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**UNITED STATES DISTRICT COURT  
DISTRICT OF ALASKA**

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

**Plaintiffs,**

**v.**

**John J. Burns, in his official capacity as  
ATTORNEY GENERAL OF THE STATE OF  
ALASKA,**

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

**Defendant.**

**DECLARATION OF D. JOHN MCKAY**

D. John McKay declares, under penalty of perjury, pursuant to 28 U.S.C. § 1746, as follows:

1. I am an attorney in private practice in Anchorage, Alaska, and have served as co-counsel for the Plaintiffs in the above-captioned matter, sponsoring the pro hac vice admission of non-resident lead counsel. I have been licensed to practice law in Alaska since May 1978.

2. I graduated from the University of Michigan Law School in May 1975, and clerked for a federal judge for two years before coming to Alaska in Fall 1977. Since coming to Alaska, the principal focus of my practice has been First Amendment-related law, and particularly representation of news media, journalists, writers, and photographers. I represent or have represented most of the news media in the state during this time, as well as a number of prominent national news organizations. For the past 27 years have also taught a Media Law course at University of Alaska Anchorage, focusing

1 on First Amendment, libel, copyright, privacy, broadcast regulation, and related issues,  
2 and I have represented parties in a number of other cases involving First Amendment  
3 issues.

4 3. My hourly rate for this case, as well as for my other work, is \$225.00 per hour. I  
5 am aware that this is below the reasonable and customary rates charged by attorneys of  
6 comparable skill and experience in the community. Indeed, it is often less than half or  
7 even a third of the rates charged by attorneys of comparable experience from larger  
8 metropolitan areas that I have co-counseled with, or opposed, both in Alaska, and in other  
9 jurisdictions where I have appeared. This rate reflects a personal choice, and should not  
10 reflect adversely upon the fee requests made by my extremely capable and experienced  
11 co-counsel from New York. In my experience, the rates they are charging in this case fall  
12 well within the range customarily billed by their peers.

13  
14 4. I am requesting reimbursement for a total of (65.0) hours of work done on this  
15 case. At \$225/hr., the total amount sought for my time is \$14,625. In addition to this  
16 billed time, and to the “no charge” time reflected in my attached itemized statement, I  
17 also spent considerable additional time not reflected on the statement. Given my role in  
18 the case, I believe the amount requested here represents a fair and reasonable charge for  
19 my services in the context of this litigation.

20 5. I do not ordinarily separate my time into particular categories, and do not do so in  
21 the accompanying itemized statement, but for the convenience of the court and the  
22 defendant, I have broken out my time here to correspond with the divisions employed by  
23 lead counsel. This results in the following subsets:

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Total hours: 65.0 @ \$225 = \$14,625.00

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A. 4/22/10 - 8/31/10	35.0	=	7,875.00
B. 9/1/10 - 10/20/10	14.1	=	3,172.50
C. 10/21/10 - 12/28/10	3.6	=	810.00
D. 1/3/11 - 3/24/11	3.9	=	877.50
E. 4/1/11 - 5/6/11	3.9	=	877.50
F. June 2011	1.8	=	405.00
G. July 2011 (Jdgmt)	2.4	=	540.00
H. July 2011 (Fees)	0.3	=	67.50

Executed this 25th of July of 2011.

s/ D. John McKay  

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D. John McKay  
AK Bar No. 7811117

**D. JOHN McKAY**  
Attorney at Law  
117 E. Cook Ave.  
Anchorage, Alaska 99501

Telephone  
(907) 274-3154

Fax  
(907) 272-5646

**Invoice for Professional Services**

ACLU of Alaska  
1057 W. Fireweed Lane, Suite 207  
Anchorage, Alaska 99503-1760  
Attention: Jeffrey Mittman, Executive Director

July 25, 2010

In Reference To: Challenge to Unconstitutional Provisions of SB 222

For Services Rendered through July 21, 2011

		<u>Hours</u>
05/19/10	Review and respond to e-mail and phone message from ACLU Alaska Executive Director Jeff Mittman re: representing ACLU and plaintiffs in suit over new state statute	0.2 N/C
05/26/10	E-mail and phone call with Jeff Mittman to set up meeting re: new suit	0.2 N/C
05/27/10	Meeting with ACLU-AK executive director Jeff Mittman re: litigation against SOA over unconstitutionality of portions of SB 222 prohibiting distribution of constitutionally protected materials	0.5
06/01/10	Review draft complaint, draft declaration of state ACLU director, SB 222, and related materials to prepare for conference call re: legal challenge to new law; TC, research re: choice of forums; multiple e-mails re: meeting and related preliminary issues	2.0
06/02/10	Conf. TC with Michael Bamberger, Richard Zuckerman, Jeff Mittman, Josh Kroot, Tom Stenson re: issues relating to filing legal challenge to provisions of SB 222 dealing with distribution of indecent materials to minors; e-mail to Bamberger; further document review; TC with Mittman	1.3
06/03/10	Note from Michael Bamberger re: potential state law counts	0.1
06/09/10	Review and edit revised draft complaint, provide comments for co-counsel, related research for same; e-mail to Bamberger and others for review; review e-mails to	

	individual prospective plaintiffs; TC with client	4.9
06/10/10	TC with Michael Bamberger; e-mails with Jeff Mittman; review proposed co-counsel agreement; calls, e-mails to arrange meeting with Deputy AG Tillery; review legislative history, minutes of Senate Judiciary Committee meeting re: language used in bill; TC with Mittman	1.0
06/11/10	TCs with AG's office and Jeff Mittman to arrange appointment; e-mails re: same; TC with Michael Bamberger re: language of statute and choices concerning how best to address statutory language in suit; e-mails re: new draft and re: meeting with Acting Deputy AG Ed Smithen	0.7
06/14/10	TCs with Craig Tillery re: whether to meet with civil or criminal division; TCs w/ Jeff Mittman re: same; e-mails to AGs, Mittman, Bamberger; e-mails from Rick Svobodny re: same	0.5
06/15/10	Further e-mails re: setting up meeting with AG Rick Svobodny; TC with Mittman	0.3
06/16/10	E-mails re: setting up meeting with AG, and re: finalizing and getting copy of draft complaint for AG to review before meeting	0.2
06/17/10	Exchange e-mails with Jeffrey Mittman, Mike Bamberger et al. re: note to AG and re: changes in draft complaint being sent to AG; further e-mails with co-counsel and Ed Smithen, AG re: meeting and related matters; TCs with Mittman, Stenson	0.5
06/18/10	Telephonic meeting re: potential suit over SB 222 with Rich Svobodny, Annie Carpeneti, Ed Sniffen, Susan McLean, Mike Barnhill, Michael Bamberger, Richard Zuckerman, Jeff Mittman, Tom Stenson, et al., outlining position, addressing possible resolution without litigation; discuss with co-counsel finding legislative history to respond to inaccurate arguments made by AG reps during meeting about positions taken by ACLU during legislative consideration of the bill, and providing same to AGs; review relevant legislative history from Mittman; review proposed screen agreement that would avoid suit while allowing legislative fix	1.3
06/20/10	Review proposed agreement re: screening agreement and e-mails re: same	0.4
06/21/10	E-mails with co-counsel re: screening and enforcement agreement to be proposed in lieu of immediate litigation, to allow time for legislature to address constitutional deficiencies in statute; send proposed agreement to AG Rick Svobodny with cover memo; follow-up e-mails re: same	0.5
06/24/10	Review e-mail from Mittman; review five-page response from Rick Svobodny via Annie Carpeneti to proposal to avoid litigation with screening agreement; confer with co-counsel re: addressing unexpectedly aggressive tone of Svobodny response with AGs in attempt to ensure no misunderstanding about intentions and plans for proceeding; review materials provided by client in response to matters raised by Svobodny letter	0.9

06/25/10	E-mails, calls with Michael Bamberger, Annie Carpeneti, Rick Svobodny, AG's offices, Anchorage and Juneau; arrange for teleconference with Svobodny on Monday	1.1
06/28/10	E-mails with co-counsel; meeting with Rick Svobodny; TC and e-mail with Michael Bamberger; review Bamberger revisions to screening agreement sent to Svobodny addressing Svobodny concerns and accompanying NY luring statute exemplar.	0.6 + 0.5 N/C
06/29/10	Review update to clients	0.1
07/01/10	Review e-mail from Rick Svobodny advising of memo to prosecutors re: use of challenged provisions, and re: referral of matter to AG Sullivan, awaiting decision	0.1
07/14/10	Review e-mail from Jeff Mittman re: lack of response from AG	0.1 N/C
07/30/10	Review e-mails exchange between co-counsel re: strategizing response to AG's lack of action on proposed agreement, and arranging meeting to respond to Svobodny's message indicating litigation will be necessary; TC with AG's off.	0.2 0.3 N/C
08/02/10	Conf. call with Michael Bamberger, Richard Zuckerman, Devereaux Chatillon, Josh Kroot, Jeff Mittman and Tom Stenson to address moving forward with litigation, and seeking preliminary injunction, in light of AG's response; follow-up call with Jeff Mittman Calls, e-mails re: logistics of obtaining dox, conf. call	0.8 0.2 N/C
08/07/10	Review update to plaintiffs	0.1
08/10/10	Review research re: preliminary injunctions/Ninth Circuit; review and respond to e-mails concerning timing of filing suit	0.3
08/17/10	Review recent e-mails between co-counsel	0.1 N/C
08/24/10	Review e-mails re: preparations for filing suit; review draft complaint, and send edits and comments; e-mails to Mittman, Chatillon, Stenson, Horowitz; note to co-counsel re: matters required by local rules	2.1
08/26/10	Review and send back edits and comments on memorandum in support of motion for preliminary injunction; research and send documents to Devereaux Chatillon for use in preparing pro hac vice application; e-mails re: matters relating to filing of suit	3.4
08/30/10	Respond to phone call, e-mail from Josh Kroot; review final revised versions of complaint and preliminary injunction memorandum; review and edit motion; memo to Josh Kroot re: matters relating to finalizing and filing and serving pleadings; review first declarations provided; review doc from Horowitz; TC with AG's office; TC with Tom Stenson	3.4

08/31/10	Review, and send edits and comments on, dozen supporting declarations for memorandum in support of motion for preliminary injunction; e-mails with Josh Kroot, Tom Stenson, Mike Bamberger, et al.; telephone conference re: status of pleadings to be filed and matters relating to filing suit; proof and edit final versions of pleadings; finalize motion for participation of non-resident counsel pro hac vice and consent of local counsel; coordinate obtaining executed declarations, and finalizing exhibits; review Bamberger memo to plaintiffs; prepare civil cover sheet and file by e-mail copies of complaint and related documents to court for processing new case per local rules; obtain check for filing fee, and pay with JS-44 at clerk's office; address issues raised by clerk re: exhibits, etc.; and obtain case number and judicial assignment; finalize motion for preliminary injunction and supporting memorandum with case number and file with Crosson declaration; TCs, e-mails with Josh Kroot; coordinate with Tom Stenson on preparing documents and summonses for service on defendants; work on issues with declarations	7.8
09/01/10	Finalize and file remaining pleadings relating to initiation of suit and motion for preliminary injunction, including all declarations; TC with clerk re: issuance of summons; revise and file proposed order; file motion for leave to file over-length brief and hard copy of memorandum; prepare draft certificate of service; attend to miscellaneous matters relating to filings, including issues with size and format of declarations; e-mail re: completion of filings; TCs with Stenson, Kroot	9.4
09/02/10	E-mail and TC with Michael Bamberger; re-file Drake affidavit with notice; TC, e-mail to Stenson re: service and processing of dox to defendants; TCs with Stenson, TC with AG	0.6
09/03/10	E-mail, TC with Stenson; file Stenson entry of appearance;	0.4 N/C
09/10/10	E-mails with Stenson re: effecting service	0.1 N/C
09/14/10	TC from assistant AG Marika Athens re: non-opp for extension of time for State's answer and reply to PI motion; e-mail to co-counsel re: same; review recent ECF filings	0.4
09/15/10	Review court order	0.1 N/C
09/23/10	Review state's opposition to motion for preliminary injunction; e-mails with Michael Bamberger re: extension for reply, local rules re: page limits, oral argument, etc.	0.7
09/26/10	Review e-mail from Bamberger; TCs with Bamberger, Kroot; TC with Mittman; file motion for extension of time to file reply memo, with supporting declaration of Michael Bamberger	0.6
09/27/10	Review court orders; TCs re: scheduling argument	0.2
09/28/10	E-mails; new filings; TC with clerk re: oral argument	0.2

09/29/10	Review State's Answer to Complaint and court orders rescheduling oral argument	0.4
10/07/10	Review draft reply memorandum and send edits and comments to Michael Bamberger; e-mails with Bamberger, Stenson; review scheduling and planning order	0.8 + 0.2 N/C
10/08/10	Review recent filings, various e-mails between counsel	0.4 N/C
10/20/10	Review court order granting plaintiffs' motion for preliminary injunction; e-mails to and from co-counsel, clients	0.8
10/21/10	TC with New York and Alaska counsel re: next steps to follow-up on grant of preliminary injunction; possible stipulation to terminate litigation without further expense; review and send edits and comments on proposed public statements concerning court's ruling; TC with Mittman	1.1
10/27/10	Review State of Alaska's motion to clarify preliminary injunction; draft memo re: suggested alternative responses; review Bamberger e-mail to Svobodny re: proposed stipulation to avoid further litigation, and accompanying decision; e-mails with co-counsel	0.8
10/28/10	Review Michael Bamberger's draft response to state's motion to clarify, send edits and comments; review e-mails, new filing	0.4
10/29/10	Review update to plaintiffs	0.1 N/C
11/17/10	E-mails re: lack of response from AG	0.1 N/C
11/21/10	E-mails re: moving for summary judgment if SOA unwilling to stipulate to resolution without further proceedings	0.1 N/C
11/22/10	Continued discussion re: making final attempt at obtaining stipulation to resolve litigation before moving for summary judgment	0.2 N/C
11/24/10	TC with AG's office attempting to secure agreement to resolve litigation without further expense	0.4
11/26/10	Review state's response to attempts to stipulate to resolution	0.1 N/C
11/27/10	TC with Jeff Mittman re: strategies for prompt resolution of case	0.2
12/27/10	Review draft summary judgment motion and send edits and comments; review related e-mails from co-counsel	0.7
12/28/10	Review update to clients	0.1 N/C
01/04/11	Review and respond to e-mail from co-counsel re: hearing on motion	0.1
01/05/11	Review State of Alaska's second motion for clarification; e-mails with co-counsel re: response, and contact counsel involved in case cited to determine	



	specific facts	0.7
01/06/11	Review most recent filings	0.2
01/19/11	Review state's motion to certify case to Alaska Supreme Court, and opposition to motion for summary judgment and related ECF docket entries and e-mails	0.4
01/21/11	Conf. call to discuss strategies for responding to state's new motion and filing, review applicable rules; review e-mails and related documents; e-mails re: stipulation for filing of parties' respective responsive pleadings	0.5
01/25/11	Draft and file stipulation for extension; TC with Marika Athens re: same	0.4
01/27/11	Review new bill introduced in Alaska legislature dealing with subject matter of litigation	0.2
01/28/11	TC with clerk; draft and file revised notice re: extension of time; e-mail to co-counsel re: same	0.3
02/01/11	Review court order granting stipulation re: extended dates for responses	0.1 N/C
02/02/11	E-mails with Michael Bamberger re: further negotiations with AG	0.1 N/C
02/03/11	Review e-mails re: status of negotiations	0.1
02/08/11	Review court order, and draft analyses of pending legislation	0.2
03/06/11	Review e-mails re: status of negotiations, pending legislation, etc.	0.2
03/23/11	Review draft summary judgment reply memo and send edits, comments; review related e-mails with co-counsel	0.4
03/24/11	Review new filings	0.2
04/07/11	Review new filings	0.3
04/08/11	Review and send new case to co-counsel	0.2 N/C
04/19/11	Review new court order re: certification to Alaska Supreme Court; communications with co-counsel re: certified questions, strategy for responding; review relevant Alaska case law	0.7
04/25/11	Review proposed questions for certification to state court and related communications with co-counsel; review final document to go to State AG; conference phone call, e-mails with Mike Bamberger, Josh Kroot, Richard Zuckerman, Tom Stenson	1.3
04/26/11	Review e-mail exchange between Michael Bamberger and AG Marika Athens re: proposed judgment, and related documents xx	0.2 N/C
04/28/11	Conf. call with New York counsel, AG's office, Alaska counsel re: issues relating to certification, and questions to be certified; prep for same; follow-	

	up e-mails	1.2
04/29/11	Follow-up communications re: certification	0.2
05/03/11	Review update to clients, e-mail from co-counsel re: Supreme Court procedure	0.1
05/06/11	Review most recent filings and e-mails	0.1
06/03/11	Review new case and e-mails	0.2
06/08/11	Review recent court orders and e-mails, including Supreme Court order declining to accept certification	0.2
06/16/11	Review e-mails with proposed renewed summary judgment and declaration and respond with edits and comments	0.4
06/23/11	Review State's responsive pleadings, including renewed motion for summary judgment; review e-mails; TC with client	0.3
06/30/11	Review court order granting summary judgment to plaintiffs, denying State's motion, and dismissing case with prejudice, and related e-mails, and answer calls re: same	0.7
07/01/11	Review and respond to e-mails re: judgment, public statement re: resolution	0.3
07/07/11	E-mails re: form of judgment and timing of fee and cost applications, and deal with calls from press re: court's decision	0.9
07/08/11	Review e-mails and related documents concerning fee application, and e-mails to and responses from state re: proposed judgment, and state's opposition to Plaintiffs' proposed form of judgment.	0.2
07/08/11	Review e-mails and related documents concerning fee application, and e-mails to and responses from state re: proposed judgment.	0.3
07/10/11	E-mails to and from co-counsel and state AGs re: form of proposed judgment and attempts to determine any basis for state's opposition to proposed form; TCs with co-counsel re: same	0.4
07/11/11	Continued communications re: proposed judgment and attempts to determine basis for state's opposition; TCs with co-counsel re: same; review court's entry of judgment; follow-up e-mails, TCs with co-counsel re: consequences of new court order	0.5
07/17/11	Review e-mail exchanges between Michael Bamberger and AG Marika Athens re: proposed judgment, and related documents xx	0.2 N/C
07/20/11	E-mail, call from Richard Zuckerman	0.1 N/C
07/21/11	Review e-mail from AG re: judgment and TC with Richard Zuckerman re: same	0.1

Total Hours @ \$225/hour                      65.0

Total Fees @ \$225/hour                      \$14,625.00

Total Balance Due This Invoice \$14,625.