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EXHIBIT C


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Reel Reads





Abu Ghraib: The Politics of Torture (Paperback)

By David Levi Strauss, Barbara Ehrenreich, Mark Danner

\$9.95

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Description

Abu Ghraib unveiled a lengthy list of disastrous actions and cover-ups by the Bush administration and the American military. Abu Ghraib examines the problem from many different perspectives, gathering together timely essays on the prison scandal from prominent progressive writers. Barbara Ehrenreich looks at the story through the lens of feminism, noting that the most infamous photos involve female soldiers. John Gray argues that Iraq is worse than Vietnam. Looking to future ramifications, Meron Benvenisti reflects on the "powerless rage" of an occupied culture. David Matlin deconstructs President Bush's declaration that the Abu Ghraib images do not represent America. Giving voice to those directly impacted, Mark Danner reports on the anger and humiliation experienced by the victims and their families. This book provides a broader understanding of the issue and its repercussions.

About the Author

Complete list of Contributors: Meron Benvenisti, Mark Danner, Barbara Ehrenreich, John Gray, Richard Grossinger, David Matlin, Charles Stein, David Levi Strauss, and Brook Warner.

Barbara Ehrenreich is a prominent political essayist and social critic. She is the author or co-author of thirteen books, including *Fear of Falling: The Inner Life of the Middle Class* (Perennial), and *Nickie and Dimed: Surviving in Low-Wage America* (Owl Books). Ehrenreich lives in Key West, Florida.

John Gray is Professor of European Thought at the London School of Economics and Political Science (LSE). His areas of expertise include British politics, European affairs, intellectual history, political philosophy, and political thought. Gray lives in London.

Meron Benvenisti was deputy mayor of Jerusalem from 1971 to 1978. Benvenisti is currently a columnist for Haaretz, Israel's largest newspaper. He is the author of many books, including *Intimate Enemies: Jews and Arabs in a Shared Land* (UC Press) and *City of Stone: The Hidden History of Jerusalem* (UC Press). Benvenisti lives in Jerusalem.

Mark Danner is a staff writer for *The New Yorker* and Professor of Journalism at University of California, Berkeley. He writes about foreign affairs and American politics and foreign policy in Europe and the Middle East. Danner lives in Berkeley, California.

David Matlin is a novelist, poet, and essayist. He teaches literature creative writing at San Diego State University. Matlin is the author of *Prisons Inside the New America* (North Atlantic Books). Matlin lives in San Diego, California.

Praise for Abu Ghraib: The Politics of Torture...

The photos did something else to me, as a feminist. They broke my heart. I had no illusions about the U.S. mission in Iraq whatever exactly it is, but it turns out that I did have some illusions about women. And I also shouldn't be surprised because I never believed that women were innately gentler and less aggressive than men. Like most feminists, I have supported full opportunity for women within the military. 1) because I knew women could fight, and 2) because the military is one of the few options around for low-income young people.
—Barbara Ehrenreich

Misquidled from the start, the war in Iraq is spiraling out of control. Any leadership the occupying forces may ever have possessed has been destroyed, and there are signs that Iraqi insurgents are coming together to mount

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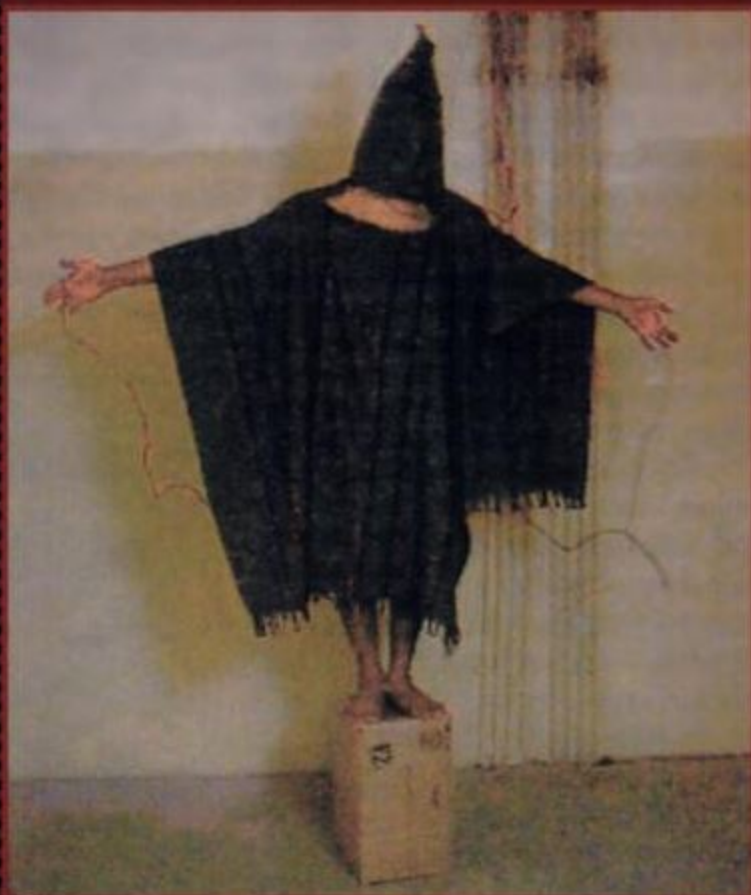
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Antigone Books Top Ten

1. *Murder on Bamboo Lane* Naomi Hirahara (\$7.99)
2. *Americanah* Chimamanda Ngozi Adichie (\$15.95)
3. *Zoologies: On Animals and the*

Abu Ghraib

The Politics of Torture



Including Essays by Mark Danner, Barbara Ehrenreich, & David Levi Strauss



THE TERRA NOVA SERIES

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

ANTIGONE BOOKS L.L.C.; et al.
Plaintiffs,
-v-
TOM HORNE, in his capacity as
Attorney General of the State of Arizona;
et al.
Defendants.

No. CV-14-02100-PHX-SRB
**[PROPOSED] ORDER GRANTING
PLAINTIFF’S MOTION FOR
PRELIMINARY INJUNCTION**

This matter has come before the Court on Plaintiffs’ Motion for Preliminary Injunction. Having reviewed the papers in support of and in opposition to such Motion, and being fully advised on this Matter, the Court finds that there is good cause appearing to grant Plaintiffs’ Motion. Plaintiffs have demonstrated a strong likelihood of success on the merits of their claims as well as the possibility that they face irreparable harm absent the issuance of an injunction. Accordingly, Plaintiffs are entitled to preliminary injunctive relief, and the Court GRANTS Plaintiffs’ Motion as follows:

1. Upon finding that Plaintiffs have carried their burden of demonstrating both
1) a likelihood of success on the merits of their claims and 2) irreparable

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injury, Plaintiffs' Motion is GRANTED pursuant to Federal Rule of Civil Procedure 65 and the equitable powers of this Court.

2. The Court hereby preliminarily ENJOINS Defendants, their agents, servants, employees, attorneys, and all others in active concert or participation with Defendants from enforcing ARIZ. REV. STAT. § 13-1425 pending the final determination of this action.
3. This Preliminary Injunction shall go into effect immediately and shall remain in effect during the pendency of this Action, or upon further order of the Court.

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11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE DISTRICT OF ARIZONA

13 ANTIGONE BOOKS L.L.C.; INTERGALACTIC, INC.,
14 D/B/A, BOOKMANS; CHANGING HANDS
BOOKSTORE, INC.; COPPER NEWS BOOK STORE;
15 MOSTLY BOOKS; VOICE MEDIA GROUP, INC.;
AMERICAN BOOKSELLERS FOUNDATION FOR FREE
16 EXPRESSION; ASSOCIATION OF AMERICAN
PUBLISHERS; FREEDOM TO READ FOUNDATION;
17 AND NATIONAL PRESS PHOTOGRAPHERS
ASSOCIATION,

18 Plaintiffs,

19 -v-

20 TOM HORNE in his capacity as Attorney General of
21 the State of Arizona, et al.,

22 Defendants.

Case No.
2:14-cv-02100-PHX-SRB

**LIST OF DECLARATIONS IN
SUPPORT OF PLAINTIFFS’
MOTION FOR A PRELIMINARY
INJUNCTION**

Declarant	Affiliation	Position
Andy Van de Voorde	Voice Media Group, Inc.	Associate Executive Editor
Allan R. Adler	Association of American Publishers	Vice President for Legal and Government Affairs
Barbara M. Jones	Freedom to Read Foundation	Executive Director
Mickey H. Ostreicher	National Press Photographers Association	Member and General Counsel
Trudy Mills	Antigone Books, L.L.C.	Co-owner
Sean Feeney	Intergalactic, Inc., d/b/a, Bookmans	President
Gayle Shanks	Changing Hands Bookstore, Inc.	Co-founder, co-owner, president, general manager
Hop David	Copper News Book Store	Co-owner
Tricia Clapp	Mostly Books	Co-owner
Christopher Finan	American Booksellers Foundation for Free Expression	President

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11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE DISTRICT OF ARIZONA

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16 MOSTLY BOOKS; VOICE MEDIA GROUP, INC.;
17 AMERICAN BOOKSELLERS FOUNDATION FOR FREE
18 EXPRESSION; ASSOCIATION OF AMERICAN
19 PUBLISHERS; FREEDOM TO READ FOUNDATION;
20 AND NATIONAL PRESS PHOTOGRAPHERS
21 ASSOCIATION,

22 Plaintiffs,

23 -v-

24 TOM HORNE in his capacity as Attorney General of
25 the State of Arizona, et al.,

26 Defendants.

Case No.
2:14-cv-02100-PHX-SRB

**DECLARATION OF
ANDY VAN DE VOORDE (VOICE
MEDIA GROUP)**

ANDY VAN DE VOORDE declares:

1. I am the Executive Associate Editor at Voice Media Group (“VMG”), a plaintiff in this action. I have personal knowledge of the facts set forth in this declaration.

1 2. I submit this declaration on behalf of VMG, the eleven newsweeklies we
2 publish (including *Phoenix New Times*, which focuses on arts, culture, and news in
3 Arizona), VMG’s employees (including me), its readers, and the users of its websites, in
4 support of plaintiffs’ motion for a declaratory relief, and a preliminary injunction and
5 permanent injunction to enjoin enforcement of an Arizona statute which provides, subject
6 to limited exceptions, that:

7 It is unlawful to intentionally disclose, display, distribute, publish, advertise
8 or offer a photograph, videotape, film or digital recording of another person
9 in a state of nudity or engaged in specific sexual activities if the person
knows or should have known that the depicted person has not consented to
the disclosure.

10 Ariz. Rev. Stat. § 13-1425 (“the Act”). I have read the Act, including the statutory
11 definitions incorporated by reference.

12 3. I understand that violation of the Act is a felony.

13 **VOICE MEDIA GROUP: A PULITZER-WINNING MEDIA ORGANIZATION**

14 4. Voice Media Group is the largest group of metropolitan newsweeklies in the
15 United States, publishing papers in eleven geographic areas: Phoenix, New York, Los
16 Angeles, Denver, Houston, Dallas, St. Louis, Miami, Minneapolis, Broward County, and
17 Orange County.

18 5. VMG was created in 2012, when a group of company executives purchased
19 the publications from the previous owners, Village Voice Media Holdings. The
20 company’s namesake, *Village Voice*, was founded in New York City in 1955. The *Voice*
21 introduced the notion of free-form, high-spirited and passionate journalism into the public
22 discourse. As the nation’s first and largest alternative newsweekly, the *Voice* is the winner
23 of three Pulitzer Prizes, and today maintains the same tradition of no-holds-barred
24 reporting and cultural coverage which it first embraced more than fifty years ago.

1 6. VMG is publisher of the *Phoenix New Times*, founded in 1970 by students
2 of Arizona State University, to provide an alternative source of news and perspective on
3 local politics, business, food, culture, arts, and music, as well as events listings for
4 Phoenix. Its reports on state and local government, and on the state court system, have
5 earned *Phoenix New Times* a reputation for investigative journalism across the state.

6 7. In addition to its print holdings, VMG owns several websites which publish
7 daily blog posts, restaurant and location listings, slideshows, and concert and events
8 calendars.

9 8. Many of the news stories and picture galleries available on VMG's websites
10 and in its print weeklies, including the *Phoenix New Times*, feature images of persons in a
11 state of nudity or engaged in specific sexual activities, as defined in the Act.

12 9. Though many of the country's alternative weeklies continue to be known for
13 their agenda-driven approach to news, VMG remains true to a different vision. VMG
14 papers emphasize strong writing and solid reporting and are averse to protecting sacred
15 cows. This commitment to journalistic fundamentals has only deepened over the years. As
16 a result, while an increasing number of daily papers shorten stories and hire consultants to
17 tell them what to print, VMG papers thrive by cultivating source networks, generating
18 truly original story ideas, and digging deeply into stories rather than skating across their
19 surface.

20 10. Each of VMG's publications also maintains an online presence. Through the
21 late 1990s, our publications' websites mostly held archived content that had been printed
22 in hard copy weeklies. Now, however, all of our content runs online, and in fact we have a
23 significant amount of content that is published online only. Content on each of our papers'
24 websites is available for free to the general public.

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1 11. We routinely report on art exhibitions, erotica, tattoo conventions, local
2 parties, and other topics involving nudity and sexuality. Many of the news stories and
3 picture galleries available on our websites and in our print editions feature images of
4 persons in a state of nudity or engaged in specific sexual activities, as defined in the Act.
5 As discussed below, in many instances, we rarely know whether the persons depicted
6 consented to the disclosure, or we sometimes know that the persons depicted did not
7 consent. Many of these images do not clearly involve “voluntary exposure in a public or
8 commercial setting.” We therefore “display” and “offer” images restricted by the Act in
9 both our paper weeklies and online. We believe that each of these images is fully
10 protected by the First Amendment, and we have every right to publish them. We do not
11 print obscene or otherwise unlawful images.

12 **FEAR OF PROSECUTION UNDER THE ACT**

13 12. I fear that VMG, Phoenix New Times, VMG’s other publications, and its
14 employees (including me) are at risk of prosecution under the Act for displaying or
15 distributing images of another person in a state of nudity or engaged in specific sexual
16 activities. Our readers are at risk of prosecution for sharing images which we publish.
17 These images appear throughout our media, including historical and artistic titles, and we
18 believe they are fully protected by the First Amendment.

19 13. First and foremost, the provision of the Act which imposes liability “if the
20 person knows or should have known that the depicted person has not consented to the
21 disclosure” is vague, and its plain reading is extremely broad. I understand consent to “the
22 disclosure” to refer to VMG’s discrete publication of a particular image, rather than the
23 taking or initial sharing of the image. We almost never have first-hand knowledge of
24 whether the subjects in the photos we publish have consented to our publication; our
25 knowledge of subjects’ consent is entirely assumed or derivative. For example, we may
26

1 reprint publicly-available images without tracking down the original circumstances of
2 consent. With respect to our freelance photographers who provide original images to us,
3 we rely on a contract which requires our freelancers to acknowledge that they will not
4 provide us with any images that violate state or federal law; as far as I am aware, no
5 photographer is screening for specific consent pursuant to the Act. Nor does VMG receive
6 formal confirmation or documentation of a subject's consent—not even derivative—from
7 the freelancer. Thus we rarely “know” that we have consent from the individuals to
8 publish their images in our papers and online, and we therefore “know” they have not
9 provided us with their consent.

10 14. Furthermore, the risk that photographs we consider for publication may be
11 restricted by the Act places a special burden on *Phoenix New Times*' employees. Our own
12 display of images either in print or online follows a vetting process by each of our
13 publications, including at *Phoenix New Times*. There are multiple “displays” of any image
14 we consider for publication – either of physical print-outs, or via email – constituting a
15 chain of disclosure among our employees within the confines of *Phoenix New Times*. The
16 nature of pre-publication review therefore guarantees that any photo we print will be
17 disclosed numerous times by our staff before it even gets to print. That is true even if one
18 of our staff were to flag an image for possible internal legal review—under the terms of
19 the Act, that employee's own diligent consideration of that image's lawfulness (*i.e.*,
20 showing the image to colleagues for review) would alone subject him or her to criminal
21 liability.

22 15. In addition, the Act imposes penalties on the display of restricted images
23 when the person “should have known” that the person depicted did not consent. This is
24 very troubling language, and creates a broad negligence standard—with felony
25 consequences attached if we guess wrong. While we do vet the images we publish or host
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1 on our own sites, we also link to images restricted by the Act on other sites (that is, we
2 “offer” or “advertise” that content). Does the Act now impose a duty for us to review the
3 circumstances of each image we link to on other online websites? And once we do review
4 images, whether our own or those on other sites we link to online, I have no idea how our
5 employees would ascertain the circumstances of consent behind each image. Does the Act
6 create a duty to investigate the circumstances behind each photograph we publish, display,
7 or advertise?

8 16. The broad reach of the images restricted by the Act greatly increases my
9 concern about potential liability for VMG and its employees. First, the definition of nudity
10 includes the bottom of the female breast, even if the nipple and areola are fully covered.
11 As a general matter, defining nudity by the nipples or areolas is concrete, and most editors
12 and photographers can comprehend, and are aware of, that definition of female nudity.
13 But the Act’s complex and counterintuitive definition of nudity, borrowed from zoning
14 law, includes images that few people would consider “nude.” Images that include parts of
15 the side or bottom of the breast below the top of the areola are common in art, social
16 media, advertising, and at red carpets and society events. For example, *Phoenix New*
17 *Times* has published the following images that I do not consider “nude” but that fall
18 within the Act’s definition: copies of art works running in local art shows¹; images of
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25 ¹ See, e.g., Benjamin Leatherman, Call for Artists: Jen Deveroux’s Nude Photography
26 *Show at monOrchid in November (NSFW)*, *Phoenix New Times* (Sept. 20, 2013),
[http://blogs.phoenixnewtimes.com/jackalope/2013/09/jen_deveroux_monorchid_photo_sh
ow.php](http://blogs.phoenixnewtimes.com/jackalope/2013/09/jen_deveroux_monorchid_photo_show.php).

1 local people at ticketed (and thus guest-restricted) events², and links to images of public
2 figures³.

3 17. In addition, the Act's definition of "simulated sex acts" is extremely broad
4 and requires no nudity at all. It therefore could include fully-clothed dirty dancing,
5 groping, and other activities that most people would not consider private, lewd, or
6 possibly unlawful to share. For example, *Phoenix New Times* has repeatedly covered the
7 annual "Fetish Ball," and published photos of individuals at this private event engaged in
8 fully-clothed, simulated sex acts on stage.⁴

9 18. Even when we knowingly publish images that we would consider nude
10 images (such as exposure of the genitals or the entire female breast), we do not and cannot
11 always obtain consent. For example, we have published images of nude art photography
12 where the person depicted is not identifiable.⁵ VMG employees would have no possible
13 way of obtaining a headless and nameless subject's consent.

14
15
16 ² See, e.g., *AVN Awards 2013: The Least Dressed (NSFW)*, *Phoenix New Times* (Jan. 26,
17 http://blogs.phoenixnewtimes.com/jackalope/2013/01/avn_awards_2013_the_least_dressed_nsfw.php?page=2).

18
19 ³ See, e.g., Ray Stern, "The Dirty" Website's 10 Most Newsworthy Posts (With Photos),
20 *Phoenix New Times* (Aug. 20, 2013), http://blogs.phoenixnewtimes.com/valleyfever/2013/08/the_dirty_websites_10_most_newsworthy_posts.php?page=3 (image and others in the slideshow).

21
22 ⁴ See, e.g., *Fetish Party 2014 at Venue Scottsdale (NSFW)*, *Phoenix New Times* (Aug. 11,
2014), <http://www.phoenixnewtimes.com/slideshow/fetish-party-2014-at-venue-scottsdale-nsfw-41753027/#46> (image and others in the slideshow).

23
24 ⁵ See, e.g., Joshua Rose, *Naked Sitting: 'Annie Liebovitz's Nudes' Uncover's New Territory*,
25 *Phoenix New Times* (Nov. 16, 2000), <http://www.phoenixnewtimes.com/2000-11-16/culture/naked-sitting/>; Katie Johnson, *Critique My Dick Pick is a Tumblr That Does Just That (NSFW)*,
26 *Phoenix New Times* (Sep. 30, 2013), http://blogs.phoenixnewtimes.com/jackalope/2013/09/critique_my_dick_pick_is_a_tumblr_that_does_just_that_nsfw (linked to and "advertised" on *Phoenix New Times* website).

1 19. I understand that the Act exempts images involving voluntary exposure in a
2 public or commercial setting. I do not know what “public” means in this context.
3 Representatives of our publications frequently attend events, including gallery openings,
4 music and dance events, and other parties, where many people are present, but which are
5 held on private property and restrict access to ticket holders or invitees. Individuals at
6 these events may know they’re being seen by others and possibly photographed, and they
7 have no legal expectation of privacy. But they are not in “public” as the term is commonly
8 understood. The term “commercial setting” is no clearer. When I hear “commercial,” I
9 immediately think of images used in advertising, where there is a clear exchange of
10 money. I do not know what the Act means when it refers to a “commercial setting”, or
11 how VMG employees would determine that from looking at a photograph.

12 20. Most fundamentally, the Act totally lacks any exception for newsworthy or
13 artistic content, or images of public figures. This is unacceptable and in clear violation of
14 First Amendment principles. We have published, and believe we have every right to
15 continue publishing, images of art and public figures clearly prohibited by the Act. We
16 have published images taken by an Arizona artist of her own naked children, and included
17 thumbnail images of naked babies.⁶ (The Act does not include any age definitions or
18 limitations.) We have also posted images of Representative Anthony Weiner’s clothed
19 but visibly erect genitalia,⁷ and in that same piece, directly linked to a gallery of images of
20 his full frontal nudity (“offering” the link with the text “Weiner’s latest penis images”).

21 _____
22 ⁶ See, e.g., Amy Silverman, *Artist Betsy Schneider Takes Pictures of Her Children Naked*
23 *and Shows Them to the World*, Phoenix New Times (Aug. 14, 2008),
<http://www.phoenixnewtimes.com/2008-08-14/news/artist-betsy-schneider-takes-pictures-of-her-children-naked-and-shows-them-to-the-world/>.

24 ⁷ See, e.g., Ray Stern, “The Dirty: Website’s 10 Most Newsworthy Posts (With Photos),
25 (Aug. 20, 2013),
http://blogs.phoenixnewtimes.com/valleyfever/2013/08/the_dirty_websites_10_most_new.php?page=5.

1 We have every right to do so. Weiner is a public figure, and his behavior, unseemly or
2 otherwise, is of clear public interest.

3 21. I am not a timid line editor, and I believe that newspapers are entitled to use
4 independent editorial judgment about which speech and images are of public concern. I
5 want the content that works best for our readership. After our editors receive copy from a
6 reporter, the editor then contacts VMG's legal counsel who reviews applicable statutes
7 and determines any possible risk involved in publishing any particular story or image. The
8 general rule is that news publications are not required to (and VMG does not) obtain the
9 consent of anyone we publish about, whether in text or images, so long as the story is fair,
10 accurate, non-obscene, and of public concern. The Act now creates an entire new legal
11 layer of consent which would require far more resources and uncertainty in assessing our
12 legal risk, and which we view as a prior restraint.

13 22. Ordinarily, the legal questions that VMG's editors and counsel consider
14 about any publication involve a civil concern. In that context, we can balance any possible
15 risks of publishing an image on a largely monetary basis (for example, a possible
16 copyright judgment) to determine whether the newsworthiness of the image or story
17 would outweigh a risk of legal action. To have to consider *criminal* liability in the context
18 of exercising our First Amendment rights in publishing is altogether different and simply
19 extraordinary. The felony criminal penalties contained in the Act are so extreme that we
20 cannot make the same sensible, calculated weighing of risks and benefits as we can in the
21 civil context. Especially given the vagueness of its text, the Act could well lead to a
22 decision not to publish content that VMG feels entitled to publish as newsworthy, faced
23 with the chilling risk of a criminal record.

24 23. I know that supporters of the Act state it was passed in order to criminalize
25 "revenge porn." To me, revenge porn means the malicious and harmful publication of
26

1 someone's private, nude image by a former partner after a break-up, with the intent of
2 harassing the person depicted. VMG does not, and would not, engage in that behavior. We
3 are in the media business, and we print lawful and newsworthy content that is
4 constitutionally protected. Without any doubt, much of our content is swept within the
5 Act's restrictions.

6 24. Concerns about the Act's possible enforcement against VMG as a media
7 entity or against its content, even if we believe it to be fully protected by the First
8 Amendment, are not hypothetical.

9 25. In 2007, law enforcement officers arrested two executives of our
10 predecessor company, Village Voice Media, who were co-founders of *Phoenix New Times*,
11 in nighttime warrantless raids of their homes, for printing articles about broad grand jury
12 subpoenas they had received from the Maricopa County Attorney's office – subpoenas
13 seeking reporters' notes, tapes, confidential sources, and records from every story written
14 about Sheriff Joe Arpaio over a period of years. Further, they sought the IP addresses,
15 cookies, and Internet browsing habits of anyone who read certain *New Times* stories
16 critical of Sheriff Arpaio, and information about every visitor to the *New Times*' website
17 over a period of years. Following public outcry, Maricopa County terminated the grand
18 jury investigation and settled the *New Times* founders' false arrest claims for \$3.75
19 million.⁸

20 26. And the following year, that same department, at Sheriff Arpaio's direction,
21 began a police investigation into *Phoenix New Times*' publications of images from
22 Arizona State University's Professor Betsy Schneider's art exhibition including images of
23

24 ⁸ See, e.g., Stephen Lemons, *New Times Will Appeal Ninth Circuit Court Decision on Its*
25 *Lawsuit Against Joe Arpaio, Andrew Thomas, and Others* (Jun. 16, 2011),
26 <http://www.phoenixnewtimes.com/2011-06-16/news/new-times-will-appeal-9th-circuit-decision-on-its-lawsuit-against-joe-arpaio-andrew-thomas-and-others/>.

1 her own naked children.⁹ Maricopa County also considered opening a police investigation
2 into the *New Times*' publications of these images. A Phoenix city attorney told local press
3 that if the photos were found to be illegal, "Everybody who picked up one those issues [of
4 the *New Times*] could be prosecuted for possessing child pornography."¹⁰

5 27. Therefore, it is not paranoid for us to believe the Act could and would
6 absolutely be applied outside of the "revenge porn" context, as the constitutionally-
7 protected nature of VMG's business has not previously stopped Arizona law enforcement
8 from infringing our rights.

9 28. The only certain way I know for VMG to avoid the risk of felony
10 prosecution under the Act would be to review each of the images we are considering for
11 publication (including via hyperlink), and obtain specific consent from each person
12 pictured. As noted above, where the person pictured is deceased or unidentifiable, that is
13 simply impossible. And even where it is technically possible, there is a question of
14 whether VMG could function at all, given the enormous resources involved in such a
15 review. If the Act is not enjoined, VMG and its publication the *Phoenix New Times* must
16 choose between risking criminal liability and self-censoring our media content. Given the
17 track record of Arizona law enforcement, that is a chilling choice for us to face.

18 CONCLUSION

19 29. If the Act is not enjoined, VMG, its publications, readers, and the users of
20 its websites will be irreparably harmed. VMG will be forced to either self-censor the
21 content in our print media and on our website, denying our customers and the users of our
22 website access to constitutionally-protected material, or risk criminal liability.

23 ⁹ See, e.g., Mike Riggs, *Phoenix New Times Under Fire for Kiddie Pics*, Hit & Run Blog
24 (Aug. 20, 2008), <http://reason.com/blog/2008/08/20/phoenix-new-times-under-fire-f>.

25 ¹⁰ See, e.g., AAN Staff, *Police Department 'Reviewing' Phoenix New Times Photos*,
26 Ass'n Alt. Newsmedia, (Aug. 19, 2008), <http://www.altweeklies.com/aan/police-department-reviewing-phoenix-new-times-photos/Article?oid=485863>.

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I declare under penalty of perjury that the foregoing is true and correct.

Executed at Denver, Colorado on this
15 day of October 2014.



Andy Van De Voorde

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10 *Attorneys for Plaintiffs*

11 IN THE UNITED STATES DISTRICT COURT

12 FOR THE DISTRICT OF ARIZONA

13 ANTIGONE BOOKS L.L.C.; INTERGALACTIC, INC.,
14 D/B/A, BOOKMANS; CHANGING HANDS
BOOKSTORE, INC.; COPPER NEWS BOOK STORE;
15 MOSTLY BOOKS; VOICE MEDIA GROUP, INC.;
AMERICAN BOOKSELLERS FOUNDATION FOR FREE
16 EXPRESSION; ASSOCIATION OF AMERICAN
PUBLISHERS; FREEDOM TO READ FOUNDATION;
17 AND NATIONAL PRESS PHOTOGRAPHERS
ASSOCIATION,

18 Plaintiffs,

19 -v-

20 TOM HORNE in his capacity as Attorney General of
21 the State of Arizona, et al.,

22 Defendants.

Case No.
2:14-cv-02100-PHX-SRB

**DECLARATION OF
ALLAN R. ADLER (ASSOCIATION
OF AMERICAN PUBLISHERS)**

23 ALLAN R. ADLER declares:

24 1. I am General Counsel and Vice President for Government Affairs of the
25 Association of American Publishers (“AAP”), one of the plaintiffs in this action. I submit
26 this affidavit on behalf of AAP and its members in support of Plaintiffs’ motion for

1 declaratory relief, a preliminary injunction and a permanent injunction to enjoin the State
2 from enforcing Ariz. Rev. Stat. § 13-1425 (“the Act”), which criminalizes the offer,
3 display and distribution of non-obscene, constitutionally-protected material. I have read
4 the Act, including the statutory definitions incorporated by reference. I understand that
5 violation of the Act is a felony.

6 2. I have personal knowledge of the facts set forth in the declaration.

7 **ASSOCIATION OF AMERICAN PUBLISHERS**

8 3. AAP, a not-for-profit New York corporation with offices in New York and
9 Washington, is the national association of the U.S. book publishing industry. AAP
10 members include most of the major commercial book publishers in the United States, as
11 well as smaller and non-profit publishers, university presses, and scholarly associations.
12 AAP members publish hardcover, paperback and electronic books in every field, as well
13 as a range of educational materials for the elementary, secondary, post-secondary, and
14 professional markets.

15 4. AAP represents an industry whose very existence depends on the free
16 exercise of the speech rights guaranteed by the First Amendment.

17 **FEAR OF PROSECUTION UNDER THE ACT**

18 5. The Act puts AAP’s member book publishers at risk of felony prosecution if
19 they continue to offer their full catalog of books to retail booksellers in Arizona, even
20 though not a single book in the catalog is obscene. For those AAP member publishers who
21 also offer direct-to-consumer sales, via the Internet or old-fashioned mail order, the Act
22 puts them at risk if they continue to offer their full catalog to consumers in Arizona.

23 6. To demonstrate why book publishers have a reasonable fear of prosecution,
24 I will review (a) the Act’s definitions of “state of nudity” and “specific sexual activities,”
25 (b) the Act’s provisions on “consent,” and (c) the limited exemptions in the Act.
26

1 A. **“State of Nudity” and “Specific Sexual Activities”**

2 7. The Act contains expansive definitions of “state of nudity” and “specific
3 sexual activities.”

4 8. “State of nudity” includes, among other things, “The appearance of a human
5 anus, genitals or a female breast below a point immediately above the top of the areola” or
6 “A state of dress that fails to opaquely cover a human anus, genitals or a female breast
7 below a point immediately above the top of the areola.”

8 9. “Specific sexual activities” includes, among other things, “Fondling or other
9 erotic touching of the human genitals, pubic region, buttocks, anus or female breast.”

10 10. The Act criminalizes the display or publication of such images, even if the
11 person depicted is not recognizable (but imposes more severe penalties if the person
12 depicted is recognizable).

13 11. Under those definitions, several broad categories of mainstream, non-
14 obscene books published by AAP members regularly include images of persons in a “state
15 of nudity” or engaged in “specific sexual activities.” These books include, among others:
16 (a) biology texts, which contain images of the naked body (or portions of the body) for
17 instructional purposes; (b) health and sex education books including, for example, books
18 about breast feeding; (c) histories and public affairs books, including images taken at
19 crime scenes, at disaster scenes, and in conflict and war zones; (d) sports books, which
20 may include congratulatory “erotic touching” of the buttocks; (e) photography books
21 which include artistic nude images, and (f) books about celebrities which include images
22 of women in swimwear or low-cut gowns that reveal a side or bottom portion of the breast
23 below the areola (even though the areola and nipple are fully covered).

24 12. Of course, I recognize that the fact that these books contain images of
25 persons in “a state of nudity” or engaged in “specific sexual activities” does not make
26 their publication a violation of the Act, unless the publisher “knows or should have known”

1 that the person depicted did not consent to the disclosure. I will address the consent issue
2 below. Before addressing that issue, however, I note that even if the persons depicted did
3 not consent to the above publications, all of these non-obscene publications are fully
4 protected by the First Amendment, and the Act therefore infringes the constitutional rights
5 of publishers.

6 **B. “Knows or Should Have Known That the Depicted Person Has Not Consented**
7 **to the Disclosure”**

8 13. The “consent[] to the disclosure” provision of the Act is the crux of the
9 practical problem for publishers—especially because it appears that the intent of the Act is
10 to require consent to the specific disclosure.¹ For publishers, “consent[] to the disclosure”
11 would probably mean consent to publication of the image in a particular book. There is a
12 possibility that “consent[] to the disclosure” would mean consent to the particular sale, by
13 a publisher, of the particular book containing the image.

14 14. For some of the books described above, a publisher *will know that the*
15 *person did not consent* to the publication of the image in a particular book. Examples of
16 these books include histories and public affairs books, including non-obscene images
17 taken at crime scenes, at disaster scenes (such as earthquakes), and in war and conflict
18 zones. Additional examples are photography books containing artistic non-obscene
19 photographs of nudes, where the persons depicted are no longer living, and thus could not
20 consent to the specific publication. All of these books are protected by the First
21 Amendment, yet it would be a felony, under the Act, for a publisher to offer to sell any of

22 ¹ I understand that the Act was intended to criminalize “revenge porn.” While the Act is
23 limited neither to “revenge” (improper motive is not an element of the offense) nor
24 pornography (the Act’s definition of “nudity” includes a wide range of mainstream, non-
25 obscene images that could not possibly be considered pornography), it appears that the
26 specific disclosure provisions of the Act were drafted with revenge porn in mind. It is the
nature of “revenge porn,” as I understand that term, that the person depicted did consent to
the taking of the photograph and its initial viewing as part of a close, personal
relationship, but did not consent to the specific disclosure of the image to third parties
after the end of that personal relationship.

1 these books to a retail bookseller in Arizona (or to sell any of these books directly to an
2 Arizona consumer).

3 15. For some of the books described above, a publisher *may not know whether*
4 *the person has consented* to the publication of the image in a particular book—and
5 therefore publishing the image would put the publisher at risk based on an allegation that
6 the publisher “should have known” that there was no consent. Examples of these books
7 include biology texts and health and sex education books where the person depicted is not
8 recognizable (except perhaps to himself or herself). Additional examples include
9 photography books of nudes, where the photographer has provided the publisher with
10 subjects’ consent, but where the publisher has neither the resources nor the ability to
11 confirm the validity of that consent.

12 16. Of course, publishers regularly address the issue of whether authors and
13 photographers have the rights to works considered for publication. As part of that process,
14 publishers may require proofs of consent of persons depicted in photographs. When that is
15 done, publishers may assume some risk that consent might not be valid. But it is one thing
16 for a publisher to accept the risk that it might be subject to a civil litigation seeking
17 damages if it publishes an image for which no valid consent to publication was given; it is
18 quite another for a publisher to be asked to assume the risk of felony prosecution if a
19 prosecutor believes that the publisher’s due diligence was inadequate, and that the
20 publisher should have known that a person depicted in a nude image did not consent to the
21 publication of that image in a specific book.

22 **C. The Exemptions**

23 17. The Act’s vague, limited exemptions compound the problem.
24
25
26

1 18. For example, the Act exempts “Images involving voluntary exposure in a
2 public or commercial setting,” but does not define what is meant by a “public ... setting”
3 or a “commercial setting.” I find both of these terms vague and confusing.

4 19. I do not know whether a “public setting” means a place where the general
5 public is permitted, or any place where other people may be present. Similarly, I don’t
6 know whether and how access to a particular venue must be restricted to make it non-
7 public. I would assume that a public beach is a “public setting,” but what about a hotel
8 beach that is open only to registered guests at the hotel? Is a dance performance, open
9 only to persons who have purchased tickets, a public setting? Does that depend upon
10 whether there were any restrictions on who could purchase tickets? Are photographs taken
11 in a sports stadium taken in a “public setting”? What about photographs taken in a locker
12 room? I also don’t know what is meant by “commercial setting.” Does that mean that the
13 person depicted was compensated, or is it sufficient that the person depicted knew that the
14 photographer was considering selling the image?

15 20. For some of the images described above, a publisher might not know and
16 might not have any way of ascertaining whether the image was taken in a public setting,
17 even if the publisher knew what that term meant. For example, a viewer might not know
18 whether a photograph of a celebrity in a gown with a plunging neckline that revealed the
19 sides of her breasts was taken at a televised awards ceremony, or taken at a private after-
20 party. Or whether a photograph of a celebrity in a bathing suit which revealed the lower
21 part of her breasts was taken on a public beach, or on a private beach.

22 21. Given the extraordinary breadth of the Act, the only way that a publisher
23 could be sure to avoid criminal liability would be to refuse to offer to sell any books
24 containing images of nudity or sexual activities to any retail booksellers or consumers in
25 Arizona, even though many such books have great historic, educational, and artistic value,
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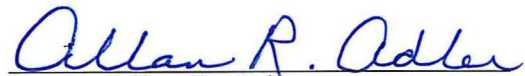
1 and all such non-obscene books are protected by the First Amendment. Indeed, because
2 publishers do not maintain a list of which of the books in their catalog contain images of
3 nudity or sexual activities, the only way that a publisher could be sure to avoid criminal
4 liability would be to compile a separate, censored catalog of those books which were
5 approved for sale in Arizona, or to decline to sell any books (or any books containing any
6 images) to booksellers or consumers in Arizona.

7
8 **CONCLUSION**

9 22. The Act threatens AAP's member book publishers with immediate
10 irreparable injury—forcing publishers to choose between a risk of felony prosecution and
11 self-censorship.

12 I declare under penalty of perjury that the above is true and correct.

13 Executed at Washington, D.C. on this
14 23rd day of October, 2014.

15 
16 Allan R. Adler

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9
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11 IN THE UNITED STATES DISTRICT COURT

12 FOR THE DISTRICT OF ARIZONA

13 ANTIGONE BOOKS L.L.C.; INTERGALACTIC, INC.,
14 D/B/A, BOOKMANS; CHANGING HANDS
BOOKSTORE, INC.; COPPER NEWS BOOK STORE;
15 MOSTLY BOOKS; VOICE MEDIA GROUP, INC.;
AMERICAN BOOKSELLERS FOUNDATION FOR FREE
16 EXPRESSION; ASSOCIATION OF AMERICAN
PUBLISHERS; FREEDOM TO READ FOUNDATION;
17 AND NATIONAL PRESS PHOTOGRAPHERS
ASSOCIATION,

18 Plaintiffs,

19 -v-

20 TOM HORNE in his capacity as Attorney General of
21 the State of Arizona, et al.,

22 Defendants.

Case No.
2:14-cv-02100-PHX-SRB

**DECLARATION OF
BARBARA M. JONES (FREEDOM
TO READ FOUNDATION)**

23 BARBARA M. JONES declares:

24 1. I am the Executive Director of the Freedom to Read Foundation (“FTRF”),
25 a plaintiff in this action. I submit this declaration on behalf of FTRF, its members, and the
26 librarians, employees and patrons of its member libraries, in support of plaintiffs’ request

1 for a declaration of unconstitutionality and preliminary and permanent injunctive relief
2 prohibiting enforcement of Ariz. Rev. Stat. § 13-1425 (the “Act”), which criminalizes the
3 offer, display and distribution of non-obscene images which depict persons in a “state of
4 nudity” or engaged in “specific sexual activities,” collectively referred to as “restricted
5 images” in this declaration. I have read the Act, including the statutory definitions
6 incorporated by reference. I understand that violation of the Act is a felony.

7 2. I have personal knowledge of the facts set forth in this declaration.

8 **FREEDOM TO READ FOUNDATION**

9 3. FTRF is a non-profit membership organization established in 1969 by the
10 American Library Association to promote and defend First Amendment rights, to foster
11 libraries as institutions fulfilling the promise of the First Amendment for every citizen, to
12 support the rights of libraries to include in their collections and make available to the
13 public any work they may legally acquire, and to set legal precedent for the freedom to
14 read on behalf of all citizens. FTRF also promotes free Internet access, opposes the
15 filtering of constitutionally protected material in public libraries, and sponsors the
16 American Association of School Librarians’ annual Banned Websites Awareness Day.
17 FTRF is incorporated in Illinois and has its principal place of business in Chicago. Its
18 members include libraries and librarians throughout the United States, including in
19 Arizona. FTRF sues on its own behalf, on behalf of its members, and on behalf of the
20 employees and patrons of its member libraries.

21 4. FTRF and its library and librarian members, both public and private, serve
22 as both access and content providers, both in hard copy and electronically.

23 5. While continuing to perform their traditional role as places where patrons
24 can borrow, read, and view printed books, audio recordings, movies, and other First
25 Amendment-protected materials, many libraries now provide their patrons with computers
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1 through which the patrons can access the Internet. This service is particularly important to
2 library patrons who do not otherwise have Internet access, many of whom have a critical
3 need for Internet access—for example, for health information, or for a job search.

4 6. Many libraries also have their own websites and use the Internet to post
5 online public access catalogs, to post information about current events, to sponsor chat
6 rooms, to provide textual and visual information, or to post online versions of materials
7 from their library collections. These library websites can be accessed from wherever the
8 Internet can be accessed—across the country, and around the world (except in those
9 countries which ban or restrict Internet access).

10 7. Some of the materials provided or made available by FTRF member
11 libraries contain restricted images. These books include, among others: (a) biology texts,
12 which contain images of the naked body (or portions of the body); (b) health and sex
13 education books; (c) histories and public affairs books, including images taken at crime
14 scenes, at disaster scenes, and in conflict and war zones; and (d) photography books which
15 include artistic nude images, among many others.

16 **FEAR OF PROSECUTION UNDER THE ACT**

17 8. FTRF members' right to acquire, offer and distribute material describing or
18 depicting non-obscene nudity and sexual conduct, and their patrons' right to such
19 materials, will be seriously infringed by the Act, if the Act is not enjoined, because FTRF
20 members will be forced to self-censor or risk prosecution under the Act.

21 9. Unless enjoined, the Act will infringe constitutional rights not only of
22 libraries, librarians, library employees, and library patrons inside of Arizona, but also of
23 libraries and librarians outside of Arizona. The Act has somewhat different, but equally
24 harsh, impacts in the state of Arizona and out-of-state.

1 10. For libraries, librarians, library employees, and library patrons in Arizona,
2 the impact of the Act will be severe and immediate. It would be a violation of the Act for
3 any Arizona library to include, in its collection, for borrowing, reading, and viewing, any
4 book or other work that contained non-obscene images that were restricted under the Act.
5 Because libraries, librarians, and library employees have no practical way to ascertain
6 whether the persons depicted in books and other First Amendment-protected materials
7 consented to the taking of the image and the publication of the image in that particular
8 work (and know that the persons depicted were not asked to consent to the shelving of the
9 book in that specific library, if such consent is required), the only sure way to comply with
10 the Act would be to remove from a library's collection all books and other materials
11 which contain any images of nudity or sexual conduct. The Act would thus affect the
12 availability of books and other materials in libraries in Arizona; it would restrain and
13 ultimately preclude the otherwise lawful shelving and dissemination of popular, acclaimed,
14 and socially important books. Library patrons in Arizona would be deprived of access to
15 these materials.

16 11. The Act presents even more severe problems for Arizona libraries'
17 provision of Internet access. If an Arizona library provides any Internet access, even if
18 such access is filtered, images of nudity subject to the Act would come through the filter
19 and thus be offered to library patrons in Arizona. The only practical way for libraries,
20 librarians, and library employees in Arizona to comply with the Act would be to terminate
21 the availability of all Internet access, which certainly would be against the policies of the
22 libraries and, I would hope, of the state of Arizona.

23 12. Furthermore, FTRF member libraries' online public access catalogs include
24 many works containing non-obscene images that are restricted under the Act. Arizona
25 members would appear obligated to remove these works from their online public access
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1 catalogs, because while the images might not appear online, listing the restricted books
2 online would be “offering” the images.

3 13. The Act also has an impact on FTRF member libraries outside of Arizona.
4 This interstate impact of the Act not only infringes the First Amendment rights of non-
5 Arizona libraries and librarians, but also has a substantial detrimental effect on their
6 ability to function in interstate commerce. Many of those non-Arizona libraries participate
7 in Interlibrary Loans to Arizona libraries. To comply with the Act, the non-Arizona
8 libraries would have to either (a) set up a restriction on the Interlibrary Loan program to
9 ensure that restricted works were not loaned to Arizona libraries or persons in Arizona, or
10 (b) to maintain a uniform Interlibrary Loan program, remove such restricted works
11 entirely, thus denying libraries (and their patrons) in other states the opportunity to borrow
12 such works. Through this latter effect, the Act not only impacts commerce between other
13 states and Arizona, but also impacts interstate commerce that takes place entirely outside
14 of Arizona.

15 14. I understand that its supporters have stated that the Act was passed to
16 criminalize “revenge porn”— a term that generally refers to the intentional and harmful
17 publication of a nude image, taken of a person in a close personal relationship, and
18 disclosed by a former partner after the break-up of that relationship, with the specific
19 intent of harassing or humiliating the person depicted. FTRF and its member libraries and
20 librarians neither engage in nor condone “revenge porn.” To the contrary, libraries and
21 librarians value and respect privacy, and are vigorous advocates of the right to privacy.
22 We recognize that the abuse of a personal relationship and the disclosure of private, nude
23 photographs that the person depicted expected would remain private can be devastating. It
24 is entirely proper for legislatures to review whether existing laws (including those which
25 criminalize harassment) are adequate to combat “revenge porn,” and to enact carefully
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1 drafted laws that narrowly focus on addressing the dangers of “revenge porn” without
2 broadly infringing First Amendment rights.

3
4 **CONCLUSION**

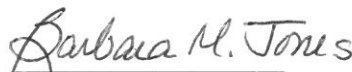
5 15. There is no practical method of compliance with the Act for FTRF and its
6 members. To comply with the Act, Arizona libraries and librarians would have to go
7 through each item physically in the library to see if it contained images of nudity or sexual
8 conduct, and would then have to undertake the impossible task of seeking to ascertain
9 whether the persons depicted had consented to the disclosure or whether the images were
10 otherwise exempt from the Act. Arizona libraries would have to stop providing Internet
11 access to their patrons, lest a patron use a computer in an Arizona library to view a
12 restricted image. Non-Arizona libraries would have to make sure that they did not loan
13 books containing restricting images to Arizona libraries. And, even if compliance with the
14 Act were possible, this would be severe self-censorship, in violation of the First
15 Amendment rights of FTRF member libraries and librarians, and their library patrons.

16 16. FTRF member libraries, librarians, library employees, and library patrons
17 will suffer immeasurable injury if the Act is not enjoined. Library patrons will be denied
18 access to constitutionally protected materials, or libraries, librarians and library employees
19 will be faced with prosecution for performing their duties and displaying and
20 disseminating such constitutionally protected materials.

21 17. For all the reasons stated above, FTRF’s members fear prosecution under
22 the Act.

23 I declare under penalty of perjury that the above is true and correct.

24 Executed at Chicago, Illinois on this
25 16th day of October 2014.

26 
Barbara M. Jones

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11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE DISTRICT OF ARIZONA

13 ANTIGONE BOOKS L.L.C.; INTERGALACTIC, INC.,
14 D/B/A, BOOKMANS; CHANGING HANDS
15 BOOKSTORE, INC.; COPPER NEWS BOOK STORE;
16 MOSTLY BOOKS; VOICE MEDIA GROUP, INC.;
17 AMERICAN BOOKSELLERS FOUNDATION FOR FREE
18 EXPRESSION; ASSOCIATION OF AMERICAN
PUBLISHERS; FREEDOM TO READ FOUNDATION;
AND NATIONAL PRESS PHOTOGRAPHERS
ASSOCIATION,

19 Plaintiffs,

20 -v-

21 TOM HORNE in his capacity as Attorney General of
the State of Arizona, et al.,

22 Defendants.

Case No.
2:14-cv-02100-PHX-SRB

**DECLARATION OF
MICKEY H. OSTERREICHER
(NATIONAL PRESS
PHOTOGRAPHERS ASSOCIATION)**

23 MICKEY H. OSTERREICHER declares:
24
25
26

1 1. I am a photojournalist and an attorney. I am a member of plaintiff National
2 Press Photographers Association (“NPPA”), and serve as NPPA’s General Counsel. I
3 have personal knowledge of the facts set forth in this declaration.

4 2. I submit this declaration on behalf of the NPPA and its members in support
5 of plaintiffs’ motion for declaratory relief and a preliminary and permanent injunction to
6 enjoin enforcement of an Arizona statute which provides, subject to limited exceptions,
7 that:

8 It is unlawful to intentionally disclose, display, distribute, publish, advertise
9 or offer a photograph, videotape, film or digital recording of another person
10 in a state of nudity or engaged in specific sexual activities if the person
knows or should have known that the depicted person has not consented to
the disclosure.

11 Ariz. Rev. Stat. § 13-1425 (“the Act”). One of the exceptions is of “Images involving
12 voluntary exposure in a public or commercial setting,” Ariz. Rev. Stat. § 11-811(B)(3). I
13 have read the Act, including the statutory definitions of “state of nudity” and “specific
14 sexual activities.” Ariz. Rev. Stat. § 11-811(D)(14), (18).

15 3. I understand that violation of the Act is a felony.

16 **NPPA: THE VOICE OF VISUAL JOURNALISTS**

17 4. The NPPA was founded in 1946, in the days of sheet film box cameras and
18 newsreels, to ensure that press photographers, who communicate through images, would
19 have a distinct voice in issues relating to the press, and so that reporters and editors, who
20 communicate with and are more comfortable using words, would have a better
21 understanding of the concerns of visual journalists.

22 5. As both the technology and structure of the press have changed, the NPPA
23 has continued to be the leading voice of visual journalists. The NPPA now has
24 approximately 7,000 members, including working news photographers, videographers and
25 multimedia journalists, whose work encompasses the three facets of visual journalism—
26

1 still images, video, and multimedia. Our members' work is published and displayed in
2 both traditional newspapers and magazines and through the full range of electronic media.

3 6. Some of our members work as employees of media publications and
4 broadcasters; some work for online entities. Others, either because of a downturn in the
5 economy and a downsizing of news organizations, or for other reasons, work as
6 independent (freelance) visual journalists. All of our members subscribe to the NPPA
7 Code of Ethics, which includes the following text in its preamble:

8 Visual journalists operate as trustees of the public. Our primary role is to
9 report visually on the significant events and varied viewpoints in our
10 common world. Our primary goal is the faithful and comprehensive
11 depiction of the subject at hand. As visual journalists, we have the
12 responsibility to document society and to preserve its history through
13 images.

14 7. In addition to being a practicing attorney, I have been a working
15 photojournalist for over forty years, with experience in both print and television. My work
16 has appeared in such publications as *The New York Times*, *Time*, *Newsweek*, and *USA*
17 *Today*; and has been featured on television programs including ABC World News Tonight,
18 Nightline, Good Morning America, NBC Nightly News, and ESPN. I have been an
19 adjunct lecturer in Photojournalism at State University of New York at Buffalo and an
20 adjunct law professor focusing on the intersection between media and the law at the
21 University at Buffalo Law School. I have served on the advisory panel for Cameras in the
22 Courtroom in Erie County and as an instructor for Press-Emergency Services Relations
23 seminars in Erie County and Niagara County, New York.

24 **FEAR OF PROSECUTION UNDER THE ACT**

25 8. I fear that the NPPA's members (including me) are at risk of prosecution
26 under the Act simply for doing our job—the accurate and comprehensive reporting of the
news. The Act would subject the NPPA's members to prosecution for taking newsworthy,

1 non-obscene photographs and videos, and either offering those photographs and videos for
2 publication, or themselves publishing the photographs and videos through electronic or
3 other media.

4 9. It is the role, and responsibility, of a visual journalist to be at the scene, and
5 to record events as he or she sees them. Press photographers do not set out to invade
6 anyone's privacy. However, there are many situations in which a press photographer,
7 doing his or her job, will take newsworthy photographs or videos which depict nudity or
8 sexual conduct as defined in the Act (sometimes incidentally or unintentionally).

9 10. At crime scenes, at disaster scenes (such as earthquakes, floods, and
10 tornados), in prisons, and in war or conflict zones, persons may be in a state of nudity
11 involuntarily. When that happens, it is the role of the photographer or videographer to
12 record the events and to be able to offer the images to an editor, who has the responsibility
13 to determine what is newsworthy and whether, given all of the circumstances, the images
14 should be published. When considering the same image, different editors may make
15 different judgments. Some may decide that the story can and should be told without the
16 image; others may decide that the naked image is an important part of the story, and
17 publish the image. That is as it should be.

18 11. Under these circumstances—crime scenes, disaster scenes, prisons, war
19 zones, and conflict zones—it is, of course, rarely if ever feasible to seek the consent of the
20 person depicted in a photograph or video. Nor is there an expectation of privacy under
21 those circumstances. And, even if it were feasible to ask consent under those
22 circumstances, and especially if the photograph was taken without the photographer or
23 videographer having intentionally invaded the privacy of the person depicted, there is no
24 reason why the person depicted should have the right to veto publication or distribution of
25 the photograph or video.

26

1 12. Here is an example from early in my career as a photojournalist. In the early
2 1970s, there was an inmate uprising at Attica prison in western New York; hundreds of
3 prisoners rebelled, seized control of the prison, and took hostages. I was a press
4 photographer at the scene. National Guardsmen and state and local police stormed the
5 prison to regain control, leaving dozens dead, both inmates and hostages. Among the
6 searing images from the prison riot were photographs and film footage taken after the
7 police regained control of the prison: Hundreds of inmates, ordered to strip naked, stood
8 in the prison yard, surrounded by guards. Examples of those images are attached as
9 **Exhibit A.**

10 13. Had the Act been in place at that time, it would have been a felony to
11 publish that image in Arizona. In fact, because those images remain available online¹, it is
12 now a felony in Arizona for a person to go to that website, and display the image to
13 another, and it may well be a felony for the website to make the images available to
14 persons in Arizona.

15 14. As an additional example, press photographer Nick Ut, an NPPA member,
16 took the iconic and Pulitzer Prize-winning image of a young woman fleeing a napalm
17 attack in Vietnam, who had ripped off her clothing after being hit by napalm fire. It is
18 attached as **Exhibit B.** That image is widely available on the Internet² and in published
19 books such as *Moments: The Pulitzer Prize Photographs* (Blackdog and Leventhal
20 Publishers 1999), and the display of that image to persons in Arizona would similarly risk
21 felony consequences.

22
23 ¹ See, e.g., *Finding Truth and Grace at Attica*, Greenburger Center for Social and
Criminal Justice (May 30, 2014) <http://www.greenburgercenter.org/article?ID=9>.

24 ² See, e.g., Tiffany Hagler-Geard, *The Historic 'Napalm Girl' Pulitzer Image Marks its*
25 *40th Anniversary*, ABC News (Jun. 8, 2012)
26 <http://abcnews.go.com/blogs/headlines/2012/06/the-historic-napalm-girl-pulitzer-image-marks-its-40th-anniversary/>.

1 15. The Act would force photographers and videographers to self-censor—a *de*
2 *facto* unconstitutional prior restraint on speech protected by the First Amendment. The
3 Act would subject those who did not self-censor to criminal liability. In addition, those
4 photographers and videographers who declined to self-censor would likely find that some
5 editors would refuse to publish or distribute the photographs and videos, not because the
6 images were not newsworthy, but because the editors and their publishers were unwilling
7 to risk prosecution under the Act.

8 16. This is not to suggest that all images taken under such circumstances should
9 be, or will be, published. A photographer or videographer may decide not to offer an
10 image for publication. Or an editor may decide not to publish an image.

11 17. The NPPA’s Code of Ethics recognizes the difficulty of this issue, and
12 provides:

13 Visual journalists and those who manage visual news productions are
14 accountable for upholding the following standards in their daily work: ...

15 Treat all subjects with respect and dignity. Give special consideration to
16 vulnerable subjects and compassion to victims of crime or tragedy. Intrude
on private moments of grief only when the public has an overriding and
justifiable need to see.

17 18. But these decisions must be made by photographers, videographers,
18 multimedia journalists, and editors, based on their own judgment, and not under threat of
19 felony prosecution.

20 19. The threat which the Act poses to press photographers is compounded by
21 the vague terms of the Act. For example, as noted above, the Act exempts “Images
22 involving voluntary exposure in a public or commercial setting,” Ariz. Rev. Stat. § 11-
23 811(B)(3), but does not define what is meant by a “public or commercial setting.” I do not
24 know what that term is intended to mean or how it will be applied. Is a concert, held in a
25 theater, to which only persons who have purchased tickets are admitted, a “public or
26

1 commercial setting”? Does that depend on whether tickets are available for sale to the
2 general public, or whether sale is limited to, for example, members of the sponsoring
3 organization, or students and faculty at a college, or persons who have a particular credit
4 card? Presumably a public beach is a “public” setting, but what about the beach of a hotel,
5 open only to hotel guests?

6 20. In addressing these questions, one must keep in mind that the Act’s
7 definition of “state of nudity,” borrowed from zoning laws and not drafted specifically for
8 this statute, is expansive. Because “state of nudity” is defined to include “a state of dress
9 that fails to opaquely cover ... a female breast below a point immediately above the top of
10 the areola,” images of women in swimsuits and dresses with “plunging necklines” which
11 reveal side or bottom views of the breasts are criminalized even if the areola and nipple
12 are fully and opaquely covered.

13 21. It would be impossible for a photographer, videographer, or multimedia
14 journalist to comply with the Act by attempting to limit the distribution of any “restricted
15 images” outside of Arizona. Both print and electronic media are distributed nationally
16 (and internationally, in those countries which respect freedom of speech and of the press).
17 A visual journalist who offers to sell a photograph or video to a newspaper, magazine,
18 website, or other print or electronic media, cannot impose the condition that the image
19 may not be displayed in Arizona. No media would accept an image for publication under
20 that condition.

21 22. I understand that supporters of the Act stated that the intent of the Act was
22 to criminalize “revenge porn”—that is, publication of a nude image, taken of a person in
23 an intimate relationship, and disclosed by the other person after the break-up of that
24 relationship, with the intent of harassing or humiliating the person depicted. The NPPA’s
25 members do not engage in “revenge porn.” But the Act does not contain any language
26

1 which limits the scope of the Act to revenge porn. For example, if the Act were limited to
2 images taken in a close personal relationship, and disclosed for the purposes of harassing
3 or humiliating the person depicted, it is unlikely that the Act would pose any threat to the
4 First Amendment rights of the members of the NPPA. Without such limiting language, the
5 Act poses a grave threat to the NPPA's members.

6 **CONCLUSION**

7 23. If the Act is not enjoined, the NPPA and its members will be irreparably
8 harmed. Visual journalists will be forced either to self-censor, or to risk criminal
9 prosecution under the Act which will have a chilling effect on the exercise of our First
10 Amendment rights.

11 24. I declare under penalty of perjury that the foregoing is true and correct.

12 Executed at Buffalo, New York on this
13 20th day of October 2014.


14 Mickey H. Osterreicher

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11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE DISTRICT OF ARIZONA

13 ANTIGONE BOOKS L.L.C.; INTERGALACTIC, INC.,
14 D/B/A, BOOKMANS; CHANGING HANDS
BOOKSTORE, INC.; COPPER NEWS BOOK STORE;
15 MOSTLY BOOKS; VOICE MEDIA GROUP, INC.;
16 AMERICAN BOOKSELLERS FOUNDATION FOR FREE
EXPRESSION; ASSOCIATION OF AMERICAN
17 PUBLISHERS; FREEDOM TO READ FOUNDATION;
AND NATIONAL PRESS PHOTOGRAPHERS
ASSOCIATION,

18 Plaintiffs,

19 -v-

20 TOM HORNE in his capacity as Attorney General of
21 the State of Arizona, et al.,

22 Defendants.

Case No.
2:14-cv-02100-PHX-SRB

**DECLARATION OF
TRUDY MILLS (ANTIGONE
BOOKS)**

23 TRUDY MILLS declares:

24 1. I am the co-owner of Antigone Books LLC (“Antigone Books”), a plaintiff
25 in this action. I have personal knowledge of the facts set forth in this declaration.
26

1 2. I submit this declaration on behalf of Antigone Books, its employees
2 (including me), its customers, and the users of its website, in support of plaintiffs’ motion
3 for declaratory relief and a preliminary and permanent injunction to enjoin enforcement of
4 an Arizona statute which provides, subject to limited exceptions, that:

5 It is unlawful to intentionally disclose, display, distribute, publish, advertise
6 or offer a photograph, videotape, film or digital recording of another person
7 in a state of nudity or engaged in specific sexual activities if the person
8 knows or should have known that the depicted person has not consented to
9 the disclosure.

10 Ariz. Rev. Stat. § 13-1425 (“the Act”). I understand that the Act defines “state of nudity”
11 and “specific sexual activities” as follows:

12 14. ... “[S]tate of nudity” means any of the following:

13 (a) The appearance of a human anus, genitals or a female breast below a
14 point immediately above the top of the areola.

15 (b) A state of dress that fails to opaquely cover a human anus, genitals or a
16 female breast below a point immediately above the top of the areola.

17 ...

18 18. “Specific sexual activities” means any of the following:

19 (a) Human genitals in a state of sexual stimulation or arousal.

20 (b) Sex acts, normal or perverted, actual or simulated, including acts of
21 human masturbation, sexual intercourse, oral copulation or sodomy.

22 (c) Fondling or other erotic touching of the human genitals, pubic region,
23 buttocks, anus or female breast.

24 (d) Excretory functions as part of or in connection with any of the activities
25 under subdivision (a), (b) or (c) of this paragraph.

26 Ariz. Rev. Stat. § 11-811(D)(14), (18). I have read the act.

 3. I understand that violation of the Act is a felony.

ANTIGONE BOOKS: AN INDEPENDENT BOOKSTORE WITH A 40-YEAR HISTORY

 4. Antigone Books is an independent bookstore located in Tucson, Arizona.
 Antigone Books has been in business for 40 years.

1 5. Antigone Books carries a broad range of new and used books in its
2 bookstore. We stock approximately 10,000 titles in our store, including both fiction and
3 non-fiction works, some of which feature “nudity” and “sexual activities” as defined in
4 the Act.

5 6. On the website operated by Antigone Books, www.antigonebooks.com (last
6 visited Oct. 14, 2014), visitors are able to obtain information about Antigone Books and
7 the books it has available, including images of the covers of books. Our website currently
8 offers more than 9 million titles, including books, e-Books, and audio books. That
9 database of books for sale is provided by a third party, through the IndieBound app, which
10 is also responsible for maintaining (or having access to) the inventory and fulfilling orders.
11 The e-books offered on our website are provided through Kobo, a third party app. Our
12 website also announces recent books, staff picks, and upcoming in-store events. Antigone
13 Books offers an e-mail newsletter discussing upcoming events, new books, and other
14 matters considered to be of interest.

15 7. Some of the books available on the website and app feature images of a
16 person in a state of nudity or engaged in specific sexual activities, as defined in the Act.
17 Some of the covers of these books, which may be seen on the website, contain images of a
18 person in a state of nudity.

19 8. We therefore “advertise” and “offer” books containing images restricted by
20 the Act both in our stores and online.

21 **FEAR OF PROSECUTION UNDER THE ACT**

22 9. I am concerned that Antigone Books and its employees (including me) are at
23 risk of prosecution under the Act for displaying or distributing images of another person
24 in a state of nudity or engaged in specific sexual activities. These images appear in many
25
26

1 of our books, including historical and artistic titles, and we believe they are fully protected
2 by the First Amendment.

3 10. The Act would therefore subject Antigone Books to prosecution for
4 engaging in constitutionally protected activities. This is so for several reasons.

5 11. First, the provision of the Act which imposes liability “if the person knows
6 or should have known that the depicted person has not consented to the disclosure” is
7 vague. I do not know what that means.

8 12. The first big question this language raises is: what is meant by “the
9 disclosure”? Does it mean consent to the publication of the nude image in a particular
10 book? Or does it mean consent to the display or sale of that book in a particular store? Or
11 is it sufficient that the person depicted consented to any disclosure of the image anywhere?
12 Since that language echoes the verb “disclose,” it appears to require discrete consent to
13 our own display of any restricted image. We do not obtain individual consent from each
14 individual pictured nude or engaged in the law’s broad description of “sexual activities”
15 before offering those images for sale. It would be entirely impractical to do so—and
16 actually impossible for situations in which we could not identify the person, or in which
17 the depicted person might be dead or unreachable. We therefore could not obtain consent
18 from every individual pictured in a restricted image, even if we tried to.

19 13. In addition, I have no idea what Antigone Books and its employees are
20 supposed to do to ascertain whether the depicted person consented to the disclosure, so
21 that we are not subject to criminal prosecution on the grounds that we “should have
22 known” that there was no consent. The law appears to impose a duty on us to investigate
23 or understand the circumstances of consent behind each picture. It is simply impossible
24 for our employees to know or understand whether a depicted person has consented to our
25 use of that restricted image solely on looking at the image itself.
26

1 14. Among the thousands of books for sale on Antigone Books' website and in
2 our bookstore is *The Bodies of Mothers: A Beautiful Body Project* (Green Writers Press
3 2014) by local photographer Jade Beall. Based in Tuscon, Arizona, Beall specializes in
4 therapeutic photography for women, creating "truthful images of women to inspire feeling
5 irreplaceably beautiful as a counter-balance to the airbrushed photoshopped imagery that
6 dominates main stream media."¹ Many of these images depict nudity, as defined in the
7 Act. None are obscene or pornographic in the slightest. Beall's "Beautiful Body Project"
8 has touched the lives of thousands of women and garnered global attention from the BBC,
9 The Huffington Post, and more. Although we assume Beall secured the consent from each
10 of her subjects to be included in the book, we "know" that these women did not
11 specifically consent to our use of their images, as we have never spoken with them. We do
12 not know whether the women were paid for these images, or whether the images were
13 taken in a "commercial setting" as defined by the law.

14 15. Also for sale on Antigone Books' website are several photography books
15 including photographs by Robert Mapplethorpe. Although Mapplethorpe tragically passed
16 in 1988, he left behind a "vast, provocative, and powerful body of work," and is regarded
17 as "one of the most important artists of the twentieth century."² Among the books
18 including Mapplethorpe photographs which Antigone Books offers for sale are *Robert*
19 *Mapplethorpe: Polaroids* (Prestel Publishing 2013), *Mapplethorpe* (Te Neues Publishing
20 Company 2007), *Robert Mapplethorpe: The Black Book* (Schirmer/Mosel 2010), and
21 *Robert Mapplethorpe* (Skira 2014). Each of these books contains photographs of persons
22 "in a state of nudity."

23 _____
24 ¹ See e.g., Jade Beall Photography <http://www.jadebeall.com/#!/about> (last visited Oct.
10, 2014).

25 ² See e.g., The Robert Mapplethorpe Foundation <http://www.mapplethorpe.org/biography/>
26 (last visited Oct. 10, 2014).

1 16. As noted above, images of the covers (or book jackets) of the books appear
2 on our website. Some of those covers and book jackets contain images of persons in a
3 state of nudity—for example, *A Second Look: The Nudes*, by Lee Friedlander (Distributed
4 Art Publishers 2013) and *Helmut Newton: SUMO* (Taschen 2009)—so that not only does
5 the website “offer” books containing these images for sale, but the website itself “displays”
6 these images.

7 17. It is impossible for me, or any other bookseller, to ascertain whether the
8 persons depicted in the Beall and Mapplethorpe books consented to the disclosure of these
9 images. If “disclosure,” as used in the Act, means the specific disclosure in a specific
10 publication, or the display and sale of that publication in a particular store, it is certain that
11 some of the persons depicted could not have consented, and did not consent, because they
12 passed away before the “disclosure.” Could my employees and I be prosecuted for
13 continuing to offer Beall or Mapplethorpe photography books for sale, on the basis that
14 we “should have known” that some of the persons depicted in the nude did not consent to
15 the publication?

16 18. The impact of the Act is not limited to artistic books. There are many books
17 and publications of great historic and political significance which contain images of a
18 person “in a state of nudity,” where the depicted person consented neither to the taking of
19 the photograph nor to its publication, let alone to the specific publication in a particular
20 book, newspaper, magazine, or other publication, or the sale of such publication in a
21 particular bookstore or on a particular website. For example, among the books for sale on
22 Antigone Books’ website are *The Abu Ghraib Investigations: The Official Independent*
23 *Panel and Pentagon Reports on the Shocking Prisoner Abuse in Iraq* (Public Affairs
24 2004), and *Abu Ghraib: The Politics of Torture* (North Atlantic Press 2004). These books
25 contain essays and commentary examining the historical and political context of the Abu
26

1 Ghraib scandal, excerpts from official reports, presidential memos, and photographs of
2 abused prisoners in a state of nudity. A preview of the pages of *Abu Ghraib: The Politics*
3 *of Torture* is available on the Antigone Books website; one page shows a fully nude
4 prisoner cowering at a barking dog. I am concerned that the Act now makes it illegal, in
5 Arizona, to sell, or display, these books and others like them that contain these images.
6 We absolutely know that the people pictured in these images did not consent to have those
7 images taken, displayed, or sold by us; however, the newsworthy and historical value of
8 these photographs is unquestionable. These books, and these images, are protected by the
9 First Amendment, and are at the core of our right to free speech, because they shed light
10 on the activities of our government.

11 19. The burdens of the Act are hard to overstate. The task of complying with the
12 Act would make operation of a bookstore nearly impossible. We offer thousands of books
13 for sale. In working with established and trusted publishers, we know that that none of the
14 books we offer is obscene or could be considered child pornography—they are all,
15 therefore, protected by the First Amendment by default. Many reputable publishers
16 publish books containing images that could be prohibited by the Act, but none of them is
17 screening for images that are restricted by Arizona’s Act. We cannot review every book to
18 determine whether it contains a nude image, or the extremely broad category of “sexual
19 activities,” let alone to ascertain whether the person depicted consented to the disclosure.
20 The Act even explicitly covers images where the person is not “identifiable,” so the Act’s
21 language restricts images where it would actually be impossible for us to secure consent
22 from an unknown person. Even attempting to comply with this vague, overbroad Act
23 would virtually, if not actually, shut us down.

24 20. I have been informed that supporters of the Act have stated that the Act was
25 passed in order to criminalize “revenge porn.” “Revenge porn,” to me, refers to the
26

1 intentional and harmful publication of a nude image, taken of a person in a close personal
2 relationship, and disclosed by a former partner after the break-up of that relationship, with
3 the specific intent of harassing or humiliating the person depicted. Antigone Books does
4 not, and would not, engage in that behavior. To my knowledge, none of our inventory
5 could be described as revenge porn—but without any doubt many of the books and
6 publications which we display or offer for sale are swept within the Act’s restrictions.

7 21. The only certain way I know for Antigone Books to avoid the risk of felony
8 prosecution under the Act would be to review many of the titles in our inventory and
9 eliminate all books with nude or sexual photographs from our store and website. In
10 addition, since we have no ability to remove particular titles from our website (as noted
11 above, the database is provided by a third party, which ensures that the books are not
12 obscene but does not screen books for compliance with the Act), we simply could not
13 maintain a database on our website.

14 22. Given that all of our activities—in displaying and offering for sale books
15 which contain images of persons in a state of nudity or engaged in sexual conduct—are
16 protected by the First Amendment, this is an intolerable situation.

17 23. If the Act is not enjoined, Antigone Books must choose between risking
18 criminal liability and self-censoring the books and content in store and on its website. If
19 Antigone Books were to self-censor there is a question of whether we could function at all,
20 given the enormous resources involved in such a review. In addition, we would lose
21 profits from the sale of those books, and we would likely lose further business because it
22 would appear that the bookstore has an incomplete or inadequate listing of books in its
23 inventory. Antigone Books would also lose much of its ability to promote itself on its
24 website using images and excerpts from the books and other material it carries.

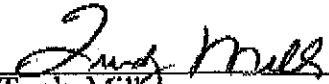
25 **CONCLUSION**

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24. If the Act is not enjoined, Antigone Books, its customers, and the users of its website will be irreparably harmed. Antigone Books will be forced to either self-censor the content available in our stores and on our website, denying our customers and the users of our website access to constitutionally-protected material, or risk criminal liability.

25. I declare under penalty of perjury that the foregoing is true and correct.

Executed at Tucson, Arizona, on this
16th day of October 2014.


Trudy Mills