

ATTACHMENT 3

UNITED STATES DISTRICT COURT
DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

BIG HAT BOOKS, INC., et al.,

Plaintiffs,

v.

No. 1:08cv 596-SEB-TAB

PROSECUTORS, et al.,

Defendants.

DECLARATION OF CHRISTOPHER FINAN

Christopher Finan declares under penalties of perjury:

Background

1. I am the President of the American Booksellers Foundation for Free Expression ("ABFFE"), a plaintiff in this action. I submit this affidavit on behalf of ABFFE in support of plaintiffs' motion for a preliminary injunction and/or motion for summary judgment to enjoin the State from enforcing House Enrolled Act 1042 (the "Statute"), a registration and taxing law which is unconstitutional.

2. ABFFE is located in New York, New York, and is affiliated with the American Booksellers Association, the leading association of general interest bookstores in the United States, with approximately 1,700 bookstore members who do business in 1,900 locations.

3. ABFFE was formed in February 1990 to combat escalating threats to the First Amendment freedoms of booksellers, publishers, librarians, and other distributors of books, magazines, records, films, and videos. The purpose of ABFFE is to inform and educate booksellers, other members of the book industry, and the public about the dangers of censorship, as well as to promote and protect the free expression of ideas, particularly in the choice of reading materials.

4. ABFFE has traditionally been a strong supporter of the First Amendment and has been at the forefront of insuring public access to information. Since its inception, ABFFE has been an active champion of First Amendment rights through its support of the National Endowment for the Arts and the Salmon Rushdie Defense Committee USA, its service as *amici* in a number of Supreme Court cases involving First Amendment issues, its distribution of educational materials on current First Amendment issues, its production and distribution of materials to celebrate Banned Books Week each year, and various other efforts.

5. Many ABFFE members are bookstores and booksellers, eleven of which are located in the State of Indiana, including, for example, co-plaintiff Big Hat Books. ABFFE's members are not what are colloquially referred to as "adult bookstores."

Application of the Statute

6. Any general bookstore, including ABFFE's Indiana members, is likely to contain hundreds or even thousands of books or other materials with sexually-related narrative or pictorial content, that could be considered "harmful to minors." Such literary classics as Vladimir Nabokov's *Lolita*, William Faulkner's *Sanctuary*, and Philip Roth's

Portnoy's Complaint come to mind. They also offer for sale contemporary work such as romance novels, graphic novels, art books, Judy Blume's *Forever* and books of photography. In addition, ABFFE's Indiana members sell books relating to a variety of sexual education and health topics, including *Joy of Sex*, by Alex Comfort, the prevention of, and risks associated with, STDs, AIDS and teenage pregnancies. Books addressing issues of sexual orientation or sexuality in general also are sold at many bookstores and again, may be directed to older minors as well as to adults as a means of providing desired information and education. ABFFE's Indiana members (at least two of which intend to move after July 1, 2008) and their staff members fear prosecution under the Statute if they continue to sell these and other mainstream materials containing sexually-related narrative or pictorial content in the same manner that some have done for decades.

7. The statute requires "a statement detailing the types of [sexually explicit] materials the person intends to offer for sale or sell." It is not clear how detailed this statement must be. Even if ABFFE's Indiana members had the time to review each book individually before they shelved it to engage in the sorts of subjective acts required under the Statute -- which they do not (they receive new titles on a regular basis) -- determining which books fall under the Statute's proscriptions is not possible and would lead to overinclusive and unconstitutional self-censorship.

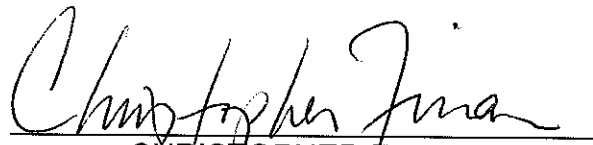
8. Most of ABFFE's Indiana members are general bookstores, seeking to bring in a general clientele, including younger readers. Having to register as a purveyor of sexually explicit materials would be injurious to their business and reputation. The only way they avoid such a label would be to purge from their inventory hundreds of

books and other materials protected by the First Amendment as to adults and older youths. These options impermissibly infringe on a bookseller's constitutional rights. Moreover, the right of their patrons -- adults and minors alike -- to access and purchase such materials also will be seriously infringed.

Conclusion

9. For all the reasons stated above, if the Statute is not held unconstitutional, ABFFE's Indiana members will be forced either to self-censor materials available in their stores or register as a purveyor of sexually explicit materials and pay a punitive fee, to their detriment.

Dated: May 21, 2008


CHRISTOPHER FINAN