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Honorable Molly C. Dwyer, Clerk
United States Court of Appeals for the Ninth Circuit
95 Seventh Street
San Francisco, CA 94103

RE: Li v. United States, Case No. 11-35412
Supplemental Authorities

Dear Ms. Dwyer,

I am writing to bring to the court's attention a recent decision issued by the Supreme Court: *Match-E-Be-Nash-She-Wish Bans of Pottawatomí Indians v. Patchak*, 132 S.Ct. 2199, 80 USLW 4483 (June 18, 2012). This case is relevant to two questions raised at oral argument: whether plaintiffs lack standing because standing should be limited to employers as the category of individuals that the statute is designed to benefit; and whether – assuming that the statute is unclear – plaintiffs have standing to bring a challenge based on the agency's violation of the implementing regulations.

As an initial matter, according to the Supreme Court, the prudential standing requirement “is not meant to be especially demanding. ... We apply the test in keeping with Congress's ‘evident intent’ when enacting the APA ‘to make agency action presumptively reviewable.’” 132 S.Ct. at 2210.

First, *Match-E-Be* holds that a plaintiff can have standing even if the relevant statutory provision is not designed to benefit the plaintiff. In *Match-E-Be* the Court recognized that a neighboring landowner who filed a complaint based on proposed land use – definitely not within the category of individuals the statute was designed to protect – had standing because the issues being litigated “fall within [the statute's] scope.” 132 S.Ct. at 2210, n. 7.

Second: even assuming that the requirements of the statute are unclear, a plaintiff can have standing to challenge agency action based on the implementing regulations. *See id.* at 2211 (the regulations “make this statutory concern with land use crystal clear”). Where the plaintiffs' interests

“come within [the statute’s] regulatory ambit”, the plaintiffs have standing. *Id.* at 2212. *See also Jeffries v. Olsen*, 121 F.Supp. 463, 476 (S.D. Cal. 1954) (“[v]iolation of valid administrative regulations, even by the administrator himself, constitutes in legal effect a violation of the statute”).

Respectfully submitted,

/s/ Robert Pauw

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