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UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON

**CV '08-0501-MO**

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

Civil No.

Plaintiffs,

DECLARATION OF CHARLES  
BROWNSTEIN

v.

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

Defendants.

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## **DECLARATION OF CHARLES BROWNSTEIN**

Charles Brownstein declares under penalties of perjury:

### **Background**

1. I am the Executive Director of the Comic Book Legal Defense Fund ("CBLDF"), a plaintiff in this action. I submit this affidavit on behalf of CBLDF and its members in support of plaintiffs' motion for a preliminary injunction to enjoin the State from enforcing ORS 167.051 to 167.057 (collectively referred to as the "Statute"), a censorship law which is unconstitutional.
2. CBLDF is a non-profit corporation dedicated to defending the First Amendment Rights of the comic book industry. CBLDF, which has its principal place of business in New York, NY, represents over 1,000 comic book authors, artists, retailers, distributors, publishers, librarians, and readers located in Oregon, throughout the country and the world.
3. CBLDF was formed in 1986 to assert and protect the First Amendment rights of authors, artists, retailers, distributors, publishers and retailers of comic books, as the result of a challenge to such rights in Lansing, Illinois.
4. I have been professionally involved with comic books for over the past fifteen years, in publishing, editing, writing, and marketing of comic books.
5. Before 1933, comic strips appeared almost exclusively in newspapers and comic books as we know them today did not exist. In 1933, "Funnies on Parade" became the first comic book to be published and marketed as such. In 1938, comic

books took another major step with Action Comics #1 featuring Superman. The comic book medium continued to evolve in subsequent years, encompassing a wide variety of genres and subject matters. Serial pamphlets served as the dominant format for comics until the 1980s when the graphic novel format, a collection of comic book material resembling paperback and hardcover trade books, was first popularized. Today graphic novels are the most popular format of delivery for comic book stories.

6. While comic books are often thought of in the context of material directed primarily at children, they have often represented thoughtful comments on culture. In recent years the comic book industry has matured, developing in various genres, including young adult fiction, teenage fiction, and award winning literary fiction addressed to older audiences, often picturing nudity, other sexually explicit images and sexually frank plots. The maturity was first recognized when the *Maus*, a holocaust memoir presented as comic book narrative created by Art Spiegelman, was awarded a Pulitzer Prize in 1992. Today most comic books are collected in the perennial graphic novel format.

#### Fear Of Prosecution Under the Statute

7. CBLDF and its members fear that they may be at risk of criminal prosecution under the Statute for distributing or permitting minors to view or 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. They, however, do not know how to determine what comic books may cross the vague lines established under the Statute.

undefined under the Statute, is vague. In addition, this section contains the same undefined and vague “incidental part” exception.


11. My understanding is that CBLDF’s members risk criminal prosecution for furnishing constitutionally-protected comic books to persons “under 13 years of age” under ORS 167.054. It would be difficult, if not impossible, for CBLDF’s members to “card” or determine whether a child is under 13 years of age at our bookstores. Like movies, books, and magazines, many comic books contain sexually related narrative or pictorial content that might appeal to a minor’s “sexual desire.” For example, *Watchmen*, a seminal graphic novel by Alan Moore and Dave Gibbons, uses the idiom of superhero comics to create a social commentary on Cold War paranoia. The book includes a character named Dr. Manhattan who represents nuclear power and is depicted in the nude. There also are scenes depicting sexuality. Similarly, *All Star Batman & Robin* by Frank Miller and Jim Lee depicts sexual situations. There also are a broad variety of *manga*, a trade term for pocket-book sized translations of Japanese comics, that depict sexuality.

12. Under ORS 167.057, furnishing a 17 year-old minor with such material is a crime if furnished for the purpose of satisfying the sexual desire of the 17-year old. As discussed above, CBLDF’s members sell comic books containing sexually-related content that may be sexually arousing, depending on the individual. Under this section, they apparently would be committing a felony if a 17 year-old purchased a comic book to satisfy his or her sexual desire or to become sexually aroused while reading such a book.

13. Moreover, to ensure compliance with the Act, CBLDF's members may be forced to physically segregate all such possible materials in the store or exclude minors from the store -- a very large percentage of their customers. In addition, having an "adult section" would change the nature of their stores, in light of the number of titles that would be placed there by a cautious retailer. This also likely would result in economic losses from the decline of sales of comic books at CBLDF's members.

### **Conclusion**

14. For all the reasons stated above, CBLDF's members fear prosecution under the Statute. If the Statute is not enjoined, they will be forced either to self-censor materials available in their stores to a great degree or risk criminal liability. (I understand that CBLDF's members have not self-censored to date because they believe the law is unconstitutional.)



4/14/08

CHARLES BROWNSTEIN