

No. 09-35153

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

POWELL'S BOOKS, INC., et. al., Plaintiffs-Appellants,

v.

JOHN KROGER, et al., Defendants-Appellees.

Appeal From The United States District Court for the District Of Oregon,
No. CV-08-501-MO

PLAINTIFFS-APPELLANTS' UNOPPOSED MOTION
TO POSTPONE ORAL ARGUMENT

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Powell's Books, et. al.

I. INTRODUCTION AND STATEMENT OF RELIEF SOUGHT

Plaintiff-Appellant Powell's Books, Inc. respectfully requests that oral argument in this matter, *Powell's Books, Inc. v. Kroger*, 09-35153, as well as in the companion appeal, *ACLU v. Kroger*, 09-35154 (which the Court has ordered will be argued together with this matter) be postponed to the June Term or thereafter in the discretion of the Court.

II. FACTUAL BACKGROUND

Michael A. Bamberger will be presenting oral argument for plaintiffs-appellants in the above matter. On January 13, 2010, Mr. Bamberger sent a letter to the Clerk of the Court stating that:

"I will be out of the country during them May week calendared for argument in Portland, and therefore respectfully request that the case not be scheduled for argument during that term. I am available during the March term, the June term, or any date thereafter."

(A copy of the letter is attached hereto as Attachment A.) Since the case was to be argued in Portland, Mr. Bamberger sent the letter to the Portland Office of the Clerk, unaware that it should have been sent to San Francisco. The letter was not returned or, apparently, forwarded.

Yesterday an order was received scheduling oral argument for May 5, 2010, during Mr. Bamberger's absence. Mr. Bamberger's trip cannot be postponed. He has been invited to Berlin, Germany for one week by the City of Berlin as part of a program inviting persons who were forced to leave Berlin prior to World War II by the Nazis. (A copy of the formal invitation is attached hereto as Attachment B.)

III. LEGAL AUTHORITY

Fed. R. App. P. 34 governs oral argument on appeal. Subpart (b)(1) states that “[a] motion to postpone the argument or allow longer argument must be filed reasonably in advance of the hearing date.” Ninth Circuit Rule 34-2, in turn, states that the day assigned for hearing may be changed “for good cause.” Both requirements are satisfied here: (1) this motion is filed well in advance of the hearing date (and two days after counsel received the Court’s notice of oral argument); and (2) good cause exists for postponing argument to the June Term or thereafter in the discretion of the Court. In addition, these dates have been cleared with counsel for Defendants-Appellees, as well as counsel in 09-35154, and the motion is unopposed.

IV. CONCLUSION

For the foregoing reasons, Plaintiffs-Appellants respectfully request that oral argument in this matter, as well as in the companion appeal (09-35154), be postponed to the June Term or thereafter in the discretion of the Court.

DATED: March 25, 2010

Respectfully submitted,

SONNENSCHN NATH & ROSENTHAL LLP

By s/ Michael A. Bamberger
Michael A. Bamberger
Richard M. Zuckerman
Attorneys for Plaintiffs-Appellants

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing 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 March 25, 2010.

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.

s/ Michael A. Bamberger

Michael A. Bamberger