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PRESS RELEASE

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**Utah's Regulation of Issue Advocacy and Multipurpose Organizations Ruled
Unconstitutional**

Yesterday, the United States District Court for the District of Utah ruled that the regulation of speech and organizations during ballot measure elections must be limited to unambiguously campaign related activities.

The court held that requiring disclosure of "political issues expenditures," defined as a "payment . . . of money made for the purpose of influencing the approval or the defeat of a ballot proposition," was unconstitutional as applied to free legal aid advertisements aired by the National Right to Work Legal Defense Foundation in 2007 at the same time as a vigorous debate on a school voucher ballot measure was taking place.

Utah officials contacted the Foundation in May, 2007, warning that the ads qualified as political issues expenditures and that the Foundation must register and report as either a "political issues committee" or a "corporation." Because the Foundation's advertisements were an appeal to contact the Foundation for free legal aid, not express advocacy to vote for against the measure, Judge Dee Benson ruled that disclosure requirements were unconstitutional as applied to the Foundation and its ads.

The court also struck Utah's definition of a "political issues committee" as facially unconstitutional. Utah imposes additional organizational, disclosure, and reporting requirements on organizations making any "disbursements to influence, or to intend to influence, directly or indirectly, any person to . . . assist in keeping a statewide ballot proposition off the ballot, or refrain from voting or vote for or against any statewide ballot proposition." Judge Benson ruled that Utah's loose definition led to self-censorship by individuals and entities wishing to avoid a political issues committee designation.

Recognizing that under U.S. Supreme Court decisions, such a designation is only permissible when limited to entities that are "under the control of a candidate or *the major purpose* of which is the nomination or election of a candidate," Judge Benson ruled that Utah's definition "does not even attempt to comply with . . . [the] 'major purpose' requirement," and is facially invalid.

"This case was a perfect example of government overreaching into the very heart of the First

Amendment," says James Bopp, Jr., lead counsel for the Foundation. Bopp explained: "the Foundation was engaging in the very activities it always has, offering free legal aid to workers affected by coercive union activities, and because they happened to coincide with a ballot measure election, the state claimed that they were regulable."

"This is a decisive victory for the First Amendment," says Bopp. "Speech surrounding ballot measures is no less protected than speech about candidates, and regulation of political speech must be limited to express advocacy and organizations cannot be forced to organize and report as a political committee unless they have the passage or defeat of a ballot measure as their major purpose."

The court's opinion can be found at www.jamesmadisoncenter.org.

James Bopp, Jr. has a national federal and state election law practice. He is General Counsel for the James Madison Center for Free Speech and former Co-Chairman of the Election Law Subcommittee of the Federalist Society.

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