

JOHN R. KROGER
Attorney General of Oregon
MARY H. WILLIAMS
Solicitor General
MICHAEL A. CASPER
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Salem, Oregon 97301-4096
Telephone: (503) 378-4402

Counsel for Appellees

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

POWELL'S BOOKS, INC.; OLD
MULTNOMAH BOOK STORE, LTD.,
DBA Annie Bloom's Books; DARK
HORSE COMICS, INC.; COLETTE'S:
GOOD FOOD + HUNGRY MINDS,
LLC; BLUEJAY, INC., DBA Paulina
Springs Books; ST. JOHN'S
BOOKSELLERS, LLC; AMERICAN
BOOKSELLERS FOUNDATION FOR
FREE EXPRESSION; ASSOCIATION
OF AMERICAN PUBLISHERS, INC.;
FREEDOM TO READ
FOUNDATION, INC.; COMIC BOOK
LEGAL DEFENSE FUND,

U.S.C.A. No. 09-35153 (Control);
09-35154

MOTION FOR EXTENSION OF TIME

Plaintiffs - Appellants,

and,

AMERICAN CIVIL LIBERTIES
UNION OF OREGON; CANDACE
MORGAN; PLANNED
PARENTHOOD OF THE
COLUMBIA/WILLAMETTE, INC.;
CASCADE AIDS PROJECT,

Plaintiffs,

v.

Continued...

Page 1 - MOTION FOR EXTENSION OF TIME
MC2:blt\2272053

Department of Justice
1162 Court Street NE
Salem, OR 97301-4096
(503) 378-4402

JOHN KROGER, Attorney General of the State of Oregon; MATT SHIRTCLIFF, Baker County District Attorney, in his official capacity; JOHN HAROLDSON, Benton County District Attorney, in his official capacity; JOHN FOOTE, Clackamas County District Attorney, in his official capacity; JOSHUA MARQUIS, Clatsop County District Attorney, in his official capacity; STEVE ATCHISON, Columbia County District Attorney, in his official capacity; PAUL FRASIER, Coos County District Attorney, in his official capacity; GARY WILLIAMS, Crook County District Attorney, in his official capacity; EVERETT DIAL, Curry County District Attorney, in his official capacity; MICHAEL DUGAN, Deschutes County District Attorney, in his official capacity; JACK BANTA, Douglas County District Attorney, in his official capacity; MARION WEATHERFORD, Gilliam County District Attorney, in his official capacity; RYAN JOSLIN, Grant County District Attorney, in his official capacity; TIM COLAHAN, Harney County District Attorney, in his official capacity; JOHN SEWELL, Hood River County District Attorney, in his official capacity; MARK HUDDLESTON, Jackson County District Attorney, in his official capacity; PETER L. DEUEL, Jefferson County District Attorney, in his official capacity; STEPHEN D. CAMPBELL, Josephine County District Attorney, in his official capacity; EDWIN I. CALEB, Klamath County District Attorney, in his official capacity; DAVID A. SCHUTT, Lake County District Attorney, in his official capacity; DOUGLASS HARCLEROAD, Lane County District Attorney, in his official capacity;

Continued...

BERNICE BARNETT, Lincoln County District Attorney, in her official capacity; JASON CARLILE, Linn County District Attorney, in his official capacity; DAN NORRIS, Malheur County District Attorney, in his official capacity; WALTER M. BEGLAU, Marion County District Attorney, in his official capacity; ELIZABETH BALLARD, Morrow County District Attorney, in her official capacity; MICHAEL D. SCHRUNK, Multnomah County District Attorney, in his official capacity; JOHN FISHER, Polk County District Attorney, in his official capacity; WADE M. MCLEOD, Sherman County District Attorney, in his official capacity; WILLIAM BRYAN PORTER, Tillamook County District Attorney, in his official capacity; DEAN GUSHWA, Umatilla County District Attorney, in his official capacity; TIM THOMPSON, Union County District Attorney, in his official capacity; DANIEL OUSLEY, Wallowa County District Attorney, in his official capacity; ERIC J. NISLEY, Wasco County District Attorney, in his official capacity; ROBERT HERMANN, Washington County District Attorney, in his official capacity; THOMAS W. CUTSFORTH, Wheeler County District Attorney, in his official capacity; BRAD BERRY, Yamhill County District Attorney, in his official capacity,

Defendants - Appellees.

Pursuant to Ninth Circuit Rule 31-2.2(b), appellees move for a 35-day extension of time in which to file the Petition for Rehearing in this case. This brief is currently due October 4, 2010.

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Page 3 - MOTION FOR EXTENSION OF TIME
MC2:blt\2272053

This motion is supported by the attached affidavit of Michael A. Casper.

Respectfully Submitted,

JOHN R. KROGER #077207
Attorney General
MARY H. WILLIAMS #911241
Solicitor General

/s/ Michael A. Casper

MICHAEL A. CASPER #062000
Assistant Attorney General

Attorneys for Defendants-Appellees
John Kroger, et al

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FOUNDATION, INC.; COMIC BOOK
LEGAL DEFENSE FUND,

Plaintiffs - Appellants,

and,

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UNION OF OREGON; CANDACE
MORGAN; PLANNED
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Plaintiffs,

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AFFIDAVIT OF MICHAEL A. CASPER

Continued...

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Defendants - Appellees.

STATE OF OREGON)
)
) ss.
County of Marion)

I, Michael A. Casper, being first duly sworn, do depose and say:

1. I am an assistant attorney general for the State of Oregon and one of the attorneys representing the state in this litigation.

2. The state's Petition for Rehearing is due on October 4, 2010. The state seeks a 35-day extension until November 8, 2010, in which to file its Petition for Rehearing. This is the first request for a time extension.

3. This extension is requested to allow adequate time for counsel to analyze the panel decision, which finds two Oregon criminal statutes facially unconstitutional and thus addresses an important issue of state law. Time is needed to allow necessary internal discussion about whether a petition for rehearing/rehearing en banc should be filed and, if so, on what specific grounds. In addition to the Attorney General, the named defendants in this case include all the state's district attorneys. Because of the complexity of the case, the importance of the issues, and the number of interested parties, I anticipate that these discussions will take three to four weeks to complete.

4. In addition, I have been, and will be, occupied completing the briefing in a number of other cases, including the board's brief in *Mathews v. Elevator Board*, Oregon Court of Appeals Case No. A145611 (filed September 16, 2010), the board's brief in *Homestyle Services v. Department of Human Services*, Oregon Court of Appeals Case No. A145136 (due October 4, 2010), the state's opening brief in the Oregon Supreme Court in *Sierra v. State*, Oregon Supreme Court Case No. S057794 (due October 15, 2010), the state's brief in *State v. Lewis*, Oregon Court of Appeals Case No. A142643 (due

October 22, 2010), the state's brief in *State v. Dries*, Oregon Court of Appeals No. A142715 (due on November 2, 2010), the state's brief in *State v. Baker*, Oregon Court of Appeals No. A141667 (due November 3, 2010), and the state's brief in *State v. Olson*, Oregon Court of Appeals No. A142327 (due November 3, 2010).

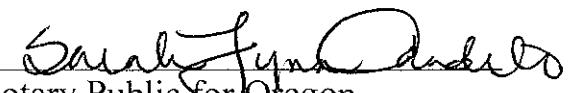
5. The state's attorneys have exercised due diligence and I anticipate that the state will file its Petition for Rehearing within the time sought.

6. I have contacted Michael Bamberger and P.K. Runkles-Pearson, attorneys for appellants. They informed me that they do not oppose this motion for an extension of time on the understanding that such an extension would also extend appellants' time to file for attorneys' fees.



Michael A. Casper
Assistant Attorney General

SUBSCRIBED AND SWORN to before me this 24 day of September, 2010.



Sarah Lynn Caudillo
Notary Public for Oregon
My Commission Expires: July 19, 2013

NOTICE OF FILING AND PROOF OF SERVICE

I hereby certify that on September 24, 2010, I directed the Motion for Extension of Time and Affidavit of Michael A. Casper 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:

Rachel G. Balaban
Sonnenchein Nath & Rosenthal LLP
24th Floor
1221 Avenue of the Americas
New York, New York 10020

/s/ Michael A. Casper
MICHAEL A. CASPER #062000
Assistant Attorney General
Attorney for Defendants-Appellees
John Kroger, et al