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**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

FREE SPEECH COALITION, INC., a
California not-for-profit trade association,
on its own behalf and on behalf of its
members,

Plaintiff,

vs.

THE STATE OF UTAH, a body politic, *et
al.*,

Defendants.

Case No. 2:05cv00949 DAK

**APPLICATION OF *AMICI CURIAE* FOR
LEAVE TO PARTICIPATE IN SUPPORT
OF PLAINTIFF'S CHALLENGE TO THE
UTAH CHILD PROTECTION REGISTRY
ACT**

Judge Dale A. Kimball

INTRODUCTION

Pursuant to Rule 7(b) of the Federal Rules of Civil Procedure and DUCivR 7-1, the American Advertising Federation (“AAF”), the American Association of Advertising Agencies (“AAAA”), the Association of National Advertisers, Inc. (“ANA”), the Center for Democracy & Technology (“CDT”), the Electronic Frontier Foundation (“EFF”), and

the Email Service Provider Coalition (“ESPC”) (collectively, the “*Amici*”) respectfully request leave to participate as *amici curiae* in support of plaintiff Free Speech Coalition, Inc., (“Plaintiff”) in the above-captioned matter.

This case seeks declaratory and injunctive relief in challenging the Utah Child Protection Registry Act, Utah Code Ann. § 13-39-101 *et seq.* (the “Act”), which purports to protect minors from email that “advertises” products or services which they may not lawfully purchase or contains material that is “harmful to minors,” on grounds that the statute is preempted by federal law and unconstitutional under the United States and Utah Constitutions. The case raises issues of extraordinary importance to the maintenance of free expression on the Internet and its use as a medium for email communications, and it accordingly presents critical issues for the *Amici*. The purpose of the requested *amicus* participation is to give the Court a more complete understanding of the widespread impact of the Utah law beyond the adult entertainment industry

The ultimate outcome of this case is of moment not simply to Plaintiff, but to all parties with a vested interest in free and unfettered availability of email as a communications channel and/or its ongoing use as a vehicle for commercial communications that are a staple of our Information Age economy. Significantly, prospective *amici* here note, without endorsing defendants’ legal position, that the State moved to dismiss because the complaint alleges that Plaintiff is challenging the constitutionality of the Act on grounds that “it may apply to individuals and entities ... not parties before the Court.” Memorandum in Support of Motion to Dismiss (Case or Controversy and Standing) (Doc. No. 4) at 6. This Motion for Leave to Participate addresses precisely that issue – that is, as the State put it, that the Act reaches “individuals and entities other than the Plaintiff or its members.” *Id.* The organizations

seeking to participate as *amici* here are concerned the registry already is having an adverse impact on their members. See News Release, Attorney General Mark Shurtleff, Dec. 7, 2005 (<http://attorneygeneral.utah.gov/PrRel/prdecember72005.htm>) (indicating that more than 200 email senders already have been forced to register to comply with Utah's law).

INTEREST OF AMICI

Amici curiae status is sought on behalf of the trade associations and public interest organizations described below that represent those who rely on email as a means of transmitting constitutionally protected expression, including speech regarding goods and services in the stream of interstate commerce, to recipients both within and outside Utah. The Act represents a direct attempt by the State to insert itself into these communications and to regulate them – and in most cases cut them off in full – based on the content of speech, on content-based preferences designated by the State, and on vague classifications that will chill the speech of even those speakers the statute may not be intended to reach. This regulatory intervention is also of grave concern to noncommercial entities that have a stake in the free flow of information on the Internet. The Act accordingly will directly and adversely affect the ability of the prospective *amici*, their members, and similarly situated parties, to speak both to individuals within Utah, as well as those outside the State. Accordingly, *Amici* have a direct interest in the outcome of this case.

The AAF represents over 50,000 professionals in the advertising industry in Utah and throughout the United States. It consists of over 130 corporate members that include advertisers, agencies, and media companies comprising the nation's leading brands and corporations.

The AAAA is the national trade association for advertising agencies. Its members represent nearly all the large, multi-national advertising agencies, as well as hundreds of small and mid-sized agencies located in 13,000 offices throughout the country. Its members place approximately 75 percent of all national, regional and local U.S. advertising placed by agencies.

The ANA is the advertising industry's oldest trade association, representing companies offering more than 8,000 brands of goods and services. It is the only organization dedicated to entities that advertise on a national and regional basis. Its members, consisting of manufacturers, retailers and service providers nationwide, including Utah, reflecting a cross-section of American industry, carry out more than \$100 billion worth of advertising each year in the U.S. alone.

The CDT is a non-profit public interest and Internet policy organization. CDT represents the public's interest in an open, decentralized Internet reflecting constitutional and democratic values of free expression, privacy, and individual liberty. CDT's staff has conducted extensive policy research, published academic papers and analyses, and testified before Congress on the impact of national and international policy on the growth and development of the Internet, and continues to work both domestically and abroad to promote responsible technology policy.

The EFF is a donor-supported membership organization working to protect fundamental rights regardless of technology, to educate the press, policymakers, and the general public about civil liberties issues related to technology, and to act as a defender of those liberties. EFF currently has over 8,500 paying members nationwide, and over 50,000 subscribers to "EFFector", its email newsletter, including over 300 subscribers in Utah. Among its various activities, EFF opposes misguided legislation, initiates and

defends court cases preserving individuals' rights, launches global public campaigns, introduces leading edge proposals and papers, hosts frequent educational events, engages the press regularly, and publishes a comprehensive archive of digital civil liberties information on one of the most linked-to web sites in the world, www.eff.org. EFF is particularly concerned with protecting the rights of individuals to speak anonymously and their rights to associate freely without disclosing to whom they communicate, on the Internet or otherwise, and regularly advises individuals around the country whose free speech rights are threatened. This case squarely impacts the interests of EFF members and interests of email speakers whom we seek to protect.


The ESPC is a cooperative group of industry leaders working to create solutions to the continued proliferation of spam and the problems of email deliverability. Its membership provides volume mail delivery services to an estimated 250,000 clients that represent the full breadth of the U.S. marketplace. The ESPC seeks solutions to spam and deliverability concerns through a combination of legislative advocacy, technological development, and industry standards.

REQUEST FOR LEAVE PARTICIPATE *AMICI CURIAE*

For the reasons stated above, *Amici* respectfully request leave of this Court to file briefs and otherwise participate as *amici curiae* in support of Plaintiff and to otherwise assist the Court in evaluating the constitutionality of the Utah Registry Act. Counsel for *Amici* contacted counsel for the parties to ask their consent to *Amici* participation in this case. Counsel for Plaintiff has given their consent. Undersigned counsel conferred with counsel for the defendants, who has indicated that the defendants, at this time, do not consent to the participation of *Amici*, but reserved the right to modify that position if

developments in the matter so warrant and may or may not object to Amici's participation in this case.

DATED this 13th day of January, 2006.



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CERTIFICATE OF SERVICE

I hereby certify that, on this 13th day of January, 2006, true and correct copies of the foregoing **APPLICATION OF *AMICI CURIAE* FOR LEAVE TO PARTICIPATE IN SUPPORT OF PLAINTIFF FREE SPEECH COALITION** were served via U.S. Mail, first class, postage prepaid, to the following:

Ira P. Rothken
Rothken Law Firm
1050 Northgate Drive, Suite 520
San Rafael, CA 94903

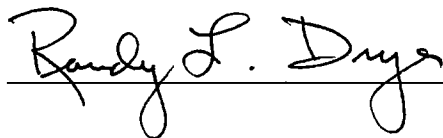
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THE STATE OF UTAH, a body politic, *et*
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Defendants.

Case No. 2:05cv00949 DAK

**[PROPOSED] ORDER GRANTING LEAVE
OF VARIOUS ORGANIZATIONS TO
PARTICIPATE AS AMICI CURIAE**

Judge Dale A. Kimball

Based on the Application of the below identified organizations to participate in
this matter as *Amici Curiae*, and good cause being shown therefore,

IT IS HEREBY ORDERED that the American Advertising Federation, the
American Association of Advertising Agencies, the Association of National Advertisers,
Inc., the Email Service Provider Coalition, the Electronic Frontier Foundation and the

Center for Democracy and Technology, by and through their counsel, may, and the same hereby are, granted leave to participate in this matter as *Amici Curiae*.

The parties hereto are ordered to serve counsel for Amici with copies of all pleadings, correspondence or other filings in this case from and after the date of this Order.

DATED this _____ day of January, 2006.

BY THE COURT:

DALE A. KIMBALL
UNITED STATES DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that, on this 13th day of January, 2006, true and correct copies of the foregoing **ORDER** were served via U.S. Mail, first class, postage prepaid, to the following:

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