"Use of 'Robocalls' in Federal Campaigns"

Testimony of James Bopp, Jr.
Before the United States Senate Committee on Rules and Administration
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INTRODUCTION

I am James Bopp, Jr., attorney at law, and I thank you for the opportunity to testify before this Committee. A substantial part of my law practice involves defending clients from governmental incursions against their constitutionally-protected freedom of speech and expression. I have defended the rights of citizens to participate in the electoral process in administrative investigations and through litigation, *amicus curiae* briefs, scholarly publications, and testimony before legislative and administrative bodies.

I have represented numerous plaintiffs in successful law suits challenging federal and state election statutes and regulations in order to vindicate constitutional rights that are integral to the successful continuation of our representative democracy.[1] The appended summary of my professional resume summarizes my work in this area. I testify today as a practitioner of federal

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[1] I have been privileged to successfully argue four landmark United States Supreme Court First Amendment cases: *Republican Party of Minnesota v. White*, 536 U.S. 765 (2002), which struck down restrictions on the speech of candidates for elected judicial office on First Amendment grounds, *Wisconsin Right to Life v. Federal Election Comm'n*, 126 S. Ct. 1016 (2006), which held that McCain-Feingold's "electioneering communication" corporate prohibition could be subject to as-applied challenges for genuine issue ads, *Randall v. Sorrell*, 126 S. Ct. 2479 (2005) which struck down Vermont's mandatory expenditure limits and contribution limits, and *Federal Election Comm'n v. Wisconsin Right to Life*, 127 S. Ct. 2652 (2007), which held that McCain-Feingold's "electioneering communication" prohibition is unconstitutional as applied to grass roots lobbying ads.

First Amendment law and not as a representative of any client.

In this testimony, I will first give a brief background of the typical regulations of automatic dialing technology and how it has advanced. Second, I will give a brief background of the First Amendment and its importance to our representative democracy because I believe that unless Members of Congress start with a proper understanding of our First Amendment and its designs, they cannot adequately uphold their oath to uphold the Constitution. Third, I will discuss the First Amendment problems with banning or severely regulating automatic dialing technology.

I. Brief History of Automatic Dialing Machine Statutes and Advances in Automatic Dialing Technology.

Telephones are important instruments in political and public issue campaigns. This is true regardless of whether the calls are placed by a live operator or by an automatic dialing machine.

In 1991, Congress adopted the TCPA which amended the Communications Act of 1934 to regulate telemarketing calls, including those made using automatic dialing technology. In enacting the TCPA, Congress adopted Section 2(13), which in recognition of the heightened protection afforded political and other forms of nonpolitical speech by the Supreme Court, found that the FCC "should have flexibility to design different rules for . . . noncommercial calls, consistent with the free speech provisions embodied in the First Amendment of the Constitution." The FCC in turn, decided to exempt all non-commercial speech from the prohibition that would otherwise apply to prerecorded calls in recognition of the First

Amendment interests at issue and because no evidence was presented in the rulemaking record "to show that non-commercial calls represent as serious a concern for telephone subscribers as unsolicited commercial calls."[2]

Currently the House is considering more restrictive legislation such as H.R. 1383 "The Quelling of Unwanted or Intrusive and Excessive Telephone Calls Act of 2007" ("QUIET Act") introduced by Ms. Zoe Lofgren of California. The Quiet Act not only regulates the time and manner of how such calls may be placed but also imposes criminal penalties on those who deceive the public regarding:

> (A) the time, place, or manner of an election for Federal office; (B) the qualifications for or restriction on voter eligibility for an election for Federal office; (C) the political party or affiliation of any candidate running in an election for Federal office; or (D) the sponsor, endorser, or originator of a telephone call initiated using an automatic telephone dialing system or using an artificial or prerecorded voice.[3]

Several states have adopted laws that subject prerecorded interstate telephone calls to more stringent requirements than the federal standards, even those currently being considered.

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[2]Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Report and Order, 7 FCC Rcd 8752 (1992) ("1992 Report and Order"). In creating this exemption, the FCC stated, "[w]e find that the exemption for non-commercial calls from the prohibition on prerecorded messages to residences includes calls conducting research, market surveys, political polling or similar activities which do not involve solicitation as defined by our rules." *1992 Report and Order* ¶ 41. In a further rulemaking decision issued in July 2003, the FCC expressly reaffirmed the exemption for prerecorded, non-commercial calls. Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Report and Order, 18 FCC Rcd 14014 (2003) ("2003 Report and Order").

[3]While the ban on calls between the hours of 9:00 p.m. and 9:00 a.m. may be a valid time restriction because most people sleep during these hours and the required disclosure of the sponsor of the call may be valid pursuant to First Amendment jurisprudence, the remaining bans on deception are covered by other laws regarding deception and/or fraud rendering it unnecessary to single out automated calls for a separate criminal penalty.

For example, both Minnesota and Indiana have statutes prohibiting prerecorded calls that apply to both noncommercial and commercial calls and have been enforced against prerecorded political issue calls.[4] While generally banning all calls placed by automatic dialing machines, many of these laws allow such calls if a live operator asks the recipient whether he or she is willing to listen to the message or participate in the survey before it is played. The purpose of the live operator requirement is to get the consent of the recipient to receive the call.

When the federal government first got involved in legislation regarding automatic dialing devices, those machines were primitive – a call was placed and a taped message was played, often the call would tie up the phone line regardless of whether the person receiving the call hung up on it. However, with advances in technology calls using automated dialing devices are sometimes indistinguishable from calls placed by live operators. Therefore, although such calls have previously been deemed "robo" calls, I believe a better term would be artificial intelligence calls or "AIC" for short.

An AIC is the functional equivalent of a live operator call. It can be programmed such that the first question asked is whether the recipient would like to participate in the survey or hear the message and, just like a live operator, go on if the response is "yes" or hang up if the response

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[4]Minn. Stat. § 325E.27. In *Van Bergen v. State of Minnesota*, 59 F.3d 1541 (8th Cir. 1995), the Eighth Circuit upheld this statute against a preemption challenge by a candidate for governor who sought to make intrastate political polling calls in support of his candidacy. Ind. Code § 24-5-14 *et seq*. In *FreeEats.Com, Inc. v. State of Indiana*, 502 F.3d 590 (7th Cir. 2007), the Seventh Circuit dismissed a federal challenge to the validity of Indiana's auto-dial statute because the Court held that the claims could be litigated in the state court where the State had filed an enforcement action against FreeEats and other organizations for making political issues calls.

is "no." It can even offer the recipient the option of adding his name to a speaker specific do-not-call list. AICs use interactive-voice-response and speech-recognition technology to interact with the recipient almost as if it the call were placed by a live person. AICs can be set up to record not only "yes" or "no" answers but also to record the recipient's free form responses. The calls can even be placed using the voice of the person who commissioned the calls. Thus, today's AICs are very different from the robo calls placed in the late eighty's or early ninety's when most of the laws regulating them were passed. The law, unfortunately, has not been able to keep up with the technological advances in this area. Bans or severe regulations on AIC technology serve to deprive the citizens of an easy, effective, and unobtrusive means of communication and deny the willing recipient of an opportunity to learn more about an issue in the case of a simple message delivery or an opportunity to make his voice heard in the case of a poll or survey.[5]

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[5]This testimony is limited to those who want to receive the caller's message. Unlike do-not-call laws, most automatic dialing machine regulations are blanket bans and foreclose calls to everyone regardless of whether the recipient of the call wants to hear the message.

II. The First Amendment and Its Purposes.

The First Amendment is a very special kind of law because its aim is to restrict government, not citizens. It is a mandate that "Congress shall make no law" and, through this mandate, our Founding Fathers sought to guarantee the "indispensable democratic freedom[s]"[6] necessary for the People to exercise their right of self-government by placing *limitations* on the powers of the government to restrict those freedoms.

At first blush, it seems as if the First Amendment prohibits all laws and regulations that restrict speech. After all, the text of that Amendment says: "Congress shall make no law . . . abridging the freedom of speech."[7] The Supreme Court, however, has held that the First Amendment does not proscribe government restrictions on speech that are justified by a compelling governmental interest. It is the conflict between the First Amendment's protection of fundamental rights with claimed governmental interests that gives rise to so many constitutional issues.

The purpose of the First Amendment is to further our "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open."[8] Thus, "there is practically universal agreement that a major purpose of [the First] Amendment was to

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[6] *Thomas v. Collins*, 323 U.S. 516, 529-30 (1945).

[7] U.S. Const. amend. I.

[8] *New York Times v. Sullivan*, 376 U.S. 254, 270 (1964).

protect the free discussion of governmental affairs."[9] Political speech is protected because the Framers understood that it is "integral to the operation of the system of government established by our constitution."[10] As a result,

> in a republic where the people are sovereign, the ability of the citizenry to make informed choices among candidates for office is essential, for the identities of those who are elected will inevitably shape the course that we follow as a nation.[11]

Indeed, "public discussion" was viewed by the Framers as not only a political right, but as "a political duty."[12] This stems from the fact that the "opportunity for free political discussion" is vital to assuring that "government may be responsive to the will of the people and that changes may be obtained by lawful means."[13]

Therefore, freedom of speech is a condition essential to our political liberty. "The First Amendment does not protect a 'freedom to speak.' It protects the freedom of those activities of thought and communication by which we 'govern.'"[14] Our commitment to freedom of expression is anchored in promoting a framework of discourse in which unrestricted deliberation on matters of public concern is secure from the intrusion of government power. The outcome in this secured

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[9] *Buckley v. Valeo*, 424 U.S. 1, 14 (1976) (*quoting Mills v. Alabama*, 384 U.S. 214, 218 (1966)).

[10] *Id.*

[11] *Id.* at 14-15.

[12] *Whitney v. California*, 274 U.S. 357, 375 (1927) (Brandeis, J., concurring).

[13] *Stromberg v. California*, 283 U.S. 359, 369 (1931).

[14] Alexander Meiklejohn, *The First Amendment Is An Absolute*, 1961 Sup. Ct. Rev. 245, 255.

"marketplace of ideas" will be determined by the persuasiveness of the speakers' reasons used in support of their values and beliefs, *not* by the dictates of government.

As Justice Brandeis eloquently stated, democratic society must value free speech "both as an end and as a means."[15] Free Speech is a valuable "end" because it is a manifestation of the ultimate purpose of government: to free its citizens so that they may pursue self-fulfillment.[16] As a "means," free speech is an indispensable path to political truth.[17]

As embodied in our Constitution, the people have chosen to submit to a system of government in which they remain the ultimate basis of authority. Therefore, government cannot deny the people their right to express and hear political ideas, attitudes, or beliefs, because to do so would interfere with their responsibility as citizens to govern themselves. The people's assumption of this ultimate authority necessarily requires that they be able to express in a manner *unrestricted* by government, whatever ideas, viewpoints, or information may prove necessary for self-governance. Public opinion mediates between the particular wills of individual citizens and the general will of the government by allowing all citizens to participate in an ongoing debate. If government restricts the speech of a citizen within public discourse, government prevents that citizen from participating in collective self-governance.

Under Article One, section six, the Constitution affords "absolute protection" to the speech of Members of Congress, our political representatives. As you, our representatives,

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[15] *Whitney*, 274 U.S. at 375.

[16] *Id.* at 375-76.

[17] *Id.*

derive your governing power from citizens, the latter must enjoy *at least* as much protection as you, their elected servants.[18] For how is the citizenry to self-govern, and serve as a check on their elected servants, if the people are not also absolutely protected in their praise and criticism of the actions of these elected servants?

Therefore, to the extent that this country has a government "of the people, by the people, and for the people," the public is the government. But what protections are offered by regulations that limit the participation of citizens in this process? For government to abide by the spirit of the First Amendment, it must *value* speech and *protect* free speech as a right, rather than as a privilege.

As a practical matter, unless citizens may exercise their right to speak freely on political matters – including discussions of candidates and their qualifications – self-government is impossible. In order to make good decisions regarding who will represent us and to hold our representatives accountable for their actions, citizens must have access to ideas and information concerning the positions candidates take on issues and their fitness to hold office. In order for those ideas and that information to be available to the electorate, there must be free commerce in the marketplace of ideas. If the marketplace of ideas is compromised by governmental restrictions on speech, then self-governance will suffer and so too will all of the other freedoms guaranteed by the Constitution.

The effect of placing governmental restrictions on political speech cannot be easily

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[18] *See* Alexander Meiklejohn, *Political Freedom*, at 36 (1960) ("The freedom which we grant to our representatives is merely a derivative of the prior freedom which belongs to us as voters.").

compartmentalized. The aim of the First Amendment is not only the protection of discourse from the intrusion of governmental authority to secure self-governance, but also the independence of citizens as rulers of themselves.[19] That is, it leaves to individuals the independence to deliberately define for themselves their beliefs, morals, and ideas.[20] As Justice Brandeis stated in his famous concurrence in *Whitney v. California*:

> Those who won our independence believed that the final end of the State was to make men free to develop their faculties; and that in its government the deliberative forces should prevail over the arbitrary .... They believed that freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth . . . that public discussion is a political duty; and that this should be a fundamental principle of the American government .... Believing in the power of reason as applied through public discussion, they eschewed silence coerced by law – the argument of force in its worst form. Recognizing the occasional tyrannies of governing majorities, they amended the Constitution so that free speech and assembly should be guaranteed.[21]

Free speech on political matters, then, is the key to the preservation of self-government and concomitant personal liberties. Therefore, political free speech is strictly guarded by the Constitution for at least three inextricably interwoven reasons: (1) because it was the Framer's

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[19]These two dimensions of freedom of expression are not mutually exclusive. It would be impossible to adequately protect one dimension of speech without also extending considerable protection to the other. Strict constraints on the public consideration of different moral points of view is not likely to lead to wide open political debate. Similarly, prohibiting the advocacy of certain political points of view is likely to have repercussions on moral discussion. Hence the *Buckley* Court's observation that "the distinction between discussion of issues and candidates and advocacy of election or defeat of candidates may often dissolve in practical application." *Buckley*, 424 U.S. at 42.

[20]*See* Paul G. Stern, Note, *A Pluralistic Reading of the First Amendment and Its Relation to Public Discourse*, 99 Yale L.J. 925, 934 (1990).

[21]275 U.S. at 375-76 (citations omitted).

intention to preserve free speech (which is obvious on the face of the First Amendment); (2) because political speech is an indispensable role in the preservation of self-government; and (3) because, given its role in preserving self-government, free political speech undergirds all other civil liberties protected by the Constitution. Thus, the Court reiterated almost sixty years later that "[t]hose who won our independence believed that the final end of the State was to make men free to develop their faculties . . . . They valued liberty both as an end and as a means."[22]

The Supreme Court has always been concerned with protecting the transmission of information from speaker to listener, and rightly so. Without this protection, the participation of citizens is chilled and their self-governing rights are diminished.

III. Restrictions On AIC Calls, Particularly Those Advocating For or Against Political Issues, Strike at the Heart of the First Amendment.

The First Amendment protects the right of self-government by protecting the four "indispensable democratic freedom[s]" of speech, press, assembly, and petition. Thus, these constitutional guarantees have their "fullest and most urgent application precisely to the conduct of campaigns for political office."[23] Advocacy of public issues or "political beliefs and ideas" is also core political speech entitled to the same protections.[24]

In *City of Ladue v. Gilleo* the Supreme Court considered the constitutionality of a city ordinance against displays of signs on residential property as applied to prohibit a homeowner

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[22] *Federal Election Comm'n v. Massachusetts Citizens for Life*, 479 U.S. 238, 257 n.10 (1986) (*quoting Whitney*, 274 U.S. at 375 (Brandeis, J., concurring)).

[23] *Buckley*, 424 U.S. at 14-15.

[24] *See Citizens Against Rent Control v. Berkeley*, 454 U.S. 290 (1981).

from displaying a sign protesting the first gulf war.[25] The Court found that the ordinance "almost completely foreclosed" a form of political communication that was "unusually cheap and convenient."[26] Relying on a line of "prior decisions [that] had voiced particular concerns with laws that foreclose an entire medium of expression," the Court held that the ordinance violated the First Amendment.[27]

> Although prohibitions foreclosing entire media may be completely free of content or viewpoint discrimination, the danger they pose to the freedom of speech is readily apparent – by eliminating a common means of speaking, such measures can suppress too much speech.[28]

The principal case on which the Supreme Court relied in *Ladue* was *Martin v. City of Struthers*.[29] In *Martin* the Court held that a local ordinance prohibiting a person from knocking on the door of residences to distribute literature was unconstitutional as applied to a person distributing religious literature door-to-door. The municipality attempted to defend its law as protecting homeowners from nuisances and potential criminal activity. The Supreme Court nevertheless held that the ordinance was unconstitutional because it:

> substitut[es] the judgment of the community for the judgment of the individual householder. It submits the distributor to criminal punishment for annoying the person on whom he calls, even though the recipient of the literature distributed is

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[25] 512 U.S. 43 (1994).

[26] *Id.* at 48, 54.

[27] *Id.* at 55.

[28] *Id.*

[29] 319 U.S. 141 (1943).

in fact glad to receive it.[30]

Similarly, in *Meyer v. Grant*, the Supreme Court held that a Colorado law which prohibited the use of paid employees to circulate initiative petitions violated the First Amendment.[31] The Court found that the prohibition against the use of paid circulators "limits the number of voices who will convey [their] message and the hours they can speak and, therefore, limits the size of the audience they can reach."[32] It also found that the prohibition on this communication mechanism "has the inevitable effect of reducing the total quantum of speech on a public issue."[33] The Court concluded that the statute restricted "access to the most effective, and perhaps economical avenue of political discourse" and held it unconstitutional under the First Amendment.[34] Further,

> That it leaves open 'more burdensome' avenues of communication, does not relieve its burden on First Amendment expression. . . . The First Amendment protects appellees' right not only to advocate their cause but also to select what they believe to be the most effective means for so doing.[35]

In 1995, the Eighth Circuit held that a ban on automatic dial announce devices did not violate the First Amendment.[36] However, *Van Bergen* was wrongly decided because it failed to

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[30] *Id.* at 143-44.

[31] 486 U.S. 414 (1988).

[32] *Id.* at 422-23.

[33] *Id.* at 423.

[34] *Id.* at 424.

[35] *Id.*

[36] *Van Bergen v. Minnesota*, 59 F.3d 1541 (8th Cir. 1995).

follow the *Ladue-Struthers* line of cases for reviewing statutes that prohibit an entire medium for communicating political speech, based on the false assumption that no residents wish to receive such speech. The Ninth Circuit relied on *Van Bergen* when it issued a similar decision in 1996.[37] Both cases were decided before the advances in technology made it possible to disconnect the phone quickly and to offer the recipient of the call the option to add him or herself to a speaker-specific do-not-call list.[38]

While AIC technology is used by commercial telemarketers, it is also a common form of communication by candidates, office holders and other individuals or groups who want to educate the public on issues they deem to be of great importance. AIC technology can be, and has been, used by members of this body as a part of their franking privilege. Regardless of whether it is an office holder, a candidate or an organization, such calls are core speech under the First Amendment. Laws banning or severely restricting the use of AIC technology prohibit one of the most effective, fundamental and economical forms of political communication, which permits a person who seeks to educate the citizenry on his point of view to communicate directly, quickly and in a cost-effective manner, with a large number of people. Bans or severe restrictions on AIC technology directly reduce the number of calls that can be made that contain, and the size of the audience that will receive, political messages. The effect of this restriction on the use of telephone calls to reach potential voters is to increase the cost and therefore reduce the amount of speech that proponents of political issues can communicate to the public.

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[37] *Bland v. Fessler*, 88 F.3d 729 (9th Cir. 1996).

[38] *Van Bergen*, 59 F.3d at 1555; *Bland*, 88 F.3d at 731.

AIC technology is an important part of political campaigns because it offers the salient advantages of permitting targeted communication with a large number of residences within a short period of time and in a cost-effective manner. A prohibition on AIC technology takes away "access to the most effective, fundamental and perhaps economical avenue of political discourse."[39] Other media, such as newspapers and broadcast or live operator calls, cannot adequately substitute for these features, especially if their relative costs are taken into account.

For example, in *FreeEats.com v. Indiana*, FreeEeats represented to the Seventh Circuit that it can place calls to 1,700,000 homes in approximately 7 hours.[40] This is the equivalent of placing approximately 243,000 calls per hour. In contrast, a live operator can place only approximately 20 calls per hour.[41] FreeEats estimated that, using 200 live operators, it would take 35 full-time days to complete the same number of calls.[42] It also estimated that the cost of placing these calls would exceed $2 million while calls placed using AIC technology would cost roughly $255,000.[43] In short, the cost would escalate from $.15 to roughly $2.25 per call.[44] Thus, using a live operator to place such calls prohibitively increases the cost and makes it difficult, if

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[39]*Meyer*, 486 U.S. at 424.

[40]*FreeEats.com v. Indiana*, No. 06-3900 (7th Cir.), Brief of Appellant, 2006 WL 3319693 (Nov. 1, 2006).

[41]*Id.*

[42]*Id.*

[43]*Id.*

[44]*Id.*

not impossible, to complete the calling project in the time necessary for effective political communication.

The requirement to introduce an AIC with a live operator, effectively bans an entire medium of communication with the citizenry by raising costs exponentially and preventing calls from being completed in a timely manner. The conflicting state interest is in protecting residential privacy. This justification has been deemed sufficient to uphold do-not-call statutes that provide exceptions for political calls.[45] The idea of having a live operator introduce a call is to get the recipient's consent to listen to the message. If the recipient says "yes," then the taped message is played. If the recipient says "no," the call is terminated. With today's AIC technology, the same thing can be done by the computer using its voice recognition capabilities. Thus, calls placed utilizing current AIC technology are no more intrusive than calls placed by live operators. Persons receiving such calls are free to either not answer (especially if they have caller-id) or hang up, just as those desiring not to talk to door-to-door solicitors are free to either not answer or shut the door.

CONCLUSION

AIC is a modern form of door-to-door campaigning. It is a direct, cost-effective means of communication that is essential to less well-funded speakers such as non-profit advocacy groups and non-incumbent candidates. AIC technology offers the salient advantages of permitting

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[45]*See National Coalition of Prayer, Inc. v. Carter*, 455 F.3d 783, 791-92 (7th Cir. 2006) (upholding Indiana's do-not-call list because it applied to a "telephone sales call" while "excluding speech that historically enjoys greater First Amendment protection" such as political speech).

targeted communication with a large number of residences within a short period of time and in a cost-effective manner. When the use of AIC technology by non-commercial speakers is banned or severely restricted, the First Amendment is no longer able to guarantee the "indispensable democratic freedom[s]"[46] necessary for the People to exercise their right of self-government.

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[46] *Thomas v. Collins*, 323 U.S. 516, 529-30 (1945).

SUMMARY OF RESUME OF
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James Bopp, Jr. is an attorney with the law firm of Bopp, Coleson & Bostrom in Terre Haute, In. His law practice concentrates on not-for-profit corporate and tax law, on campaign finance and election law, on the biomedical issues of abortion, foregoing and withdrawing life-sustaining medical treatment and assisted suicide, on federal and state trial and appellate litigation, and on United States Supreme Court practice. He represents numerous not-for-profit organizations, political action committees, candidates, and political parties. He currently serves as a Commissioner on the National Commission of Commissioners of Uniform State Laws and as a member of the Republican National Committee.

Mr. Bopp's extensive Supreme Court practice includes successfully arguing the landmark United State Supreme Court cases of *Republican Party of Minnesota v. White*, 536 U.S. 765 (2002), which struck down restrictions on the speech of candidates for elected judicial office on First Amendment grounds, *Wisconsin Right to Life v. Federal Election Commission*, 126 S. Ct, 1016 (2006), which held that McCain-Feingold's "electioneering communication" corporate prohibition could be subject to as-applied challenges for genuine issue ads, *Randall v. Sorrell*, 126 S. Ct. 2479 (2006), which struck down Vermont's mandatory candidate expenditure limits and candidate contribution limits, and *Federal Election Comm'n v. Wisconsin Right to Life*, 127 S. Ct. 2652 (2007), which held that McCain-Feingold's "electioneering communication" prohibition is unconstitutional as applied to grass roots lobbying ads.

Mr. Bopp's successful state election law litigation includes over 75 campaign finance cases in 35 states, of which he has won over 90% of the cases decided on the merits. His successful federal election law litigation includes striking down six sets of Federal Election Commission regulations in cases including *Faucher v. FEC*, 928 F.2d 468 (1st Cir. 1991), *Maine Right to Life Committee v. Federal Election Commission*, 98 F.3d 1 (1st Cir. 1996), *Minnesota Citizens Concerned for Life v. Federal Election Commission*, 113 F.3d 129 (8th Cir. 1997), and *Beaumont v. Federal Election Commission*, 278 F.3d 261 (4th Cir. 2002). He served as one of the lead counsel in *McConnell v. Federal Election Committee*, 124 S. Ct. 619 (2002), which challenged the recently passed McCain-Feingold law. In addition, he represented voters in a challenge to the Florida recount in the 2000 general election which culminated in the U.S. Supreme Court decision in *Bush v. Gore*. *Touchston v. McDermott*, 234 F.3d 1130 (11th Cir. 2000) (en banc)

Because of Bopp's expertise in campaign finance and election law, he has testified numerous times on campaign finance reform before the United States Senate Committee on Rules and Administration, before the United State House Committee on House Administration and before the Subcommittee on the Constitution of the United States House Judiciary Committee. Bopp has published several leading law review articles on campaign finance law

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Mr. Bopp currently serves as General Counsel for the James Madison Center for Free Speech and is the former Co-Chairman of the Election Law Subcommittee of the Free Speech and Election Law Practice Group of the Federalist Society. The James Madison Center can be found at <http://www.jamesmadisoncenter.org>.

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SUMMARY OF RESUME OF
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James Bopp, Jr. is an attorney with the law firm of Bopp, Coleson & Bostrom in Terre Haute, In. His law practice concentrates on not-for-profit corporate and tax law, on campaign finance and election law, on the biomedical issues of abortion, foregoing and withdrawing life-sustaining medical treatment and assisted suicide, on federal and state trial and appellate litigation, and on United States Supreme Court practice. He represents numerous not-for-profit organizations, political action committees, candidates, and political parties. He currently serves as a Commissioner on the National Commission of Commissioners of Uniform State Laws and as a member of the Republican National Committee.

Mr. Bopp's extensive Supreme Court practice includes successfully arguing the landmark United State Supreme Court cases of *Republican Party of Minnesota v. White*, 536 U.S. 765 (2002), which struck down restrictions on the speech of candidates for elected judicial office on First Amendment grounds, *Wisconsin Right to Life v. Federal Election Commission*, 126 S. Ct, 1016 (2006), which held that McCain-Feingold's "electioneering communication" corporate prohibition could be subject to as-applied challenges for genuine issue ads, *Randall v. Sorrell*, 126 S. Ct. 2479 (2006), which struck down Vermont's mandatory candidate expenditure limits and candidate contribution limits, and *Federal Election Comm'n v. Wisconsin Right to Life*, 127 S. Ct. 2652 (2007), which held that McCain-Feingold's "electioneering communication" prohibition is unconstitutional as applied to grass roots lobbying ads.

Mr. Bopp's successful state election law litigation includes over 75 campaign finance cases in 35 states, of which he has won over 90% of the cases decided on the merits. His successful federal election law litigation includes striking down six sets of Federal Election Commission regulations in cases including *Faucher v. FEC*, 928 F.2d 468 (1st Cir. 1991), *Maine Right to Life Committee v. Federal Election Commission*, 98 F.3d 1 (1st Cir. 1996), *Minnesota Citizens Concerned for Life v. Federal Election Commission*, 113 F.3d 129 (8th Cir. 1997), and *Beaumont v. Federal Election Commission*, 278 F.3d 261 (4th Cir. 2002). He served as one of the lead counsel in *McConnell v. Federal Election Committee*, 124 S. Ct. 619 (2002), which challenged the recently passed McCain-Feingold law. In addition, he represented voters in a

challenge to the Florida recount in the 2000 general election which culminated in the U.S. Supreme Court decision in *Bush v. Gore*. *Touchston v. McDermott*, 234 F.3d 1130 (11th Cir. 2000) (en banc)

Because of Bopp's expertise in campaign finance and election law, he has testified numerous times on campaign finance reform before the United States Senate Committee on Rules and Administration, before the United State House Committee on House Administration and before the Subcommittee on the Constitution of the United States House Judiciary Committee. Bopp has published several leading law review articles on campaign finance law including *The First Amendment Is Still Not a Loophole: Examining* McConnell's *Exception to* Buckley's *General Rule Protecting Issue Advocacy*, 31 NORTHERN KENTUCKY LAW REV. 289 (2004), *The First Amendment Is Not A Loophole: Protecting Free Expression in the Election Campaign Context*, 28 UWLA LAW REV. 1 (1997), *Constitutional Limits on Campaign Contribution Limits*, 11 REGENT U. LAW REV. 235 (1998-99) and *All Contribution Limits Are Not Created Equal: New Hope in the Political Speech Wars*, 49 CATHOLIC U. LAW REV.11 (1999).

Mr. Bopp currently serves as General Counsel for the James Madison Center for Free Speech and is the former Co-Chairman of the Election Law Subcommittee of the Free Speech and Election Law Practice Group of the Federalist Society. The James Madison Center can be found at <http://www.jamesmadisoncenter.org>.