

**AMERICAN CIVIL LIBERTIES UNION
OF UTAH FOUNDATION, INC.**

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Attorneys for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

NATHAN FLORENCE, et al.,)	
)	
Plaintiffs,)	
)	Civil No. 2:05CV00485 DB
vs.)	
)	Judge Dee Benson
MARK SHURTLEFF, et al.,)	Magistrate Judge Samuel Alba
)	
Defendants.)	

DECLARATION OF CHARLES BROWNSTEIN

I, Charles Brownstein, do declare:

1. I am the Executive Director of the Comic Book Legal Defense Fund (“CBLDF”), a plaintiff in this action. I submit this declaration on behalf of CBLDF, its members, and the readers of their material, in support of the plaintiffs' motion for summary judgment requesting a declaration of unconstitutionality and permanent injunctive relief prohibiting enforcement of

Sections 5 and 9 of House Bill 260, enacted on March 2, 2005, as applied through amended Utah Code § 76-10-1206 and Utah Code § 76-10-1233 (collectively the “Challenged Statutes”).

2. CBLDF is a non-profit corporation dedicated to defending the First Amendment Rights of the comic book industry. CBLDF, which has its principal place of business in New York, NY, represents over 1,000 comic book authors, artists, retailers, distributors, publishers, librarians and readers located in Utah and throughout the country and the world.

3. CBLDF was formed in 1986 to assert and protect the First Amendment rights of authors, artists, distributors, publishers and retailers of comic books, as the result of a challenge to such rights in Lansing, Illinois.

4. I have been professionally involved for over fifteen years in the publishing and marketing of comic books.

5. Before 1933, comic strips appeared almost exclusively in newspapers, and comic books as we know them today did not exist. In 1933, Funnies on Parade became the first comic book to be published and marketed as such. In 1938, comic books took another major step with Action Comics #1 featuring Superman.

6. While comic books are often thought of in the context of material directed primarily at children, they have often represented satirical, critical and dramatic comments on culture. In recent years, the comic book industry has matured and developed in various genres, including young adult fiction, teenage fiction and materials addressed to older audiences, often picturing nudity and sexually frank plots. The maturity was recognized when “Maus,” a holocaust comic book narrative created by Art Spiegelman, was awarded a Pulitzer Prize in 1992. Today most comic books are collected in perennial formats which resemble soft-cover

and hard-cover books, with an increasing number of comic books finding digital distribution through the internet and mobile applications.

FEAR OF PROSECUTION UNDER THE CHALLENGED STATUTES

7. CBLDF and its members fear that they may be at risk of prosecution under the Challenged Statutes for permitting minors to view or access on the Internet constitutionally protected material which might be deemed “harmful to minors” under the meaning of the Challenged Statutes. They do not know how to determine what comic books may cross this vague line. Many comic books contain sexually related narrative or pictorial content that might be deemed to be “harmful to minors”. A greater number contain elements of classic heroic fantasy which could be misconstrued as “harmful to minors”. In addition, comics that may be appropriate for an older minor may not be appropriate for a younger minor. CBLDF’s members would therefore be forced to censor their material to be appropriate for the youngest minors who might conceivably access it over the Internet.

8. Comics are a graphic-based art form that has rapidly adapted its content and commerce for the Internet. Today, the largest individual retailers of comic books in the United States are Internet-based, while hundreds of “web comics” artists are posting work every year. Some of their material involves frank sexual content or depictions of nudity.

9. Publishers have also begun distributing conventional comic books and graphic novels through the Internet and mobile platforms such as the Apple iPad and the Sony PlayStation Portable. For example, Neil Gaiman's “The Sandman,” a critically lauded series that contains frank portrayal of adult themes, and contains nudity, is now being distributed via the Internet and mobile devices by DC Comics. Though widely recognized as a classic series for adults and teen readers, this series would potentially be vulnerable to prosecution under the

Challenged Statutes. If the Challenged Statutes are not enjoined, CBLDF and its members are concerned that they will have either to risk criminal liability or self-censor constitutionally protected material.

10. CBLDF itself has a website, located at www.cbldf.org, which discusses First Amendment issues relating to the comic book industry and has links to other websites on the Internet. The online information that CBLDF members provide serves both adults and minors. Online users anywhere in the world can access the content provided by CBLDF and its members on the Web and via email. An example of a comic book discussed on CBLDF's website that might be deemed "harmful to minors" is *Alternative Comics #2*, an anthology that includes the story "The Salon" by Nick Bertozzi, which contains a segment depicting Pablo Picasso in the nude. The only certain way for CBLDF's members to prevent minors from viewing or examining proscribed materials is to entirely eliminate those materials from their websites.

11. Even if CBLDF's members seek to avoid liability under Utah Code § 76-10-1233, by rating and labeling the content in accordance with Utah Admin. R. 152-1a, the vagueness of the term "minors" makes this task extremely difficult. Labeling specific content as harmful to younger minors would certainly discourage and restrict older minors from accessing the content or cause them to believe that a law is being violated if they do access the labeled content.

CONCLUSION

12. For all the reasons stated above, CBLDF's members fear prosecution under the Challenged Statutes. If the Challenged Statutes are not enjoined, they will be forced either to self-censor materials available on their websites and in their stores or to risk criminal liability.

I declare under penalty of perjury that the above is true and correct to the best of my knowledge.

Executed on this 26th
day of May, 2011.

s/ Charles Brownstein
Charles Brownstein