

**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
	)	Magistrate Judge Samuel Alba
MARK SHURTLEFF, et al.,	)	
	)	
Defendants.	)	

**DECLARATION OF NATHAN FLORENCE**

I, Nathan Florence, do declare:

1. I am a Salt Lake City artist. I create paintings and other art, both on commission and without commission. My works have been shown in galleries throughout Utah and elsewhere in the United States, and are held in a number of museums and other public collections. I submit this declaration on my own behalf and on behalf of my customers and the users of my website, in support of Plaintiffs' request for a declaration of unconstitutionality and

permanent injunctive relief prohibiting enforcement of Utah Code sections 76-10-1206 and 76-10-1233 (the “Challenged Statutes”).

2. I offer my services and show examples of my paintings on and through the website associated with the domain name NFLORENCEFINEART.COM.

### **FEAR OF PROSECUTION UNDER THE CHALLENGED STATUTES**

3. I fear prosecution under the Challenged Statutes because I display on my website material that may be considered by some to be “harmful to minors.” This material may be accessed by minors who browse my website.

4. A significant portion of my website is dedicated to showcasing my artwork. Some of these works portray nude women, making their appearance on the Internet potentially subject to the Challenged Statutes.

5. It is important to me not to be criminally charged, even if ultimately it is determined that I committed no crime. In order to ensure that I do not make available to a minor any material that might be considered “harmful to minors” on my generally accessible website, I would be forced to screen my website, eliminating any material that might possibly fall into this category. Because the Challenged Statutes are vague as to what materials could be considered “harmful to minors,” and because what some may consider “harmful” to a 17-year-old is different than what some may consider “harmful” to an 11-year-old, I would be forced to self-censor material at the lowest end of the age range.

6. I do not believe that any of my artwork is “harmful to minors.” I have never taken steps to assign age-appropriateness ratings to my art, or to otherwise indicate that my art is something that minors should not view, nor would I. If they are not enjoined, the Challenged

Statutes will force me to speak about my art in a way that I would not voluntarily do, and in a way that, for certain artworks, is counter to my actual opinion.

7. I aim to provide my clients with the means to express themselves through art and to appreciate my art. I rely on my website and the Internet in general to advertise my services and display my work to potential clients. If the Challenged Statutes are not permanently enjoined, I will likely suffer decreased business, as I will no longer be able to effectively rely on my website to advertise and display examples of the full range of my services. I will be forced to self-censor my own works on my website where those works contain sexual themes or depict nudity.

### **CONCLUSION**

8. If the Challenged Statutes are not declared unconstitutional and enjoined, my customers, the users of my website, and I will be irreparably harmed. I will be forced either to limit the content available on my website or 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 6<sup>th</sup> day of June, 2011.

s/ Nathan Florence  
NATHAN FLORENCE