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December 20, 2013

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. CV11-57187
Argued & Submitted May 8, 2013
Submission Vacated on Referral to Mediation May 13, 2013
Returned from Mediation to Panel June 3, 2013, But Not Yet Resubmitted
Panel: Judges Noonan, Wardlaw & Murguia

Dear Ms. Dwyer:

Pursuant to FRAP 28(j), Appellant Courthouse News Service writes to inform the panel the Supreme Court last week unanimously "cautioned … that federal courts ordinarily … should not 'refus[e] to decide a case in deference to the States.'" *Sprint Communs. v. Jacobs*, 2013 U.S. LEXIS 9019, *7-8 (Dec. 10, 2013) (quoting *New Orleans Public Service, Inc.* v. *Council of City of New Orleans*, 491 U.S. 350, 368 (1989) ("*NOPSI*")).

The Court rejected the Eighth Circuit's view that *Younger* abstention is warranted by *Middlesex County Ethics Comm.* v. *Garden State Bar Ass'n*, 457 U.S. 423 (1982) "whenever three conditions are met: There is (1) 'an ongoing state judicial proceeding, which (2) implicates important state interests, and (3) ... provide[s] an adequate opportunity to raise [federal] challenges.'" *Sprint*, 2013 U.S. LEXIS 9019 at *21.

The Supreme Court reversed because "[d]ivorced from their quasi-criminal context, the three *Middlesex* conditions would extend *Younger* to virtually all" cases "where a party could identify a plausibly important state interest." *Id.* at *23. Rather, the Court "stressed," *Younger* ***only*** "extends to the three 'exceptional circumstances' identified in *NOPSI,* but no further." *Id.* at *8, 23.

As the *O'Shea* abstention at issue in this case is a branch of *Younger*, Appellee's reliance on *Middlesex* (at AB 54, 56-57) is unavailing – and reversal is required – because "none of the [*NOPSI*] circumstances" exist. *Id.* at *8. This case involves no "criminal" or "civil enforcement proceedings." *Id.* As for the third circumstance, enjoining a clerk's ***administrative*** policy of denying access to complaints until after processing does not implicate "'the state courts' ability to perform their ***judicial***

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functions,'" let alone "interfer[e] with ... 'civil proceedings involving certain orders ... uniquely in furtherance'" of that ability, as required. *Id.* at *17 (emphasis added).

That conclusion is further supported by a recent decision rejecting *O'Shea* abstention because the "concerns" underlying *O'Shea* and *Younger* "are simply not present" when "[p]laintiffs seek to enjoin the current procedures" ancillary to state court proceedings. *Ray v. Judicial Corr. Servs.*, 2013 U.S. Dist. LEXIS 139480, *44 (N.D. Ala. Sept. 26, 2013) (procedures for collecting court costs and fines).

Very truly yours,

Rachel Matteo-Boehm

cc: Robert A. Naeve, Esq.
Counsel for Appellee Michael Planet