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IN THE UNITED STATES COURT OF APPEALS
 FOR THE NINTH CIRCUIT

POWELL'S BOOKS, INC.; et al.

Plaintiffs-Appellants,

v.

MATT SHIRTCLIFF, Baker County
 District Attorney, in his official
 capacity; et al.

Defendants-Appellees.

U.S.C.A. Nos. 09-35153 and 09-35154

DEFENDANTS-APPELLEES'
 RESPONSE TO PLAINTIFFS-
 APPELLANTS' MOTION FOR
 RECONSIDERATION

On June 3, 2009, this court issued an order consolidating two appeals, 09-35153, brought by Powell's Books et al, and 09-35154, brought by the ACLU of Oregon et al, and setting due dates for consolidated briefing. Plaintiffs-appellants have asked the court to reconsider that order. Defendants-Appellees respectfully submit that, under the circumstances, consolidation of the appeals is appropriate.

Both sets of appellants are appealing the same judgment. In the proceedings below, both were joined in a united front; they filed a single

complaint, were jointly represented by the same counsel, and briefed and argued the case together. In denying their requested relief for declaratory and injunctive relief, the District Court did not distinguish between the various plaintiffs.

On appeal, the two sets of appellants have requested that their appeals be combined for argument but not be consolidated for "all purposes" and, specifically, that they be allowed to brief the case separately. In support of this request, they assert that they have different interests and "different approaches" to the appeal. In the alternative, appellants request additional time in which to file a consolidated brief.

Whether separately represented parties in a consolidated appeal may brief the case separately is a matter committed to this court's discretion. Notably, however, under this court's rules, L.R. 28-4, separately represented parties on the same side of a consolidated appeal are encouraged to join in a single brief "to the greatest extent practicable."

In the interest of judicial efficiency, appellees respectfully submit that these cases should be consolidated, and that appellants should attempt to combine their briefing to the greatest extent practicable and to avoid duplicative

briefing. Appellees have no objection to appellants request for additional time to accomplish that. In all events appellees expect to file a single response.

Respectfully submitted,

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/s/ Michael A. Casper

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CERTIFICATE OF SERVICE

I hereby certify that on June 9, 2009, I directed the Defendants-Appellees' Response to Plaintiffs-Appellants' Motion for Reconsideration to be electronically filed with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within 3 calendar days to the following non-CM/ECF participants:

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/s/ Michael A. Casper

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