

ATTACHMENT 7

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 JAMES DANA

James Dana declares under penalties of perjury:

Background

1. I am the Executive Director of the Great Lakes Booksellers Association ("GLBA"), a plaintiff in this action. I submit this affidavit on behalf of GLBA 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. GLBA is located in Grand Haven, Michigan. It is a trade association representing independent bookstores in the Great Lakes Region, including Indiana. GLBA has twenty-six members in Indiana. I understand at least two of them presently intend to move their business location after July 1, 2008.

3. One of the purposes of GLBA 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. GLBA's members are not what are colloquially referred to as "adult bookstores."

Application of the Statute

5. Any general bookstore, including GLBA'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 novels and books of photography. In addition, GLBA's Indiana members 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. GLBA's Indiana members 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.

6. 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 GLBA'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.

7. GLBA'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

8. For all the reasons stated above, if the Statute is not held unconstitutional, GLBA'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 20, 2008


JAMES DANA