

No. 09-35153, 09-35154

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

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

Plaintiffs-Appellants

v.

JOHN KROGER, et. al.

Defendants-Appellees.

AMERICAN CIVIL LIBERTIES UNION OF OREGON, et. al.,

Plaintiffs-Appellants,

v.

JOHN KROGER, et. al.,

Defendants-Appellees.

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

**MOTION OF PLAINTIFFS-APPELLANTS IN NOS. 09-35153 AND 09-35154 FOR
THE GRANT OF 15 MINUTES ORAL ARGUMENT TO COUNSEL IN EACH OF
THE CASES**

Michael A. Bamberger
mbamberger@sonnenschein.com
Richard M. Zuckerman
rzuckerman@sonnenschein.com
SONNENSCHN NATH & ROSENTHAL LLP
1221 Avenue of the Americas
New York, NY 10020
Telephone: (212) 768-6700
Facsimile: (212) 768-6800

Attorneys for Plaintiffs-Appellants
Powell's Books, Inc., et. al. (09-35153)

P.K. Runkles-Pearson, OSB No. 061911
Pkrunkles-pearson@stoel.com
STOEL RIVES LLP
900 SW Fifth Avenue, Suite 2600
Portland, OR 97204
Telephone: (503) 224-3380
Facsimile: (503) 220-2480

Cooperating Attorney
ACLU Foundation of Oregon

Attorney for Plaintiffs-Appellants
ACLU of Oregon, et. al. (09-35154)

Plaintiffs-Appellants Powell's Books, Inc., et al. in 09-35153 and Plaintiffs- Appellants ACLU of Oregon, et al. in 09-35154 respectfully move that each of their counsel be granted 15 minutes of oral argument.

These appeals arise out of the same proceedings and same decision rendered in the United States District Court for the District of Oregon. The district court's decision treated the claims of Powell's Books, Inc., et al. (Plaintiffs-Appellants in No. 09-35153) very differently from the claims of American Civil Liberties Union of Oregon, et al. (Plaintiffs-Appellants in No. 09-35154). Therefore, the two sets of Plaintiffs-Appellants filed separate notices of appeal, represented by separate counsel, and filed separate briefs on appeal, raising different issues. They also filed a motion for a combined excerpt of record and for argument on the same day before a single panel, which motion was granted. In connection with those motions the Court, by order of Appellate Commissioner Peter L. Shaw dated July 2, 2009, order that the cases “be assigned to the same merits panel.”

Counsel just learned this week by a call to the Clerk’s office that the Clerk is treating these cases as fully consolidated and thus requiring separate counsel to share 20 minutes of oral argument. The significant constitutional issues raised by the two appeals, while related, are different and complex. We therefore respectfully urge that separate counsel in each of the appeals be granted 15 minutes of oral argument so that the issues before the Court may be appropriately heard.

WHEREFORE, Plaintiffs-Appellants respectfully request that this Court grant separate counsel in 09-35153 fifteen minutes of oral argument and counsel 09-35154 fifteen minutes of oral argument. Plaintiffs-Appellants do not object to Defendant-Appellees' time being similarly extended.

Dated: May 21, 2010

SONNENSCHN NATH & ROSENTHAL LLP
s/ Michael A. Bamberger
Richard M. Zuckerman
rzuckerman@sonnenschein.com
Attorney for Plaintiffs-Appellants
Powell's Books, Inc., et. al. in 09-35153

STOEL RIVES LLP

s/ P.K. Runkles-Pearson (with permission)
Attorney for Plaintiffs-Appellants
ACLU of Oregon, et. al. in 09-35154

CERTIFICATE OF SERVICE

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

I hereby certify that I electronically filed the foregoing PLAINTIFFS-APPELLANTS' MOTION OF PLAINTIFFS-APPELLANTS IN NOS. 09-35153 AND 09-35154 FOR THE GRANT OF 15 MINUTES ORAL ARGUMENT TO COUNSEL IN EACH OF THE CASES 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 May 21, 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.

Dated: May 21, 2010

s/ Michael A. Bamberger
Michael A. Bamberger

Attorney for Plaintiffs-Appellants
Powell's Books, Inc., et. al. in 09-35153

STOEL RIVES LLP

s/ P.K. Runkles-Pearson (with permission)
Attorney for Plaintiffs-Appellants
ACLU or Oregon, et. al. in 09-35154