

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

Broad Alaska law enacted this year bans constitutionally protected speech online and in retail locations for topics including photography, art, sexual and reproductive health.

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ANCHORAGE -- A coalition of organizations and local booksellers today filed suit to block a broad Alaska censorship law that bans constitutionally protected speech on the Internet on topics including contraception and pregnancy, sexual health, literature, and art and also threatens retailers of books, magazines, movies and other media.

Signed in May by Governor Parnell and effective July 1, the law, Section 11.61.128 of the Alaska Statutes, imposes two severe restrictions on the distribution of constitutionally protected speech on the Internet and in book and video stores and libraries. 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. Also, a bookseller, video retailer, or librarian can be prosecuted if he or she is unaware that it contains nudity or sexual content and unknowingly sells, rents, or loans a book, video, magazine or other media to a minor whether online or in a brick and mortar location. Violators of either part of the law can be sentenced to up to two years in prison, must register as sex offenders and could be forced to forfeit their business.

"The Internet is the new photo gallery," said Donald Douglas, owner of Don Douglas Photography in Juneau. "This law infringes on our right to present images that we feel are well within the bounds of socially acceptable imagery, yet someone with no particular legal authority may decide to be harmful for children."

"We carry 24,000 books and there is no way to know the contents of each one," said David Cheezum, co-owner of Fireside Books in Palmer. "If I make a mistake and sell the wrong book to a kid, I could be prosecuted and risk getting two years in prison, registering as a sex offender and even forfeiting my business."

Plaintiffs in the suit against state attorney general Daniel Sullivan are the American Booksellers Foundation for Free Expression, the Alaska Library Association, the American Civil Liberties Union of Alaska, the Association of American Publishers, Bosco's Inc. the Comic Book Legal Defense

Fund, Don Douglas Photography, the Entertainment Merchants Association, Fireside Books, the Freedom To Read Foundation, and Title Wave Books.

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 Alaska regardless of the location from which the website originates, 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 Jeffrey Mittman, executive director of the ACLU of Alaska. "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 allows 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 affiliates 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 child pornography, speech intended to entice minors into inappropriate activity, or harassing speech.

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[For more information about the Media Coalition, go to:
http://www.mediacoalition.org/](http://www.mediacoalition.org/)