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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

POWELL'S BOOKS, INC., et al.,
Plaintiffs,

Civil No. **CV '08-0501-MO**
DECLARATION OF MARYAM PERS **CV '08-0501-MO**

v.

HARDY MYERS, in his official capacity as
ATTORNEY GENERAL OF THE STATE
OF OREGON, et al.,

Defendants.

William Peters declares under penalties of perjury:

Background

1. I am the general manager and bookbuyer of Old Multnomah Book Store, Ltd d/b/a Annie Bloom's Books ("Annie Bloom's"), a plaintiff in this action. I submit this affidavit on behalf of Annie Bloom's in support of plaintiffs' motion for a preliminary injunction to enjoin the State from enforcing ORS 167.051 to 167.057 (collectively referred to as the "Statute"), an unconstitutional censorship law which will apply to mainstream book stores such as Annie Bloom's.

2. Annie Bloom's was established in 1978 and is located in the Multnomah Village district of Portland, Oregon. It is a locally-owned full-service neighborhood bookstore offering a broad-range of works, including children's materials, contemporary fiction, and books on art, current events, parenting and entertainment.

Fear Of Prosecution Under the Act

3. Annie Bloom's fears that it may be at risk of criminal prosecution under the Act for permitting minors to access or purchase constitutionally-protected material at our bookstores or on-line, which could be deemed "sexually explicit" or to appeal to a person's "sexual desires" under the meaning of the Act. Annie Bloom's, however, does not know how to determine what books may cross the vague lines established under the Act.

4. Under the Statute, it is a crime to furnish “sexually explicit material” to anyone under the age of 13 if the person “intentionally furnishes a child, or intentionally permits a child to view, sexually explicit material and the person knows that the material is sexually explicit material.” ORS 167.054. Such material includes that which contains visual images -- including paintings and drawings -- of masturbation, intercourse or genital/oral/anal contact between people and animals. “[F]urnish” is defined broadly, including “to sell, give, rent, loan or otherwise provide.” See ORS 167.051.

5. There are two exceptions under ORS 167.054. First, certain persons, including employees of museums, schools, or public libraries, are not liable. Annie Bloom's does not fall into this exception. Second, under Section 2(2)(b), Annie Bloom's would not be liable if the sexually explicit portions of the material furnished, or permitted to be viewed, “form merely an incidental part of an otherwise nonoffending whole and serve some purpose other than titillation.” I believe this exception is vague and do not understand what specific material would fit under this exception.

6. Under the Statute, it is a crime if a person disseminates to anyone under the age of 18 a “visual representation or explicit verbal description or narrative account of sexual conduct” for the purpose of “arousing or satisfying the sexual desires of the person or the minor. . . .” ORS 167.057 I understand this is a very broad provision encompassing material with textual descriptions, as well as visual depictions. I also believe that the phrase “arousing or satisfying the sexual desires,” which is undefined

under the Act, is vague. In addition, this section contains the same undefined and vague "incidental part" exception.

7. My understanding is that Annie Bloom's risks criminal prosecution for furnishing constitutionally-protected materials described above to persons "under 13 years of age" under ORS 167.054. While we may from time to time suggest to a youthful customer that a desired purchase may be inappropriate, it would be difficult, if not impossible, to "card" or determine whether a child is under 13 years of age at our bookstores. Under ORS 167.057, furnishing a 17 year-old minor with such material is a crime if furnished for the purpose of satisfying the sexual desire of the 17-year old. See Act, §3. As discussed herein, Annie Bloom's sells books and other materials containing sexually-related content that may be sexually arousing, depending on the individual. Under this section 3, Annie Bloom's would be committing a felony if a 17 year-old purchased a book to satisfy his or her sexual desire or to become sexually aroused while reading such a book -- an act that individual has a right to do.

8. Annie Bloom's has in stock over 18,000 volumes constituting over 12,000 titles. We receive on an average over 250 new titles per week. Obviously we cannot read each new title to determine whether there are any sexual explicit portions and if so whether such portions "serve some purpose other than titillation" (even if I knew what that meant). On Exhibit A are listed just a few examples of the multitude of books, magazines or other material sold at Annie Bloom's likely to contain sexually-related

narrative or pictorial content, including, in some instances, nudity, that could be considered by some "sexually explicit" or "visual representation[s] or explicit verbal description[s] or narrative account[s] of sexual conduct" that may appeal to a person's "sexual desires." I believe the only way for Annie Bloom's to ensure compliance under the Statute at our stores would be to eliminate such materials entirely. Developing an alternative segregated shelving arrangement at our stores for books that may be covered under the Statute -- if my staff and I even could determine that book by book, which I believe we could not without being extremely overinclusive -- is totally impractical, unduly burdensome and would consume an inordinate amount of time that we do not have. If forced to do so, we would have to cover up or rope off many sections in my stores to insure that minors would not have access. This would be extremely inconvenient to customers, would completely alter the ambience of the stores, and undoubtedly would have an adverse effect on sales.

9. In short, if the Statute is not enjoined and Annie Bloom's must self-censor books, it will lose the profits from the sale of those books, and lose even more business because it will appear that the bookstore has an incomplete or inadequate listing of books in our inventory. As importantly, adults and older teenagers will be impeded from access to constitutionally-protected materials.

Conclusion

10. For all the reasons stated above, I fear prosecution under the Statute. If the Statute is not enjoined, Annie Bloom's will be forced either to self-censor our books and magazines to a great degree or risk criminal liability. (The only reason we have not self-censored to date is that we have been advised that the Act is unconstitutional.)


WILLIAM PETERS

April 16, 2008

Exhibit A

Books of photography, including Tenneson, *A Life in Photography* and Gombrich, *Story of Art*

Maya Angelou, *I Know Why the Caged Bird Sings*

Steinbeck, *Of Mice and Men*

Comfort, *Joy of Sex*

Sex education books for children and teenagers, including Hindman, *A Very Touching Book*, books by Robie Harris, and *Our Bodies, Ourselves* from the Boston Women's Health Book Collective

Blume, *Forever*

Nabokov, *Lolita*