

**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 BARBARA M. JONES**

I, Barbara M. Jones, do declare:

1. I am the Executive Director of the Freedom to Read Foundation, Inc. (“FTRF”), a plaintiff in this action. I submit this declaration on behalf of FTRF, its members, and the librarians, employees and users of its member libraries, 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. 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. Its members include 1,592 libraries and librarians, including 8 in Utah, most (if not all) of whom engage in electronic communications.

3. FTRF and its library and librarian members, both public and private, serve as both access and content providers 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 websites and use the Internet to post card catalogues, to post information about current events, to sponsor chat rooms, to provide textual information or art, or to post online versions of materials from their library collections. Patrons can, for example, access the websites 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.

4. Some of the materials provided or made available by libraries contain nudity or sexual content. For example, FTRF member libraries’ online card catalogues include such works as *It's Perfectly Normal* by Robie Harris, *The Joy of Sex* by Alex Comfort, *The Joy of Gay Sex*

by Charles Silverstein and Felice Picano, *Deal with it! : a whole new approach to your body, brain, and life as a gURL*, by Esther Drill, *The Whole Lesbian Sex Book* by Felice Newman, *Nude Sculpture: 5000 Years* by Vicki Goldberg and David Finn, and *Edward Weston's Book of Nudes*.

### **Fear Of Prosecution Under The Challenged Statutes**

5. FTRF members' right to learn about, acquire and distribute material describing or depicting nudity and sexual conduct, and their patrons' right to such materials, will be seriously infringed by the Challenged Statutes if they are not enjoined because FTRF members will be forced to self-censor or risk prosecution under the Challenged Statutes.

6. FTRF members operate libraries in the State of Utah. The Challenged Statutes would affect the availability of books in libraries in Utah. Application of the "harmful to minors" restriction would restrain and ultimately preclude the otherwise lawful dissemination to minors of such popular, acclaimed, and socially important books as *Forever* by Judy Blume, *The Absolutely True Diary of a Part-Time Indian* by Sherman Alexie, *The Perks of Being A Wallflower* by Stephen Chboskey, *Beloved* by Toni Morrison, *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.

7. In addition to affecting libraries within the state of Utah, the Challenged Statutes also affects libraries' websites nationwide. Users of the Internet can often access covers and excerpts from these books at libraries' websites. Some of the language and depictions on those covers and in those excerpts would invariably be subject to the Challenged Statutes.

### **Internet Use by FTRF Members is Interstate in Nature**

8. Much of the Internet use by libraries is interstate in nature. For example, any library's Web page can be accessed by Internet users not only throughout the United States, but

throughout the world. Similarly, FTRF members from across the country communicate with one another, as well as with Internet users across the country, via e-mail. Moreover, FTRF members cannot effectively prevent their websites or discussion groups from being accessed by Utah users. Thus, both instate and out-of-state FTRF users -- who post information which may be considered "harmful to minors" as established by the Challenged Statutes on websites, chat rooms and discussion groups -- must comply with the Challenged Statutes or risk criminal prosecution in Utah.

9. The only certain method of compliance with the Amended Act is for FTRF and its members to exclude from their websites and their libraries anything which might possibly fall under the purview of the Challenged Statutes, thus severely constricting the usefulness and informational content of the websites and libraries. FTRF strongly believes that adults are constitutionally entitled to unrestricted access to all First Amendment-protected material, even that which contains sexual activity or excitement.

10. Even if FTRF and its members seeks 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.

11. If the Challenged Statutes are not enjoined and FTRF members are forced to self-censor, they and the librarians, employees and users of its member libraries will suffer immeasurable injury. The users of its libraries will be denied access to constitutionally protected materials. Its members, themselves, and their librarians and employees will be faced with

prosecution for performing their duties and displaying and disseminating such constitutionally protected materials.

**Conclusion**

12. For all the reasons stated above, FTRF'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 libraries 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 2<sup>nd</sup>  
day of May, 2011.

s/ Barbara M. Jones  
Barbara M. Jones