

ATTACHMENT 6

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 JUDITH KRUG

Judith Krug declares under penalties of perjury:

Background

1. I am the Executive Director of the Freedom to Read Foundation (FTRF), a sister organization of the American Library Association (ALA). FTRF is one of the plaintiffs herein. I also am the Director for the Office for Intellectual Freedom of the ALA. I am professionally trained as a librarian and for many years taught the intellectual freedom and censorship course at the Graduate School of Library and Information Science of Simmons College, Boston, Massachusetts. I submit this affidavit on behalf of FTRF 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. The FTRF was established by the ALA in 1969 to promote and defend the First Amendment right to free expression, including the right to read and listen to the

ideas of others. The FTRF works with the ALA to support and foster libraries -- both public and private -- as institutions in which First Amendment freedoms are fulfilled, and to support the right of libraries to include in their collections and make available any work which they may legally acquire. The FTRF gives both financial and legal support to libraries and librarians across the country, including Indiana libraries and librarians. The FTRF was founded in part to support and defend librarians whose positions are jeopardized because of their defense of the First Amendment. The FTRF is headquartered at the offices of the American Library Association, 50 E. Huron, Chicago, IL 60611. FTRF members include librarians, library patrons, public libraries, private libraries, academic libraries, private organizations and individuals committed to promoting the freedom to read on behalf of all individuals.

3. Among many of its other regular activities, the FTRF has annually supported "Banned Books Week" (BBW) since its inception in 1982. BBW brings to the attention of the public that its First Amendment rights must be exercised to remain strong. BBW does this by publishing information about the books that have been challenged or banned during the preceding year so the public is aware of the continuing threats to First Amendment rights. This list contains many of the 20th and 21st centuries' most important works of American literature, including, for example, Phillip Roth's *Portnoy's Complaint*, Nabokov's *Lolita*, and J.D. Salinger's *The Catcher in the Rye*, all of which contain sexual narrative. The list celebrates the freedom to choose what one wants to read and the freedom to express one's opinion, even if that opinion might be considered unorthodox or unpopular. It stresses the importance of ensuring the

availability of all points of view, including those that are unorthodox or unpopular, to all who choose to read them.

4. The FTRF invokes its historic role as a protector of librarians and libraries and our First Amendment freedoms by contesting the Statute.

Application of the Statute

5. Any library, including FTRF'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" to children of different ages. In addition, to the important works of literature mentioned in paragraph 3, libraries also carry contemporary work such as romance novels, graphic novels, art books, Judy Blume's *Forever* and books of photography. In addition, libraries generally carry books relating to a variety of sexual education and health topics, including the prevention of, and risks associated with, STDs, AIDS and teenage pregnancies. Books addressing issues of sexual orientation or sexuality in general also are carried at many libraries. Many libraries sell excess used books periodically, both for the cash received and the space created. As I understand the Statute, if any of such used books could be deemed "harmful to minors" as defined in Indiana law, the librarian and the library would have to register under the Statute.

6. Having to register as a purveyor of sexually explicit materials would be injurious to the library's reason for being and the reputation of the librarian and library. The only way they avoid such a label would be to review all used books to be sold and purge from that sale books and other materials protected by the First Amendment as to

adults and older youths. These options impermissibly infringe on a librarian's constitutional rights. Moreover, the right of their patrons -- adults and minors alike -- to purchase such materials also will be seriously infringed.

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 FTRF's library and librarian members had the time to review each book individually before they offered them for sale in the sorts of subjective acts required under the Statute, determining which books fall under the Statute's proscriptions is not possible and would lead to overinclusive and unconstitutional self-censorship.

Conclusion

8. For all the reasons stated above, if the Statute is not held unconstitutional, FTRF's Indiana members will be forced either to self-censor materials or register as a purveyor of sexually explicit materials and pay a punitive fee, to their detriment. FTRF and its Indiana members play an important role in ensuring that the reading public can exercise its First Amendment right to freedom of information. For the reasons stated herein, the Statute prevents them from exercising this important function and by so doing, is unconstitutional.

Dated: May 21, 2008


JUDITH KRUG