

Local Booksellers, National Trade Associations, ACLU, and Others Sue to Block Internet Censorship Law

Broad Massachusetts law enacted this year bans constitutionally protected speech online for topics including literature, art, sexual and reproductive health.

FOR IMMEDIATE RELEASE

July 13, 2010

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BOSTON -- A coalition of organizations and local booksellers today filed suit to block a broad Massachusetts censorship law that bans constitutionally protected speech on the Internet for topics including contraception and pregnancy, sexual health, literature, and art.

Signed in April by Governor Patrick and effective yesterday, the law, Chapter 74 of the Acts of 2010, imposes severe restrictions on the distribution of constitutionally protected speech on the Internet. The law could make anyone who operates a website or communicates through a listserv criminally liable for nudity or sexually related material, if the material can be considered "harmful to minors" under the law's definition. In effect, it bans from the Internet anything that may be "harmful to minors," including material adults have a First Amendment right to view. Violators can be fined \$10,000 or sentenced to up to five years in prison, or both.

"The Internet is the new gallery, the new museum," said Glenn Ruga, executive director of the Photographic Resource Center in Boston. "This law infringes on our right to present images that we feel are vital to free expression and within bounds of socially acceptable imagery, yet someone with no particular legal authority may decide to be harmful for children."

"The risk of five years in prison or a \$10,000 fine will certainly have a chilling effect on booksellers with websites that describe their books available online or in a store," said Chris Finan, President of the American Booksellers Foundation for Free Expression (ABFFE). "Most bookstores are small businesses, and it is very likely that booksellers will try to avoid problems by engaging in self-censorship."

Plaintiffs in the suit against state attorney general Martha Coakley and Massachusetts district attorneys are the American Booksellers Foundation for Free Expression, the American Civil Liberties Union of Massachusetts, the Association of American Publishers, the Comic Book Legal Defense Fund, the Harvard Book Store, the Photographic Resource Center, Porter Square Books, and licensed marriage and family therapist Marty Klein.

Since there is no way for websites to determine the age of an Internet browser and there is no way to block Internet users from Massachusetts regardless of the location the website originates

from, the law threatens Internet users nationwide and even worldwide. The suit seeks to have the law declared unconstitutional and void on its face, and to enjoin the state from enforcing it, on the basis of the First and Fourteenth Amendments of the U.S. Constitution, and the Constitution's Commerce Clause.

"While this Act may have been motivated by the desire to protect children from sexual predators on the Internet, its effect is much broader," said John Reinstein, legal director of the ACLU of Massachusetts. "Its inevitable effect, if permitted to stand, is that Internet content providers will limit the range of their speech. There are no reasonable technological means that allow Internet users to ascertain the age of anyone who might access their online communications and then restrict access for minors."

In 1997, the U.S. Supreme Court ruled unanimously in *Reno v. ACLU* to invalidate a federal law, the "Communications Decency Act," on First Amendment grounds, because it similarly restricted online communication. In 2003, the Third Circuit invalidated a second such federal law, the "Child Online Protection Act," in *ACLU v. Mukasey*. Additionally, seven state laws containing similar content-based restrictions for online communication have now been struck down or enjoined as unconstitutional, in cases brought by Media Coalition members and ACLU state chapters in Virginia, Vermont, Michigan, New Mexico, Arizona, South Carolina, and New York.

"Courts have repeatedly rejected laws that lead to this sort of self-censorship," said Michael Bamberger of Sonnenschein Nath & Rosenthal LLP, general counsel of Media Coalition and counsel in the case. "We should have adequate safeguards to protect children, but those safeguards cannot unreasonably interfere with the rights of adults to access materials protected by the First Amendment."

The plaintiffs in the case represent a range of speakers, content providers, and access providers who post and discuss online content such as resources on preventing HIV transmission, visual art and images, literature, and books and resources for gay and lesbian people. If this law is struck down, it will not limit the state's ability to prosecute obscenity, child pornography, speech intended to entice minors into inappropriate activity, or harassing speech.

"The Internet is the broadest, most participatory marketplace for human expression ever created, enabling hundreds of millions of people of all ages throughout the world to communicate with a speed and ease never before possible," said Carol Rose, executive director of the ACLU of Massachusetts. "If allowed to go into effect, this law would reduce all Internet content and discussion to a level suitable for young children. It must not be allowed to go into effect."

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For more information about the ACLU of Massachusetts, go to:
<http://www.aclum.org>

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