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October 19, 2011

Mr. Michael E. Gans, Clerk of Court  
United States Court of Appeals  
for the Eighth Circuit  
Thomas F. Eagleton U.S. Courthouse  
111 South 10<sup>th</sup> Street, Room 24.329  
St. Louis, Missouri 63102

**Re: Marcy A. Johnson v. West Publishing Corporation**  
**Case No. 11-8020**

Dear Mr. Gans:

On August 30, 2011, West Publishing Corporation filed a petition pursuant to Section 1292(b) seeking interlocutory review of the district court's order denying West's motion for judgment on the pleadings in an action involving claims under the Drivers' Privacy Protection Act, 18 U.S.C. §2721, et seq. ("DPPA"). Earlier, on April 15, 2011, this Court granted West leave to participate as amicus curiae in an appeal from a district court order dismissing a complaint asserting DPPA claims in *Janice Cook, et al v. ACS State & Local Solutions, et al* (Case No. 10-3818), and West's amicus brief was filed on that date.

Counsel for West attended the September 22, 2011 oral argument in *Cook*, but did not participate in the argument. During that argument, the district court's opinion in *Johnson* that is the subject of West's petition was addressed and, indeed, the *Johnson* case was central to the oral argument in *Cook*. The *Cook* panel also posed a hypothetical question that assumed certain facts about West's business practices and the public accessibility of DMV records on West's databases—namely, that anyone can visit a

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public library that has a public access terminal and a Westlaw subscription and get all the information in motor vehicle records, subject only to selecting a purpose from a drop-down menu. West has written to the Court in connection with the *Cook* appeal to state that the hypothetical's factual assumptions, which are not part of the record, are incorrect and do not describe West's actual business practices. Access to West's databases containing DMV records is not available to the general public in public libraries or elsewhere.

Consequently, the oral argument in *Cook* provides additional reasons why West's petition should be granted. As the panel's questions and parties' argument reflected, the issues in *Johnson* and *Cook* overlap and the district court's decision in *Johnson*, which diverged from the district court's decision in *Cook*, appeared to be of interest to the *Cook* panel. Addressing *Johnson*, one of two conflicting lower court decisions in this Circuit, will be necessary to resolution of the issues presented in the *Cook* appeal. West suggests, therefore, that the core statutory construction question at issue in *Cook* should be addressed in the context of briefing that addresses the district court's decision in *Johnson* and the reasoning used to reach it. Granting West's petition would accomplish that.

Further, granting West's petition would enable West to fully respond to the *Cook* panel's hypothetical. Only briefing in the context of an appeal in *Johnson* would avoid misunderstandings about West's business practices (which properly were not addressed in West's amicus brief in *Cook*) and the *Johnson* record. In short, the *Cook* argument provides additional reasons why West should be heard and the *Johnson* opinion should be briefed.

Very truly yours,

/s/ Kim M. Watterson

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KMW/hh  
Enclosures

cc: All counsel of record