



February 4, 2011

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The Honorable Carl Gatto, Chair  
The Honorable Steve Thompson, Vice-Chair  
House Judiciary Committee  
Alaska House of Representatives  
Juneau, AK 99801

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[Representative\\_Steve\\_Thompson@legis.state.ak.us](mailto:Representative_Steve_Thompson@legis.state.ak.us)

**Re: House Bill 127**  
**ACLU Review of Constitutional Issues**

Chair Gatto, Vice-Chair Thompson:

Thank you for the opportunity to submit written testimony with respect to House Bill 127.

The American Civil Liberties Union of Alaska represents thousands of members and activists throughout the State of Alaska who seek to preserve and expand individual freedoms and civil liberties guaranteed under the United States and Alaska Constitutions. In that respect, we wish to advise you of constitutional issues with the Bill.

As you may know, the ACLU of Alaska Foundation is currently representing several Alaska bookstores and others in *American Booksellers Foundation for Free Expression (ABFFE) v. Burns*. The federal court has already granted a preliminary injunction, on First Amendment grounds, against AS 11.61.128(a).

Section 9 of H.B. 127 would narrow AS 11.61.128(a) to only criminalize the distribution of material “harmful to minors” by an adult if the recipient is under 16 years old and the adult is reckless regarding the recipient’s age or the adult believes the recipient is less than 16 years old. The legislation would also add a knowledge requirement as to the content being sent to the minor.

This bill is an improvement on AS 11.61.128(a) which was enjoined October 21, but even with these changes the law would still violate the First Amendment and the Commerce Clause of the US Constitution. We welcome the opportunity to work with the Attorney General and this Committee to amend Section 9 to make it constitutionally sound. We believe that modest changes to the bill would cure the constitutional problems in Section 9 while still providing law enforcement with the means to protect minors from adults looking to prey on them.

Please feel free to contact the undersigned should you require any additional information. We are happy to reply to any questions that may arise, or to answer informally any questions which Members of the Committee may have.

Thank you again for the opportunity to share our thoughts.

Sincerely,



Jeffrey Mittman  
*Executive Director*  
ACLU of Alaska

cc: Representative Wes Keller, [Representative\\_Wes\\_Keller@legis.state.ak.us](mailto:Representative_Wes_Keller@legis.state.ak.us)  
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