

No. 09-35154

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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

**DECLARATION OF P.K. RUNKLES-PEARSON IN SUPPORT OF
PLAINTIFFS-APPELLANTS' APPLICATION FOR ATTORNEYS' FEES**

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Cooperating Attorney
ACLU Foundation of Oregon

*Attorney for Defendants-Appellees
John Kroger, et al.*

*Attorney for Plaintiffs-Appellants
ACLU of Oregon, et al.*

I, P.K. RUNKLES-PEARSON, first having been duly sworn, hereby depose and say under penalty of perjury:

1. I am an attorney at the law firm of Stoel Rives LLP, and I am the principal attorney representing Plaintiffs-Appellants ACLU of Oregon, Cascade AIDS Project, Planned Parenthood of the Columbia-Willamette, and Candace Morgan (“Plaintiffs”) in this action. I make this affidavit in support of Plaintiffs’ application for attorneys’ fees pursuant to 42 U.S.C. § 1988 and Circuit Rule 39-1.6. I make these statements based upon my own personal knowledge, information and belief, and am competent to testify hereto.

2. In early 2008, the ACLU Foundation of Oregon, Inc. requested that I consider representing Plaintiffs on a pro bono basis for the ACLU Foundation of Oregon, Inc. I agreed to do so, and I agreed with Plaintiffs that any award of attorneys’ fees my firm collected in this matter would be paid over to the ACLU Foundation of Oregon, Inc. to pursue other constitutional rights litigation.

3. Because I was aware of the possibility of a recovery under 42 U.S.C. § 1988, and because Stoel Rives attorneys regularly track pro bono time, I and the other timekeepers kept records of our time in this matter. Attached as Exhibit 1 is a table showing the detailed time entries and descriptions for each of the attorneys who recorded time from and after March 5, 2008 in connection with the District

Court proceedings in this matter and in this appeal. The timekeepers are Rachel Lee, Crystal Chase, Andrew Shoals, and me.

4. The table attached as Exhibit 1 includes descriptive narratives and time listings showing the breakdown of time spent on different tasks on each day. The table lists both the time recorded for tasks during the District Court proceedings and the time billed during the appeal for which Plaintiffs are seeking a fee award.

5. In preparing Exhibit 1, I have exercised billing judgment in not seeking recovery for certain items. For example, Plaintiffs are not seeking recovery for time spent by summer clerks when that time did not directly add value to Plaintiffs' case or for time spent by an additional attorney and clerk who reviewed proposed exhibits in the District Court proceeding. They are also not seeking recovery for time spent by a panel of experienced appellate lawyers who assisted me in preparing for the oral argument before this Court.

6. The following table summarizes the total time listed on Exhibit 1 that was recorded by all timekeepers at Stoel Rives LLP:

TIMEKEEPER	DISTRICT COURT	NINTH CIRCUIT
P.K. Runkles-Pearson	241.2	145.1
Rachel Lee	110.8	
Crystal Chase	13.4	
Andrew Shoals		12.1
Total	365.4	157.2

7. Plaintiffs' fee request is based on hourly rates that are reasonable in the context of the Portland market and the rates regularly charged and collected by Stoel Rives LLP for the lawyers in this matter.

8. I have been admitted to practice for more than seven years, including the last four years as an associate at Stoel Rives LLP. I graduated from New York University School of Law in 2002 after serving as Executive Editor of the NYU Law Review. I took the July 2002 New York bar exam and began working at a New York law firm soon after. I served as law clerk to Oregon Supreme Court Justice Thomas A. Balmer from 2004 to 2006. I joined Stoel Rives in 2006. I have been admitted to practice in Oregon since 2006 and New York since 2003, and I am admitted to practice in state and federal courts in Oregon and New York. I am also admitted to practice in this Court. I am a board member, cooperating

attorney, and lawyers' committee member of the ACLU of Oregon. My practice includes a broad range of appellate work in state and federal courts and a subspecialty in defense-side labor and employment law. I am an author of Oregon State Bar CLE book chapters on appellate law and employment law.

9. In 2008, my standard hourly rate was \$270. In 2009, my standard hourly rate was \$295. In 2010, my standard hourly rate was \$315. Stoel Rives LLP has regularly charged and collected my standard hourly rates for my time since I took on this matter.

10. For Rachel Lee's time, Plaintiffs are seeking an hourly rate of \$150, which was her standard rate in 2008. Ms. Lee was a law clerk at Stoel Rives LLP during the summer of 2008. The information Ms. Lee provided to Stoel Rives indicates that at that time she had completed her second year as a law student at Stanford Law School; that as a first-year student, she had received the Hilmer Oehlman, Jr. Award for the best legal writing in her Legal Research & Writing section; that she was a member editor of the Stanford Law Review in 2007-2008, and of the Environmental Law Review in 2006-2007; and that she was elected Senior Notes Editor for the Stanford Law Review in January 2008.

11. For Crystal Chase's time, Plaintiffs are seeking an hourly rate of \$150, which was her standard rate in 2008. Ms. Chase was a law clerk at Stoel Rives LLP during the summer of 2008. The information Ms. Chase provided to

Stoel Rives indicates that at that time she had completed her second year as a law student at Lewis & Clark Law School, and that she was a recipient of a Faculty Scholarship, a member of Lewis & Clark's Environmental Law Review, and a participant of the Jessup International Law Moot Court Intramural Competition.

12. For Andrew Shoals' time, Plaintiffs are seeking an hourly rate of \$150, which was his standard rate in 2010. Mr. Shoals was a law clerk at Stoel Rives LLP during the summer of 2010. The information that Mr. Shoals provided to Stoel Rives indicates that at that time he had completed his first year as a law student at the University of Pennsylvania and that he was the recipient of a Dean Scholarship and a 2009-2010 Morgan Lewis & Bockius Book Scholarship.

13. Both the total hours recorded and the hours recorded for each of the various aspects of this appeal were reasonable and necessary to prosecute the case and overturn the judgment of the trial court and were appropriate for a case of this legal complexity.

14. Based on the hourly rates sought here, Plaintiffs seek an award of reasonable attorneys' fees totaling \$129,288.50.

15. As part of their requested fee award, Plaintiffs also seek an award of out-of-pocket expenses necessary to prosecute the case. Those expenses, which total \$1,505.58, are set forth in detail in Exhibit 2. Because this Court has already awarded Plaintiffs some amount for photocopying costs pursuant to their cost bill,

Plaintiffs do not seek any additional amounts for photocopying. Plaintiffs also do not seek any amounts for electronic research. The expenses sought include trackable delivery services used to serve papers (FedEx and UPS), transcript fees, filing fees, and the nominal amount Plaintiffs expended to purchase copies of the few exhibits that could not be donated. They are expenses that Stoel Rives would ordinarily charge to a fee paying client, and they are expenses that the ACLU of Oregon will pay or has already paid in this matter.

16. Pursuant to Circuit Rule 39-1.6, I am attaching as Exhibit 3 a completed Form 9 containing my considered assessment of the amount of appellate time Stoel Rives attorneys on this case spent performing various tasks.

I swear, under penalty of perjury, that the foregoing is true and correct.

DATED this 28th day of December, 2010.

STOEL RIVES LLP

s/ P. K. Runkles-Pearson

P. K. Runkles-Pearson, OSB No. 061911

Attorney for Plaintiffs-Appellants

ACLU of Oregon, et al.

CERTIFICATE OF FILING SERVICE

United States Court of Appeals Docket Number: No. 09-35154

I hereby certify that I electronically filed the foregoing DECLARATION OF P.K. RUNKLES-PEARSON IN SUPPORT OF PLAINTIFFS-APPELLANTS' APPLICATION FOR ATTORNEYS' FEES 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 December 28, 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: December 28, 2010.

STOEL RIVES LLP

s/ P. K. Runkles-Pearson _____

P. K. Runkles-Pearson, OSB No. 061911
Attorney for Plaintiffs-Appellants
ACLU of Oregon, et al.

EXHIBIT 1

District Court				
Date	Atty or Clerk	Hours	Fees	Description
03/05/08	PKR	5.00	1350.00	Review emails from team re underlying legal issues; open new file
03/17/08	PKR	.80	216.00	Review case law underlying complaint
03/19/08	PKR	.20	54.00	Email re corporate disclosure statements
03/20/08	PKR	.50	135.00	Prepare to file complaint
03/24/08	PKR	2.80	756.00	Prepare declarations of clients
03/25/08	PKR	1.00	270.00	Prepare declarations of clients
03/26/08	PKR	5.80	1566.00	Research preliminary injunctions; telephone call with co-counsel; review complaint and preliminary injunction papers
03/28/08	PKR	3.20	864.00	Review emails; emails to clients; draft declarations
03/31/08	PKR	.60	162.00	Emails re status
04/01/08	PKR	2.50	675.00	Review and revise complaint
04/02/08	PKR	4.00	1080.00	Review and revise pleadings; draft declarations
04/03/08	PKR	6.00	1620.00	Review and revise complaint; draft declarations
04/04/08	PKR	3.80	1026.00	Draft declarations and retainer agreements; review and revise complaint; conference call re strategy going forward
04/07/08	PKR	5.50	1485.00	Review and revise complaint; telephone call with David Greenberg of PPCW; telephone calls and emails re CAP participation; draft declarations for ACLU and Candace Morgan
04/08/08	PKR	.50	135.00	Coordinate revisions to declarations
04/09/08	PKR	2.20	594.00	Review and revise declaration of David Fidanque and memorandum in support of preliminary injunction

District Court				
Date	Atty or Clerk	Hours	Fees	Description
04/10/08	PKR	1.70	459.00	Discuss ethical issues related to complaint; telephone call with other counsel; telephone call with Andrea Meyer re retainer agreements; review and revise declarations
04/11/08	PKR	1.50	405.00	Consider ethical issues related to representation; review and revise joint prosecution letter
04/14/08	PKR	3.30	891.00	Telephone call with CAP; research on preliminary injunction standards
04/16/08	PKR	2.00	540.00	Review and revise preliminary injunction brief; emails re Morgan declaration; emails re attorney relationships; telephone call with co-counsel
04/17/08	PKR	3.00	810.00	Discussion and analysis re retainer agreements; review and revise pro hac vice applications
04/21/08	PKR	3.40	918.00	Review edits to complaint and preliminary injunction; conversation with Andrea Meyer re continued preparation for filing same; emails with Candace Morgan and CAP; review and revise Morgan declaration; review materials from CAP
04/22/08	PKR	2.10	567.00	Review declarations; discussion with co-counsel re contents of declarations; coordinate with clients re declarations; review and revise declarations
04/24/08	PKR	1.00	270.00	Telephone calls and emails with clients in preparation for filing; review and revise complaint and preliminary injunction briefing
04/25/08	PKR	2.50	675.00	Review all declarations and pleadings; finalize and prepare materials for filing
04/28/08	PKR	.80	216.00	Telephone call with co-counsel re service; follow up with clients re filing
04/29/08	PKR	.50	135.00	Emails re case; telephone call with Andrea Meyer re service

District Court				
Date	Atty or Clerk	Hours	Fees	Description
05/02/08	PKR	.20	54.00	Emails coordinating team re communications with opposing counsel
05/05/08	PKR	.70	189.00	Conference call re scheduling dates; email clients re scheduling matters
05/06/08	PKR	1.20	324.00	Review and confer regarding stipulation on dates; prepare acknowledgement of service
05/08/08	PKR	.30	81.00	Confer re acceptance of service with opposing counsel
05/14/08	PKR	.40	108.00	Communicate with opposing counsel re service; letter re same
05/15/08	PKR	.30	81.00	Email with clients re briefing and hearing schedule
05/20/08	PKR	.30	81.00	Emails with co-counsel about decision in <i>United States v. Williams</i>
05/21/08	PKR	.20	54.00	Email re plaintiff's concerns re lawsuit
05/22/08	PKR	.50	135.00	Consider case strategy; telephone call with David Fidanque re same
05/27/08	R-L	.50	75.00	Review complaint, motion, memorandum and declarations
06/02/08	R-L	.50	75.00	Review state's memorandum in opposition
06/03/08	PKR	1.10	297.00	Review state's answering papers, emails re conference call; telephone call with Andrea Meyer
06/03/08	R-L	1.40	210.00	Review state's memorandum in opposition
06/04/08	PKR	1.90	513.00	Continue to review brief; conference call re approach to brief; discuss with Rachel Lee
06/04/08	R-L	5.70	855.00	Conference call with P.K. Runkles-Pearson and ACLU attorneys; discuss assignment with P.K. Runkles-Pearson; review cases cited in state's memorandum re standard for facial challenge on vagueness grounds; research Ninth Circuit case law on delay in seeking preliminary injunction against statute

District Court				
Date	Atty or Clerk	Hours	Fees	Description
06/05/08	R-L	.60	90.00	Research cases on delay in seeking preliminary injunction against statute
06/06/08	PKR	.40	108.00	Emails re reply brief
06/06/08	R-L	3.80	570.00	Research standard for vagueness challenge in First Amendment context; research delay in seeking injunction against statute
06/08/08	R-L	3.40	510.00	Draft portion of reply brief seeking preliminary injunction
06/09/08	PKR	3.20	864.00	Emails regarding research for reply brief; review materials for reply brief.
06/09/08	R-L	7.50	1125.00	Research preliminary injunctions; draft memo for reply brief seeking preliminary injunction
06/10/08	PKR	6.60	1782.00	Review cases; draft section of brief concerning vagueness
06/10/08	R-L	3.60	540.00	Finish drafting memorandum for reply brief seeking preliminary injunction
06/11/08	PKR	1.40	378.00	Draft section of reply concerning balance of hardships
06/11/08	R-L	3.10	465.00	Review and edit drafts of reply brief from P.K. Runkles-Pearson and co-counsel
06/12/08	PKR	6.50	1755.00	Telephone call with co-counsel; review and revise reply brief
06/12/08	R-L	2.20	330.00	Conference call with P.K. Runkles-Pearson and co-counsel; edit drafts of reply brief; research definition of prurient interest
06/13/08	PKR	1.50	405.00	Email correspondence re brief; prepare new version of brief and send to editing
06/13/08	R-L	.90	135.00	Edit draft of reply brief; send additional case citation to P.K. Runkles-Pearson
06/16/08	PKR	2.50	675.00	Review and revise reply brief; review and revise declaration of Andrea Meyer
06/20/08	PKR	.30	81.00	Email correspondence re oral argument
06/22/08	PKR	3.10	837.00	Prepare for oral argument

District Court				
Date	Atty or Clerk	Hours	Fees	Description
06/22/08	R-L	1.70	255.00	Meeting with P.K. Runkles-Pearson, Andrea Meyer, and co-counsel to prepare for hearing on motion for preliminary injunction
06/23/08	PKR	4.00	1080.00	Prepare for and attend hearing on preliminary injunction; communicate with clients re same
06/25/08	PKR	1.50	405.00	Meeting with ACLU leadership regarding next strategic steps
06/25/08	R-L	.20	30.00	Conference with P.K. Runkles-Pearson re tasks for merits briefing
06/26/08	PKR	1.70	459.00	Email correspondence re strategy and next steps; telephone conference re expert witnesses and issues for brief on merits
06/26/08	R-L	2.20	330.00	Prepare for conference call; conference call re issues for brief
06/30/08	PKR	1.80	486.00	Draft outline for merits brief; telephone call with Andrea Meyer re expert witnesses
07/01/08	PKR	2.20	594.00	Prepare for briefing on the merits; meet clients at ACLU to discuss strategy, issues to be briefed and division of labor
07/01/08	R-L	2.20	330.00	Meeting with ACLU staff and P.K. Runkles-Pearson re strategy for briefing and oral argument
07/02/08	PKR	.70	189.00	Discussion with Rachel Lee regarding research on balance of hardships; research re appropriate expert witnesses
07/02/08	R-L	3.70	555.00	Research standards for permanent injunction briefing
07/03/08	PKR	.40	108.00	Email correspondence re potential declarations of expert witnesses
07/03/08	R-L	2.10	315.00	Research permanent injunctions and declaratory relief
07/07/08	R-L	4.40	660.00	Research declaratory judgment and permanent injunctions

District Court				
Date	Atty or Clerk	Hours	Fees	Description
07/08/08	PKR	.30	81.00	Email and telephone correspondence re books to be used as exhibits
07/08/08	R-L	5.00	750.00	Research facial and as-applied challenges
07/09/08	PKR	.30	81.00	Meet with Andrea Meyer; review books for exhibits
07/09/08	R-L	5.90	885.00	Draft memorandum re injunctive and declaratory relief
07/10/08	R-L	2.60	390.00	Draft memorandum re standards for declaratory and injunctive relief
07/11/08	PKR	3.70	999.00	Begin drafting motion for ultimate relief; telephone call with co-counsel re same; review legal research from co-counsel; email correspondence re legislative history and books for exhibits
07/11/08	C-C	2.50	375.00	Start research into origins and meaning of Miller-Ginsberg test for obscenity for memorandum for P.K. Runkles-Pearson
07/11/08	R-L	4.60	690.00	Draft memorandum re facial and as-applied challenges
07/14/08	PKR	1.00	270.00	Continue drafting motion for ultimate relief; email correspondence re expert testimony and exhibits
07/14/08	C-C	4.80	720.00	Continue research and draft memorandum on the elements of the Miller-Ginsberg test and importance of each element for memorandum for P.K. Runkles-Pearson
07/14/08	R-L	6.40	960.00	Research limiting constructions
07/15/08	PKR	4.00	1080.00	Continue drafting motion for ultimate relief; review research from Rachel Lee on facial and as-applied challenges
07/15/08	C-C	6.10	915.00	Draft and edit memorandum for P.K. Runkles-Pearson on meaning and significance of each of the elements of the Miller-Ginsberg test for obscenity; prepare case notebook with relevant cases for her use

District Court				
Date	Atty or Clerk	Hours	Fees	Description
07/15/08	R-L	4.10	615.00	Research limiting constructions
07/16/08	PKR	1.50	405.00	Review research and caselaw from Crystal Chase re elements of the Miller-Ginsberg test
07/16/08	R-L	2.60	390.00	Research limiting constructions
07/17/08	PKR	1.20	324.00	Telephone call with Dr. Mark Nichols re expert testimony on child development; review articles from Dr. Nichols; telephone call with co-counsel re brief
07/17/08	R-L	6.30	945.00	Draft memorandum re limiting constructions
07/18/08	PKR	1.30	351.00	Telephone call with Richard Colman re expert testimony; discussions re exhibits; additional correspondence with Dr. Nichols
07/18/08	R-L	11.80	1770.00	Draft memorandum re limiting constructions
07/20/08	PKR	9.50	2565.00	Review material and cases re limiting constructions; research re Maynard and Oregon statutory construction
07/21/08	PKR	9.50	2565.00	Review material received from co-counsel; review cases cited therein; create list of follow-up points; draft statutory construction section of brief
07/22/08	PKR	5.40	1458.00	Draft merits brief
07/22/08	R-L	3.60	540.00	Edit brief; research operation of "not liable to prosecution" language in statutes
07/23/08	PKR	1.00	270.00	Review material from co-counsel; correspondence with Dr. Colman
07/25/08	PKR	3.50	945.00	Draft declarations of Dr. Colman and Dr. Nichols; correspond with co-counsel re edits to brief and dictionary definitions; telephone call with Camelia Hison; review information from Ms. Hison
07/27/08	PKR	8.10	2187.00	Review edits to brief; substantially revise sections re Maynard

District Court				
Date	Atty or Clerk	Hours	Fees	Description
07/28/08	PKR	11.40	3078.00	Add new section to brief re Miller-Ginsberg background; call with ACLU re brief; telephone call with co-counsel; review additional evidence from expert witnesses; correspond with same; multiple emails re exhibits
07/28/08	R-L	1.90	285.00	Review draft of brief; conference call with P.K. Runkles-Pearson and co-counsel; discuss material for brief
07/29/08	PKR	4.10	1107.00	Review and incorporate ACLU comments to brief; discuss exhibit selection with co-counsel; contact court re procedure for exhibits; review declaration of Chris Finan; email from CAP re experts; extensive email with David Horowitz re procuring exhibits; review co-counsel's edits to brief
07/29/08	R-L	1.10	165.00	Review draft of brief; conference with P.K. Runkles-Pearson re same
07/30/08	PKR	5.80	1566.00	Multiple emails re exhibits; incorporate and harmonize edits to brief from ACLU and co-counsel; telephone call re same with Chin See Ming of ACLU; revise declaration of Camelia Hison; review additional information from Ms. Hison
07/30/08	R-L	3.40	510.00	Verify contents of books to be cited in brief and declarations; review findings with P.K. Runkles-Pearson
07/31/08	PKR	6.90	1863.00	Draft motions; confer with opposing counsel; telephone calls to declarants; review and revise memo; prepare all for filing; review material for exhibits; revise Finan and Hison declarations
07/31/08	R-L	.40	60.00	E-mail to P.K. Runkles-Pearson describing contents of books to be cited in brief
08/01/08	PKR	1.00	270.00	Contact clients re filing of motion; arrange for filing of exhibits
08/05/08	PKR	1.50	405.00	Review material for exhibits

District Court				
Date	Atty or Clerk	Hours	Fees	Description
08/05/08	R-L	1.30	195.00	Review exhibits to mark portions that violate statutes
08/06/08	PKR	.80	216.00	Review exhibits; email correspondence re same; prepare exhibits for filing
08/06/08	R-L	.10	15.00	Review list of exhibits
08/20/08	PKR	1.00	270.00	Telephone call with co-counsel and ACLU re strategy for hearing and oral argument; telephone call with Andrea Meyer re same
08/29/08	PKR	.50	135.00	Confer with ACLU re response in support of motion
09/02/08	PKR	.80	216.00	Review state's response brief
09/03/08	PKR	3.90	1053.00	Consider and outline arguments for reply brief; telephone call with co-counsel and clients re reply brief strategy
09/04/08	PKR	5.20	1404.00	Consider strategy for reply brief; draft sample paragraphs; telephone call with co-counsel and clients re same
09/07/08	PKR	5.30	1431.00	Draft sections of reply brief
09/08/08	PKR	4.80	1296.00	Review co-counsel's sections of reply brief; incorporate into new draft; email to co-counsel and clients re same
09/09/08	PKR	.90	243.00	Review additional edits to reply brief from co-counsel; telephone call re same
09/10/08	PKR	1.50	405.00	Review and revise reply brief to incorporate clients' changes; consult with co-counsel re same
09/11/08	PKR	2.90	783.00	Emails and telephone calls with co-counsel and clients re reply strategy; draft new section of reply brief
09/12/08	PKR	.50	135.00	Incorporate final comments to reply brief; finalize and file reply brief
09/29/08	PKR	.40	108.00	Telephone call with co-counsel re oral argument
10/01/08	PKR	5.00	1350.00	Strategize for oral argument; telephone call with Andrea Meyer

District Court				
Date	Atty or Clerk	Hours	Fees	Description
10/02/08	PKR	6.00	1620.00	Prepare for oral argument; meet with co-counsel to coordinate argument points
10/03/08	PKR	7.80	2106.00	Prepare for oral argument; attend oral argument; emails re same
12/12/08	PKR	1.50	442.50	Review opinion and order
12/15/08	PKR	.30	88.50	Emails re decision and scheduling of post-decision conference
Total (District Court):		365.40	\$83,799.00	

Appeal				
Date	Atty or Clerk	Hours	Fees	Description
12/16/08	PKR	2.00	590.00	Evaluate case for appeal; communicate with opposing counsel re form of judgment
12/18/08	PKR	.30	88.50	Review and consider proposed form of judgment
12/19/08	PKR	.30	88.50	Communicate with co-counsel and opposing counsel re revisions to proposed form of judgment
12/24/08	PKR	1.20	354.00	Consider issues re appeal; communicate with co-counsel re same
01/09/09	PKR	.50	147.50	Telephone call with co-counsel and clients re appeal
01/14/09	PKR	.20	59.00	Email with co-counsel re separate notices of appeal
01/22/09	PKR	5.00	1475.00	Review decision and prepare for meeting with David Greenberg of Planned Parenthood regarding appeal; attend meeting; contact other clients
01/27/09	PKR	1.30	383.50	Evaluate appeal with Cascade AIDS Project
01/29/09	PKR	.30	88.50	Telephone call with Cascade AIDS Project re appeal; email with Candace Morgan re appeal
02/02/09	PKR	.50	147.50	Email with co-counsel re appeal and docketing statement
02/04/09	PKR	1.50	442.50	Email with court regarding exhibits; prepare and file notice of appeal and docketing statement
02/19/09	PKR	.50	147.50	Consider transcript issues
02/20/09	PKR	.10	29.50	Email to opposing counsel re transcripts
03/06/09	PKR	.10	29.50	Email to opposing counsel re transcripts
04/16/09	PKR	1.30	383.50	Review opinion and consider arguments for briefing; telephone call with counsel for other plaintiffs re same

Appeal				
Date	Atty or Clerk	Hours	Fees	Description
05/05/09	PKR	.40	118.00	Communicate with co-counsel re consolidation; review draft motion
05/07/09	PKR	5.50	1622.50	Review briefing below in preparation for drafting Ninth Circuit opening brief; review and revise consolidation motion
05/08/09	PKR	8.00	2360.00	Outline Ninth Circuit brief
05/11/09	PKR	7.00	2065.00	Draft Statement of Jurisdiction, Issues Presented, Statement of the Case, and Statement of Facts
05/12/09	PKR	6.00	1770.00	Draft summary of argument and over-breadth sections
05/14/09	PKR	.20	59.00	Telephone call re request for extension of time
05/21/09	PKR	.60	177.00	Review co-counsel's draft brief; email re same
05/26/09	PKR	7.50	2212.50	Draft over-breadth section; detailed outline interpretation section; review excerpts of record; email to co-counsel with comments
05/30/09	PKR	9.00	2655.00	Draft section of brief re interpretation of statutes
05/31/09	PKR	8.50	2507.50	Draft vagueness and "as applied" sections
06/01/09	PKR	1.60	472.00	Review and revise opening brief; email to clients re same
06/02/09	PKR	4.60	1357.00	Review and revise opening brief
06/03/09	PKR	1.40	413.00	Receive court's order re consolidation; telephone calls with Chin See Ming, co-appellants counsel, opposing counsel, and the court re same; draft motion for reconsideration re same
07/02/09	PKR	.20	59.00	Email with co-counsel re amicus
07/15/09	PKR	5.50	1622.50	Review and revise opening Ninth Circuit brief; email to clients re same

Appeal				
Date	Atty or Clerk	Hours	Fees	Description
07/16/09	PKR	1.30	383.50	Hone opening brief; add footnotes and citations; telephone call to Court of Appeals re exhibits; prepare additions to excerpts of record
07/17/09	PKR	1.50	442.50	Finalize opening brief and excerpts of record for filing
08/03/09	PKR	.30	88.50	Review email re procedural developments, filing of briefs, request for extension of time
08/04/09	PKR	2.30	678.50	Review brief of booksellers and amicus brief of the Thomas Jefferson Foundation; correspondence re extension of time for the state to respond; correspondence re merits with David Horowitz
09/29/09	PKR	1.70	501.50	Review answering brief; telephone call with co-counsel re same
10/02/09	PKR	.30	88.50	Email to co-counsel re repealed criminal laws
10/04/09	PKR	2.50	737.50	Review briefs and consider arguments for reply briefing
10/05/09	PKR	3.40	1003.00	Draft reply brief
10/06/09	PKR	.40	118.00	Review co-counsel's reply brief and comment
10/07/09	PKR	.30	88.50	Email re reply brief
10/08/09	PKR	3.20	944.00	Emails with cooperating counsel re reply brief; telephone calls and analysis with ACLU re legislative history; review and revise reply brief and prepare for filing
10/09/09	PKR	.30	88.50	Final review of reply brief before filing
10/20/09	PKR	.20	59.00	Prepare to send paper copies of reply brief
10/21/09	PKR	.30	88.50	Review paper copies of reply brief
03/24/10	PKR	.40	126.00	Discuss setover with co-counsel; assist with setover motion

Appeal				
Date	Atty or Clerk	Hours	Fees	Description
04/20/10	PKR	.70	220.50	Review new First Amendment decision <i>U.S. v. Stevens</i> ; email to co-counsel re same
04/21/10	PKR	1.50	472.50	Review <i>U.S. v. Stevens</i> in more detail and consider what to do
04/30/10	PKR	.40	126.00	Emails re oral argument
05/20/10	PKR	.50	157.50	Telephone call to court re oral argument; review letter re additional authority and motion to court re additional time
05/25/10	PKR	.80	252.00	Make arrangements to moot oral argument; draft letter of additional authorities re <i>U.S. v. Stevens</i>
06/01/10	PKR	2.50	787.50	Confer with co-counsel re arrangements for argument; gather information about panel for argument
06/02/10	PKR	1.10	346.50	Email re preparation for moot argument; review cases written by judges on the panel
06/04/10	PKR	.50	157.50	Email with co-counsel re certification questions
06/06/10	PKR	4.50	1417.50	Review all appellate briefing and key cases in preparation for oral argument
06/07/10	PKR	8.50	2677.50	Prepare for oral argument; review cases; participate in moot argument; confer with co-counsel re argument arrangements; prepare notes
06/08/10	PKR	3.80	1197.00	Attend oral argument; debrief from same
06/14/10	PKR	.40	126.00	Email with opposing counsel and client re certification motion
06/15/10	PKR	.50	157.50	Brief Drew Shoals on issues for research on certification question
06/17/10	A-S	2.00	300.00	Conduct research on certification case law

Appeal				
Date	Atty or Clerk	Hours	Fees	Description
06/18/10	A-S	3.00	450.00	Begin drafting memorandum re standard for Ninth Circuit certification; review relevant Oregon statutes; review appellate brief; review list of banned and challenged books
06/21/10	A-S	5.10	765.00	Finish review of appellate brief; review relevant case law on certification of First Amendment challenges; draft memorandum summarizing findings
06/22/10	PKR	.50	147.50	Meet with Drew Shoals to discuss research findings
06/22/10	A-S	2.00	300.00	Complete memorandum summarizing findings and meet with P.K. Runkles-Pearson to discuss findings and strategy for moving forward with research
06/23/10	PKR	2.80	882.00	Telephone call with co-counsel re response to certification motion; draft response; review and revise response
06/24/10	PKR	.70	220.50	Additional discussion with co-counsel re certification questions; finalize and file response
07/17/10	PKR	.40	126.00	Emails to clients re case developments, including status of certification motion
09/20/10	PKR	1.80	531.00	Review and analyze decision; email to clients re same
09/21/10	PKR	.20	59.00	Email from opposing counsel re extension of time to seek en banc review
09/22/10	PKR	1.30	409.50	Review statutes and rules re en banc review and attorney fees
09/23/10	PKR	.50	157.50	Review records for cost bill
09/29/10	PKR	.50	157.50	Prepare cost bill
11/08/10	PKR	.80	252.00	Review petition for en banc/panel rehearing; email to clients re same
12/14/10	PKR	.6	189.00	Review order denying petition for rehearing; email to clients re same; instruct staff re preparation of bills for fee petition

Appeal				
Date	Atty or Clerk	Hours	Fees	Description
12/15/10	PKR	1.3	409.50	Research law for fee petition
12/17/10	PKR	.4	126.00	Review bills for fee petition; remove inefficient entries
12/26/10	PKR	3.9	1228.50	Draft fee petition
12/27/10	PKR	4.2	1323	Review and revise fee petition and supporting documents
Total (Appeal):		157.20	\$45,489.50	

GRAND TOTAL		522.60	\$129,288.50	
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EXHIBIT 2

DATE	ITEM	AMOUNT
05/14/08	Air Courier Delivery	10.10
04/25/08	Filing fee for original complaint	350.00
08/08/08	Air Courier Delivery	5.80
07/31/08	Purchase of non-donated books for exhibits	106.19
06/30/08	Court Reporter fee to Bonita J. Shumway for copy of transcript of 6/23/08 preliminary injunction hearing before Judge Mosman	88.00
2/04/09	Air Courier Delivery	17.20
2/04/09	Filing fee for notice of appeal	455.00
3/10/09	Court Reporter fee to Bonita J. Shumway for original transcript of 10/3/08 permanent injunction hearing	292.00
7/17/09	Air Courier Delivery	65.98
7/20/09	Air Courier Delivery	46.92
7/23/09	Air Courier Delivery	42.37
10/21/09	Air Courier Delivery	26.02
	Total:	1,505.58

Office of the Clerk
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT
P.O. Box 193939
San Francisco, California 94119-3939

Molly C. Dwyer
Clerk of Court

(415) 355-8000

Form 9: APPLICATION FOR ATTORNEYS FEES
Under Ninth Circuit Rule 39-1.6

9th Cir. No. Case Name: v.

DESCRIPTION OF SERVICES

HOURS

Interviews & Conferences	<input type="text" value="4.8"/>
Obtaining & Reviewing Records	<input type="text" value="1.7"/>
Legal Research	<input type="text" value="36.6"/>
Preparing Briefs	<input type="text" value="57.4"/>
Preparing for & Attending Oral Argument	<input type="text" value="20.9"/>
Other (specify below):	<input type="text" value="35.8"/>

This form contains appellate time only. Hours listed as "other" were spent on the form of judgment, evaluation of the appeal, motions re consolidation, review of the amicus brief, Plaintiff's Rule 28(j) letter, drafting a response to the state's certification motion, and drafting the cost bill and fee petition.

TOTAL Hours Claimed

TOTAL COMPENSATION REQUESTED: \$ (appeal only)

Signature Date

A request for an award of attorneys fees must be supported by a memorandum showing that the party seeking fees is legally entitled to them and must be accompanied by Form 9 or a document that contains substantially the same information, along with:

- (1) a detailed itemization of the tasks performed each date and the amount of time spent by each lawyer and paralegal on each task;
- (2) a summary for each lawyer and paralegal of the total hours spent in the categories set forth above;
- (3) a showing that the hourly rates claimed are the prevailing rates in the relevant market; and
- (4) an affidavit attesting to the accuracy of the information submitted.