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Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
 DISTRICT OF ALASKA**

**AMERICAN BOOKSELLERS FOUNDATION FOR FREE
 EXPRESSION, et al.**

Plaintiffs,

v.

**JOHN BURNS, in his official capacity as ATTORNEY
 GENERAL OF THE STATE OF ALASKA,**

Defendant.

Civil No. 3:10-cv-00193-RRB

DECLARATION OF RICHARD M. ZUCKERMAN

RICHARD M. ZUCKERMAN declares:

1. I am a member of the law firm of SNR Denton US LLP (known as Sonnenschein Nath & Rosenthal LLP when this case commenced) (“SNR Denton”), counsel to Plaintiffs.
2. I have personal knowledge of the facts set forth in this Declaration, which I make

Declaration of Richard M. Zuckerman in Support of
 Plaintiffs’ Application for Attorneys’ Fees and Expenses
American Booksellers et al. v. John Burns,
 Case 3:10-cv-00193-RRB

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in support of SNR Denton's application for an award of attorneys' fees.

3. I have been a member of the Bar of the State of New York for 35 years, since January 1976. I have been a member of the Bar of the United States Court of Appeals for the Ninth Circuit for 15 years. I am also a member of the Bar of the United States Supreme Court, the United States Courts of Appeals for the District of Columbia, Federal, Second, Third, Fifth, and Tenth Circuits, and the United States District Courts for the Southern and Eastern Districts of New York and the District of Connecticut. I have also appeared *pro hac vice* in additional federal and state courts. I am a member in good standing of each of the Courts to which I have been admitted.

4. I graduated from Dartmouth College, *summa cum laude*, in 1972, and from Yale Law School, in 1975. In law school, I was an editor of the Yale Law Journal, a director of Moot Court, an Assistant-in-Instruction, and the recipient of the Harlan Fiske Stone Prize for appellate advocacy.

5. Since my admission to the Bar, the overwhelming majority of my practice has been devoted to civil litigation, including both trials and appeals. I am a Co-Author of Appeals to the Second Circuit (7th Ed.), published by the Association of the Bar of the City of New York.

6. Since 2002, I have worked with my law partner, Michael Bamberger, on a broad range of matters which, since 2008, have included representing members of the Media Coalition, a coalition of media-related entities organized to protect First Amendment rights, in First Amendment litigation. In addition to my work on this case, my work for Media Coalition and/or its members has included:

(a) *Brown v. Entertainment Merchants Ass'n*, ___ S.Ct. ___, 2011 WL

2518809 (U.S. Sup. Ct., June 27, 2011) (enjoining California law restricting violent video games as violative of First Amendment), counsel for ABFFE, AAP, FTRF, and others, as *amici curiae*;

(b) *American Booksellers Foundation for Free Expression v. Coakley*, 2010 WL 4273802 (D. Mass. 2010) (enjoining, as violative of First Amendment, the extension of Massachusetts “harmful to minors” law to electronic communications); and

(c) *American Booksellers Foundation for Free Expression v. Cordray*, 124 Ohio St.3d 329, 922 N.E.2d 192, 2010 Ohio 149 (Ohio 2010) (limiting construction of Ohio “harmful to minors” statute to comply with First Amendment).

7. In addition, I have been honored to serve as counsel for the American Bar Association and several other *amici curiae* before the United States Supreme Court in these, among other, cases:

(a) *Fitzgerald v. Barnstable School Committee*, 555 U.S. 246 (2009) (whether gender discrimination claims under 42 U.S.C. § 1983 are preempted by Title IX of the Education Amendment Acts of 1972), counsel for American Bar Association, as *amicus curiae*;

(b) *Horne v. Flores*, 557 U.S. ---, 129 S.Ct. 2579 (2009) (equal access to education for students for whom English is a second language), counsel for Asian American Justice Center and other civil rights organizations, as *amici curiae*;

(c) *Al-Marri v. Spagone*, --- U.S. ---, 129 S.Ct. 1545 (2009) (criminal due process rights during times of threat to national security), counsel for American Bar Association, as *amicus curiae*; and

(d) *Samantar v. Yousuf*, --- U.S. ---, 130 S.Ct. 2278 (2010) (whether foreign sovereign immunity may be asserted as a defense to civil rights claims under 42 U.S.C. § 1983), counsel for professors of international litigation and foreign relations law, as *amici curiae*.

8. I have served as *pro bono* counsel to Human Rights Watch, one of the world's leading human rights organizations, for over 15 years. I regularly counsel Human Rights Watch on First Amendment matters, including pre-publication vetting of reports, and responses to subpoenas seeking the production of research notes containing confidential source materials.

9. My regular litigation practice includes a broad range of commercial litigation and civil rights litigation, including First Amendment litigation. My cases include:

(a) *Edwards v. First American Corp.*, 610 F.3d 514 (9th Cir. 2010) (Article III standing under the Real Estate Settlement Procedures Act);

(b) *In re WestPoint Stevens, Inc.*, 600 F.3d 231 (2d Cir. 2010) (scope of appellate review of bankruptcy court's sale order);

(c) *Eastern Paralyzed Veterans Ass'n, Inc. v. Secretary of Veterans Affairs*, 257 F.3d 1352 (Fed. Cir. 2001) (constitutionality of regulations permitting Secretary of Veterans Affairs to discontinue medical care to veterans);

(d) *DeGirolamo v. Alitalia-Linee Aeree Italiane, S.p.A.*, 159 F.Supp.2d 764 (D. N.J. 2001) (liability of airline for discrimination against wheelchair user);

(e) *In re Letters of Request From Supreme Court of Hong Kong*, 821 F.Supp. 204 (S.D.N.Y. 1993) (due process rights of defendant relating to discovery taken in United States for use in Hong Kong criminal proceeding);

- (f) *Eastern Paralyzed Veterans Ass'n, Inc. v. Veterans' Admin.*, 762 F.Supp. 539 (S.D.N.Y. 1991) (equal protection claim on behalf of spinal cord injured veterans relating to care provided at Veterans Administration Medical Center);
- (g) *Americans Disabled for Accessible Public Transp. (ADAPT) v. Skinner*, 881 F.2d 1184 (3d Cir. 1989) (civil rights claim related to accessibility of mass transit system);
- (h) *Kelly v. Schmidberger*, 806 F. 2d 44 (2d Cir. 1986) (defense of defamation claim against priest);
- (i) *In re Grand Jury Subpoena Dated Jan. 4, 1984*, 750 F.2d 223 (2d Cir. 1984) (whether academic researcher may assert “scholar’s privilege,” under First Amendment, in response to grand jury subpoena);
- (j) *Recording Industry Ass'n of America v. Copyright Royalty Tribunal*, 662 F.2d 1 (D.C.Cir. 1981) (appeal from proceeding of Copyright Royalty Tribunal establishing royalty rates for recorded music);
- (k) *New York Charter School Ass'n v. Smith*, 15 N.Y.3d 403, --- N.E.2d ---- (2010) (whether charter schools are subject to prevailing wage laws);
- (l) *ATI, Inc. v. Ruder & Finn, Inc.*, 42 N.Y.2d 454, 368 N.E.2d 1230, 398 N.Y.S.2d 864 (1977) (speech protected by First Amendment could not subject speaker to liability for *prima facie* tort); and
- (m) *Quirk v. Municipal Assistance Corp. for City of New York*, 41 N.Y.2d 644, 363 N.E.2d 549, 394 N.Y.S.2d 842 (1977) (constitutionality of Municipal Assistance Corporation of the City of New York).

10. My regular billing rates range from \$730 to \$810 per hour. SNR Denton requests an award at the reduced rate of \$550 an hour, in recognition of the fact that hourly rates in New York are higher than those in many other areas of the country, including Alaska.

11. In further support of the reasonableness of my hourly rate, plaintiffs request that this Court take into account the accompanying declaration of Stephen E. Jenkins, president of the law firm of Ashby & Geddes, P.A. in Wilmington, Delaware.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: July 25, 2011

/s/ Richard M. Zuckerman

Richard M. Zuckerman