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April 24, 2013

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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

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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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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", written in a cursive style.

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.

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/s/ Rachel Matteo-Boehm