

FEB 27 2009

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UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT
CIVIL APPEALS DOCKETING STATEMENT

09-35154

PLEASE ATTACH ADDITIONAL PAGES IF NECESSARY.

TITLE IN FULL: See Attachment A.	DISTRICT: Oregon		JUDGE: Mosman	
	DISTRICT COURT NUMBER: 08-501-MO			
	DATE NOTICE OF APPEAL FILED: 02/04/09		IS THIS A CROSS-APPEAL? <input type="checkbox"/> YES	
	IF THIS MATTER HAS BEEN BEFORE THIS COURT PREVIOUSLY, PLEASE PROVIDE THE DOCKET NUMBER AND CITATION (IF ANY):			
BRIEF DESCRIPTION OF ACTION AND RESULT BELOW: Petitioners challenged ORS 167.051 to ORS 167.057 as unconstitutional under the First, Fifth, and Fourteenth Amendments, seeking declaratory and injunctive relief. The Court interpreted those statutes, found them constitutional, and dismissed the complaint.				
PRINCIPAL ISSUES PROPOSED TO BE RAISED ON APPEAL: The Court improperly interpreted the statutes; as properly interpreted, they are unconstitutionally vague and violate the right to free speech, both facially and as applied to each of the petitioners in their regular activities as citizens and sex educators. The Court misinterpreted the substance and the impermissible chilling effect of statutory affirmative defenses.				
PLEASE IDENTIFY ANY OTHER LEGAL PROCEEDING THAT MAY HAVE A BEARING ON THIS CASE (INCLUDE PENDING DISTRICT COURT POST-JUDGMENT MOTIONS): Other plaintiffs in the action below filed a notice of appeal dated February 3, 2009.				
DOES THIS APPEAL INVOLVE ANY OF THE FOLLOWING:				
<input type="checkbox"/> Possibility of settlement				
<input type="checkbox"/> Likelihood that intervening precedent will control outcome of appeal				
<input type="checkbox"/> Likelihood of a motion to expedite or to stay the appeal, or other procedural matters (specify)				
<input type="checkbox"/> Any other information relevant to the inclusion of this case in the Mediation Program				
<input type="checkbox"/> Possibility parties would stipulate to binding award by Appellate Commissioner in lieu of submission to judges.				

#25200

LOWER COURT INFORMATION

JURISDICTION		DISTRICT COURT DISPOSITION	
FEDERAL	APPELLATE	TYPE OF JUDGMENT / ORDER APPEALED	RELIEF
<input checked="" type="checkbox"/> FEDERAL QUESTION <input type="checkbox"/> DIVERSITY <input type="checkbox"/> OTHER (SPECIFY)	<input checked="" type="checkbox"/> FINAL DECISION OF DISTRICT COURT <input type="checkbox"/> INTERLOCUTORY DECISION APPEALABLE AS OF RIGHT <input type="checkbox"/> INTERLOCUTORY ORDER CERTIFIED BY DISTRICT JUDGE (SPECIFY): <input type="checkbox"/> OTHER (SPECIFY):	<input type="checkbox"/> DEFAULT JUDGMENT <input type="checkbox"/> DISMISSAL / JURISDICTION <input checked="" type="checkbox"/> DISMISSAL / MERITS <input type="checkbox"/> SUMMARY JUDGMENT <input type="checkbox"/> JUDGMENT / COURT DECISION <input type="checkbox"/> JUDGMENT / JURY VERDICT <input type="checkbox"/> DECLARATORY JUDGMENT <input type="checkbox"/> JUDGMENT AS A MATTER OF LAW <input type="checkbox"/> OTHER (SPECIFY):	<input type="checkbox"/> DAMAGES: SOUGHT \$ _____ AWARDED \$ _____ <input checked="" type="checkbox"/> INJUNCTIONS: <input checked="" type="checkbox"/> PRELIMINARY <input checked="" type="checkbox"/> PERMANENT <input type="checkbox"/> GRANTED <input checked="" type="checkbox"/> DENIED <input type="checkbox"/> ATTORNEY FEES: SOUGHT \$ _____ AWARDED \$ _____ <input type="checkbox"/> PENDING <input type="checkbox"/> COSTS: \$ _____

CERTIFICATION OF COUNSEL

I CERTIFY THAT:

- COPIES OF ORDER / JUDGMENT APPEALED FROM ARE ATTACHED.
- A CURRENT SERVICE LIST OR REPRESENTATION STATEMENT WITH TELEPHONE AND FAX NUMBERS IS ATTACHED (SEE 9TH CIR. RULE 3-2
- A COPY OF THIS CIVIL APPEALS DOCKETING STATEMENT WAS SERVED IN COMPLIANCE WITH FRAP 25.
- I UNDERSTAND THAT FAILURE TO COMPLY WITH THESE FILING REQUIREMENTS MAY RESULT IN SANCTIONS, INCLUDING DISMISSAL OF THIS APPEAL.



 Signature

Feb. 4, 2009

 Date

COUNSEL WHO COMPLETED THIS FORM

NAME: P.K. Runkles-Pearson

FIRM: **Stoel Rives LLP**

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* THIS DOCUMENT SHOULD BE FILED IN THE DISTRICT COURT WITH THE NOTICE OF APPEAL *
 * IF FILED LATE, IT SHOULD BE FILED DIRECTLY WITH THE U.S. COURT OF APPEALS *

ATTACHMENT A

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

POWELL'S BOOKS, INC.; OLD
MULTNOMAH BOOK STORE, LTD.
d/b/a ANNIE BLOOM'S BOOKS; DARK
HORSE COMICS, INC.; COLETTE'S:
GOOD FOOD + HUNGRY MINDS, LLC;
BLUEJAY, INC. d/b/a PAULINA SPRINGS
BOOKS; ST. JOHNS BOOKSELLERS, LLC;
AMERICAN BOOKSELLERS
FOUNDATION FOR FREE EXPRESSION;
ASSOCIATION OF AMERICAN
PUBLISHERS, INC.; FREEDOM TO READ
FOUNDATION INC.; COMIC BOOK
LEGAL DEFENSE FUND;

Plaintiff-Appellants,

v.

HARDY MYERS, in his official capacity as
ATTORNEY GENERAL OF THE STATE OF
OREGON; MATT SHIRTCLIFF, Baker
County District Attorney; JOHN
HAROLDSON, Benton County District
Attorney; JOHN FOOTE, Clackamas County
District Attorney; JOSHUA MARQUIS,
Clatsop County District Attorney; STEVE
ATCHISON, Columbia County District
Attorney; PAUL FRASIER, Coos County
District Attorney; GARY WILLIAMS, Crook
County District Attorney; EVERETT DIAL,
Curry County District Attorney; MICHAEL
DUGAN, Deschutes County District Attorney;
JACK BANTA, Douglas County District
Attorney; MARION WEATHERFORD,
Gilliam County District Attorney; RYAN
JOSLIN, Grant County District Attorney; TIM
COLAHAN, Harney County District Attorney;
JOHN SEWELL, Hood River County District
Attorney; MARK HUDDLESTON, Jackson
County District Attorney; PETER L. DEUEL,
Jefferson County District Attorney;

STEPHEN D. CAMPBELL, Josephine County District Attorney; EDWIN I. CALEB, Klamath County District Attorney; DAVID A. SCHUTT, Lake County District Attorney; F. DOUGLASS HARCLEROAD, Lane County District Attorney; BERNICE BARNETT, Lincoln County District Attorney; JASON CARLILE, Linn County District Attorney; DAN NORRIS, Malheur County District Attorney; WALTER M. BEGLAU, Marion County District Attorney; ELIZABETH BALLARD, Morrow County District Attorney; MICHAEL D. SCHRUNK, Multnomah County District Attorney; JOHN FISHER, Polk County District Attorney; WADE M. MCLEOD, Sherman County District Attorney; WILLIAM BRYAN PORTER, Tillamook County District Attorney; DEAN GUSHWA, Umatilla County District Attorney; TIM THOMPSON, Union County District Attorney; DANIEL OUSLEY, Wallowa County District Attorney; ERIC J. NISLEY, Wasco County District Attorney; ROBERT HERMANN, Washington County District Attorney; THOMAS W. CUTSFORTH, Wheeler County District Attorney; BRAD BERRY, Yamhill County District Attorney, in their official capacities as DISTRICT ATTORNEYS,

Defendant-Appellees.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

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

Plaintiffs,

v.

HARDY MYERS, in his official
capacity as Attorney General of the
State of Oregon, et al.,

Defendants.

No. CV 08-501-MO

JUDGMENT

MOSMAN, J.,

The court having issued its December 12, 2008 Opinion and Order (#48), in which the court denied plaintiffs' Motion for Permanent Injunction and Declaration of Unconstitutionality, and the court hereby incorporating that Opinion and Order in this judgment,

NOW, THEREFORE, IT IS HEREBY ADJUDGED as follows:

(1) ORS 167.054 and 167.057, as interpreted by the court in its Opinion and Order, are not substantially overbroad under the First and Fourteenth Amendments to the United States Constitution;

(2) ORS 167.054 and 167.057, as interpreted by the court in its Opinion and Order, are not unconstitutionally vague under the Fifth and Fourteenth Amendments to the United States Constitution;

(3) ORS 167.054 and 167.057, as interpreted by the court in its Opinion and Order, are not facially invalid;

(4) Plaintiffs' complaint is dismissed with prejudice, plaintiffs taking nothing thereby.

DATED this 6th day of January, 2009.

/s/ Michael W. Mosman
MICHAEL W. MOSMAN
United States District Judge

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Cooperating Attorney
ACLU Foundation of Oregon

Attorney for Plaintiffs American Civil
Liberties Union of Oregon, Candace
Morgan, Planned Parenthood of the
Columbia / Willamette, Inc., and Cascade
AIDS Project

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

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

Civil No. CV08-0501-MO

REPRESENTATION STATEMENT

v.

HARDY MYERS, in his official capacity as
ATTORNEY GENERAL OF THE STATE OF
OREGON, et al.,

Defendants.

Counsel for Plaintiff-Appellants American Civil Liberties Union of Oregon, Candace
Morgan, Planned Parenthood of the Columbia / Willamette, Inc., and Cascade AIDS Project
on this appeal are:

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Cooperating Attorney
ACLU Foundation of Oregon

Attorney for Plaintiffs American Civil Liberties
Union of Oregon, Candace Morgan, Planned
Parenthood of the Columbia / Willamette, Inc.,
and Cascade AIDS Project

CERTIFICATE OF SERVICE

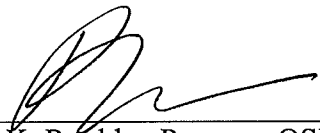
I hereby certify that I served the foregoing **CIVIL APPEALS DOCKETING STATEMENT** on the following named person(s) on the date indicated below by:

- hand delivery
- facsimile transmission
- overnight delivery via UPS
- Email
- notice of electronic filing using the Cm/ECF system
- concurrently electronically mailing this document in Word format to each attorney's last-known e-mail address on the date set forth below

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State of Oregon Department of Justice
1162 Court Street, N.E.
Salem, OR 97301-4096

Michael A. Casper
Oregon Department of Justice
1162 Court Street, N.E.
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DATED: February 4, 2009



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