

FILED

DEC 14 2010

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

## 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,

Plaintiffs - Appellants,

and

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

Plaintiffs,

v.

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

No. 09-35153

D.C. No. 3:08-cv-00501-MO  
District of Oregon,  
Portland

ORDER

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; 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.

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

No. 09-35154

D.C. No. 3:08-cv-00501-MO  
District of Oregon,

CASCADE AIDS PROJECT,

Portland

Plaintiffs - Appellants,

and

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,

Plaintiffs,

v.

JOHN R. KROGER, in his official  
capacity as 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; 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.

Before: FERNANDEZ, McKEOWN, and PAEZ, Circuit Judges.

The panel has voted to deny the petition for panel rehearing. Judges McKeown and Paez vote to deny the petition for rehearing en banc and Judge Fernandez so recommends. The full court has been advised of the petition for rehearing and rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The petition for panel rehearing and the petition for rehearing en banc are denied.