute, to correct the defects which were the basis for the preliminary injunction. Plaintiffs agreed with the Attorney General that, if the statute were so amended, *ABFFE v. Coakley* would be discontinued.

4. On March 31, 2011, the Massachusetts Legislature enacted, and on April 11, 2011, Governor Deval Patrick signed into law, Chapter 9 of the Statutes of 2011, Section 19 of which corrected the defects in the Massachusetts statute. I attach to this Declaration:

<b>Exhibit</b>	<b>Description</b>
A	Mass. Gen. Laws, Ch. 272, Section 28 (Prior to Amendment)
B	Mass. Gen. Laws, Ch. 272, Section 28 (After Amendment)
C	Legislative Style, Showing <u>Additions</u> and <del>Deletions</del>

5. Because the defects in the Massachusetts statute have been corrected by prompt legislative action, *ABFFE v. Coakley* has been discontinued.<sup>2</sup>

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<sup>1</sup> Plaintiffs' Combined Memorandum (A) Reply in Further Support of Plaintiffs' Motion for Summary Judgment, (B) In Opposition to the State's Cross-Motion for Summary Judgment, and (C) In Opposition to the State's Motion for Certification, Docket 70, March 24, 2011, p. 9 n. 3.

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

Executed at: New York, New York, June 16, 2011.

s/ Michael A. Bamberger

The undersigned certifies that a true and correct copy of the foregoing Declaration of Michael A. Bamberger, including the accompanying Exhibits, was served via electronic filing this 16<sup>th</sup> day of June, 2011, upon counsel for Defendant.

s/ Michael A. Bamberger

Michael A. Bamberger

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<sup>2</sup> Agreement was also reached relating to plaintiffs' claim for attorneys' fees in *ABFFE v. Coakley*.

**EXHIBIT A: MASS. GEN. LAWS, CH. 272, SECTION 28  
(PRIOR TO AMENDMENT)**

**§ 28. Matter harmful to minors, dissemination; possession; defenses**

Whoever disseminates to a minor any matter harmful to minors, as defined in section thirty-one, knowing it to be harmful to minors, or has in his possession any such matter with the intent to disseminate the same to minors, shall be punished by imprisonment in the state prison for not more than five years or in a jail or house of correction for not more than two and one-half years, or by a fine of not less than one thousand nor more than ten thousand dollars for the first offense, not less than five thousand nor more than twenty thousand dollars for the second offense, or not less than ten thousand nor more than thirty thousand dollars for the third and subsequent offenses, or by both such fine and imprisonment. A prosecution commenced under this section shall not be continued without a finding nor placed on file. It shall be a defense in any prosecution under this section that the defendant was in a parental or guardianship relationship with the minor. It shall also be a defense in any prosecution under this section if the evidence proves that the defendant was a bona fide school, museum or library, or was acting in the course of his employment as an employee of such organization or of a retail outlet affiliated with and serving the educational purpose of such organization.

**EXHIBIT B: MASS. GEN. LAWS, CH. 272, SECTION 28**  
**(AFTER AMENDMENT, EFFECTIVE APRIL 11, 2011)**

**§ 28. Matter harmful to minors, dissemination; possession; defenses**

Whoever purposefully disseminates to a person he knows or believes to be a minor any matter harmful to minors, as defined in section 31, knowing it to be harmful to minors, or has in his possession any such matter with the intent to disseminate the same to a person he knows or believes to be a minor, shall be punished by imprisonment in the state prison for not more than 5 years or in a jail or house of correction for not more than 2 1/2 years, or by a fine of not less than \$1000 nor more than \$10,000 for the first offense, not less than \$5000 nor more than \$20,000 for the second offense, or not less than \$10,000 nor more than \$30,000 for a third or subsequent offenses, or by both such fine and imprisonment. A person who disseminates an electronic communication or possesses an electronic communication with the intent to disseminate it shall not be found to have violated this section unless he specifically intends to direct the communication to a person he knows or believes to be a minor. A prosecution commenced under this section shall not be continued without a finding or placed on file. It shall be a defense in a prosecution under this section that the defendant was in a parental or guardianship relationship with the minor. It shall also be a defense in a prosecution under this section if the evidence proves that the defendant was a bona fide school, museum or library, or was acting in the course of his employment as an employee of such organization or of a retail outlet affiliated with and serving the educational purpose of such organization.

**EXHIBIT C: LEGISLATIVE STYLE, SHOWING ADDITIONS  
AND DELETIONS**

**§ 28. Matter harmful to minors, dissemination; possession; defenses**

Whoever purposefully disseminates to a person he knows or believes to be a minor any matter harmful to minors, as defined in section ~~thirty-one,~~31, knowing it to be harmful to minors, or has in his possession any such matter with the intent to disseminate the same to ~~minors~~a person he knows or believes to be a minor, shall be punished by imprisonment in the state prison for not more than ~~five~~5 years or in a jail or house of correction for not more than ~~two and one half~~2 1/2 years, or by a fine of not less than ~~one thousand~~\$1000 nor more than ~~ten thousand dollars~~\$10,000 for the first offense, not less than ~~five thousand~~\$5000 nor more than ~~twenty thousand dollars~~\$20,000 for the second offense, or not less than ~~ten thousand~~\$10,000 nor more than ~~thirty thousand dollars~~\$30,000 for the ~~a~~ third ~~and~~or subsequent offenses, or by both such fine and imprisonment. A person who disseminates an electronic communication or possesses an electronic communication with the intent to disseminate it shall not be found to have violated this section unless he specifically intends to direct the communication to a person he knows or believes to be a minor. A prosecution commenced under this section shall not be continued without a finding ~~nor~~or placed on file. It shall be a defense in ~~any~~any prosecution under this section that the defendant was in a parental or guardianship relationship with the minor. It shall also be a defense in ~~any~~any prosecution under this section if the evidence proves that the defendant was a bona fide school, museum or library, or was acting in the course of his employment as an employee of such organization or of a retail outlet affiliated with and serving the educational purpose of such organization.