

ATTACHMENT 4

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 ALLAN R. ADLER

Allan R. Adler declares under penalties of perjury:

Background

1. I am the Vice-President for Legal and Government Affairs of the Association of American Publishers ("AAP"), one of the plaintiffs in this action. I submit this affidavit on behalf of AAP 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. AAP, a not-for-profit New York corporation with offices in New York and Washington, is the national association of the U.S. book publishing industry. AAP's members include most of the major commercial book publishers in the United States, as well as smaller and non-profit publishers, university presses, and scholarly associations. AAP members publish hardcover and paperback books in every field and a range of

educational materials for the elementary, secondary, post-secondary, and professional markets.

3. AAP represents an industry whose very existence depends on the free exercise of the free-speech rights guaranteed by the First Amendment. The business of AAP's members is primarily based on print publishing, but AAP members make a wide range of material available online, including book excerpts.

4. Some of the content published by AAP members contains material which may be considered "harmful to minors" as defined by Indiana law. Many of the efforts to ban books in various communities have been directed at books published by AAP's members. If the Statute is not enjoined, the access of Indiana residents to First Amendment-protected materials published by AAP members will be limited.

Application of the Statute

5. Any general bookstore 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 greats 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, art books, graphic novels, and books of photography. In addition, Indiana booksellers sell books relating to a variety of sexual education and health topics, including *Joy of Sex* by Alex Comfort, as well as books dealing with 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. Many of these works are published by AAP members.

6. Many of the Indiana booksellers purchasing AAP-member published books 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 to avoid such a label would be to purge from their inventory hundreds of books and other materials that are First Amendment-protected for adults and older minors. These options impermissibly limit the ability of AAP members to sell their constitutionally protected books in Indiana.

Dated: May 21 2008


ALLAN R. ADLER