

:

V THE STATE OF OHIO,
S 77 High Street, 30th Floor,
. Columbus, Ohio 43215;

Case No. _____

B BETTY D. MONTGOMERY, in her official
O capacity as ATTORNEY GENERAL OF
B THE STATE OF OHIO,
T 30 East Broad Street, 17th Floor
A Columbus, Ohio 43215;

T DAVID KELLEY,
, ADAMS COUNTY PROSECUTOR,
i 110 West Main Street,
n West Union, Ohio 45693;

i DAVID BOWERS,
s ALLEN COUNTY PROSECUTOR,
o 204 North Main Street, Suite 302,
f Lima, Ohio 45801;

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

f ROBERT P. DeSANTO,
i ASHLAND COUNTY PROSECUTOR,
i 307 Orange Street,
a Ashland, Ohio;

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D. MICHAEL HADDOX, MUSKINGUM :
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DENNIS WATKINS,
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CRAIG ROTH,

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Bryan, Ohio 43506;

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Now come Plaintiffs, who for their complaint against defendants, state as follows:

PRELIMINARY STATEMENT

1. This is an action brought pursuant to state and federal law, including the First and Fourteenth Amendments to the United States Constitution and Article I, Section 11 of the Ohio Constitution, alleging that the State of Ohio, by and through its legislative and executive bodies, has enacted an overly broad and unconstitutional statutory scheme which improperly criminalizes the sale and dissemination of material that is defined to be “harmful to juveniles.” This legislation improperly burdens the exercise of the right to free expression and promotes self-censorship by enacting a chilling effect upon the sale, display, exhibition, and dissemination of legitimate, constitutionally-protected speech and expression.

2. Included within the types of presumptively-protected expressive material implicated by the “harmful to juvenile” statutes -- which are codified at O.R.C. §§ 2907.01(E), 2907.01(J), 2907.31, and 2907.311 -- are depictions of violence or cruelty, bodily functions, physical torture, and sexual activity or

nudity which do not appeal to the prurient interest of minors. Also included are materials which contain foul language, representations of criminal activity, and sexually explicit depictions that have serious redeeming literary, artistic, political, or scientific value to minors. These content-based restrictions apply equally to materials sold or distributed both in person and on the Internet.

3. Application of the “harmful to juvenile” restrictions would restrain and ultimately preclude the otherwise lawful sale and dissemination to minors of such popular, acclaimed, and socially important books as *Carrie* by Stephen King, *A Time To Kill* by John Grisham, *The Coldest Winter Ever* by Sister Souljah, *Daddy Cool* by Donald Goines, *The Hot Zone* by Richard Preston, *Dead Man Walking* by Sister Helen Prejean, and *The Last Report on the Miracles at Little No Horse* by Louise Erdich. The “harmful to juvenile” restrictions would also sweep within their coverage many award-winning motion pictures, including for example *Saving Private Ryan*, *Goodfellas*, *Butch Cassidy and the Sundance Kid*, *The Godfather*, *Schindler’s List*, and *Unforgiven*.

4. The “harmful to juveniles” definition, as applied in O.R.C. §§ 2907.31 and 2907.311, also criminalizes the display or sale to, or the perusal by, a person under 18 of newspapers and other news media reporting and commenting on news and current events, such as crimes, battles, epidemics, and other matters of importance in violation of the free expression and free press clauses of the First Amendment to the United States Constitution and related guarantees.

5. In addition, application of the restrictions to the Internet violates both the First Amendment and the federal Commerce Clause. The United States Supreme Court recently invalidated a similar federal law on First Amendment grounds, *see Reno v. ACLU*, 521 U.S. 844 (1997), after which the Third Circuit Court of Appeals enjoined enforcement of a second federal law on similar grounds in *ACLU v. Reno*, 217 F.3d 162 (3d Cir. 2000), *aff’g* 31 F.Supp.2d 473 (E.D. Pa. 1999). In addition, six (6) other laws

containing similar content-based restrictions have been struck down in their entirety or enjoined as unconstitutional. *See ACLU v. Johnson*, 194 F.3d 1149 (10th Cir. 1999), *aff'd* 4 F.Supp.2d 1024 (D. N.M. 1998); *Cyberspace Communications, Inc. v. Engler*, 238 F.3d 420 (6th Cir. 2000); *American Booksellers Fdn. for Free Expression v. Dean*, No. 1:01-CV46, (D. Vt. Apr. 18, 2002); *ACLU v. Napolitano*, Civ. No. 00-506 (D. Az. Feb. 19, 2002); *PSINet, Inc. v. Chapman*, 167 F.Supp.2d 878 (W.D. Va. 2001); *American Libraries Association v. Pataki*, 969 F.Supp. 160 (S.D. N.Y. 1997).

6. In addition, both the “harmful to juveniles” definition and the Internet restriction include unconstitutionally vague and indefinite language, including the following: “bizarre,” “violence,” “cruelty,” “brutality,” “functions of elimination,” “repeated,” “foul language,” “violent physical torture,” “destruction of a human being,” “glorify,” “glamorize,” “criminal activity,” “dominant tendency to corrupt,” “actively connected,” “web site,” “Section 2907.311 of the Revised Code and the portions of Section 2907.31 of the Revised Code that pertain to materials that are harmful to juveniles but not obscene to the person who sends the e-mail message or who directly presents the image or text,” “specific, known juvenile,” “group of known juveniles,” “computer facility,” “facility, system or network that is engaged in the violation of Section 2907.31,” “reasonable,” “effective,” and “appropriate.” Use of such vague and undefined terms renders the entirety of the statutory scheme fatally unconstitutional.

7. On May 6, 2002, Defendant Governor Bob Taft signed into law House Bill 8 despite its obvious facial unconstitutionality. The latter part of the Bill -- the portion of the law which is challenged in this Complaint -- amends O.R.C. §§ 2907.01 and 2907.35. These amendments are referred to in this Complaint as “the Act.”

8. Unless enforcement of the Act is enjoined by this Court, the Act will take effect on August 5, 2002.

9. Under the Act, depictions or descriptions of nudity or sexual conduct, violence, criminal activity or excretory functions, among others, although protected by the First Amendment, are potentially criminal if communicated on the Internet and made accessible in Ohio, or if sold, reused, disseminated or available for perusal in retail establishments in Ohio, so long as someone finds it to be “harmful to juveniles” under the Act’s broad definition. This could include, *inter alia*, a detailed, educational description of sexual activity contained on Plaintiff The Sexual Health Network’s Web site.

10. Since all speech on the Internet is accessible in Ohio, regardless of the geographical location of the person who posted it, the Act threatens Internet users nationwide and even worldwide.

11. Plaintiffs herein do not challenge the power of the State of Ohio to regulate obscenity, child pornography, speech used to entice or lure minors into inappropriate activity, or harassing speech.

12. The Internet restriction, however, regulates more than just obscenity or child pornography on the Internet; it regulates and ultimately criminalizes a broad range of constitutionally-protected speech and expression. The Internet represents the most participatory marketplace of mass speech yet developed. It is in many ways a far more speech-enhancing medium than radio, television, print, the mails, or the proverbial village green. Hundreds of millions of people can now engage in interactive communication on a national and global scale via computer networks that are connected to the Internet. The Internet enables average citizens, with a few simple tools and at a very low cost, to participate in local or worldwide conversations, publish an online newspaper, distribute an electronic pamphlet, and communicate with a broader audience than ever before possible. The Internet also provides millions of users with access to a vast range of information and resources. Internet users are far from passive listeners; rather, they are empowered by the Internet to seek out exactly the information they need and to respond with their own communication if desired.

13. Because of the way the Internet works, the Internet restriction's prohibition on distributing to minors material that "appears on a computer monitor" and that is "harmful to juveniles" effectively bans distribution of that same material to adults.

14. In so doing, the Act targets speech that is constitutionally-protected for adults and juveniles. This includes, for example, valuable works of literature and art, news reports as to crime and current events, historical nonfiction, safer sex information, examples of popular culture, and a wide range of robust human discourse about current issues and personal matters that may include provocative, violent, or sexually oriented language and images.

15. The inevitable effect of the Act, if permitted to stand, will be one of self-censorship. As a result of the restrictions contained in the Act, retailers, distributors, publishers and producers of periodicals, books, motion pictures, videos, sound recordings, and newspapers, in addition to Internet content providers will limit the range of their constitutionally-protected speech to avoid the coverage of the Act. Even if the "harmful to juveniles" definition were limited to the types of material permitted to be criminalized by *Ginsberg v. New York*, 390 U.S. 629 (1968), and *Miller v. California*, 413 U.S. 15 (1973), Internet content providers will be forced to limit the range of their constitutionally-protected speech because there are no reasonable technological means that enable users of the Internet to ascertain the age of persons who access their communications, or to restrict or prevent access by minors to certain content. Consequently, the Act reduces adult speakers and users in cyberspace to reading and communicating only material that is suitable for young children.

16. In addition, even if the "harmful to juveniles" definition were so limited, the Act prohibits speech that is valuable and constitutionally-protected for minors, especially older minors.

17. The Internet restriction also violates the Commerce Clause of the United States Constitution because it regulates commerce occurring wholly outside of the State of Ohio, because it imposes an impermissible burden on interstate and foreign commerce, and because it subjects interstate use of the Internet to inconsistent state regulations. An online user outside of Ohio cannot know whether someone in Ohio might download his or her content posted on the Web; consequently, the user must comply with Ohio law or face the threat of criminal prosecution.

18. Plaintiffs include and represent a broad range of individuals and entities who are speakers, content providers, and access providers on the Internet. Plaintiffs post and discuss content including resources on AIDS prevention, visual art and images, literature, and books and resources for gay and lesbian youth.

19. The Act violates the First, Fifth, and Fourteenth Amendment rights of Plaintiffs, their members, their users, and tens of millions of other speakers and users of the Internet and threatens them with irreparable harm. The Act also violates the Commerce Clause of the United States Constitution as previously set forth.

20. This action seeks to have the Act declared facially unconstitutional and void, and to have the State of Ohio and its agents enjoined from enforcing the Act, by reason of the First, Fifth and Fourteenth Amendments to, and the Commerce Clause of, the United States Constitution.

JURISDICTION AND VENUE

21. This case arises under the United States Constitution and the laws of the United States and presents a federal question within this Court's Article III jurisdiction. As such, jurisdiction is proper pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1343(3), given that this suit seeks remedies under 28 U.S.C. §§ 2201 and 2202, 42 U.S.C. §§ 1983 and 1988, and Fed. R. Civ. P. 65.

22. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b).

THE PARTIES

23. Plaintiff BOOKFRIENDS, INC., d/b/a WILKIE NEWS, (“Wilkie”) is an Ohio corporation operating a bookstore in Dayton, Ohio. It is the oldest independent bookstore in Ohio, having been founded in 1894. Wilkie sues on its own behalf and on behalf of its customers.

24. Plaintiff AMERICAN BOOKSELLERS FOUNDATION FOR FREE EXPRESSION (“ABFFE”) is a not-for-profit organization created by the American Booksellers Association in 1990 to inform and educate booksellers, other members of the book industry, and the public about the dangers of censorship and to promote and protect the free expression of ideas, particularly freedom in the choice of reading materials. ABFFE is incorporated in Delaware and has its principal place of business in New York City, New York. Most of ABFFE’s members, including Plaintiff Wilkie, are bookstores which are located and operated in the United States. ABFFE sues on its own behalf, on behalf of its members who operate bookstores in Ohio or who use online computer communications systems throughout the country, and on behalf of the patrons of their member bookstores in Ohio and elsewhere.

25. Plaintiff ASSOCIATION OF AMERICAN PUBLISHERS, INC. (“AAP”) is the national association of the United States book publishing industry. AAP’s approximately 300 members include most of the major commercial book publishers in the United States, as well as smaller and non-profit publishers, university presses, and scholarly associations. AAP members publish hardcover and paperback books in every field and a range of educational materials for the elementary, secondary, post-secondary, and professional markets. Members of AAP also produce computer software and electronic products and services. AAP is incorporated in New York and has its principal places of business in New York City and in the District of Columbia. AAP represents an industry whose very existence depends on the free exercise

of rights guaranteed by the First Amendment. AAP sues on its own behalf, on behalf of its members whose books are sold in Ohio or who use online computer communications systems throughout the country, and on behalf of the readers of its members' books.

26. Plaintiff FREEDOM TO READ FOUNDATION, INC. ("FTRF") is a non-profit membership organization established in 1969 by the America Library Association to promote and defend First Amendment rights, to foster libraries as institutions fulfilling the promise of the First Amendment for every citizen, to support the rights of libraries to include in their collections and make available to the public any work they may legally acquire, and to set legal precedent for the freedom to read on behalf of all citizens. FTRF is incorporated in Illinois and has its principal place of business in Chicago. FTRF sues on its own behalf, on behalf of its members in Ohio or who use online computer communications systems throughout the country, and on behalf of the patrons of its member libraries.

27. Plaintiff NATIONAL ASSOCIATION OF RECORDING MERCHANTISERS ("NARM") is an international trade association whose more than 1,000 members include recorded entertainment retailers, wholesalers, distributors, and manufacturers, many of whom conduct business over the Internet. NARM is incorporated in Delaware and has its principal place of business in Marlton, New Jersey. NARM sues on its own behalf, on behalf of its members located in Ohio or who use online computer communications systems throughout the country, and on behalf of their consumers.

28. Plaintiff OHIO NEWSPAPER ASSOCIATION ("ONA") is a trade association representing all 84 of Ohio's daily newspapers and an additional 90 weekly newspapers. ONA is incorporated in Ohio and has its principal office in Columbus, Ohio. ONA sues on its own behalf and on behalf of its members.

29. Plaintiff THE SEXUAL HEALTH NETWORK, INC., ("the Sexual Health Network") is a small, Internet-based company incorporated in the State of Delaware. It maintains a Web site at

<http://www.Sexualhealth.com>. The Sexual Health Network was founded in May of 1996 by Dr. Mitchell Tepper while he was working on his doctoral dissertation at the University of Pennsylvania Program in Human Sexuality Education. Dr. Tepper also has a Master in Public Health degree from the Yale University School of Medicine. Mr. Tepper is currently the President of the Sexual Health Network. The Sexual Health Network is dedicated to providing easy access to sexuality information, education, and other sexuality resources for people with disability, chronic illness, or other health-related problems. The Sexual Health Network sues on its own behalf and on behalf of users of Sexualhealth.com on the World Wide Web.

30. The VIDEO SOFTWARE DEALERS ASSOCIATIONS (“VSDA”) is the trade association for the home video industry. It represents more than 1,700 member companies in North America and 12 countries worldwide, including retailers of motion picture videos and video games, the home video divisions of major and independent motion picture studios, and other associated businesses that comprise the home video entertainment industry. VSDA is incorporated in the State of Delaware, and its principal business location is in Encino, California. VSDA sues on its own behalf, on behalf of its members in the state of Ohio, and on behalf of the customers of its members.

31. Defendant BOB TAFT is the Governor of the State of Ohio and is sued in his official capacity as such. He is vested with the executive power of the State of Ohio and has the duty to ensure that the laws of the State of Ohio are fully and faithfully executed. Pursuant to this executive power, Bob Taft signed the Act into law on May 6, 2002.

32. Defendant BETTY D. MONTGOMERY is the Attorney General of the State of Ohio and is sued in her official capacity as such. She is the chief law officer of the State of Ohio with authority in both civil and criminal matters.

33. The remaining named Defendants are the county prosecutors in each of the counties in the State of Ohio, who have the duty to prosecute crimes, including violations of the Act.

STATEMENT OF FACTS

The Internet Generally

34. The Internet is a decentralized, global medium of communication that links people, institutions, corporations, and governments around the world. It is a giant computer network that interconnects innumerable smaller groups of linked computer networks and individual computers. While precise estimates are difficult to formulate due to its constant and rapid growth, the Internet is currently believed to connect more than 159 countries and close to 322 million users worldwide. Analysts project that the Internet will grow to 490 million users by the year 2002. In addition, approximately 84% of all Internet users use electronic mail, or "e-mail," a message system which allows users to communicate via the Internet. In 1998, 3.4 trillion e-mail messages were sent in the United States -- over 9.3 billion messages a day.

35. Because the Internet merely links together numerous individual computers and computer networks, no single entity or group of entities controls the material made available on the Internet or otherwise limits the ability of others to access such materials. Rather, the range of digital information available to Internet users -- which includes text, images, sound and video -- is individually created, maintained, controlled, and located on millions of separate individual computers around the world.

36. The Internet presents extremely low entry barriers to anyone who wishes to provide or distribute information or gain access to it. Unlike television, cable, radio, newspapers, magazines, or books, the Internet provides the average citizen with an affordable means for communicating with, accessing, and posting content to a worldwide audience.

Accessing the Internet

37. Individuals have several easy means of gaining access to computer communications systems in general and to the Internet in particular. Many educational institutions, businesses, and local communities maintain an easily accessible computer network which is linked directly to the Internet.

38. In addition, many libraries provide their patrons with free access to the Internet through computers located at the library. Some libraries even host online discussion groups and chat rooms. Many libraries also post their card catalogs and online versions of material from their collections.

39. Internet service providers (“ISP’s”) allow subscribers to dial onto the Internet by using a modem and a personal computer to access computer networks that are linked directly to the Internet. Some ISP’s charge a monthly fee ranging from \$15.00 to \$50.00 monthly, but some provide their users with free or very low-cost Internet access.

40. National commercial online services, such as America Online, serve as ISP’s and also provide subscribers with additional services, including access to extensive content within their own proprietary networks.

Exchanging Information on the Internet

41. Most Internet users select user names, e-mail addresses, or both that allow them to log on to the Internet and to communicate with other users. Many user names are pseudonyms or pen names that often provide users with a distinct online identity and help to preserve their anonymity and privacy. America Online allows every subscriber to use up to six different “screen names,” which may be used by different family members or as separate pseudonyms by an individual. The user name and e-mail address are the only indicators of the user’s identity; that is, persons communicating with the user will only know them by their user name and e-mail address, unless the user chooses to reveal other personal information.

42. Once an individual signs on to the Internet, there are a wide variety of methods for communicating and exchanging information with other users.

E-Mail

43. The simplest and perhaps most widely used method of communication on the Internet is electronic mail, which is commonly referred to as “e-mail.” Using one of dozens of available “mailers” -- software capable of reading and writing an e-mail -- a user is able to address and transmit via computer a message to a specific individual or group of individuals who have e-mail addresses.

Discussion Groups, Mailing Lists, and Chat Rooms

44. Online discussion groups are another of the most popular forms of communication via computer network. Discussion groups allow users of computer networks to post messages onto a public computerized bulletin board and to read and respond to messages posted by others in the discussion group. Discussion groups have been organized on many different computer networks and cover virtually every topic imaginable. Discussion groups can be formed by individuals, institutions, or organizations, or by particular computer networks.

45. "USENET" news groups are a very popular set of bulletin board discussion groups available on the Internet and other networks. Currently there are USENET news groups on more than 30,000 different subjects, and over 100,000 new messages are posted to these groups each day.

46. Similarly, users also can communicate within a group by subscribing to automated electronic mailing lists that allow any subscriber to a particular mailing list to post a message that is automatically distributed to all other subscribers. These lists are sometimes called "mail exploders" or "list servs."

47. "Chat rooms" also allow users to engage in simultaneous conversations with another user or group of users by typing messages and reading the messages typed by others participating in the "chat." Chat rooms are available on the Internet and through commercial online services. Although chat rooms are often set up by particular organizations or networks, any individual user can start an online "chat."

48. Online discussion groups, mailing lists, and chat rooms create an entirely new global public forum -- a cyberspace village green -- where people can associate and communicate with others who have common interests, and engage in discussion or debate on every imaginable topic.

The World Wide Web

49. The World Wide Web (the "Web") is the most popular way to provide and retrieve information on the Internet. Anyone with access to the Internet and proper software can create "Web pages" or "home pages" which may contain many different types of digital information -- text, images, sound, and even video. The Web comprises millions of separate "Web sites" that display content provided by particular persons or organizations. Any Internet user anywhere in the world with the proper software can create her own Web page, view Web pages posted by others, and then read text, look at images and video, and listen to sounds posted at these sites.

50. The Web serves in part as a global, online repository of knowledge, containing information from a diverse array of sources, which is easily accessible to Internet users around the world. Though information on the Web is contained on individual computers, each of these computers is connected to the Internet through Web protocols that allow the information on the Web to become part of a single body of knowledge accessible by all Web users.

51. Many large corporations, banks, brokerage houses, newspapers, and magazines currently provide online editions of their publications and reports on the Web or operate independent Web sites. Many government agencies and courts also use the Web to disseminate information to the public. For example, Defendants Bob Taft and Betty D. Montgomery have posted Internet Web sites containing information available to the public. In addition, many individual users and small community organizations have established individualized home pages on the Web that provide information of interest to members of the particular organization, communities, and other individuals.

52. To gain access to the information available on the Web, a person generally uses a Web “browser” -- software such as Netscape Navigator or Internet Explorer -- to display, print, and download documents that are formatted in the standard Web formatting language. Each document on the Web has an address that allows users to find and retrieve it.

53. Most Web documents also contain “links.” These are short sections of text or image that refer and link to another document. Typically the linked text is blue or underlined when displayed, and when selected by the user on her computer screen, the referenced document is automatically displayed, wherever in the world it actually is stored. Links, for example, are used to lead from overview documents to more detailed documents on the same Web site, from tables of contents to particular pages, and from text to cross-references, footnotes, and other forms of information.

54. Links may also take the user from the original Web site to another Web site on a different computer connected to the Internet, a computer that may be located in a different area of the country, or even the world.

55. Through the use of these links from one computer to another, from one document to another, the Web for the first time unifies the diverse and voluminous information made available by millions of users on the Internet into a single body of knowledge that can be searched and accessed.

56. A number of “search engines” and directories -- such as Yahoo, Google, WebCrawler, and Lycos -- are available free of charge to help users navigate the World Wide Web. Once a user has accessed the search service, he or she simply types a word or string of words as a search request and the search engine provides a list of sites that match the search string.

57. As can be seen from the various ways that people can exchange information and communicate via this new technology, the Internet is “interactive” in ways that distinguish it from traditional communication media. For instance, users are not passive receivers of information as with television and radio; rather, a user can easily respond to the material he or she receives or views online. In addition, “interactivity” means that Internet users must actively seek out with specificity the information they wish to retrieve and the kinds of communications in which they wish to engage. For example, a user wishing to read articles posted to a newsgroup must log on to the Internet and then connect to a USENET server, select the relevant group, review the relevant header lines -- which provide brief content descriptions -- for each message, and then access a particular message to read its content. Similarly, to gain access to material on the World Wide Web, a user must know and type the address of a relevant site or find the site by typing a relevant search string in one of several available search engines or by activating a Web site link.

The Range of Content Available on the Internet

58. The information made available on the Internet is as diverse as human thought. Content on the Internet is provided by the millions of Internet users worldwide and ranges from academic writings, to humor, to art, to literature, to medical information, to music, to news, to movie clips, to human sexuality. For example, on the Internet one can view the full text of the Bible, all of the works of Shakespeare, and numerous other classic works of literature. One can browse through paintings from museums around the world, view in detail images of the ceiling of the Sistine Chapel, or hear selections from the latest rap music albums. At any one time, the Internet serves as the communication medium for literally hundreds of thousands of global conversations, political debates, and social dialogues.

59. Although the overwhelming majority of the information on the Internet does not involve nudity or sexual activity, such material is available on the Internet. For example, an Internet user can read online John Cleland's eighteenth-century novel, *Fanny Hill: Memoirs of a Woman of Pleasure*, view the digital photography of Diane Fenster, receive instructions on how to practice safer sex, participate in a question and answer forum on methods for enhancing sexual experiences, and exchange e-mail about a popular new rap music lyric. Much of this material is similar, if not identical, to material that is routinely discussed in cafes and on the street corners and distributed by libraries, bookstores, record stores, and newsstands every day.

The Statutory Language at Issue

60. On May 6, 2002, Defendant Governor Bob Taft signed into law House Bill 8, effective August 5, 2002, part of which repeals O.R.C. §§ 2907.01 and 2907.35 and substitutes new provisions in their place. Those amendments, referred to in this Complaint as "the Act," are the following:

Sec. 2907.01. As used in sections 2907.01 to 2907.37 of the Revised Code:

(A) “Sexual conduct” means vaginal intercourse between a male and female; anal intercourse, fellatio, and cunnilingus between persons regardless of sex; and, without privilege to do so, the insertion, however slight, of any part of the body or any instrument, apparatus, or other object into the vaginal or anal cavity of another. Penetration, however slight, is sufficient to complete vaginal or anal intercourse.

(B) “Sexual contact” means any touching of an erogenous zone of another, including without limitation the thigh, genitals, buttock, pubic region, or, if the person is a female, a breast, for the purpose of sexually arousing or gratifying either person.

(C) “Sexual activity” means sexual conduct or sexual contact, or both.

(D) “Prostitute” means a male or female who promiscuously engages in sexual activity for hire, regardless of whether the hire is paid to the prostitute or to another.

(E) Any material or performance is “harmful to juveniles,” if it is offensive to prevailing standards in the adult community with respect to what is suitable for juveniles, and if any of the following apply:

- (1) It tends to appeal to the prurient interest of juveniles;
- (2) It contains a display, description, or representation of sexual activity, masturbation, sexual excitement, or nudity;
- (3) It contains a display, description, or representation of bestiality or extreme or bizarre violence, cruelty, or brutality;
- (4) It contains a display, description, or representation of human bodily functions of elimination;
- (5) It makes repeated use of foul language;
- (6) It contains a display, description, or representation in lurid detail of the violent physical torture, dismemberment, destruction, or death of a human being;
- (7) It contains a display, description, or representation of criminal activity that tends to glorify or glamorize the activity, and that, with respect to juveniles, has a dominant tendency to corrupt.

(F) When considered as a whole, and judged with reference to ordinary adults or, if it is designed for sexual deviates or other specially susceptible group, judged with reference to that group, any material or performance is “obscene” if any of the following apply:

- (1) Its dominant appeal is to prurient interest;
- (2) Its dominant tendency is to arouse lust by displaying or depicting sexual activity, masturbation, sexual excitement, or nudity in a way that tends to represent human beings as mere objects of sexual appetite;
- (3) Its dominant tendency is to arouse lust by displaying or depicting bestiality or extreme or bizarre violence, cruelty, or brutality;
- (4) Its dominant tendency is to appeal to scatological interest by displaying or depicting human bodily functions of elimination in a way that inspires disgust or revulsion in persons with ordinary sensibilities, without serving any genuine scientific, educational, sociological, moral, or artistic purpose;
- (5) It contains a series of displays or descriptions of sexual activity, masturbation, sexual excitement, nudity, bestiality, extreme or bizarre violence, cruelty, or brutality, or human bodily functions of elimination, the cumulative effect of which is a dominant tendency to appeal to prurient or scatological interest, when the appeal to such an interest is primarily for its own sake or for commercial exploitation, rather than primarily for a genuine scientific, educational, sociological, moral, or artistic purpose.

(G) "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

(H) "Nudity" means the showing, representation, or depiction of human male or female genitals, pubic area, or buttocks with less than a full, opaque covering, or of a female breast with less than a full, opaque covering of any portion thereof below the top of the nipple, or of covered male genitals in a discernibly turgid state.

(I) "Juvenile" means an unmarried person under the age of eighteen.

(J) "Material" means one of the following:

- (1)(a) As used in section 2907.311 of the Revised Code and in the portions of section 2907.31 of the Revised Code that pertain to materials that are harmful to juveniles but not obscene, "material" means any book, magazine, newspaper, pamphlet, poster, print, picture, figure, image, description, motion picture film, phonographic record, tape, or other tangible thing capable of arousing interest through sight, sound, or touch and, except as provided in division (J)(1)(b) of this section, includes an image or text appearing on a computer monitor or on a television screen, liquid crystal display, or similar display device used as a computer monitor or an image or text recorded on a computer hard disk, computer floppy disk, magnetic tape, or similar storage device.

(b) As used in section 2907.311 of the Revised Code and in the portions of section 2907.31 of the Revised Code that pertain to materials that are harmful to juveniles but not obscene, both of the following apply:

(I) Except as otherwise provided in division (J)(1)(b)(ii) of this section, “material” does not include an image or text that appears on a computer monitor or on a television screen, liquid crystal display, or similar display device used as a computer monitor while the monitor, screen, display, or device is actively connected to a web site on the internet.

(ii) “Material” includes an image or text that appears on a computer monitor or on a television screen, liquid crystal display, or similar display device used as a computer monitor while the monitor, screen, display, or device is actively connected to a web site on the internet if the image or text is contained in an e-mail message or if the image or text is so appearing on the monitor, screen, display, or device during a direct presentation to a specific, known juvenile or group of known juveniles. The image or text is “material” under this division only regarding the application of section 2907.311 of the Revised Code and the portions of section 2907.31 of the Revised Code that pertain to materials that are harmful to juveniles but not obscene to the person who sends the e-mail message or who directly presents the image or text to the specific, known juvenile or group of known juveniles.

(2) As used in all provisions of sections 2907.01 to 2907.37 of the Revised Code that are not identified in division (J)(1) of this section, “material” means any book, magazine, newspaper, pamphlet, poster, print, picture, figure, image, description, motion picture film, phonographic record, or tape, or other tangible thing capable of arousing interest through sight, sound, or touch and includes an image or text appearing on a computer monitor, television screen, liquid crystal display, or similar display device or an image or text recorded on a computer hard disk, computer floppy disk, compact disk, magnetic tape, or similar data storage device.

(K) “Performance” means any motion picture, preview, trailer, play, show, skit, dance, or other exhibition performed before an audience.

(L) “Spouse” means a person married to an offender at the time of an alleged offense, except that such person shall not be considered the spouse when any of the following apply:

(1) When the parties have entered into a written separation agreement authorized by section 3103.06 of the Revised Code;

(2) During the pendency of an action between the parties for annulment, divorce, dissolution of marriage, or legal separation;

(3) In the case of an action for legal separation, after the effective date of the judgment for legal separation.

(M) "Minor" means a person under the age of eighteen.

Sec. 2907.35.

(A) An owner or manager, or agent or employee of an owner or manager, of a bookstore, newsstand, theater, or other commercial establishment engaged in selling materials or exhibiting performances, who, in the course of business:

(1) Possesses five or more identical or substantially similar obscene articles, having knowledge of their character, is presumed to possess them in violation of division (A)(5) of section 2907.32 of the Revised Code;

(2) Does any of the acts prohibited by section 2907.31 or 2907.32 of the Revised Code, is presumed to have knowledge of the character of the material or performance involved, if the owner, manager, or agent or employee of the owner or manager has actual notice of the nature of such material or performance, whether or not the owner, manager, or agent or employee of the owner or manager has precise knowledge of its contents.

(B) Without limitation on the manner in which such notice may be given, actual notice of the character of material or a performance may be given in writing by the chief legal officer of the jurisdiction in which the person to whom the notice is directed does business. Such notice, regardless of the manner in which it is given, shall identify the sender, identify the material or performance involved, state whether it is obscene or harmful to juveniles, and bear the date of such notice.

(C) Sections 2907.31 and 2907.32 of the Revised Code do not apply to a motion picture operator or projectionist acting within the scope of employment as an employee of the owner or manager of a theater or other place for the showing of motion pictures to the general public, and having no managerial responsibility or financial interest in the operator's or projectionist's place of employment, other than wages.

(D)(1) Sections 2907.31, 2907.311, 2907.32, 2907.321, 2907.322, 2907.323, and 2907.34 and division (A) of section 2907.33 of the Revised Code do not apply to a person solely because the person provided access or connection to or from a computer facility, system, or network not under that person's control, including having provided transmission, downloading, intermediate storage, access software, or other related

capabilities that are incidental to providing access or connection to or from a computer facility, system, or network, and that do not include the creation of the content of the material that is the subject of the access or connection.

(2) Division (D)(1) of this section does not apply to a person who conspires with an entity actively involved in the creation or knowing distribution of material in violation of section 2907.31, 2907.311, 2907.32, 2907.321, 2907.322, 2907.323, 2907.33, or 2907.34 of the Revised Code or who knowingly advertises the availability of material of that nature.

(3) Division (D)(1) of this section does not apply to a person who provides access or connection to a computer facility, system, or network that is engaged in the violation of section 2907.31, 2907.311, 2907.32, 2907.321, 2907.322, 2907.323, 2907.33, or 2907.34 of the Revised Code and that contains content that person has selected and placed in or on the facility, system, or network or content over which that person exercises editorial control.

(E) An employer is not guilty of a violation of section 2907.31, 2907.311, 2907.32, 2907.321, 2907.322, 2907.323, 2907.33, or 2907.34 of the Revised Code based on the actions of an employee or agent of the employer unless the employee's or agent's conduct is within the scope of employee's or agent's employment or agency, and the employer does either of the following:

(1) With knowledge of the employee's or agent's conduct, the employer authorizes or ratifies the conduct.

(2) The employer recklessly disregards the employee's or agent's conduct.

(F) It is an affirmative defense to a charge under section 2907.31 or 2907.311 of the Revised Code as the section applies to an image transmitted through the internet that the person charged with violating the section has taken, in good faith, reasonable, effective, and appropriate actions under the circumstances to restrict or prevent access by juveniles to material that is harmful to juveniles, including any method that is feasible under available technology.

Section 2. That existing sections . . . 2907.01, and 2907.35 of the Revised Code are hereby repealed.

61. Sections 2907.31(B) and (C) of the Ohio Revised Code attempt to provide defenses to liability under the Internet restrictions of the Act by stating that it is an affirmative defense:

(B)(1) The defendant is the parent, guardian, or spouse of the juvenile involved.

(2) The juvenile involved, at the time of the conduct in question, was accompanied by his parent or guardian who, with knowledge of its character, consented to the material or performance being furnished or presented to the juvenile.

(3) The juvenile exhibited to the defendant or his agent or employee a draft card, driver's license, birth record, marriage license, or other official or apparently official document purporting to show that such juvenile was eighteen years of age or over or married, and the person to whom such document was exhibited did not otherwise have reasonable cause to believe that such juvenile was under the age of eighteen and unmarried.

(C)(1) It is an affirmative defense to charge under this section, involving material or a performance that is obscene or harmful to juveniles, that such material or performance was furnished or presented for a bona fide medical, scientific, educational, governmental, judicial, or other proper purpose, by a physician, psychologist, sociologist, scientist, teacher, librarian, clergyman, prosecutor, judge, or other proper person.

(2) Except as provided in division (B) (3) of this section, mistake of age is not a defense to a charge under this section.

62. Since there is no way for online speakers to examine age-verifying documents of persons who access the Internet, subsection (B)(3) of Section 2907.31 provides little or no defense for prosecutions under the Act with respect to speech on the Internet. Even if online speakers had the ability to determine whether someone accessing their content was a minor, they would have no way of knowing whether the minor was accompanied by a parent or legal guardian; therefore, subsection (B)(2) also fails as a viable defense. The defense provided in subsection (C)(1) applies only to a limited number of speakers. Thus, due to the unavailability of these defenses, the vast majority of online speakers are faced with the threat of criminal prosecutions against which they have no affirmative defenses.

63. Section 2907.35(F) of the Act sets forth an additional affirmative defense that the defendant "has taken, in good faith, reasonable, effective, and appropriate actions under the circumstances to restrict or prevent access by juveniles to [Internet] material that is harmful to juveniles, including any method that is feasible under available technology."

64. As other federal courts have found, "there are no good faith, reasonable, effective and appropriate actions to restrict or prevent access of minors" to Internet communications that do not unduly

impact on the First Amendment rights of adults. *ACLU v. Johnson*, 4 F.Supp.2d 1029, *aff'd* 194 F.3d 1149 (10th Cir. 1999).

65. A violation of the Act is punishable by imprisonment of not more than 6 months or a fine of not more than \$1,000.00, or both, or, if the material is found to be obscene, is punishable by imprisonment for a period of 6 to 12 months or a fine of not more than \$2,500.00, or both.

The Act's Impact on Speech Generally

66. The “harmful to juveniles” definition essentially serves to ban the sale of, rental or dissemination to, and permitting the perusal of, certain constitutionally-protected to speech persons under the age of 18.

67. By reason of its unconstitutional overbreadth and vagueness, the “harmful to juveniles” definition will chill the exercise by publishers, distributors, and retailers of their right to sell, distribute, or have sold or distributed First Amendment-protected materials in the State of Ohio.

The Act's Impact on Internet Speech

68. The Act bans certain constitutionally-protected speech among adults and juveniles. Even if the “harmful to juveniles” definition were limited in accordance with *Ginsberg* and *Miller*, the Act would still ban certain constitutionally-protected speech among adults.

69. Both the United States Congress and the legislative bodies of many states, including Michigan, New Mexico, Virginia, Arizona, and Vermont, have previously enacted laws similar to the Internet restrictions, all of which were either held unconstitutional or enjoined on First Amendment grounds. *See* ¶5, *supra*.

70. Speech on the Internet is generally available to anyone with access to the appropriate technology. Anyone who posts content to the Web, chat rooms, mailing lists, and discussion groups makes it automatically available to all users worldwide, including minors. Because minors have access to all of

these forums, any communication in these fora which is potentially “harmful to juveniles” could be punishable under the Act. Due to the very nature of the Internet, virtually every communication on the Internet may potentially be received by a minor and therefore may potentially be the basis for prosecution, particularly since knowledge that the recipient is a minor is not required.

71. Because many of the terms in the Act are overbroad, the Act will further chill the speech of content providers on the Web. For example, the Act fails to distinguish between material that is “harmful” for older as opposed to younger minors.

72. Further, the reference to “prevailing standards in the adult community with respect to what is suitable for juveniles” is overbroad because, due to the borderless nature of the Internet, it effectively imposes the standards of the most conservative county in Ohio on content providers and users in all other states even if other states have more liberal standards regarding what is considered “harmful to juveniles.” As a consequence, content providers and users of the Web will likely err on the side of caution and not post content on the Web that they would otherwise have posted. In this way, the Act chills speech on the Web and thus causes irreparable harm to the First Amendment freedoms of online speakers, readers, and users.

73. Most of the millions of users on the Internet at some point are either speakers or content providers subject to the Act. Anyone who sends an e-mail, participates in a discussion group or chat room, or maintains a home page on the Web potentially is subject to the Act because his or her communication might be accessed by a minor in the State of Ohio. Given the technology of the Internet, there are no reasonable means for these speakers to ascertain the age of persons who access their messages or for restricting or preventing access by minors to certain content. From the perspective of these speakers, the

information that they make available on the public spaces of the Internet either must be made available to all users of the Internet, including users who may be minors, or it will not be made available at all.

74. For instance, when a user posts a message to a USENET discussion group, it is automatically distributed to hundreds of thousands of computers around the world, and the speaker has no ability to control who will access his or her message from those computers. Similarly, users who communicate on mailing lists have no way to determine the ages of other subscribers to the list. Finally, content providers on the Web have no reasonable way to verify the age of persons who access their Web sites. For these reasons, there is no practical way for content providers to withhold material that may be “harmful to juveniles” -- as prohibited by the Act -- from people younger than 18 years old.

75. Moreover, the Act is overbroad because it allows prosecution even if the sender had no knowledge or reason to know of the recipient’s age. Although knowledge of the “character and content” of the material is required, knowledge that the recipient is a minor is not required.

76. Because Internet speakers have no means to restrict minors in Ohio from accessing their communications, the Act effectively requires almost all discourse on the Internet -- whether among citizens of Ohio or among users anywhere in the world -- to be at a level suitable for young children. The Act therefore bans an entire category of constitutionally-protected speech between and among adults on the Internet.

77. In addition, any person who disagrees with or objects to sexual content on the Internet could cause a speaker to be prosecuted under the Act by having a minor view the online speech, resulting in a “heckler’s veto” of Internet speech. Further, any person who objects to sexual content on the Internet could cause a speaker to fear prosecution under the Act by claiming to be a minor, whether or not the person actually is one.

78. The Act also prohibits older minors from communicating and accessing protected speech. Even if some depictions or discussions of nudity and sexual conduct may be considered by some to be inappropriate or “harmful” for younger minors, many depictions and discussions -- including safer sex resources -- are valuable, at least for older minors.

79. Even if there were means by which speakers on the Internet could ascertain or verify the age of persons who receive their content (and there are no such means), requiring users to identify themselves and to disclose personal information in order to allow verification of age would prevent Internet users from maintaining their privacy and anonymity on the Internet.

The Act’s Burden on Interstate Commerce

80. The Act’s Internet restrictions impact the speech of online speakers across the nation, not just in the State of Ohio, because it is impossible for Internet users to determine the geographic location of persons who access their information. Internet users elsewhere have no way to determine whether information posted to the Web, discussion groups, or chat rooms will be accessed by persons residing in the State of Ohio. The various sites on the Internet can be accessed by anyone in the world; therefore, there is no way for speakers to ensure that residents of Ohio will not receive their communications. Thus, all users, even if they do not reside in Ohio or intend to communicate with residents of Ohio, must comply with the Act.

81. The Act unjustifiably burdens interstate commerce and regulates conduct that occurs wholly outside the State of Ohio. The Act chills speakers outside of Ohio and curtails speech that occurs wholly outside the borders of Ohio, thereby causing irreparable harm. Like the nation’s railways and highways, the Internet is by its nature an instrument of interstate commerce. Just as goods and services travel over state borders by train and truck, information flows across state and national borders on the Internet.

Internet content providers that are located outside of Ohio, such as The Sexual Health Network, as well as people participating in chat rooms, newsgroups, or mail exploders, have no feasible way to determine whether their information will be accessed or downloaded by someone who is located in Ohio. Just as a user of the Internet cannot identify the age of another user of the Internet, one also cannot identify where a particular user or speaker resides or from where a particular user may be accessing or downloading information on the Internet. Due to the nature of the technology, a non-Ohioan, even if he or she has no desire to reach anyone in Ohio, will be forced to self-censor his or her speech on the Internet in order to comply with the Act and to avoid the possibility of prosecution in Ohio. In this manner, the Act interferes significantly with the interstate flow of information and with interstate commerce.

82. Moreover, interstate and international computer communications networks -- like the nation's railroads -- constitute a segment of the economy that particularly demands uniform rules and regulations.

83. Because the definition of "harmful to juveniles" in O.R.C. § 2907.01(E) depends in part upon "prevailing standards in the adult community," the Act effectively imposes regulations on interstate speech that conflict with the community standards of other states and local communities. If each state implements its own regulations, as Ohio has done, regarding what information can be legally distributed via the Internet, interstate commerce will be greatly inhibited and disrupted. Permitting piecemeal regulation requires persons around the world to embark upon the difficult task of discerning what can and cannot be communicated in the many different jurisdictions connected to computer networks.

The Ineffectiveness of the Internet Restriction
and the Effectiveness of Alternative Means

84. Because of the global nature of the Internet, Defendants cannot demonstrate that the Internet restriction is likely to reduce the availability in Ohio of material that may be “harmful to juveniles” on the Internet.

85. It is estimated that approximately 40% of the content provided on the Internet originates abroad. All of the content on the global Internet is equally available to all Internet users worldwide and may be accessed as easily and as cheaply as content that originates locally. Because it is not technologically possible to prevent content posted abroad from being available to Internet users in the State of Ohio, the Internet restriction will not accomplish its purported purpose of keeping inappropriate content from minors in Ohio.

86. Conversely, there are many alternative means that are more effective at assisting parents in limiting a minor’s access to certain material if desired.

87. Commercial online services like America Online provide features that subscribers may use to prevent children from accessing chat rooms and to block access to Web sites and news groups based on keywords, subject matter, or specific newsgroup. These services also offer screening software that blocks messages containing certain words, as well as tracking and monitoring software to determine which resources a particular online user, such as a child, has accessed. They also offer children-only discussion groups that are closely monitored by adults.

88. Online users also can purchase special software applications, known as user-based blocking programs, that enable them to control access to online resources. These applications allow users to block access to certain resources, to prevent children from giving personal information to strangers by e-mail or in chat rooms, and to keep a log of all online activity that occurs on the home computer.

89. User-based blocking programs are not perfect, both because they fail to screen all inappropriate material and because they inadvertently block valuable Internet sites. However, a voluntary decision by concerned parents to use these products for their children constitutes a far less restrictive alternative than the Act's imposition of criminal penalties for protected speech upon the universe of Internet users.

The Act's Impact on the Plaintiffs

90. Plaintiffs, who are or represent publishers, distributors, and sellers of periodicals, books, newspapers, motion pictures, videos, and sound recordings sold, rented, or distributed in Ohio, fear prosecution under the Act for offering, distributing, or selling material that might be deemed by some individuals to be "harmful to juveniles."

91. Plaintiffs interact with and use the Internet in a wide variety of ways, including as content providers, access providers, and users. The Internet restriction burdens Plaintiffs in all of these capacities. Plaintiffs are users and content providers who are subject to the provisions of the Act. These plaintiffs fear prosecution under the Act for communicating, sending, displaying, or distributing material that might be deemed by some to be "harmful to juveniles" under the Act. They also fear liability for material posted by others to their online discussion groups, chat rooms, mailing lists, and Web sites. Plaintiffs have no way to avoid prosecution under the Act and are left with two equally untenable alternatives: (1) risk prosecution under the Act, or (2) attempt to engage in self-censorship, which, as a result, denies adults and older minors access to constitutionally-protected material.

BookFriends, Inc. d/b/a Wilkie News

92. Plaintiff Wilkie stocks over 1,500 different titles in its Dayton, Ohio bookstore and maintains an additional 142,000 titles in its database, many of which contain foul words, descriptions of violence,

torture, cruelty, or violent death, and which glamorize criminal activity or discuss human sexuality. Shortly, Wilkie will be reactivating its online store to offer over 250,000 titles, many of which have similar content.

93. Wilkie's right to offer and sell a full range of mainstream constitutionally-protected materials will be seriously infringed if the Act is not enjoined. Should the Act remain in effect, Wilkie will be forced to self-censor or risk prosecution under the Act.

American Booksellers Foundation for Free Expression

94. Plaintiff ABFFE has hundreds of bookseller members who are located from coast to coast, including the State of Ohio. Those located in Ohio, such as plaintiff Wilkie, sell and offer for sale books and other materials that contain repeated foul words, descriptions of violence, torture, cruelty, or violent death, and which glamorize criminal activity or discuss human sexuality. Although ABFFE's members are not "adult bookstores," many member bookstores do use the Internet and electronic communications to obtain information and excerpts of books from publishers which may include nudity and which deal frankly with the subject of human sexuality. For example, member booksellers may review current popular titles -- such as by Francesa Lia Block, *Pictures & Passion: A History of Homosexuality in the Visual Arts* by James W. Saslow, and *American Pastoral* by Philip Roth -- which include passages or images describing nudity and sexual conduct. Some member bookstores also have their own Web pages that discuss the contents of books sold in stores.

95. ABFFE members' right to offer and sell in Ohio a full range of mainstream materials, and learn about, acquire, and distribute material containing nudity and sexual conduct, and their patrons' right to purchase such materials, will be seriously infringed if the Act is not enjoined. Should the Act remain in effect, ABFFE members and the publishers with whom they transact business will be forced to self-censor or risk prosecution under the Act.

Association of American Publishers, Inc.

96. Plaintiff AAP sues on behalf of its members who are providers of mainstream books and other materials to retailers in Ohio, as well as those who are content providers and users of the Internet. Although their businesses are primarily based on print publishing, AAP's members are very actively involved in the Internet. AAP's members create electronic products to accompany and supplement their printed books and journals; create custom educational material on the Internet; communicate with authors and others, receive manuscripts, and edit, typeset, and design books electronically; transmit finished products to licensed end-user customers; communicate with bookstores and other wholesale and retail accounts; and promote authors and titles online.

97. Many of AAP's members have Web pages and provide information to the world on the Internet. Some of the content provided by AAP's members contains nudity or sexual conduct. Many of the efforts to ban books in various communities have been directed at books published by AAP's members. AAP fears that the Act will spawn similar efforts directed at AAP's online publishing. If the "harmful to juveniles" definition is not enjoined, AAP members will be forced to limit Ohio residents from access to many important books. If the Internet restriction is not enjoined, AAP members will be forced either to risk criminal liability or to stop providing online access to constitutionally-protected books and other related materials.

Freedom to Read Foundation, Inc.

98. Plaintiff FTRF and its library and librarian members, both public and private, serve as both access and content providers at physical libraries in the State of Ohio and on the Internet. Because the Internet offers their patrons a unique opportunity to access information for free, many libraries provide their patrons with facilities that patrons can use to access the Internet. Many libraries also have their own Web

sites on the Internet and use the Internet to post card catalogues, to post information about current events, to sponsor chat rooms, to provide textual information and graphic design, and to post online versions of materials from their library collections. Patrons can, for example, access the Web site of certain libraries from anywhere in the country to peruse the libraries' card catalogues, review an encyclopedia reference, or check a definition in the dictionary.

99. Some of the materials provided or made available by libraries contain nudity or sexual conduct. For example, FTRF member libraries' physical and online card catalogues include such works as *Forever* by Judy Blume, *Women on Top* by Nancy Friday, *Changing Bodies, Changing Lives* by Ruth Bell, *Our Bodies, Our Selves* by the Boston Women's Health Collective and *It's Perfectly Normal* by Robie Harris. Others contain repeated foul language, descriptions of violence, torture, cruelty, or violent death, or glamorize criminal activity.

100. If the "harmful to juveniles" definition is not enjoined, Ohio's libraries will be forced to limit Ohio residents from access to many and important books and other materials. If the Internet restriction is not enjoined, libraries will be inhibited from both posting and providing access to materials on the Internet that contain nudity or sexual conduct. Adult library patrons and Internet users would thus be deprived of access to these constitutionally-protected library materials. Given the global and unrestricted nature of the Internet and the past attempts by persons to bar literature and reference items from library collections, many of FTRF's members may choose not to post a substantial amount of expressive material at all -- material that many adults might consider useful for themselves or their own children -- rather than risk prosecution for posting material that might be illegal in Ohio.

The National Association of Recording Merchandisers

101. NARM's members sell sound recordings in the State of Ohio. Further, some of NARM's members are online music retailers who market their recordings by permitting Internet users to download music samples before making a purchase with their credit cards. Permitting users to sample music before identifying themselves is an important feature of this marketing strategy. NARM members are concerned that they may be exposed to criminal liability under the Act simply for misjudging what may be deemed "harmful to juveniles" under an ambiguous and overbroad standard.

Ohio Newspaper Association

102. All the daily and most of the weekly newspapers in Ohio are members of ONA. Given the nature of current events, these newspapers often describe death, torture, cruelty and crime in their print and online papers that some might consider "harmful to juveniles." Unless the Act is enjoined, much of the news reported in Ohio's newspapers must be self-censored.

The Sexual Health Network, Inc.

103. Plaintiff The Sexual Health Network's Web site (Sexualhealth.com) includes a wide array of sex education materials for people with disabilities and chronic diseases. Some resources are written specifically for The Sexual Health Network, while other materials are adapted from other sources. Topics covered include both general matters -- such as information about the effects of aging on sexuality or ideas to help increase women's sexual pleasure -- to disability-specific issues -- such as sexual positions that may enhance intercourse for individuals with particular disabilities or advice on dealing with low sexual self-esteem that may accompany a disability.

104. The articles and other information available on Sexualhealth.com necessarily involve the use of sexually explicit language and visual images. Frank, detailed explanations are given in order for the information that the site provides to be useful to its viewers.

105. Sexualhealth.com also includes forums where individuals may ask each other questions and share information. This interactive feature helps to keep people coming back to the site, because it provides constantly changing content, and allows individuals -- who may be geographically isolated from others with similar disabilities or illnesses -- to experience a "support group" environment.

106. The Sexual Health Network's Web site also provides links to other sexuality-related sites, such as the one maintained by the Sinclair Intimacy Institute, a producer of explicit educational videos designed to help couples improve their sex lives.

107. The Sexual Health Network fears that making the materials on the Sexualhealth.com site available online could be alleged to constitute distribution of material that is "harmful to juveniles" and thus subject it to prosecution under the Act.

108. If the Act is not enjoined, the Sexual Health Network must choose between risking criminal prosecution or curtailing its speech by removing from its site any material that could be alleged to be "harmful to juveniles."

Video Software Dealers Association

109. Members of Plaintiff VSDA produce the vast majority of video recordings in the United States, some of which include sexually explicit, violent, or otherwise provocative scenes. The videos are distributed and sold in Ohio; in addition, some of the videos are available to the public on the Internet.

110. VSDA members are concerned that the Act requires them to censor their videos. For this reason, VSDA believes that the Act imposes unconstitutional censorship that substantially limits the potential to enhance the diversity, availability, timeliness, quality, and utility of motion pictures on video.

111. If the Act is not enjoined, VSDA members might be criminally liable for constitutionally-protected content if they do not self-censor.

CAUSES OF ACTION

COUNT I

Violation of Adults' Rights Under the First and Fourteenth Amendments to the United States Constitution

112. Plaintiffs repeat and reallege paragraphs one (1) through one hundred eleven (111) as if set forth in their entirety.

113. The Act violates the rights of Plaintiffs, their members, and their users under the First and Fourteenth Amendments of the United States Constitution on its face and as applied because it effectively bans constitutionally-protected speech by and between adults and the dissemination of such speech to adults.

114. The Act violates the rights of Plaintiffs, their members, and their users under the First and Fourteenth Amendments to the United States Constitution because it is not the least restrictive means of accomplishing any compelling governmental purpose.

115. The Act violates the rights of Plaintiffs, their members, and their users under First and Fourteenth Amendments to the United States Constitution because it is substantially overbroad.

COUNT II

Violation of Minors' Rights Under the First and Fourteenth Amendments to the United States Constitution

116. Plaintiffs repeat and reallege paragraphs one (1) through one hundred fifteen (115) as if set forth in their entirety.

117. The Act violates the rights of Plaintiffs, their members, and their users under the First and Fourteenth Amendments to the United States Constitution because it interferes with the rights of minors to purchase, rent, access, and view material that to them is protected by the First Amendment.

118. The Act is unconstitutional because it defines as “harmful to juveniles”, and therefore prohibits dissemination to minors of, material protected by the First Amendment as to them.

COUNT III

Unconstitutional Vagueness Under the Fifth and Fourteenth Amendments to the United States Constitution

119. Plaintiffs repeat and reallege paragraphs one (1) through one hundred eighteen (118) as if set forth in their entirety.

120. The Act violates the rights of Plaintiffs, their members, and their users in that it is unconstitutionally vague and indefinite because it fails to provide fair notice as to what constitutes a criminal offense.

COUNT IV

Violation of the Right to Communicate and Access Information Anonymously Under the First and Fourteenth Amendments to the United States Constitution

121. Plaintiffs repeat and reallege paragraphs one (1) through one hundred twenty (120) as if set forth in their entirety.

122. The Act violates the rights of Plaintiffs, their members, and their users under the First and Fourteenth Amendments to the United States Constitution to communicate and access information anonymously, insofar as it effectively requires Internet users to identify themselves in order to gain access to constitutionally-protected speech.

COUNT V

Violation of the Commerce Clause of the United States Constitution

123. Plaintiffs repeat and reallege paragraphs one (1) through one hundred twenty-two (122) as if set forth in their entirety.

124. The Act violates the rights of Plaintiffs, their members, and their users under the Commerce Clause because it constitutes an unreasonable and undue burden on interstate and foreign commerce.

125. The Act violates the rights of Plaintiffs, their members, and their users under the Commerce Clause because it subjects interstate use of the Internet to inconsistent regulations.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court:

- A. Declare that House Bill 8, to the extent that it enacts O.R.C. §§ 2907.01 and 2906.37, violates the First, Fifth and Fourteenth Amendments and the Commerce Clause of the United States Constitution;
- B. Preliminarily and permanently enjoin defendants, their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of the injunction, from enforcing the provisions of House Bill 8;
- C. Award Plaintiffs their reasonable costs and fees pursuant to 42 U.S.C. § 1988; and
- D. Grant plaintiffs such other and further relief as the Court deems just and proper.

Dated: May 6, 2002

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