No. 99-40632

In The
United States Court of Appeals
For The Fifth Circuit

PETER VEECK, doing business as RegionalWeb,

Appellant,

v.

SOUTHERN BUILDING CODE CONGRESS INTERNATIONAL INC.,

Appellee.

Appeal from the United States District Court
for the Eastern District of Texas
Honorable David Folsom

Supplemental Brief for Amici Curiae Association of American Physicians & Surgeons, Inc. Eagle Forum Education and Legal Defense Fund

Filed in Support of Appellant
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CONSENT TO FILING AMICI BRIEF

All parties, through their counsel, have consented to the filing of an *Amici Curiae* brief by the Association of American Physicians & Surgeons, Inc. and by Eagle Forum Education and Legal Defense Fund in this matter. Eric Weisberg, on behalf of Plaintiff/Appellant, granted consent to Karen Tripp, counsel for both of these *amici curiae*, in a telephone conversation with her on October 19, 2001. Robert J. Veal, on behalf of Defendant/Appellee, granted consent to Karen Tripp via e-mail to her on October 24, 2001.

Supplemental Statement of Interested Parties

Peter Veeck, doing business as RegionalWeb,
Appellant,

v. **No. 99-40632**

Southern Building Code Congress International Inc.,
Appellee.

The undersigned counsel of record certifies that the nonprofit organizations Association of American Physicians & Surgeons, Inc. and Eagle Forum Education and Legal Defense Fund have an interest in the outcome of this case. These representations are made in order that the judgment of this court may evaluate possible disqualification or recusal.

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Concise Statement of Identity of *Amici Curiae*, Interest in the Case, and Source of Authority to File

The Association of American Physicians & Surgeons, Inc. ("AAPS") is a nonprofit organization dedicated to defending free enterprise in medicine. Founded in 1943, AAPS has thousands of physician members in all specialties and is one of the largest national physician organizations funded entirely by membership. Members of AAPS, like nearly all physicians, must comply with Current Procedural Terminology ("CPT") medical codes owned by the American Medical Association ("AMA"), which are not readily available over the Internet. AAPS seeks reversal of the decision below to ensure that AAPS members and others have unrestricted access to legal requirements.

Eagle Forum Education and Legal Defense Fund ("EFELDF") is a nonprofit organization founded in 1981. It is dedicated in part to promoting greater public access to and scrutiny of laws and governmental records, including information relating to medicine, education and government-funded research. EFELDF seeks reversal of the decision below to ensure that the public has full access to legal requirements.

Amici have a direct and vital interest in the issues presented to this Court with respect to restrictions on access to laws, regulations and governmental records.

Argument

Supreme Court precedent requires reversal of the decision below and judgment in favor of Appellant Veeck, because "the authentic exposition and interpretation of the law, which, binding every citizen, **is free for publication to all**." *Banks v. Manchester*, 128 U.S. 244, 253 (1888) (emphasis added). Only the Supreme Court can change this rule. "Needless to say, only this Court may overrule one of its precedents." *Thurston Motor Lines, Inc. v. Jordan K. Rand, Ltd.*, 460 U.S. 533, 535 (1983) (per curiam) (criticizing a Court of Appeals for departing from a Supreme Court precedent). Appellee Southern Building Code Congress International, Inc. ("SBCCI") effectively seeks reversal of this Supreme Court holding in *Banks*, but such relief is unavailable here.

The First Amendment right of free speech protects Veeck's actions, and precludes SBCCI's attempted ownership of the law. Robust public debate about the law can only take place if the law itself is freely restated, copied, and criticized. There can no more be a restriction on restating the law than there could be on criticizing it; both types of restrictions are unconstitutional. *See, e.g.*, *Buckley v. Valeo*, 424 U.S. 1, 14 (1976) (per curiam) ("'[T]here is practically universal agreement that a major purpose of th[e First] Amendment

was to protect the free discussion of governmental affairs' ….") (quoting *Mills v. Alabama*, 384 U.S. 214, 218 (1966)).

The First Amendment also protects listeners, particularly for matters related to government speech. The building codes at issue here constitute government speech which all have a right to hear, regardless of who developed them. Government is imposing the codes, and the decision below must be reversed because it interferes with the public's ability to hear what the law is. Maximizing public compliance with the law, which promotes public safety here, depends on protecting the rights of listeners to hear what the law is.

Appellee SBCCI and its *amici* are mistaken in alleging, without proof, an economic need for ownership of legal requirements. The court below erred in embracing a government-conferred monopoly based on such unsupported and implausible allegations of economic need. Economists, ever since Adam Smith, have recognized that such monopolies are typically undesirable. "By a perpetual monopoly, all the other subjects of the state are taxed very absurdly in two different ways; first, by the high price of goods, which, in the case of a free trade, they could buy much cheaper; and secondly, by their total exclusion from a branch of business, which it might be both convenient and profitable for many of them to carry on." Adam Smith, *Wealth of Nations* 814 (Random House: 1994, Cannon ed.) (also freely available online at

http://socserv2.socsci.mcmaster.ca/~econ/ugcm/3ll3/smith/wealth/index.html). The windfall enjoyed by such monopolies represents an economic loss to the public, in addition to the infringement on constitutional rights.

For these reasons, explained further below, we urge reversal of the decision below and judgment in favor of Appellant Veeck.

I. The *Banks* Precedent Requires Judgment for Appellant Veeck.

Departure from Supreme Court precedent is an "indefensible brand of judicial activism." *Rodriguez de Quijas v. Shearson/American Express, Inc.*, 490 U.S. 477, 486 (1989) (Stevens, Brennan, Marshall and Blackmun, JJ., dissenting). This fundamental principle of Rule of Law applies even if the precedent appears to be plainly wrong and a unanimous Supreme Court subsequently overrules it. *See Khan v. State Oil Co.*, 522 U.S. 3, 20 (1997) ("Court of Appeals was correct in applying th[e] principle despite disagreement with [the precedent], **for it is this Court's prerogative alone to overrule one of its precedents**.") (emphasis added).

In *Banks v. Manchester,* 128 U.S. 244 (1888), the Supreme Court considered a state statute providing for a contractor to exclusively report and print state supreme court opinions and obtain a copyright in the reports. Banks, the contractor, had brought suit seeking to enjoin another printer from copying

and reprinting the court opinions. In holding there could be no copyright in such reports, the Court said:

> The question is one of public policy, and there has always been a judicial consensus, from the time of the decision in the case of *Wheaton v. Peters*, 8 Pet 591, that no copyright could under the statutes passed by Congress, be secured in the products of the labor done by judicial officers in the discharge of their judicial duties. The whole work done by the judges constitutes the authentic exposition and interpretation of the law, which, **binding every citizen, is free for publication to all, whether it is a declaration or unwritten law, or an interpretation of a constitution or a statute.**

Id. at 253 (emphasis added).

Thus the threshold issue under *Banks* is whether the subject matter is "binding [on] every citizen." *Id*. The answer here is "yes", and hence *Banks* requires judgment for Veeck: the subject matter must be "free for publication to all." *Id.* To hold otherwise would be to contradict the *Banks* precedent. SBCCI's role in developing the law and its financial interests in trying to own the law are wholly irrelevant to the *Banks* analysis.

The panel majority noted that "[t]his point would seem to apply equally to any statute, ordinance, or regulation that has the force of law irrespective of authorship." *Veeck v. Southern Bldg. Code Congress Int'l, Inc.*, 241 F.3d 398, 405 (5th Cir. 2001), *reh'g en banc granted* (5th Cir. Sept. 27, 2001). The panel majority was correct on this point. But only the Supreme Court has the power to narrow its ruling. *See Thurston Motor Lines*, quoted *supra*.

The First Circuit, confronted with a similar issue, adhered to the *Banks* precedent: "The citizens are the authors of the law, and therefore its owners, regardless of who actually drafts the provisions, because the law derives its authority from the consent of the public, expressed through the democratic process." *Building Officials & Code Admin. v. Code Technology, Inc.*, 628 F.2d 730, 734 (1st Cir. 1980). There is no justification here for departing from the teaching of the Supreme Court and the First Circuit.

II. Free Speech Includes an Unfettered Right to Restate the Law.

All citizens, including Veeck, must have a fundamental free speech right to restate the law. "An unconditional right to say what one pleases about public affairs is what I consider to be the minimum guarantee of the First Amendment." *New York Times v. Sullivan*, 376 U.S. 254, 297 (1964) (Black, J., concurring). The law itself is central to "public affairs" and the operation of government. "Criticism of government is at the very center of the constitutionally protected area of free discussion." *Rosenblatt v. Baer*, 383 U.S. 75, 85 (1966).

Appellant Veeck merely restated the law, a necessary prerequisite to public criticism of it. How can one effectively criticize something without restating it? Justice Douglas' observation about First Amendment limitations on copyright is as applicable to the restatement of the law as it is to the

restatement of ideas. "Serious First Amendment questions would be raised if Congress' power over copyrights were construed to include the power to grant monopolies over certain ideas …. The arena of public debate would be quiet, indeed, if a politician could copyright his speeches or a philosopher his treatises and thus obtain a monopoly on the ideas they contained. **We should not construe the copyright laws to conflict so patently with the values that the First Amendment was designed to protect**." *Lee v. Runge*, 404 U.S. 887, 892-93 (1971) (Douglas, J., dissenting from denial of certiorari) (citation omitted, emphasis added). On the Internet, it is impossible to engage in meaningful debate about the law if the law itself cannot be posted. By attempting to prevent Veeck from restating the law electronically, SBCCI stifles free speech.

Recognizing First Amendment rights in copyrighted material is the most straightforward basis for resolving this case. *See, e.g.*, *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 340, 342 (1974) (limitations placed on libel law by the First Amendment); *New York Times Co. v. Sullivan*, 376 U.S. at 278 (same). Recently, the Eleventh Circuit discussed essential First Amendment limitations on copyright in the context of the book "Gone With the Wind." *See Suntrust Bank v. Houghton Mifflin Co.*, No. 01-12200, 2001 U.S. App. LEXIS 21690 (11th Cir. Oct. 10, 2001) (discussing First Amendment protections woven into

copyright law in holding copyright may not be used to censor or shield a work from public comment).

The *Houghton Mifflin* court refrained from allowing the use of copyright to chill free speech. "Freedom of speech requires the preservation of a meaningful public or democratic dialogue, as well as the uses of speech as a safety valve against violent acts, and as an end in itself." *Id.* at *15 (citing 1 Nimmer § 1.10[B][1]). The Court continued: "It is exposure to ideas, and not to their particular expression, that is vital if self-governing people are to make informed decisions." *Id.* at *19 n.14 (citing 1 Nimmer § 1.10[B][2]). The current statutory doctrine of fair use, passed in 1976, accommodated only the First Amendment concerns that had been judicially created as of that time. *Id.* at *19 ("Until codification of the fair-use doctrine in the 1976 Act, fair use was a judge-made right developed to preserve the constitutionality of copyright legislation by protecting First Amendment values."). Assertion by private organizations of ownership over the law, in order to prevent the posting of such law on the Internet, arose after the statutory codification of fair use. Technology advances do not wait for Congressional action, and the First Amendment protects Veeck's postings even if the statutory fair use doctrine does not.

In rejecting Veeck's claim, the court below applied traditional fair use analysis that "tends to favor the copyright owner's economic needs." Andrea Simon, *A Constitutional Analysis of Copyrighting Government-Commissioned Work*, 84 Colum. L. Rev. 425, 454 (1984). Specifically, the court below held that "SBCCI has more than demonstrated that this particular use by Mr. Veeck and the affect [sic] of widespread use in this manner would be harmful and adversely affect the potential market for the copyrighted works of SBCCI. The Court finds a present harm and that there exists a meaningful likelihood of future harm to SBCCI." *Veeck v. Southern Bldg. Code Congress Int'l, Inc.*, 49 F. Supp. 2d 885, 891 (E.D. Tex. 1999). However, "an unusually strong public interest in copyrighted material … may demand use of a substantial portion of the work … [such that] some courts have altered fair use's traditional balance of equities." Simon, *supra*, 84 Colum. L. Rev. at 455 (citing *Rosemont Enterprises v. Random House, Inc.*, 366 F.2d 303 (2d Cir. 1966), *cert. denied*, 385 U.S. 1009 (1967)). This updated approach to fair use doctrine is necessary here.

Amici have encountered similar, and increasing, infringement on free speech in other contexts. AAPS, for example, is prevented from posting and criticizing the CPT medical codes that physicians must use when billing for services under Medicare and other government programs, because the AMA

asserts a copyright interest in the codes. This frustrates access to the CPT codes and meaningful debate about them. In the case of the CPT billing requirements, a restatement of its absurd complexities and ambiguities, replete with criminal sanctions for violations, would itself constitute a powerful criticism of the government requirements.

Similarly, EFELDF has encountered interference with public restatement and debate about state-mandated school questionnaires and tests. In *C.N. v. Ridgewood Board of Education*, 146 F. Supp. 2d 528 (D.N.J. 2001), a school administered a questionnaire that was offensive to parents without ever distributing it to the parents. Litigation ensued and the district court issued a decision, but the copyrighted questionnaire remains unpublished so that the public remains unaware of the material in dispute. Neither the questionnaire nor many other state-mandated tests are available for scrutiny on the Internet, often based on assertion of copyright. Like the codes at issue in this case, there is little or no value to school questionnaires and tests independent of the legal requirement. This application of copyright infringes on free speech about questionnaires used in school.

III. In Depriving Electronic Access to the Law, the Decision Below Violates the First Amendment Right of Listeners to Government Speech.

Legal requirements, like the codes at issue here, constitute government speech which all have a right to hear. Freedom to receive information is a First Amendment right, which requires vigilance to protect. *See Martin v. City of Struthers*, 319 U.S. 141, 143 (1943) ("This freedom [of speech and press] . . . necessarily protects the right to receive ...."). This remains true regardless of who developed the building codes here. "Government by secrecy is no less destructive of democracy if it is carried on within agencies or within private organizations serving agencies." *Forsham v. Harris*, 445 U.S. 169, 190 (1980) (Brennan, J., dissenting). The public's interest includes "anything which might touch on an official's fitness for office." *Garrison v. Louisiana,* 379 U.S. 64, 77 (1964). The building codes are directly related to government policy, and are even the product of government decisions for which public officials must be accountable. *See Buckley v. Valeo,* 424 U.S. at 14 ("a major purpose of th[e First] Amendment was to protect the free discussion of governmental affairs") (quotations omitted); *Grosjean v. American Press Co.*, 297 U.S. 233, 250 (1936) (noting the preparation of "the people for an intelligent exercise of their rights as citizens").

A goal of the First Amendment is to promote "an informed and educated public opinion with respect to a matter which is of public concern." *Thornhill v. Alabama*, 310 U.S. 88, 104 (1940). Inherent in this goal is an informed public about the laws themselves. The First Amendment guarantees "unconditional freedom to criticize the way such public functions are performed," and the public cannot effectively criticize what it cannot efficiently access. *Rosenblatt*, 383 U.S. at 94 (Black, J., concurring in part and dissenting in part).

The premise of the decision below was that "this is not a case where a citizen was denied any access to the law as adopted by the municipalities in question." 49 F. Supp. 2d at 890. But Veeck and the entire public are denied efficient **electronic** access to the codes in question. Non-electronic access is simply no longer adequate to satisfy the legitimate needs of the public to learn about and stay current with legal requirements in the 21st century. Virtually all states now provide electronic access to their statutes, regulations and judicial opinions over the Internet, promoting a more informed citizenry. Federal appellate court decisions have been freely available over the Internet for years. The lone exception to freely available, electronic legal requirements is material withheld from the Internet due to a proprietary interest asserted by private entities like SBCCI. But the public has a First Amendment right to "hear" the

laws without interference over the Internet. *See Lamont v. Postmaster Gen'l*, 381 U.S. 301 (1965) (upholding a First Amendment right to receive information).

For building safety codes, the adverse effect of restrictions on access is particularly egregious. There is a compelling state interest in maximizing public compliance with building safety code requirements. Lives are saved through public reporting and subsequent correction of building safety violations. The more efficient the public access to these codes is, the greater the compliance with the codes will be. Public posting of those codes on the Internet would inevitably result in alert citizens identifying safety violations and demanding their correction. Tragic loss of life in building fires could be minimized if the public were more informed about building safety codes and timely evacuation procedures.

The need for public access to Medicare coding procedures through the CPT is likewise compelling. Health safety, analogous to building safety, is also a function of public knowledge of available procedures as codified in the CPT. Moreover, physicians and their staff would be able to provide more efficient medical services if they could efficiently access coding requirements directly through the Internet.

The Freedom of Information Act itself promotes public access to electronic records. *See, e.g.*, 5 U.S.C. § 552(a)(3)(C). Yet SBCCI, as a private organization, is denying public access to electronic versions of legal requirements contrary to the public policy of FOIA. While Appellee SBCCI fears a monetary loss if the public gains electronic access to the safety codes, the corresponding cost to the public of SBCCI's restrictions results in less compliance with the safety codes. The public's right to listen to the law must include electronic as well as non-electronic versions.

IV. The State-Conferred Monopoly Sought by Appellee SBCCI Should Be Rejected for Economic Reasons.

The decision below also fails for economic reasons. Economists, ever since Adam Smith, agree that monopolies are economically undesirable and oppressive. *See Wealth of Nations*, quoted *supra*. Yet Appellee SBCCI and its *amici* seek a government-conferred monopoly in the form of ownership of certain legal requirements. The owner of the law, like any monopolist, can then charge far more than the price dictated by the supply and demand curves of a free market. Indeed, there is no competitive limit to the amount that such a monopoly-holder can charge, or the degree to which it can restrict access to the goods.

Appellee SBCCI and its *amici* argue for a state-conferred monopoly which is financially advantageous for only the monopolist. The resultant cost

to the public is substantial in the form of higher prices, less availability, and manipulation of product development to perpetuate and extend the monopoly. *See generally United States v. Microsoft Corp.*, 253 F.3d 34 (D.C. Cir. 2001). All of these oppressive aspects of a monopoly exist here, and require reversal of the decision below.

A. The Court Below Erred in Embracing Monopoly of Ownership of the Law.

The court below erred in describing the current process as though it were cost-free to the public. It held that:

> These codes are offered for adoption as local construction ordinances to any local government, at no cost, and with no obligation on the part of the government unit to become a member of SBCCI. The total cost of preparation, promulgation, and maintenance of the codes is borne by SBCCI, which includes the input of thousands of design professionals, building contractors, building officials from all over the country, construction industry groups, trade associations, and other interested citizens. It is from this pool of knowledge and expertise, compiled in a readily usable and understandable form, that **the codes are offered to the local governments at no cost to the public.**

49 F. Supp. 2d at 890-91 (emphasis added, citations omitted).

To the contrary, there are substantial costs to the public resultant from SBCCI's monopoly, costs plainly evident here. The public cannot readily access the building safety codes over the Internet by virtue of SBCCI's monopoly. The public must pay non-competitive, inflated charges imposed by SBCCI due to its monopoly power. The SBCCI monopoly even constrains

public compliance with the safety codes by withholding them from the Internet, such that public reporting of violations of the codes is limited. The resultant harm is in lost lives as well as dollars.

Removing private restrictions on public access to these codes reduces distortions in their development. Currently, private organizations like SBCCI and the AMA can tailor their codes, with the force of law, for the benefit of their own financial interests and benefactors rather than the public. The legal safeguards that protect the public against corruption of political process, such as disclosure requirements and prohibitions on payments to decisionmakers, do not ordinarily apply to these private organizations as they manipulate the legal requirements. For example, SBCCI has a financial incentive to tailor its codes to equipment sold by its contributors or partners. Broader public access and scrutiny of the codes would reduce the potential for abuse.

The development of codes in the legal field has worked well in the public domain, as demonstrated by the Uniform Commercial Code (UCC). Why should this model be rejected for other fields? Highly successful and an essential part of the American economy, the UCC has thrived based on unfettered public access to the law. This shining example militates in favor of holding that other legal requirements must also be in the public domain.

B. The Economic Basis of the Decision Below is Unsupported, Implausible, and Contrary to the Coase Theorem.

The decision below essentially relies on the following economic assertion:

> As the Ninth Circuit stated, 'Non-profit organizations that develop these model codes and standards warn they will be unable to continue to do so if the codes and standards enter the public domain when adopted by a public agency.' Agreeing with these assertions, the Court finds that the first Banks element [based on taxpayer funding of judges] is not met in the present case.

49 F. Supp. 2d at 888 (quoting *Practice Management Info. Corp. v. American Med. Ass'n*, 121 F.3d 516, 519 (9th Cir. 1997), *cert. denied*, 118 S.Ct. 339 (1997)). The decision of the panel majority echoed this sentiment in holding that "the foreseeable outcome" of Veeck prevailing would be "that state and local governments would have to fill the void directly, resulting in increased governmental costs." 241 F.3d at 406.

This bald assertion is unsupported by the record, and is also economically implausible. It was error for the court below to base its decision on its "[a]greeing with these assertions," rather than actual evidence. In reality, leading codes, like the UCC, developed in an environment that enabled the public to freely access and scrutinize them.

If legally required building codes at issue here were in the public domain, then organizations, companies, and researchers would still invest

adequate resources in improving them. Companies and organizations, for example, would still compete to be named as official code developers, so that they could earn a premium for selling the legal requirements with an "official" imprimatur. Companies and organizations may then be competing for less value than now, but as long as the net value is above zero there would still be interested developers. And even if companies and organizations lost interest, academia and those affected by the codes would still fund efforts to improve the law just as they have done with respect to most commercial and penal standards.

If the required building codes at issue here go into the public domain, then SBCCI would lose the distorting incentive to manipulate codes to increase sales through revised versions. The medical CPT codes owned by the AMA are constantly changing in trivial ways, thereby providing a prodigious revenue stream to the AMA as it sells the revised versions. This is contrary to the public interest, which is to promote compliance rather than revenue to a monopolist. Ambiguities and perpetual changes, which are obstacles to maximizing public compliance, constitute a golden goose for the monopolist that can sell explanatory materials and seminars. Removal of this artificial monopoly would remove financial incentives to repeatedly change the codes, rather than stabilize them.

The Nobel Prize-winning Coase Theorem also militates in favor of removal of this monopoly as a "transaction cost" that obstructs efficiency without furthering any social goals. *See, e.g.*, Ronald H. Coase, "The Problem of Social Cost," 3 *J. Law & Econ.* 1 (1960). Establishing that the law is freely available to all would remove an inefficient transaction cost for access to the law. SBCCI, the AMA, and similar organizations would still be free to negotiate benefits for themselves in the absence of these transaction costs. It was error for the court below to unilaterally confer a windfall benefit to SBCCI that it could not obtain in negotiation.

SBCCI sought and consented to government adoption of its codes. "The cities of Anna and Savoy, Texas, under expressed agreements with SBCCI, have enacted ordinances adopting SBCCI's model codes by reference." 49 F. Supp. 2d at 887. Likewise, the AMA entered into a contract with the Department of Health and Human Services to require the AMA's CPT codes. *See* http://www.aapsonline.org/aaps/medicare/hcfaama.txt. Government would not require use of private codes over the objection of the owner, because such codes would likely be unattractive compared to alternatives. Rather, such codes are imposed by government as a result of proactive lobbying by those who sell the codes. This Court should not confer a benefit on SBCCI and other code developers that they were unable to procure directly in their dealings with

government. *See Stop-N-Go of Madison, Inc. v Uno-Ven Co.*, 184 F.3d 672, 680 (7th Cir. 1999) ("While the parties -- both sophisticated and experienced businesses -- were free to arrange this by contract, we are reluctant to reach such a result through tort law.").

Under the current system, government has no efficient means for even enforcing a promise by an organization to provide its codes freely to the public. For example, the AMA promised to provide its CPT codes freely to the public over the Internet in order to persuade the government to require use of its codes, but the AMA then ignored its promise with impunity. *See* Statement of the AMA to HHS Re: Physicians' Current Procedural Terminology (CPT), T. Reginald Harris, MD, April 16, 1997 ("The AMA has taken additional steps to make CPT available over the Internet and is expected to complete an agreement with the HCFA in the very near future. Under the agreement, complete public access to HCFA data files containing CPT will be available, free of charge, both domestically and internationally.") (testimony was presented in April 1997, and yet the AMA continues to prohibit anyone from posting CPT requirements on the Internet) (posted at http://www.aapsonline.org/aaps/medicare/amacpt.htm).

Without a state-conferred monopoly, Appellee SBCCI and the AMA could still negotiate directly with government and then sell its codes in a

competitive manner. They could still obtain the government "imprimatur" as an official developer of the codes, which would certainly give them an advantage over unofficial distributors. But without the monopoly, public access and compliance would increase, and transaction costs would be largely eliminated. Distribution would no longer be artificially suppressed by the monopoly, and SBCCI and its counterparts would have to earn their keep the old-fashioned way – through competition. Economically, that is exactly as it should be.

Conclusion

Amici respectfully request reversal of the decision below, and entry of judgment in favor of Appellant Veeck.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that two true and correct copies (on paper and computer disk) of the foregoing document were served, by delivery to Federal Express (third-party commercial carrier) for overnight delivery, postage/shipping prepaid, to counsel of record listed below, pursuant to Fed. R. App. P. 25(b), and that the same document was filed, by delivering an original and twenty copies (on paper and computer disk) to Federal Express (third-party commercial carrier) for overnight delivery, postage/shipping prepaid, to the Clerk of the Court, pursuant to Fed. R. App. P. 25(a)(2)(B)(ii), on this 31st day of October, 2001, at the following addresses:

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CERTIFICATE OF COMPLIANCE

Pursuant to 5th Cir. R. 32.2. and 32.3 and Fed. R. App. P. 32(a)(7)(C), the undersigned certifies this brief complies with the type-volume limitations of 5th Cir. R. 32.2.7(b) and Fed. R. App. P. 29(d).

1. Exclusive of the exempted portions in 5th Cir. R. 32.2 and Fed. R. App. P. 32.2.7(b)(3), the brief contains 4,680 words.
2. The brief has been prepared in proportionally spaced typeface using Times New Roman 14 point font for text and 12 point font for footnotes produced by Microsoft Word 97 software.
3. An electronic version of the brief has been provided and if the Court so requests, the undersigned will provide a copy of the word or line printout.
4. The undersigned understands a material misrepresentation in completing this certificate, or circumvention of the type-volume limits in 5th Cir. R. 32.2, may result in the Court's striking the brief and imposing sanctions against the person signing the brief.

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Karen B. Tripp, Esq.