

**Nos. 09-35153, 09-35154**

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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POWELL'S BOOKS, INC., et al.,

*Plaintiffs-Appellants,*

v.

JOHN KROGER, et al.,

*Defendants-Appellees.*

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AMERICAN CIVIL LIBERTIES UNION OF OREGON, et al.,

*Plaintiffs-Appellants,*

v.

JOHN KROGER, et al.,

*Defendants-Appellees.*

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On Appeal from the United States District Court  
for the District of Oregon  
Hon. Michael W. Mosman  
Case No. CV-08-501-MO

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**PLAINTIFFS-APPELLANTS' REPLY  
IN SUPPORT OF THEIR MOTION FOR RECONSIDERATION OF THE  
ORDER ON THEIR MOTION TO FILE A SINGLE EXCERPTS OF  
RECORD AND FOR COMBINED ORAL ARGUMENT**

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In response to Plaintiffs-Appellants' motion for reconsideration, counsel for Defendants-Appellees suggests that "appellants should attempt to combine their briefing to the greatest extent practicable and to avoid duplicative briefing." (Defendants-Appellees' Response, p. 2). Plaintiffs-Appellants agree.

Plaintiffs-Appellants do not intend to burden the Court with duplicative briefing. The entire reason for filing separate briefs (both of which were within 48 hours of being filed when the June 3 Order was entered) is that Plaintiffs-Appellants *Powell's Books et al.* (which include literary associations and booksellers) and Plaintiffs-Appellants *ACLU et al.* (which include providers of health care information) are affected differently by the statutes at issue, and will make different, non-duplicative substantive arguments. To the extent that they may have arguments in common, the two groups of Plaintiffs-Appellants will coordinate their briefing, so that the same argument is presented to the Court only once, not twice.

Plaintiffs-Appellants made their motion seeking leave to file a single Excerpts of Record and to have the cases scheduled together for oral argument but not consolidated, for the very purpose identified by Defendants-Appellees: To avoid duplication that would burden the Court. Plaintiffs-appellants respectfully

suggest that the best way to attain that goal is to have a single Excerpts of Record, separate briefs filed by the Plaintiffs-Appellants on the separate appeals, and oral argument on the two appeals heard by the same panel on the same day.

Of course, Plaintiffs-Appellants have no objection if Defendants-Appellees wish to file a single brief in response to the separate briefs filed by Plaintiffs-Appellants Powell's Books *et al.* and Plaintiffs-Appellants ACLU *et al.*

Dated June 10, 2009.

STOEL RIVES LLP

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## CERTIFICATE OF SERVICE

United States Court of Appeals Docket Number: No. 09-35153, 09-35154

I hereby certify that I electronically filed the foregoing PLAINTIFFS-  
APPELLANTS' REPLY IN SUPPORT OF THEIR MOTION FOR  
RECONSIDERATION OF THE ORDER ON THEIR MOTION TO FILE A  
SINGLE EXCERPT OF RECORD AND FOR COMBINED ORAL ARGUMENT  
with the Clerk of the Court for the United States Court of Appeals for the Ninth  
Circuit by using the appellate CM/ECF system on June 10, 2009.

I certify that all participants in the case are registered CM/ECF users and  
that service will be accomplished by the appellate CM/ECF system.

Dated June 10, 2009.

SONNENSCHN NATH &  
ROSENTHAL LLP

*s/ Michael A. Bamberger*  
Michael A. Bamberger