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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON

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

Civil No. **CV '08 - 0501 - MO**

v.

DECLARATION OF  
DAVID GREENBERG

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

Defendants.

I, DAVID GREENBERG, certify and declare as follows:

## Background

1. I am the President and CEO of Planned Parenthood of the Columbia / Willamette, Inc. (“PPCW”), a plaintiff in this action. I submit this declaration on behalf of PPCW in support of plaintiffs’ motion for a preliminary injunction to enjoin the State from enforcing ORS 167.051 through 167.057 (the “Statute”) an unconstitutional censorship statute which will apply to institutions, such as PPCW, who provide sexuality education programs.

2. PPCW is the largest non-profit family planning and reproductive rights organization in Oregon. Since 1963, PPCW has been committed to delivering the highest quality health care, teaching responsible and age-appropriate sexuality education, and protecting a woman's right to choose. It seeks to expand access to sexual and reproductive health care in Oregon and Southwest Washington by promoting a wide range of services to a diverse population, assuring the availability of comprehensive sexuality education, raising public awareness of sexual and reproductive health care issues, and reducing unintended pregnancy and births, especially among young people. To address those issues, PPCW provides a broad range of sexual and reproductive health care, family planning and other medical services; trains and educates people on issues of sexuality; and advocates for the protection of reproductive rights and freedom in Oregon and Southwest Washington. Its team of trained educators provides sexuality education programs to nearly 10,000 youth and their parents annually in Portland, Salem and Bend, with the goal of providing young people with the tools that they need to make informed, responsible choices. Toward that end, PPCW reaches out to young people through teen peer education programs, development sessions for high-risk youth, educational presentations to schools and community groups, and professional training for youth service providers. PPCW’s youth programs have various target audiences, some as young as ten years

old. As a part of that program and other sexuality education efforts, PPCW distributes materials including descriptions or depictions of sexual behavior.

### Fear of Prosecution Under the Statute

3. PPCW fears that its agents, employees, and volunteers may be at risk of criminal prosecution under the Statute for permitting minors to access constitutionally protected material which could be deemed “sexually explicit” or to appeal to a person’s “sexual desires” under the meaning of the Statute.

4. Under ORS 167.054, it is a crime to “intentionally furnish” or “intentionally permit” anyone under the age of 13 to view “sexually explicit material” if the accused “knows that the material is sexually explicit material.” ORS 167.054(1). Such material includes material containing visual images—including paintings and drawings—of masturbation, intercourse or genital/oral/anal contact between people and animals. *See* ORS 167.051(5). It could be interpreted to include materials used by PPCW. “[F]urnish” is defined broadly, including “to sell, give, rent, loan or otherwise provide.” *See* ORS 167.051(2).

5. ORS 167.054 provides two exceptions to prosecution. First, under ORS 167.054(2)(a), certain persons, including employees of museums, schools, medical treatment providers, or public libraries, may not be prosecuted. In some circumstances, PPCW does not fall into that exception. Second, under ORS 167.054(2)(b), PPCW would not be liable if the sexually explicit portions of the material furnished, or permitted to be viewed, “form merely an incidental part of an otherwise nonoffending whole and serve some purpose other than titillation.” I believe that exception is vague. I have no way of knowing, and do not understand, what specific material qualifies for that exception.

6. I understand that, under ORS 167.054(3)(a), an affirmative defense exists for a criminal defendant who can prove that the material was furnished “solely for the purpose of sex education.” PPCW may be able to assert that defense. However, asserting that defense does not guarantee PPCW immunity from prosecution or a successful defense to prosecution. In addition, even if PPCW were able to assert the defense successfully, the defense would not exempt PPCW from the expense, inconvenience, and stigma of a criminal prosecution. Therefore, the availability of the affirmative defense does not remove the chilling effect that the Statute has on PPCW’s constitutionally protected activities.

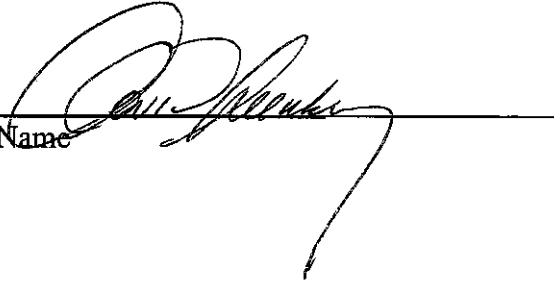
7. Under ORS 167.057, it is a crime to disseminate to anyone under the age of 18 a “visual representation or explicit verbal description or narrative account of sexual conduct” for the purpose of “arousing or satisfying the sexual desires of the person or the minor . . .” I understand that is a very broad provision encompassing material with textual descriptions, as well as visual depictions. It could be interpreted to include materials used by PPCW. I also believe that statute is vague because the phrase “arousing or satisfying the sexual desires” is open to a wide variety of interpretations. ORS 167.057 is also vague because it contains the same undefined and vague “incidental part” exception contained in ORS 167.054.

8. Under ORS 167.057, furnishing a 17-year-old minor with prohibited materials is a crime if the material is furnished for the purpose of satisfying the sexual desire of the 17-year-old. As described above, some materials that PPCW provides contain sexually related content that may be sexually arousing to some teenagers. Under ORS 167.057, therefore, PPCW would be committing a felony if a 17-year-old obtained materials from PPCW to satisfy his or her sexual desire or to become sexually aroused while reading those materials.

12. For all the reasons stated above, PPCW fears prosecution under the Statute and requests that such prosecution be enjoined.

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

DATED: April 16 2008.

Name A handwritten signature in black ink is written over a horizontal line. The signature is cursive and appears to read 'David Greenberg'. The line extends to the right of the signature.

## EXHIBIT A

Ruth Bell, *Changing Bodies, Changing Lives* (Three Rivers Press, 1998)

Wendy Caster, *The Lesbian Sex Book* (Alyson Books, 1993)

Robie H. Harris, *It's Not The Stork* (Candlewick Press 2006)

Robie H. Harris, *It's Perfectly Normal* (Candlewick Press 1994)

Peter Mayle, *What's Happening to Me?* (Carol Publishing Group, 1989 edition)

Peter Mayle, *Where Did I Come From?* (Carol Publishing Group, 1977)

Dr. Charles Silverstein, *The New Joy of Gay Sex* (Harper Perennial, 1993)

Pamela M Wilson, MSW, *When Sex is The Subject: Attitudes and Answers for Young Children* (ETR Associates, 1991)