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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**  
DECLARATION OF JUDITH KRUG

v.

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

Defendants.

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## DECLARATION OF JUDITH KRUG

Judith Krug declares under penalties of perjury:

### Background

1. I am the Executive Director of the Freedom to Read Foundation (FTRF), a sister organization of the American Library Association (ALA), one of the plaintiffs herein. I also am the Director for the Office for Intellectual Freedom of the ALA. I am professionally trained as a librarian and for many years taught the intellectual freedom and censorship course at the Graduate School of Library and Information Science of Simmons College, Boston, Massachusetts. I submit this affidavit on behalf of FTRF 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 that is unconstitutional.

2. The FTRF was established by the ALA in 1969 to promote and defend the First Amendment right to free expression, including the right to read and listen to the ideas of others. The FTRF works with the ALA to support and foster libraries -- both public and private -- as institutions in which First Amendment freedoms are fulfilled, and to support the right of libraries to include in their collections and make available any work which they may legally acquire. The FTRF gives both financial and legal support to libraries and librarians across the country, including Oregon libraries and librarians. The FTRF was founded in part to support and defend librarians whose positions are jeopardized because of their defense of the First Amendment. The FTRF is headquartered at the offices of the American Library Association, 50 E. Huron, Chicago, IL 60611. FTRF members include librarians, library patrons, public libraries, private

libraries, academic libraries, private organizations and individuals committed to promoting the freedom to read on behalf of all individuals.

3. Among many of its other regular activities, the FTRF has annually supported “Banned Books Week” (BBW) since its inception in 1982. BBW brings to the attention of the public that its First Amendment rights must be exercised to remain strong. BBW does this by publishing information about the books that have been challenged or banned during the preceding year so the public is aware of the continuing threats to First Amendment rights. This list contains many of the 20<sup>th</sup> and 21<sup>st</sup> centuries’ most important works of American literature, including, for example, Phillip Roth’s *Portnoy’s Complaint*, Nabokov’s *Lolita*, and J.D. Salinger’s *The Catcher in the Rye*, all of which contain sexual narrative. The list celebrates the freedom to choose what one wants to read and the freedom to express one’s opinion, even if that opinion might be considered unorthodox or unpopular. It stresses the importance of ensuring the availability of all points of view, including those that are unorthodox or unpopular, to all who choose to read them.

4. The FTRF invokes its historic role as a protector of librarians and libraries and our First Amendment freedoms by contesting the Statute. FTRF sues on its own behalf, on behalf of its members in Oregon, and on behalf of its member libraries’ patrons.

#### Fear Of Prosecution Under the Statute

5. As I understand the Statute, FTRF and its Oregon members (collectively, “FTRF’s Oregon members”) can be prosecuted for permitting minors to access constitutionally protected material that could be deemed “sexually explicit” or to appeal

to a person's "sexual desires" under the meaning of the Statute. The Statute effectively makes librarians engage in censorship, which is inimical to the philosophical basis of the library profession.

6. Most libraries, including FTRF's Oregon members, are likely to contain hundreds of books or other materials with sexually-related narrative or pictorial content, including, in some instances, nudity, that could be considered "sexually explicit" or "visual representation[s] or explicit verbal description[s] or narrative account[s] of sexual conduct" that may appeal to a person's "sexual desires." The books referenced in paragraph 3 above are just a few such examples. Other examples include materials such as *Forever*, by Judy Blume, *Women on Top*, by Nancy Friday, *Changing Bodies*, *Changing Lives*, by Ruth Bell, *Our Bodies, Our Selves*, by the Boston Women's Health Collective, and *It's Perfectly Normal*, by Robie Harris. These materials also are available for purchase in the state to individual members of FTRF. FTRF's Oregon members fear prosecution under the Statute if they continue to provide these and other mainstream materials containing sexually-related narrative or pictorial content.

7. Under the Statute, it is a crime to furnish "sexually explicit material" to anyone under the age of 13 if the person "intentionally furnishes a child, or intentionally permits a child to view, sexually explicit material and the person knows that the material is sexually explicit material." ORS 167.054. "[F]urnish" is defined broadly, including "to sell, give, rent, loan or otherwise provide." See ORS 167.051. My understanding is that based on this broad and vague language, FTRF's Oregon members risk criminal prosecution for furnishing the constitutionally protected materials described above to a person under the age of 13. The age requirement places yet another unconstitutional

overbroad nature of the Statute, FTRF's Oregon members will be forced to engage in self-censorship that undoubtedly will restrict library patrons' -- adults and minors alike -- access to constitutionally protected materials, including the books described above.

Conclusion

11. FTRF and its Oregon members play an important role in ensuring that the reading public can exercise its First Amendment right to freedom of information. For the reasons stated herein, the Statute prevents them from exercising this important function and by so doing, is unconstitutional.

Dated: April 18, 2008

  
JUDITH KRUG