

**No. 09-35154**

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

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AMERICAN CIVIL LIBERTIES UNION OF OREGON, et al.,

*Plaintiffs-Appellants,*

v.

JOHN KROGER, et al.,

*Defendants-Appellees.*

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

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**PLAINTIFFS-APPELLANTS' REPLY IN SUPPORT OF THEIR  
APPLICATION FOR ATTORNEYS' FEES**

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John Kroger, et al.*

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The state does not contest many of Plaintiffs' arguments regarding the reasonableness of their fees. Most significantly, the state *does not contest Plaintiffs' statement that their counsel's rates were reasonable*, contesting only the rates of counsel in No. 09-35153. Plaintiffs see no reason to reiterate their unopposed arguments here, and they file this reply only to address a few discrete points.

Complexity. First, as the bookseller plaintiffs point out in their reply, the case was exceedingly complex. The fact that, at the end of the day, this Court decided the case on the facial overbreadth challenge (and thus did not need to reach other issues) does not obviate Plaintiffs' obligation to research and brief the other issues throughout the two and half years the case was pending.

District Court Hours. Second, Plaintiffs' hours were reasonable and not duplicative of the bookseller plaintiffs' work. The state's only specific concern with the reasonableness of plaintiff's counsel's hours in the Ninth Circuit is with the "dozens" of hours that plaintiff's counsel spent at the complaint stage.

Response at 11. Given the complexity of the case, the hours spent coming up to speed were reasonable. Furthermore, those hours also included significant work that was necessary for the preliminary injunction brief, which was filed at the same time as the complaint. In addition, Ms. Runkles-Pearson's substantial participation was not redundant because it was necessary in order for Mr. Bamberger and his

colleagues to become admitted pro hac vice. (The local rules require that local counsel must “meaningfully participate” in the matter. District of Oregon Rule 83-3(a)(1).) Without local counsel, Mr. Bamberger and his colleagues could not have provided their not inconsiderable insights.

Appellate Hours. Third, Plaintiffs’ hours in this Court were reasonable. It was necessary for Plaintiffs to approach the case differently from the bookseller plaintiffs given the way the District Court framed the issues on appeal. While the court only considered plaintiffs’ facial challenge, it discussed the plaintiffs’ individual circumstances in order to determine whether substantial overbreadth existed. The court’s opinion suggested that some plaintiffs might be treated differently than others. For example, the court expressed doubt that the bookseller plaintiffs could be liable “for selling [a] book whose contents are unknown to them” and that the sex educator plaintiffs could be liable for providing material that (according to the court) did not have sexual arousal as a primary purpose. Opinion at 24. Those conclusions presented the possibility that this Court might draw legal lines between the plaintiffs and their positions – and that representation of all plaintiffs at once might be difficult if not ethically impossible. Thus, the plaintiffs split into two groups for appeal. As the bookseller plaintiffs describe in their reply, counsel worked together to be as efficient as possible in the process. Bookseller Plaintiffs’ Reply at 5-6.

Overall, the fee petitions seek compensation for the hours of two law firms (primarily through only two lawyers) to represent over a dozen plaintiffs who had diverse needs and interests in a procedurally and substantively complex case that stretched over two years. The fees Plaintiffs seek are not insignificant, but they are reasonable under these circumstances. Plaintiffs respectfully request that this Court grant their petition.

Dated: January 10, 2011.

STOEL RIVES LLP

*s/ P. K. Runkles-Pearson*

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

*Attorney for Plaintiffs-Appellants*

*ACLU of Oregon, et al.*

**CERTIFICATE OF FILING AND SERVICE**

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

I hereby certify that I electronically filed the foregoing PLAINTIFFS-  
APPELLANTS' REPLY IN SUPPORT OF THEIR 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  
January 10, 2011.

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: January 10, 2011.

STOEL RIVES LLP

*s/ P. K. Runkles-Pearson*

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