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Court Voids Alaska Statute to Protect First Amendment Rights
Holds Restrictions on Internet Speech Violates Constitution

ANCHORAGE, AK, July 1, 2011 — Holding that an Alaska criminal statute threatened to reduce all speech on the Internet “to only what is fit for children,” the Federal District Court in Anchorage permanently barred enforcement of that statute because it violates First Amendment rights of free speech,

In a lawsuit brought by Alaska booksellers, librarians, a photographer, and other First Amendment and media organizations, Chief U.S. District Judge Ralph Beistline held that Senate Bill 222, which could have made anyone who operates a website criminally liable for posting material deemed “harmful to minors,” would have chilled free expression. “There are no reasonable technological means that enable a speaker on the Internet to ascertain the actual age of persons who access their communications,” the Court held. “Individuals who fear the possibility of a minor receiving speech intended for an adult may refrain from exercising their right to free speech at all – an unacceptable result.”

“The Judge recognized the clear violation of the First Amendment rights of all citizens posed by this overbroad statute,” said Michael Bamberger of SNR Denton US LLP, General Counsel to Media Coalition and lead counsel for plaintiffs. “Plaintiffs agree with the Court that other Alaska laws already address the important interest in protecting children.”

The Court held that if Alaska believes additional protections are necessary, the Legislature can enact a narrowly-drawn statute. “Other jurisdictions have written statutes that survive constitutional muster, and the Alaska Legislature can follow suit if it so desires,” Judge Beistline held.

Before the Alaska legislature enacted the bill, Media Coalition had pointed out its constitutional defects and offered to work with the legislature to draft a bill that would provide further protections for minors without violating the First Amendment.

Jeffrey Mittman, Executive Director of the ACLU of Alaska, said, “Alaskans value our freedoms. The court has ensured Alaskans’ Internet communications will remain free from unreasonable government infringement.”

Before ruling on the case, the federal court had asked the Alaska Supreme Court to answer questions about the scope of the statute, but that court declined to answer the questions.

Plaintiffs include bookstores Bosco's, Fireside Books, and Title Wave Books; Don Douglas Photography; Media Coalition members American Booksellers Foundation for Free Expression, Association of American Publishers, Comic Book Legal Defense Fund, Entertainment Merchants Association, and Freedom to Read Foundation; the Alaska Library Association; and the ACLU of Alaska.

Attorneys for the plaintiffs are Michael A. Bamberger and Richard M. Zuckerman of the New York office of SNR Denton; D. John McKay; and Tom Stenson, ACLU of Alaska Foundation.

SB 222, enacting Section 11.61.128 of the Alaska Statutes, was signed in May 2010 by Governor Parnell. The papers in the matter, *American Booksellers Foundation for Free Expression, et al. v Sullivan*, 3:10-cv-0193-RRB, can be read online at <http://www.mediacoalition.org/ABFFE-v.-Sullivan/>

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