



AMERICAN CIVIL LIBERTIES UNION OF UTAH FOUNDATION, INC
355 NORTH 300 WEST, SALT LAKE CITY, UT 84103
(801) 521-9862 PHONE • (801) 532-2850 FAX
ACLU@ACLUUTAH.ORG • WWW.ACLUUTAH.ORG

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Governor Jon Huntsman, Jr.
Utah State Capitol Complex
East Office Building, Suite E220
PO Box 142220
Salt Lake City, Utah 84114-2220

Dear Governor Huntsman,

The American Civil Liberties Union of Utah is obliged to comment on House Bill 260 S3, "Amendments Relating to Pornographic and Harmful Materials." We respectfully request that you veto this pending law because it is riddled with constitutional infirmities. Although H.B. 260's goal of protecting minors online is important and worthy, there are less restrictive means of doing this. Moreover, a constitutional challenge to H.B. 260 will almost certainly result in costly litigation expenses to the State.

The ALCU has been a victorious plaintiff in numerous suits throughout the nation seeking to protect the rights of citizens, and those in the Internet industry, to exercise their First Amendment freedoms. Indeed, the ACLU of Pennsylvania was a plaintiff in a recent federal case, *CDT v. Pappert*, 337 F. Supp. 2d 606 (E.D. Pa. 2004), wherein the court struck down as unconstitutional a Pennsylvania statute that was similar to H.B. 260. Additionally, the ACLU was a plaintiff in *ACLU v. Johnson*, 194 F.3d 1149 (10th Cir. 1999), wherein a preliminary injunction against enforcement of a similar New Mexico statute was granted. The preliminary injunction was granted on both free speech and commerce clause grounds.

We reiterate our support for the broad goal of protecting children online. Nevertheless, H.B. 260 is unlikely to withstand a legal challenge because it will result in government censorship of protected speech and is not the least restrictive means of achieving the government's goals. Moreover, the mandatory rating scheme imposed on some speakers by the legislation violates the First Amendment. A number of Supreme Court cases have established that the First Amendment does not allow government to compel speakers to say something that they do not want to say, and that includes pejorative ratings.

We urge you to veto H.B. 260 for the reasons mentioned above. Not only will it invoke a system of government censorship, but it will also chill permissible speech to the detriment of the citizens of Utah. Thank you for your consideration.

Respectfully,

Margaret Plane
Staff Attorney

Dani Eyer
Executive Director