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Court Voids Alaska Statute to Protect First Amendment Rights
Holds Restrictions on Internet Speech Violate 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 a statute because it violates First Amendment rights of free speech.

In a lawsuit brought by Alaska booksellers, libraries, 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 speech. “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 had enacted the current statute, Media Coalition and the ACLU had pointed out the constitutional defects in the bill, and sought to work with the Legislature and the Attorney General’s office to draft a bill which 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 or unreasonable government infringement.”

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

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

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 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 www.akclu.org.

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