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April 24, 2013

VIA CM ECF FILING

Molly Dwyer, Clerk
United States Court of Appeals
for the Ninth Circuit
P.O. Box 193939
San Francisco, CA 94119-3939

Re: *Courthouse News Service v. Michael Planet*, Case No. 11-57187
Oral Argument Scheduled for May 8, 2013, at 9:30 a.m. in Pasadena

Dear Ms. Dwyer:

Pursuant to FRAP 28(j), Appellant Courthouse News Service supplements its briefs with the following:

Rivas v. Napolitano, 2013 U.S. App. LEXIS 6663, *9-10 (9th Cir. 2013) (reversing dismissal under FRCP 12(b)(1) as “not appropriate” because the jurisdictional question overlapped the merits). It supplements page 7, footnote 4 of the Reply (citing *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039-40 (9th Cir. 2004)).

NAGE v. Mulligan, 849 F. Supp. 2d 167, 175 (D. Mass. 2012) (following “developing consensus among federal courts that *Burford* abstention is unwarranted where, as here, plaintiffs bring First Amendment challenges to state laws or actions”) (citing *Ripplinger v. Collins*, 868 F.2d 1043 (9th Cir. 1989)); *Crisante v. Coats*, 2012 U.S. Dist. LEXIS 53646, *28 (M.D. Fla. Apr. 17, 2012) (denying *Pullman* abstention in case involving “nettlesome issue of state law” because “[a]bstention is to be invoked particularly sparingly in actions involving alleged deprivations of First Amendment rights”).

Neither decision discussed nor required a chilling effect before rejecting abstention. They supplement the Opening Brief at 6, 19-27, 47-48, 54, the Reply at 9-13, and the citation at pages 52 and 57 of Appellee’s Answering Brief to *McKusick v. City of Melbourne*, 96 F.3d 478 (11th Cir. 1996), which recognized *O’Shea* “abstention for comity and federalism reasons is inappropriate” where state action is “attacked on First Amendment grounds and is facially overbroad.” *Id.* at 489 n.6.

Dex Media West v. Seattle, 696 F.3d 952, 960 (9th Cir. 2012) (“economic motive ... is insufficient to characterize a publication as commercial” and reduce its First Amendment protection). It supplements page 13, footnote 7 of the Reply.

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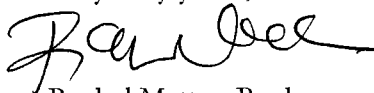
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Dorsett v. County of Nassau, 2012 U.S. Dist. LEXIS 168073, *52 (E.D.N.Y. Nov. 26, 2012) (allowing media to intervene to challenge protective order because otherwise “the public’s right of access ... would go untested” and “the first amendment protects not only the content of speech but also its timeliness”). This decision, recognizing the right of timely access, supplements the Opening Brief at 4-5, 24-25 & n.7, 48-54 and Reply at 10-13 & n.5.

Please bring these supplemental citations to the panel’s attention.

Very truly yours,

A handwritten signature in black ink, appearing to read "Rachel", with a stylized flourish extending to the right.

Rachel Matteo-Boehm

CERTIFICATE OF SERVICE

I hereby certify that on April 24, 2013, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Rachel Matteo-Boehm