Case No.: H028579

IN THE COURT OF APPEAL OF CALIFORNIA

SIXTH APPELLATE DISTRICT

Jackson O'Grady, *et al.*,

Petitioners,

vs.

Superior Court of the State of California, County of Santa Clara,

Respondent,

Apple Computer, Inc.

Real Party in Interest

Appeal from the Superior Court of Santa Clara County,
Hon. James Kleinberg (Case No. 1-04-CV-032178)

APPLICATION TO FILE AMICUS CURIAE BRIEF AND PROPOSED AMICUS BRIEF OF BEAR FLAG LEAGUE

(for Petitioners in Part and Real Party in Interest in Part)

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APPLICATION TO FILE AMICUS CURIAE BRIEF AND STATEMENT OF INTEREST OF AMICUS CURIAE

A. Introduction.

Pursuant to California Rule of Court 13(c)(1), the Bear Flag League ("League") respectfully requests leave to file its proposed *amicus curiae* brief.[1] The League is an unincorporated association of current and former residents of the State of California who operate and/or contribute to 80 separate weblogs,[2] also known as "Blogs." The League was formed in July 2003 in order to collaborate and publish articles concerning California culture, current events, legal issues and politics for the reading public.

B. The League's Interest in These Proceedings

The League members are all Bloggers. The League members rely on both confidential and non-confidential sources of information for use in preparing news articles for dissemination to the general public. In some instances, a League member merely provides its readers with internet hyperlinks from the Blog to a group of news articles regarding a particular topic. However, in many instances, League members interview confidential and non-confidential sources for use in

[1] Pursuant to California Rule of Court 13(c)(3), the League has elected to combine its application with its proposed brief.

[2] A complete list of the association's membership is attached to this application and brief as Exhibit "A" and may also be found at www.BearFlagLeague.com.

original writings on their Blogs.[3] In this latter respect, the League members' activities are properly characterized as the gathering and reporting of news.[4]

The League members are similarly situated to the Petitioners. As publishers of online magazines who may rely, in part, on confidential sources, any one of the League members could be faced with responding to the type of discovery sought or planned by the Real Party in Interest, Apple Computer, Inc. ("Apple.") The League members will likely in the future need to invoke the federal qualified privilege arising from the First Amendment of the United States Constitution and/or the reporter's shield arising from the California Constitution and Evidence Code. Moreover, the resolution of the instant proceeding will directly impact the League members' ability to gather and report on news. An order by this Court denying the writ sought by Petitioners on its merits would have a chilling effect on the League members' ability to gather information from anonymous or confidential sources. On the other hand, an order by this Court denying the writ on the grounds of ripeness would ensure that the issue of whether

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[3] A well-publicized example of a Blog using confidential sources to report on a major news story concerns the Blog known as "Captain's Quarters" found at www.captainsquartersblog.com. Captain's Quarters has garnered national attention for reporting on a major political scandal involving the Canadian liberal party. Captain's Quarters relied on confidential sources who supplied it with information in the face of a Canadian government imposed news blackout. *See A Blog Written From Minneapolis Rattles Canada's Liberal Party*, Clifford Krauss, New York Times, April 6, 2005. This is the very same type of news gathering and reporting activity that the League routinely engages in on a daily basis.

[4] Admittedly, as is the case with most Bloggers, many League members use their Blogs periodically to express opinion, commentary or items of a personal nature.

Bloggers can invoke the federal qualified privilege or California's reporter's shield is decided based on a fully developed record. For the all of these reasons, the League has a substantial interest in the present matter.

C. The Need for Further Briefing.

The Respondent Superior Court assumed for purposes of the challenged order issued below that "Bloggers" are journalists and, therefore, theoretically protected by the qualified journalists' privilege under federal law and the absolute reporter's shield privilege under California law. Further briefing is needed on the applicability of these constitutional and statutory protections to Bloggers who perform the same function as traditionally defined print and broadcast journalists. The opposition brief submitted by Apple does not even mention the word "Blogger" and the briefs by Petitioners only briefly touch on the issue.

For the foregoing reasons, the League respectfully requests that the Court grant leave to file the proposed *amicus curiae* brief below.

However, the primary activity of the League's Bloggers is to gather and report news from both confidential and non-confidential sources.

LEGAL DISCUSSION

> "Freedom of the press, or, to be more precise, the benefit of freedom of the press, belongs to everyone - to the citizen as well as the publisher... The crux is not the publisher's 'freedom to print;' it is, rather, the citizen's 'right to know'."[5]

I.

SUMMARY OF ARGUMENT

The constitutional protections provided to journalists do not apply to all Bloggers. There are quite a few Bloggers who are neither news gatherers nor news reporters. However, those Bloggers engaged in newsgathering activities with the intent to disseminate news to the public are entitled to the same level of protection afforded to traditional journalists. Hence, the League supports the Petitioners. See Part II below. The League likewise believes that the Federal Stored Communications Act should preclude Apple from issuing subpoenas to Petitioners' internet service providers. See Part III below. To ascertain the proper balancing of the competing interests of free dissemination of information and protection from false information, the Court should follow the example of the Communications Decency Act and protect the disseminator while imposing the risk of liability on the source. See Part IV below.

The League, however, concurs with Apple, that this case is *not* ripe for review with respect to the ability of Bloggers to raise the federal qualified

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[5] *Arthur Hays Sulzberger,* American Newspaper Publisher, Convocation Speech for 2004 Elijah Parish Lovejoy Award at Colby College.

privilege or California's reporter's shield. Quite frankly, without actual subpoenas served on actual Bloggers, the Respondent Superior Court and this Court have an inadequate record with which to make a determination of which protections, if any, apply to Bloggers. The ripeness doctrine exists in order to avoid a waste of judicial resources resolving hypothetical situations that may never come to pass. With respect to the present dispute, this Court might issue an opinion regarding the scope of permissible discovery directed to Petitioners in their capacity as non-parties. Following remand, it is entirely possible that subpoenas are never served on Petitioners. Alternatively, it is possible that the non-party Petitioners will, following this Court's disposition, become parties under Apple's theory of misappropriation of trade secrets. In that event, the standards applicable to the federal privilege would no longer be confined to the scope of permissible *discovery* directed to a non-party. Instead, the court below will be faced with issues concerning the scope of discovery as well as constitutional limits of liability facing Petitioners as parties.[6] Unless and until these issues are given time to ripen, this Court's resources would be wasted on adjudicating hypothetical issues that may never come to pass or whose factual premises may change dramatically.

To the extent that Petitioners are seeking relief from a protective order that, on its face, does not apply to subpoenas that have yet to be served, this Court

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[6] Under *Mitchell v. Superior Court*, 37 Cal. 3d 268 (1984), whether the individual responding to discovery is a party or is a non-party is a factor in balancing the competing interests of the right to conduct discovery and the privileges afforded to members of the press.

should deny the relief requested by Petitioners. However, to the extent that the Petitioners are seeking relief as to the actual subpoenas issued to their internet service providers, the League supports the relief requested by Petitioners as set forth in more detail below. Finally, in the event this Court finds that an actual, justiciable controversy exists, the Court should not focus on the fact the Petitioners published online rather than in print or over the airwaves, in determining the propriety of Petitioners' acts.

II.

BLOGGERS WHO GATHER INFORMATION WITH THE INTENT OF DISSEMINATING NEWS TO THE PUBLIC ELECTRONICALLY ARE ENTITLED TO THE SAME CONSTITUTIONAL AND STATUTORY PROTECTIONS AS TRADITIONAL PRINT AND BROADCAST JOURNALISTS

A. California's Absolute "Reporter's Shield" Immunizes Bloggers Engaged in Journalistic Activities from the Court's Contempt Powers

Since 1980, California's constitution[7] has conferred absolute immunity from the contempt power of the court for refusing to divulge confidential sources. *In re Willon*, 47 Cal. App. 4th 1080, 1090 (1996).

[7] Prior to 1980, the reporter's shield was only codified in statutes. *In re Willon*, 47 Cal. App. 4th 1080, 1090 (1996).

> "On its face, article I, section 2(b) [of the California Constitution] does appear to provide *absolute protection to those engaged in the newsgathering process*; it is couched in clear mandatory language without qualification. Indeed, in civil proceedings the provision has been construed to provide 'the highest possible level of protection' from disclosure of materials sought by a civil litigant."

Id. at 1091 (1996) (emphasis added).

On its face, the Respondent Superior Court's order below did not address any subpoenas served on any Bloggers. However, other language in the trial court's order suggests that the Respondent Superior Court adjudicated that, because of the character of the information posted on the websites, the Petitioners have no right to assert either the federal privilege or California reporter's shield to protect their confidential sources of information. For this reason, the League addresses the question of whether a Blogger should be entitled to invoke the same protections afforded to traditional print and broadcast journalists.

The trial court's order below swept aside a Blogger's right to invoke federal and California constitutional protections with one phrase: "…there is no license conferred on anyone to violate valid criminal laws." March 11, 2005 Order, p. 11. No such license was sought by Petitioners below. They did not seek an order immunizing them from civil or criminal liability. Petitioners merely sought to exclude their confidential sources from the scope of permissible discovery by Apple.

The trial court, in concluding that Petitioners had no license to violate criminal law, cited *DVD Copy Control Ass'n Inc. v. Bunner*, 31 Cal. 4th 864 (2003)

and *Bartnicki v. Vopper*, 532 U.S. 514, 529 (2001). The Petitioners correctly point out that neither decision applies to this controversy because neither decision involved the issue of a reporter's shield laws. Petition for Writ of Mandamus, p. 44.

However, each of these cases can and should be distinguished on additional grounds not elaborated on by the Petitioners. In *Bartnicki*, the issue before the Supreme Court was the *liability* under wiretapping laws of certain members of the media for publishing intercepted cellular telephone conversations:

> "Where the punished publisher of information has obtained the information in question in a manner lawful in itself but from a source who has obtained it unlawfully, may the government punish the ensuing publication of that information based on the defect in a chain?"

Bartnicki, *supra*, 532 U.S. at 528.

Notably, in the *Bartnicki* decision, the media members were named defendants. A party's liability for publications concerning a plaintiff is distinct from a non-party's obligation to respond to discovery. Hence, *Bartnicki's* discussion concerning civil liability of a party should not have any applicability to a non-party's privilege to resist discovery or avoid contempt proceedings. Although the Respondent Superior Court expressly relied on *Bartnicki* in fashioning its order below, Apple has not cited nor claimed *Bartnicki* is applicable to this controversy in its brief with this Court. That silence speaks volumes regarding the applicability of *Bartnicki.*

The Respondent Superior Court's reliance on *DVD Copy Control Ass'n Inc. v. Bunne*, 31 Cal. 4th 864 (2003) to support its decision below was equally misplaced. In the *DVD* case, the sole issue before the California Supreme Court was whether a preliminary injunction prohibiting a defendant from disseminating trade secrets violated the First Amendment. *Id.* at 870. Again, as was the case in *Bartnicki*, the issue at hand dealt with the ultimate civil liability of a party – not the scope of permissible discovery directed to a non-party.

B. The Court Should Reject Apple's Overly Narrow Interpretation of "Publications" Giving Rise to the Reporter's Shield

Apple argues that California's reporter's shield is limited in application to a "person connected with or employed upon a newspaper, magazine or other periodical publication . . .." (Apple Opposition, pg. 32 (quoting Evid. Code §1070)). Apple contends, without citation of authority, that "[p]etitioners' web operations do not fall within these enumerated categories." (Apple Opposition, pg. 33). However Apple provided no definition of "magazine" or "periodical," or any argument why blogging is excluded from the statutory language, other than pure speculation that the California legislature must have intended to limit the privilege to members of a "professional community governed by ethical and professional standards." *Id.*

In fact, the legislature's extension of the privilege to anyone with a "connection" to either a "magazine" or "periodical" shows the intent for an

expansive, broadly-defined privilege. More significantly, there is nothing in the definition of either "magazine" or "periodical" which would exclude electronic publications.

For example, in *Price v. Time, Inc.,* 304 F.Supp.2d 1294 (N.D. Ala. 2004) the Court attempted to determine whether a magazine journalist was within the scope of an Alabama statute which provided a shield to newspaper journalists. Looking to the dictionary (in the absence of case law),[8] the *Price* Court defined the term "magazine" as

> "a periodical that usually contains a miscellaneous collection of articles, stories, poems, and pictures and is directed at a group having a particular hobby, interest, or profession (as education, photography, or medicine) or at a particular age group (as children, teenagers)."

Price, *supra*, 304 F. Supp. at 1303 (citation and attribution omitted).

Similarly, in case regarding mailing rates, the United States Supreme Court, also with reference to a dictionary, used a common and broad understanding of the term "periodical":

> A periodical is defined by Webster as "a magazine or other publication which appears at stated or regular intervals," and by the Century dictionary as "a publication issued at regular intervals in successive numbers or parts, each of which (properly) contains matter on a variety of topics and no one of which is contemplated as forming a book of itself."

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[8] Counsel for the League has unsuccessfully attempted to locate any California case law defining the terms "magazine" or "periodical" (at least in the context of the shield law).

Houghton v. Payne, 194 U.S. 88, 96 (1904).[9]

The *Houghton* court also looked at the meaning of the term "magazine." Again, it used an inclusive definition; "[a] pamphlet published periodically containing miscellaneous papers, esp. critical and descriptive articles, stories, poems, etc., designed for the entertainment of the general reader." *Id.* (citation and attribution omitted).

This Court should well note then, that the meaning of "periodical" and "magazine"—the terms chosen by the California legislature to define the scope of the privilege — include a wide variety of writings. There is nothing in the common definition of these terms, which have been adopted by a number of Courts for a variety of purposes, excluding Bloggers who publish (i.e. post) fairly regularly and provide material for the entertainment of readers generally. Certainly, there is nothing in the statutory language which even remotely suggests that the privilege is limited to persons who have graduated from a journalism school.

As to this, the California legislature could have, if it chose, explicitly limited the scope of the privilege to full-time journalists. This was the course taken by Delaware, where the statutory privilege applies only to persons earning their "principal livelihood" as a reporter. Del. Code Ann. tit. 10 § 4320.

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[9] *See also*, *Fifield v. American Auto. Ass'n*, 262 F.Supp. 253, 257 (D.C.Mont. 1967) (defining "periodical" as "a magazine or other journal that is issued at regularly recurring intervals").

California has chosen, instead, a broader privilege, and the Court should decline Apple's invitation to narrow it by fiat.

As a final point, Apple argues that without its ad hoc narrowing of the privilege, chaos will reign as any ordinary citizen with a computer will utilize the privilege to "conceal his misconduct." This is nonsense. Even as to a full time employee of a major newspaper, the privilege will only apply where he or she is actually functioning as a journalist. "[T]he shield law provides no protection for information obtained by a journalist not directly engaged in 'gathering, receiving or processing' news." *Delaney v. Superior Court* , 50 Cal. 3d 785, 797, n. 8 (1990). As such, the privilege contains its own limitation when part time journalists seek its protection, given its application is limited to whatever time they spend gathering news for publication.

C. The First Amendment's Qualified Reporter's Privilege Protects Bloggers Engaged in Journalistic Activities

The Apple opposition cites *Mitchell v. Superior Court*, 37 Cal. 3d 268 (1984) in support of its view that the Respondent Superior Court was proper in permitting a subpoena to Petitioners' internet service provider, Nfox, to issue. *Mitchell* sets forth four factors that a trial court should weigh in determining whether the qualified privilege arising from the First Amendment should yield to a need for discovery of a reporter's confidential sources or unpublished information: (1) The nature of the litigation; (2) whether the information sought goes to the

"heart" of plaintiff's claims; (3) whether plaintiff has exhausted alternative sources of the information; and (4) any public interest in maintaining confidentiality of the sources.

As argued in Part V, below, the League believes that the issue of whether Petitioners have a privilege to resist (as yet unserved) subpoenas by Apple is not ripe. That said, in the event this Court disagrees, the *Mitchell* case would support application of the qualified First Amendment privilege.

The first factor supports application of the privilege to Bloggers because this matter is civil in nature (not criminal) and the Petitioners are not parties. *Mitchell*, at 279. Admittedly, the second factor supports Apple's view insofar as the identity of all individuals who allegedly misappropriated Apple's trade secrets lies at the "heart" of Apple's claims. The third factor weighs in favor of the Petitioners for all the reasons set forth in the Petition. The League will not burden this Court by repeating those arguments here.

The fourth factor bears more discussion than has been provided by either Petitioners or Apple. Apple frames the issue of whether there is any public interest in having websites publicize illegally obtained trade secrets. Apple's Opposition, p. 42. This is an overly narrow view of the issue. The public has an interest in the free flow of information from confidential sources to broadcast reporters, magazine writers and even Bloggers. A decision by this court that jeopardizes that confidentiality could have a chilling effect on the willingness of confidential sources to contact Bloggers. The public interest factor, therefore,

weighs against the use of subpoenas to Bloggers to obtain information on confidential sources.

III.

THE FEDERAL STORED COMMUNICATIONS ACT BARS APPLE'S SUBPOENAS TO THE BLOGGERS' INTERNET SERVICE PROVIDERS

Adherence to the letter and spirit of the Stored Communications Act, 18 U.S.C. § 2701, is crucial to the continued development of the online free press embodied in Blogs. Almost all Blogs are hosted by third-party providers. Perhaps the largest of these is Blogger,[10] which provides not only the servers on which the Blogs are stored, but also free software. Ad-supported, a Blogger can start a Blog on Blogger for free in about a half an hour. Even the most active of Blogs are hosted on third party servers. Two examples: Blogcritics is hosted by Cyberwurx and Instapundit is hosted by Hosting Matters. Cyberwurx will host a Blog for as little as $5 a month. Hosting Matters can host a Blog for as little as $11 a month and will place a Blog on its own dedicated server for $129.00 a month.

All of the foregoing low cost options provide very few barriers to entry into the marketplace of online journalism.[11] While low barriers increase freedom and

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[10] http://www.Blogger.com

[11] Since the advent of the printing press, entry to the marketplace has been the cornerstone of a free press. In the American Revolution, newspapers proliferated on the side of the American Forces. Thomas Paine's Common Sense, an anonymous pamphlet, stirred the sentiment of the colonies toward war. Like the

competition among Bloggers, it leaves Bloggers at the mercy of the third party service providers who, quite literally control all of the Blogger's material. Often the first attempt to stifle online speech is to threaten a Blogger's host with civil liability in order to force the provider to take the Blog offline. At least two members of the League have received such threats.[12]

If hosting companies have to be concerned that there are exceptions to the Stored Communications Act, they will err on the side of releasing information and avoiding potential liability. The result is the very type of stifling of the development of the internet that the Stored Communications Act was intended to avoid.

IV.

THE COMMUNICATIONS DECENCY ACT SUPPORTS APPLICATION OF THE FEDERAL PRIVILEGE AND CALIFORNIA REPORTERS' SHIELD LAW

Allowing discovery of the source of a news story, while providing complete civil immunity for the Blogger reporting the story, brings the law on the reporter's privilege and the reporter's shield into conformity with other laws, including the Communications Decency Act, 47 U.S.C. § 230, et. seq. ("CDA"). In the CDA,

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blogger of today, Paine published his sentiments but not his identity.

[12] Accounts of these threats are published at: www.calblog.com/archives/002784.html and xrlq.com/2005/02/09/2156/blogtard-of-the-day-andrea-harris/#comment-13447

Congress decided to regulate the Internet in order to reduce the proliferation of indecent material involving and aimed at children. Even when addressing this blatantly illegal and immoral behavior, Congress was careful to balance the competing interest of free development of the Internet. Congress' enunciation of the policy of the United States began as follows:

> It is the policy of the United States –
>
> > (1) to promote the continued development of the Internet and other interactive computer services and other interactive media;
> >
> > (2) to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation;

47 U.S.C. § 230.

To achieve this balance, Congress provided protection for the provider of a service, while leaving liability squarely on the publisher or speaker of information. This immunity from liability for the provider continues to attach even if the provider takes voluntary action to remove offensive material without removing all such material:

> No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.
>
> (2) Civil liability.
>
> No provider or user of an interactive computer service shall be held liable on account of –
>
> > (A) any action voluntarily taken in good faith to

> restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected; or
> (B) any action taken to enable or make available to information content providers or others the technical means to restrict access to material described in paragraph (1).

47 U.S.C. § 230

The Court should engage in a similar balancing of interests when determining the extent to which it should apply both the federal privilege and California reporter's shield. As long as the reporter, whether it be a member of the traditional print or broadcast media or an Internet-based Blogger, does not know or have reason to know that publication of the material would be wrongful, the reporter should be shielded from civil liability. The material itself and the original provider of the material should not have the same protection.

V.

THE APPLICABILITY OF THE FEDERAL PRIVILEGE OR SHIELD LAWS TO BLOGGERS IS NOT RIPE FOR REVIEW BECAUSE NO SUBPOENA HAS BEEN ISSUED TO ANY BLOGGERS

Apple describes the order sought by Petitioners with respect to unserved subpoenas as "advisory." Apple is correct both with respect to the Respondent Superior Court's actual ruling below and as to the scope of a trial court's power to regulate discovery. Nothing in the Discovery Act empowers a trial court to rule

on hypothetical subpoenas served on hypothetical non-party deponents.[13] Until such time as these subpoenas are crafted, served and opposed at the trial level, this Court has a poor record on which to decide whether Petitioners may raise the federal privilege or California reporter's shield. Moreover, reading between the lines of Apple's papers below and in this Court, it is quite possible that the Petitioners may be parties to the below action by the time a discovery device is aimed at the Petitioners. In that event, their status as parties may substantially alter the analysis of which protective measures apply to Petitioners. The focus of the trial court would shift in that event from the scope of permissible discovery directed to a journalist non-party to the constitutionality of imposing civil liability on a journalist party.

For all the foregoing reasons, although the League supports application of the federal privilege and California shield to Bloggers engaged in journalistic activities, the League agrees with Apple that no such justiciable controversy is presently before this Court as to unserved subpoenas that may eventually be served on Petitioners.

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[13] Arguably, Code of Civil Procedure section 2025(i) supports the notion of prospective relief by a trial court. That section authorizes a protective order to issue "Before, during, or after a deposition." However, the most plausible, common sense interpretation of that statute is that the trial court may issue a protective order before a deposition is commenced – not before a deposition subpoena (and/or notice) is even served.

CONCLUSION

For the foregoing reasons, the League respectfully urges the Court to deny the relief prayed for by the Petitioners, to the extent relief is sought on the grounds of any unserved, hypothetical subpoenas directed to Petitioners. In the event the Court finds a justiciable controversy before it, the League respectfully requests that the Court grant the relief prayed for by the Petitioners and issue a writ of mandamus or prohibition directing the Respondent Superior Court to vacate the March 11, 2005 order denying Petitioners' protective order.

Dated: April 14, 2005

Respectfully submitted,

ENTERPRISE COUNSEL GROUP[14]
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[14] The League's attorneys wish to acknowledge and thank law student Rory Miller for his assistance with this brief.

CERTIFICATE OF WORD COUNT

The text of this brief is in 13 point and the brief consists of 4,906 words as counted by the word processing program (Microsoft Word, 2002 Ed.) used to generate the brief.

Dated: April 14, 2005

Respectfully submitted,

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EXHIBIT "A"

List of Website Members of *amicus curiae* Bear Flag League:

1. aarons.cc
2. bittersweet.ondragonswing.com
3. accidentalverbosity.com
4. americandigest.org
5. annika.mu.nu
6. baldilocks.typepad.com
7. www.beautifulatrocities.com
8. www.belowstreetlevel.com
9. benslaw.blogspot.com
10. shroudedindoubt.typepad.com/bodypartsThe
11. boifromtroy.com
12. www.calblog.com
13. www.captainsquartersblog.com
14. cc4truth.com
15. camafia.blogspot.com
16. www.californiarepublic.org/CROBlog/CROblog.html
17. caltechgirlsworld.mu.nu
18. lt-smash.us
19. www.mdcbowen.org/cobb
20. www.dagoddess.com
21. www.coffee.ondragonswing.com
22. dailypundit.com
23. www.diggersrealm.com/mt
24. doggydiaries.pudgypuppy.com
25. drinkthis.typepad.com
26. e-biscuit.com
27. educationwonk.blogspot.com
28. fautedemieuxblog.blogspot.com
29. foolsblog.com
30. blog.infinitemonkeysblog.com
31. www.jeffdoolittle.com
32. legalxxx.blogspot.com
33. peterseanesq.blogspot.com
34. littlemissattila.mu.nu/
35. www.claremont.org/localliberty
36. madmikey.mu.nu
37. www.mwilliams.info
38. www.russellwardlow.net/blog
39. www.millers_time.typepad.com
40. smrtbloned.com
41. moxie.nu/blog.php
42. www.nicejewishboy.net
43. patiopundit.com
44. patrickprescott.com
45. patterico.com
46. pearly-gates.blogspot.com
47. www.pinkslipcentral.com
48. piratesblog.blogdrive.com
49. hayekcenter.org/prestopundit
50. professorchaos.mu.nu
51. www.qando.net
52. raincrossconservative.blogspot.com
53. resipsaloquitur.blogspot.com
54. breakers.typepad.com/leftbeach
55. roscoe.typepad.com
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57. www.sacbeewatch.blogspot.com
58. selectedpete.blogspot.com
59. shakingspears.blogspot.com
60. www.usefulwork.com/shark
61. www.slingsnarrows.com/blog
62. www.sneakeasysjoint.com
63. socallawblog.com
64. tanhorizons.blogspot.com
65. theangleofrepose.blogspot.com
66. mahdi.blogdrive.com
67. fladenexp.blogspot.com
68. interocitor.com
69. www.theirishlass.blogspot.com
70. lp.typepad.com
71. paragraphfarmer.blogspot.com
72. usdlaw.blogspot.com
73. therightcoast.blogspot.com
74. johnminnix.blogspot.com
75. www.threeknockdownrule.blogspot.com
76. tonecluster.com
77. www.torerolaw.com
78. windowmanager.blogspot.com
79. xrlq.com
80. www.mcgeheezone.com/weblog

CERTIFICATE OF SERVICE

I, Cyndie C. Sedlacek, the undersigned, do hereby state:

I am over eighteen years of age and not a party to the instant proceedings. My business address is: Enterprise Counsel Group, ALC, Five Park Plaza, Suite 450, Irvine, California 92614.

On April 14, 2005, I caused to be served the within:

APPLICATION TO FILE AMICUS CURIAE BRIEF AND PROPOSED AMICUS BRIEF OF NON-PARTY BEAR FLAG LEAGUE

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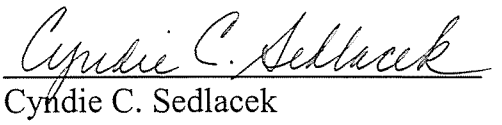
California Newspapers Publishers Assoc. Amicus curiae for petitioner

Executed on April 14, 2005, at Irvine, California. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.



Cyndie C. Sedlacek