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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON

POWELL'S BOOKS, INC.; OLD  
MULTNOMAH BOOK STORE, LTD.  
d/b/a ANNIE BLOOM'S BOOKS; DARK  
HORSE COMICS, INC.; COLETTE'S;  
GOOD FOOD + HUNGRY MINDS, LLC;  
BLUEJAY, INC. d/b/a PAULINA SPRINGS  
BOOKS; ST. JOHNS BOOKSELLERS, LLC;  
TWENTY-THIRD AVENUE BOOKS;  
AMERICAN BOOKSELLERS  
FOUNDATION FOR FREE EXPRESSION;  
ASSOCIATION OF AMERICAN  
PUBLISHERS, INC.; FREEDOM TO READ  
FOUNDATION INC.; COMIC BOOK  
LEGAL DEFENSE FUND; CANDACE  
MORGAN; PLANNED PARENTHOOD OF  
THE COLUMBIA / WILLAMETTE, INC.;

Civil No. CV08-0501-MO

AMENDED COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF

CASCADE AIDS PROJECT; AMERICAN CIVIL LIBERTIES UNION OF OREGON, INC.,

Plaintiffs,

v.

HARDY MYERS, in his official capacity as ATTORNEY GENERAL OF THE STATE OF OREGON; MATT SHIRTCLIFF, Baker County District Attorney; JOHN HAROLDSON, Benton County District Attorney; JOHN FOOTE, Clackamas County District Attorney; JOSHUA MARQUIS, Clatsop County District Attorney; STEVE ATCHISON, Columbia County District Attorney; PAUL FRASIER, Coos County District Attorney; GARY WILLIAMS, Crook County District Attorney; EVERETT DIAL, Curry County District Attorney; MICHAEL DUGAN, Deschutes County District Attorney; JACK BANTA, Douglas County District Attorney; MARION WEATHERFORD, Gilliam County District Attorney; RYAN JOSLIN, Grant County District Attorney; TIM COLAHAN, Harney County District Attorney; JOHN SEWELL, Hood River County District Attorney; MARK HUDDLESTON, Jackson County District Attorney; PETER L. DEUEL, Jefferson County District Attorney; STEPHEN D. CAMPBELL, Josephine County District Attorney; EDWIN I. CALEB, Klamath County District Attorney; DAVID A. SCHUTT, Lake County District Attorney; F. DOUGLASS HARCLEROAD, Lane County District Attorney; BERNICE BARNETT, Lincoln County District Attorney; JASON CARLILE, Linn County District Attorney; DAN NORRIS, Malheur County District Attorney; WALTER M. BEGLAU, Marion County District Attorney; ELIZABETH BALLARD, Morrow County District Attorney; MICHAEL D. SCHRUNK, Multnomah County District Attorney; JOHN FISHER, Polk County District Attorney; WADE M. MCLEOD, Sherman County

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District Attorney; WILLIAM BRYAN  
PORTER, Tillamook County District  
Attorney; DEAN GUSHWA, Umatilla County  
District Attorney; TIM THOMPSON, Union  
County District Attorney; MONA  
WILLIAMS, Wallowa County District  
Attorney; ERIC J. NISLEY, Wasco County  
District Attorney; ROBERT HERMANN,  
Washington County District Attorney;  
THOMAS W. CUTSFORTH, Wheeler County  
District Attorney; BRAD BERRY, Yamhill  
County District Attorney, in their official  
capacities as DISTRICT ATTORNEYS,

Defendants.

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Plaintiffs, for their complaint against Defendants, state as follows:

### **I. PRELIMINARY STATEMENT**

1. This action, brought pursuant to federal law, including the First, Fifth and Fourteenth Amendments to the U.S. Constitution, alleges that the state of Oregon, through its legislative and executive bodies, enacted an overly broad and unconstitutional statutory scheme in ORS 167.051 to 167.057 (the “Statute”). The Statute unconstitutionally criminalizes the dissemination to minors of constitutionally protected material that contains depictions or verbal descriptions of sexual conduct. The Statute burdens the exercise of citizens’ right to free expression and promotes self-censorship by creating a chilling effect on the sale, display, exhibition and dissemination of constitutionally protected speech and expression.

2. On July 31, 2007, Governor Ted Kulongoski signed into law House Bill 2843, effective January 1, 2008, as chapter 869 of Oregon Laws 2007, part of which is codified as the Statute. It is a censorship law that is unconstitutional in a multitude of ways.

3. ORS 167.054 provides that a person commits the crime of furnishing sexually explicit material to a child “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.”

4. ORS 167.054 explicitly exempts the following two categories of people from prosecution under that section:

- (1) Employees of museums, schools, law enforcement agencies, medical treatment providers, or public libraries, acting within the scope of regular employment; and
- (2) Persons who furnish, or permit the viewing of, material the sexually explicit portions of which form “merely an incidental part of an otherwise nonoffending whole and serve some purpose other than titillation.”

5. Only people with the precise positions listed in the first exception are exempt. Persons who do the same kind of work, such as employees at private libraries, are not exempt. Notably, the exempt group does not include parents or legal guardians. In addition, the second exemption has two requirements, both of which must be met: (1) the sexually explicit portion of the material must form an incidental part of an otherwise nonoffending whole, and (2) it must serve some purpose other than titillation. A retailer selling a book about sex to a child could be liable under ORS 167.054, even if the book were a grade-school textbook intended to educate children about reproduction. Finally, there is no intent to harm required under ORS 167.054; the only intent required is the intent to furnish qualifying material.

6. ORS 167.054 provides three affirmative defenses to prosecution:

- (1) That the material was furnished, or the viewing was permitted, solely for the purpose of sex education, art education or psychological treatment *and* that it was furnished or permitted by the child’s parent or legal guardian, an educator or treatment provider, or another person acting on behalf of such party;

(2) That the defendant reasonably believed the person at issue was not a child;  
or

(3) That the parties are within three years of age.

7. Although a sex or art educator may raise an affirmative defense after being charged with violation of ORS 167.054, he or she is not exempt from prosecution in the same manner as museum or school employees.

8. ORS 167.057 provides that it is a crime to furnish or use with a minor (a person under 18 years of age) a visual representation or explicit verbal description or narrative account of sexual conduct for the purpose of either “(a) arousing or satisfying the sexual desires of the person or the minor; or (b) inducing the minor to engage in sexual conduct.”

9. Unlike ORS 167.054, ORS 167.057 provides only one exception to liability: A person is not subject to prosecution if the person furnishes or uses a representation, description or account of sexual conduct that “forms merely an incidental part of an otherwise nonoffending whole and serves some purpose other than titillation.” ORS 167.057 provides no exception to liability for museum, school, law enforcement or medical personnel. As with ORS 167.054, both parts of the exemption must be met to avoid liability.

10. The other two defenses in subsection 3 of ORS 167.057 are identical to those in ORS 167.054:

(a) That the representation, description or account was furnished or used for the purpose of psychological or medical treatment *and* that it was furnished by a treatment provider or by another person acting on behalf of the treatment provider;

- (b) That the defendant reasonably believed the person at issue was not a minor; or
- (c) That the parties are within three years of age.

The affirmative defenses to liability under ORS 167.057 (unlike those in ORS 167.054) do not include that the material was used for educational purposes, and these defenses do not protect parents or educators.

11. The U.S. Supreme Court has established a framework for determining when a state constitutionally may restrict minors from having access to material with sexual content (the “*Ginsberg/Miller Standard*”). *See Ginsberg v. State of New York*, 390 US 629 (1968); *Miller v. California*, 413 US 15 (1973). The *Ginsberg/Miller Standard* allows material to be restricted from minors only if

- (a) the average person, applying contemporary community standards, finds that the work, taken as a whole, appeals to the prurient interest of minors;
- (b) the work defines or describes, in a way that is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable for minors, sexual conduct specifically defined by state law; and
- (c) the work, taken as a whole, lacks serious literary, artistic, political or scientific value to minors.

12. The Statute does not comply with the *Ginsberg/Miller Standard*. To the contrary, it criminalizes constitutionally protected material that

- (a) considered as a whole, has serious literary, artistic, political or scientific value to minors;

- (b) considered as a whole, does not appeal to the prurient interest of minors; and
- (c) is not patently offensive to prevailing adult standards in the adult community as a whole with respect to what is suitable for minors.

13. In addition, the Statute contains unconstitutionally vague language such as “incidental,” “nonoffending,” “titillation,” “arousing” and “satisfying sexual desires.” Use of such vague and undefined terms renders the Statute unconstitutional.

14. Finally, ORS 167.057, which prohibits furnishing a 17-year-old with constitutionally protected materials if it is furnished for the purpose of satisfying the sexual desire of the 17-year-old, contravenes the First Amendment because a 17-year-old has a constitutional right to read material that includes an “explicit verbal description or narrative account of sexual conduct,” ORS 167.057(1)(a), and to satisfy his or her sexual desires or become sexually aroused by reading such material. Nevertheless, the Statute makes it a felony to furnish such material to the minor so that he or she may do these protected acts.

15. Plaintiffs include and represent a broad range of individuals and entities that communicate protected speech in and to the state of Oregon, as well as recipients of such protected speech.

16. Plaintiffs do not challenge the power of Oregon to criminalize speech used to entice or lure minors into illegal or inappropriate activity. They thus challenge ORS 167.057(1)(B) only to the extent it is not severable from the rest of the Statute.

17. The Statute violates the rights of Plaintiffs, their members and their customers under the First, Fifth and Fourteenth Amendments and threatens them with irreparable harm.

18. This action seeks to have the Statute declared facially unconstitutional and void, and to enjoin enforcement of the Statute, by reason of the First, Fifth and Fourteenth Amendments to the U.S. Constitution.

## **II. JURISDICTION AND VENUE**

19. This case arises under the U.S. Constitution. Plaintiffs seek remedies under 42 USC §§ 1983 and 1988. Venue is proper under 28 USC § 1391.

## **III. THE PARTIES**

20. Plaintiff POWELL'S BOOKS, INC. ("Powell's") is the largest independent used and new bookstore in the world and has seven retail locations in the Portland, Oregon area. Powell's is incorporated and has its principal place of business in Oregon. Powell's sues on its own behalf and on behalf of purchasers and readers of its books and other materials.

21. Plaintiff OLD MULTNOMAH BOOK STORE, LTD. d/b/a ANNIE BLOOM'S BOOKS ("Annie Bloom's") is an independent bookstore incorporated and operating in Portland since 1978. Annie Bloom's is a locally owned full-service neighborhood bookstore offering a broad range of works, including children's materials, contemporary fiction, and books on art, current events, parenting and entertainment. Annie Bloom's sues on its own behalf and on behalf of purchasers and readers of its books and other materials.

22. Plaintiff DARK HORSE COMICS, INC. ("Dark Horse") is a privately held Oregon company established in 1986 with its corporate headquarters in Milwaukie, Oregon. It has grown to become the third-largest comics publisher in the United States and is acclaimed internationally for the quality and diversity of its line. Dark Horse's flagship retail operation is Things From Another World, Inc. ("TFAW"), which has three stores throughout Oregon. Dark Horse sues on its own behalf, on behalf of TFAW and on behalf of purchasers and readers of its publications.

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23. Plaintiff COLETTE'S: GOOD FOOD + HUNGRY MINDS, LLC ("Colette's") was set up with the explicit mission of being a First Amendment bookstore and café. Both owners are voracious readers, and both have journalistic and writing backgrounds. Colette's strongly believes in the freedom of expression and the right to read, view and listen to the expressions of others. Colette's has been in existence since November 2007 and plans to open another location in the near future. Colette's sues on its own behalf and on behalf of purchasers and readers of its books and other materials.

24. Plaintiff BLUEJAY, INC. d/b/a PAULINA SPRINGS BOOKS ("Paulina's") is a retailer of predominantly new books in a broad range of genres, including, but not limited to, general fiction, history, outdoor recreation, children and adolescents, travel, self-help, education, parenting, Christian, and inspirational. It operates a store in Sisters, Oregon and a store in Redmond, Oregon. Paulina's sues on its own behalf and on behalf of purchasers and readers of its books and other materials.

25. Plaintiff ST. JOHNS BOOKSELLERS, LLC ("St. Johns") operates a neighborhood general-interest bookstore, offering both new and used books for a wide range of interests. Its Portland, Oregon store will have been in business for three years as of June 2008. St. Johns sues on its own behalf and on behalf of purchasers and readers of its books and other materials.

26. Plaintiff TWENTY-THIRD AVENUE BOOKS ("Twenty-Third Avenue") was established in 1980 and is located in the Nob Hill district of northwest Portland, Oregon. It offers a wide array of books, magazines and other materials, including, for example, fiction, biographies and other nonfiction books, graphic novels and erotica, gay and lesbian studies, and

books directed to children, teens and adolescents. Twenty-Third Avenue sues on its own behalf and on behalf of purchasers and readers of its books and other materials.

27. Plaintiff AMERICAN BOOKSELLERS FOUNDATION FOR FREE EXPRESSION (“ABFFE”) was organized as a not-for-profit organization by the American Booksellers Association in 1990 to inform and educate booksellers, other members of the book industry and the public about the dangers of censorship, and to promote and protect the free expression of ideas, particularly freedom in the choice of reading materials. ABFFE is incorporated in Delaware and has its principal place of business in New York, New York. ABFFE, most of whose members are bookstores in the United States, sues on its own behalf, on behalf of its members in Oregon and on behalf of the patrons of its member bookstores in Oregon.

28. Plaintiff ASSOCIATION OF AMERICAN PUBLISHERS, INC. (“AAP”) is the national association of the U.S. book publishing industry. AAP’s approximately 300 members include most of the major commercial book publishers in the United States, as well as smaller and nonprofit publishers, university presses and scholarly associations. AAP members publish hardcover and paperback books in every field and a range of educational materials for the elementary, secondary, postsecondary and professional markets. Members of AAP also produce computer software and electronic products and services. AAP is incorporated in New York and has its principal places of business in New York City and the District of Columbia. AAP represents an industry whose very existence depends on the free exercise of rights guaranteed by the First Amendment. AAP sues on behalf of its members located in Oregon, those whose books are distributed or offered for sale in Oregon, and readers of its members’ books in Oregon.

29. Plaintiff FREEDOM TO READ FOUNDATION INC. (“FTRF”) is a nonprofit membership organization established in 1969 by the American Library Association to promote and defend First Amendment rights, to foster libraries as institutions fulfilling the promise of the First Amendment for every citizen, to support the rights of libraries to include in their collections and make available to the public any work they may legally acquire, and to set legal precedent for the freedom to read on behalf of all citizens. FTRF’s members include librarians, public libraries, private libraries, academic libraries, private organizations and individuals committed to promoting the freedom to read on behalf of all individuals. FTRF is incorporated in Illinois and has its principal place of business in Chicago. FTRF sues on its own behalf, on behalf of its members in Oregon and on behalf of its patrons.

30. Plaintiff COMIC BOOK LEGAL DEFENSE FUND (“CBLDF”) is a nonprofit corporation dedicated to defending the First Amendment rights of the comic book industry. CBLDF represents over 1,000 comic book authors, artists, retailers, distributors, publishers, librarians and readers throughout the country and the world. CBLDF sues on its own behalf, on behalf of its members in Oregon and on behalf of the customers of such members.

31. Plaintiff CANDACE MORGAN is a resident of Multnomah County. She teaches current and future librarians enrolled in the Oregon distance-learning cohort of the Emporia State University School of Library and Information Science. Morgan is also a grandparent of a seven-year-old boy whom she takes to the library and bookstore.

32. Plaintiff PLANNED PARENTHOOD OF THE COLUMBIA/WILLAMETTE, INC. (“PPCW”) is the largest nonprofit 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, ensuring the availability of comprehensive sexuality education, raising public awareness of sexual and reproductive health care issues, and reducing unintended pregnancies 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 youths and their parents annually in Portland, Salem and Bend, with the goal of providing young people with the tools they need to make informed, responsible choices. To 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 10 years old. PPCW is an Oregon nonprofit corporation organized for the public benefit. It sues on its own behalf, on behalf of its volunteers and employees, and on behalf of the population served by its programs.

33. Plaintiff CASCADE AIDS PROJECT ("CAP") has been an Oregon nonprofit corporation organized for the public benefit since 1985. CAP's mission is preventing new HIV infections, caring for people affected and infected by HIV/AIDS, and educating communities to eliminate stigma and shame and advocate for immediate action in combating the pandemic. As part of that mission, CAP has implemented the Teen2Teen program, a group of 15- to 19-year-olds who volunteer for an entire year and are trained as peer educators in HIV/AIDS and sexuality education. The young people in Teen2Teen dedicate their time to learning and

educating about HIV/AIDS, sexuality, gender, sexual orientation, healthy relationships and more. CAP sues on its own behalf, on behalf of its volunteers and employees, and on behalf of the population served by its programs.

34. Plaintiff AMERICAN CIVIL LIBERTIES UNION OF OREGON, INC. (the "ACLU of Oregon") is an Oregon nonprofit corporation organized for the public benefit with a membership of over 17,000 people, all of whom live or work in Oregon. The ACLU of Oregon is a nonpartisan advocacy organization. Since 1955, it has been dedicated to the preservation and enhancement of civil liberties and civil rights. It believes that the freedoms of press, speech, assembly and religion, and the rights to due process, equal protection and privacy, are fundamental to a free people. The ACLU of Oregon lobbies to prevent the passage of laws that would undermine civil liberties and civil rights, and to encourage passage of laws that would enhance civil liberties and civil rights. The ACLU of Oregon also supports educational outreach designed to sway public opinion on civil liberties and civil rights issues. It sues on its own behalf; on behalf of its volunteers, employees and members; and on behalf of the population served by its programs.

35. Defendant HARDY MYERS is the Attorney General of the state of Oregon and is sued in his official capacity as such. He is the chief law officer of the state of Oregon, with authority in both civil and criminal matters, and has the obligation to "consult with, advise and direct the district attorneys in all criminal causes." ORS 180.060(5).

36. The remaining Defendants are the district attorneys in each of the counties in the state of Oregon, who have the duty to prosecute crimes, including violations of the Statute.

#### **IV. FACTUAL ALLEGATIONS**

##### **A. The Statutory Language at Issue**

37. The Statute reads as follows:

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“167.051. Definitions for ORS 167.054 and 167.057. As used in ORS 167.054 and 167.057:

“(1) ‘Child’ means a person under 13 years of age.

“(2) ‘Furnishes’ means to sell, give, rent, loan or otherwise provide.

“(3) ‘Minor’ means a person under 18 years of age.

“(4) ‘Sexual conduct’ means:

“(a) Human masturbation or sexual intercourse;

“(b) Genital-genital, oral-genital, anal-genital or oral-anal contact, whether between persons of the same or opposite sex or between humans and animals;

“(c) Penetration of the vagina or rectum by any object other than as part of a medical diagnosis or as part of a personal hygiene practice; or

“(d) Touching of the genitals, pubic areas or buttocks of the human male or female or of the breasts of the human female.

“(5) ‘Sexually explicit material’ means material containing visual images of:

“(a) Human masturbation or sexual intercourse;

“(b) Genital-genital, oral-genital, anal-genital or oral-anal contact, whether between persons of the same or opposite sex or between humans and animals; or

“(c) Penetration of the vagina or rectum by any object other than as part of a personal hygiene practice.

“167.054. Furnishing sexually explicit material to a child.

“(1) A person commits the crime of furnishing sexually explicit material to a child 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.

“(2) A person is not liable to prosecution for violating subsection (1) of this section if:

“(a) The person is an employee of a bona fide museum, school, law enforcement agency, medical treatment provider or public library, acting within the scope of regular employment; or

“(b) The person furnishes, or permits the viewing of, material the sexually explicit portions of which form merely an incidental part of an otherwise nonoffending whole and serve some purpose other than titillation.

“(3) In a prosecution under subsection (1) of this section, it is an affirmative defense:

“(a) That the sexually explicit material was furnished, or the viewing was permitted, solely for the purpose of sex education, art education or psychological treatment and was furnished or permitted by the child’s parent or legal guardian, by an educator or treatment provider or by another person acting on behalf of the parent, legal guardian, educator or treatment provider;

“(b) That the defendant had reasonable cause to believe that the person to whom the sexually explicit material was furnished, or who was permitted to view the material, was not a child; or

“(c) That the defendant was less than three years older than the child at the time of the alleged offense.

“(4) In a prosecution under subsection (1) of this section, it is not a defense that the person to whom the sexually explicit material was furnished or who was permitted to view the material was not a child but was a law enforcement officer posing as a child.

“(5) Furnishing sexually explicit material to a child is a Class A misdemeanor.

“167.057. Luring a minor.

“(1) A person commits the crime of luring a minor if the person:

“(a) Furnishes to, or uses with, a minor a visual representation or explicit verbal description or narrative account of sexual conduct; and

“(b) Furnishes or uses the representation, description or account for the purpose of:

“(A) Arousing or satisfying the sexual desires of the person or the minor; or

“(B) Inducing the minor to engage in sexual conduct.

“(2) A person is not liable to prosecution for violating subsection (1) of this if the person furnishes or uses a representation, description or account of sexual conduct that forms merely an incidental part of an otherwise nonoffending whole and serves some purpose other than titillation.

“(3) In a prosecution under subsection (1) of this section, it is an affirmative defense:

“(a) That the representation, description or account was furnished or used for the purpose of psychological or medical treatment and was furnished by a treatment provider or by another person acting on behalf of the treatment provider;

“(b) That the defendant had reasonable cause to believe that the person to whom the representation, description or account was furnished or with whom the representation, description or account was used was not a minor; or

“(c) That the defendant was less than three years older than the minor at the time of the alleged offense.

“(4) In a prosecution under subsection (1) of this section, it is not a defense that the person to whom the representation, description or account was furnished or with whom the representation, description or account was used was not a minor but was a law enforcement officer posing as a minor.

“(5) Luring a minor is a Class C felony.”

## **B. The Statute’s Impact on Plaintiffs’ Speech**

38. Plaintiffs are or represent disseminators, publishers, distributors, transmitters, sellers, purchasers and recipients of periodicals, books, newspapers, motion pictures, videos and sound recordings sold, rented, transferred or distributed in Oregon. Plaintiffs fear prosecution under the Statute for offering, distributing or selling material that might be deemed by some to be speech restricted under the Statute. If Plaintiffs are found to have violated the Statute, they risk penalties, for violations of ORS 167.054, of up to one year’s imprisonment and/or a fine of

up to \$6,250, and, for violations of ORS 167.057, of up to five years' imprisonment and/or a fine of up to \$125,000.

39. The Statute restricts the sale, gift, rental, loan or other dissemination of certain constitutionally protected speech to persons under age 18.

40. By reason of its unconstitutional overbreadth and its vagueness, the Statute will chill the exercise by publishers, distributors, transmitters and retailers of their right to sell, distribute or transmit, or have sold or distributed, constitutionally protected materials in the state of Oregon.

**Powell's Books, Inc.**

41. Plaintiff Powell's has several retail locations in Portland at which materials containing sexually explicit material or visual representations or narrative accounts of sexual conduct (as those terms are defined in the Statute) are offered for sale. Such materials include novels by Judy Blume, romance novels, graphic novels and sex education books for teenagers. Powell's fears that it is and will continue to be exposed to risk of prosecution for violation of the Statute. Should the Statute be upheld, Powell's will be forced to self-censor or risk such a prosecution.

**Old Multnomah Book Store, Ltd. d/b/a Annie Bloom's Books**

42. Plaintiff Annie Bloom's is a locally owned full-service neighborhood bookstore offering a broad range of works, including children's materials, contemporary fiction, and books on art, current events, parenting and entertainment, some of which materials contain sexually explicit material or visual representations or narrative accounts of sexual conduct (as those terms are defined in the Statute). Annie Bloom's fears that it is and will continue to be exposed to risk of prosecution for violation of the Statute. Should the Statute be upheld, Annie Bloom's will be forced to self-censor or risk such a prosecution.

**Dark Horse Comics, Inc.**

43. Dark Horse publishes a wide variety of comics and other materials at retail stores, including its flagship operation, TFAW. Some contain material that could be deemed “sexually explicit” or “arousing or satisfying [to] the sexual desires” of its customers. Dark Horse fears prosecution under the Statute if it continues to publish such materials.

**Colette's: Good Food + Hungry Minds, LLC**

44. Colette's sells a wide variety of books and other materials at its store and specializes in nonfiction, including photography and art books. It also has established a comprehensive Gay, Lesbian, Bisexual, Transgender, and Questioning section to better serve its patrons. Colette's fears prosecution under the Statute if it continues to maintain this section or carries other material that contains sexually explicit material or visual representations or narrative accounts of sexual conduct, as those terms are defined in the Statute.

**Bluejay, Inc. d/b/a Paulina Springs Books**

45. Paulina's is a mainstream bookstore that sells materials it fears fall under the Statute, including, for example, romance novels, such as those by Nan Ryan, Linda Howard and Cheyenne McCray; books of photography, including material with sexual content, such as *Joy of Sex*. Paulina's fears that it is at risk of criminal prosecution under the Statute for selling these and other constitutionally protected materials.

**St. Johns Booksellers**

46. St. Johns is a mainstream bookstore with over 15,000 titles catering to a wide range of customer interests. It stocks, among other materials, romance novels, including those by Lisa Kleypas and Stephanie Laurens; graphic novels, including those by Neil Gaiman; and books of photography, including those by Jan Saudek. St. John's fears that it is at risk of

criminal prosecution under the Statute for selling these and other constitutionally protected materials.

#### **Twenty-Third Avenue Books**

47. Twenty-Third Avenue is a mainstream bookstore that sells materials it fears fall under the Statute, including graphic novels, erotica and books focusing on gay and lesbian studies. It fears that it is at risk of criminal prosecution under the Statute for selling these and other constitutionally protected materials.

#### **American Booksellers Foundation for Free Expression**

48. Plaintiff ABFFE has hundreds of bookseller members located from coast to coast, as well as in the state of Oregon, Multnomah County and other counties. Those located in Oregon, such as Plaintiff Powell's, sell and offer for sale books and other materials that contain sexually explicit material, or visual representations or explicit verbal descriptions or narrative accounts of sexual conduct, as defined in the Statute. ABFFE members are not "adult bookstores."

49. ABFFE members' right to offer and sell in Oregon a full range of mainstream materials, and to learn about, acquire and distribute materials containing nudity and sexual conduct, and their patrons' right to purchase such materials, will be seriously infringed by the Statute if it is not enjoined, because ABFFE members and the publishers with which they transact business will be forced to self-censor or risk prosecution under the Statute.

#### **Association of American Publishers, Inc.**

50. Plaintiff AAP sues on behalf of its members which provide mainstream books and other materials to retailers in Oregon.

51. Some of the content published by AAP members and distributed in Oregon contains sexual explicit material or visual representations or explicit verbal descriptions of sexual

conduct, as defined in the Statute. Many of the efforts to ban books in communities across the country have been directed at books published by AAP members. If the Statute is not enjoined, AAP members will be forced to limit the access of Oregon residents to many important books or risk prosecution under the Statute.

**Freedom to Read Foundation Inc.**

52. Plaintiff FTRF and its library and librarian members serve as both access and content providers at public, private and academic libraries in the state of Oregon. FTRF's members in Oregon include individuals who access materials at libraries and bookstores in the state.

53. Some of the materials provided or made available by public, private and academic libraries in Oregon, or made available to FTRF members in bookstores in the state, contain speech restricted under the Statute. For example, FTRF member libraries include materials such as *Forever* by Judy Blume; *Women on Top* by Nancy Friday; *Changing Bodies, Changing Lives* by Ruth Bell; *Our Bodies, Ourselves* 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.

54. Because the exemption for employees of public libraries does not apply to every provision of the Statute and does not apply to all libraries, Oregon libraries will be forced to limit Oregon residents' access to many important books and other materials if the Statute is not enjoined, or those libraries will risk prosecution. Additionally, FTRF members will not have access to constitutionally protected materials that would otherwise be available for purchase in the state.

### **Comic Book Legal Defense Fund**

55. Plaintiff CBLDF includes publishers and retailers in Oregon. Some of the materials published or distributed by such members contain speech that is restricted under the Statute but, at the same time, is constitutionally protected, for example, *Watchmen*, a seminal graphic novel by Alan Moore and Dave Gibbons. If the Statute is not enjoined, CBLDF members will be forced to limit Oregon residents' access to some of its materials, or risk prosecution.

### **Candace Morgan**

56. Plaintiff Morgan has an interest in declaratory relief because, as an educator of librarians, she is forced to interpret the Statute in teaching her students. Morgan must advise her students which library materials have been censored and criminalized by the Statute, what risks they now face under the Statute in providing library materials to minors, and how the risks for librarians of private collections are greater than those for librarians of public collections. Because the Statute is vague, Morgan is unable to provide definitive interpretations of the Statute to her students. As a grandparent, Morgan has an interest in injunctive and declaratory relief because the Statute restricts the materials she can provide to her grandson and threatens prosecution should she provide materials that violate the Statute. For instance, Morgan has considered providing her grandson books by Robie Harris; those books may violate the Statute.

### **Planned Parenthood of the Columbia/Willamette, Inc.**

57. Plaintiff PPCW provides comprehensive sexuality education to a diverse age range, including education targeted at children as young as 10 years old. As part of that education, PPCW distributes materials depicting and/or describing sexual behavior, which materials may constitute restricted speech under the Statute. PPCW also distributes materials to the public at large that may violate the Statute, and such materials may be distributed to minors.

If the Statute is not enjoined, PPCW will be forced to limit the distribution of those constitutionally protected materials, severely impairing its mission of providing sexuality education, or it will risk prosecution.

#### **Cascade AIDS Project**

58. Plaintiff CAP provides comprehensive sexuality education to a diverse age range, including education targeted at minors. As part of that education, CAP distributes materials depicting and/or describing sexual behavior, which materials may constitute restricted speech under the Statute. CAP also distributes materials to the public at large that may violate the Statute and such materials may be distributed to minors. If the Statute is not enjoined, CAP will be forced to limit the distribution of those constitutionally protected materials, severely impairing its mission of providing sexuality education, or it will risk prosecution.

#### **American Civil Liberties Union of Oregon, Inc.**

59. Plaintiff the ACLU of Oregon consists of 17,000 members who may wish to obtain or distribute materials that constitute restricted speech under the Statute. If the Statute is not enjoined, the Statute will substantially impair (or entirely destroy) the ACLU of Oregon's members' access to such materials and their ability to distribute such materials.

### **V. CAUSES OF ACTION**

#### **COUNT I**

##### **Declaratory Relief and Injunction – Violation of First and Fourteenth Amendments to the U.S. Constitution**

60. Plaintiffs repeat and reallege paragraphs 1-59.

61. The Statute violates the rights of Plaintiffs and their members, volunteers, employees, customers and users under the First and Fourteenth Amendments to the U.S. Constitution because it interferes with the rights of minors and adults to access and view material

that they are entitled to access and view under the First Amendment, and because it interferes with the rights of disseminators, publishers, distributors, transmitters and sellers of such materials to disseminate material that is protected by the First Amendment.

62. The Statute is unconstitutional because it defines as harmful to minors certain material protected by the First Amendment, and therefore prohibits the dissemination of such material to minors.

## **COUNT II**

### **Unconstitutional Vagueness Under the Fifth and Fourteenth Amendments to the U.S. Constitution**

63. Plaintiffs repeat and reallege paragraphs 1-62.

64. The Statute violates the rights of Plaintiffs, their members, their customers, and their users in that it is unconstitutionally vague because it fails to provide fair notice as to what constitutes a criminal offense.

## **VI. PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that the Court:

A. Declare that the Statute violates the First, Fifth and Fourteenth Amendments to the U.S. Constitution on its face and as applied to Plaintiffs and those on whose behalf they sue;

B. Preliminarily and permanently enjoin Defendants and their officers, agents, servants, employees and attorneys, and those persons in active concert or participation with them who receive actual notice of the injunction, from enforcing the Statute;

C. Award Plaintiffs their reasonable costs and fees pursuant to 42 USC § 1988; and

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D. Grant Plaintiffs such other and further relief as the Court deems just and proper.

DATED: May 14, 2008.

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