

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

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|---------------------------------|---|---------------------------------------|
| PATRIOTIC VETERANS, INC., |) | |
| |) | |
| Plaintiff, |) | CIVIL ACTION NO. 1:10-cv-0723 WTL-TAB |
| |) | |
| v. |) | |
| |) | |
| STATE OF INDIANA |) | |
| EX REL. GREG ZOELLER, |) | |
| ATTORNEY GENERAL, and |) | |
| GREG ZOELLER, Attorney General, |) | |
| |) | |
| Defendants. |) | |

**PLAINTIFF’S RESPONSE TO DEFENDANTS’ CITATION
OF SUPPLEMENTAL AUTHORITY**

The Defendants have tendered *Maryland v. Universal Elections, Inc.*, 729 F.3d 370 (4th Cir. 2013) as supplemental authority in this matter. However, the *Universal Elections* case has little bearing on this case for at least four independent reasons.

First, the *Universal Elections* case concerns disclosure requirements for automated calls under the federal Telephone Consumer Protection Act, 47 U.S.C. § 227 (“TCPA”) and the defendants’ apparent failure to disclose the identity of the campaign associated with automated calls that the defendants placed. That mere identification requirement is a far cry from the ban on automated political calls achieved by the Indiana statute at issue, the Indiana Automatic Dialing Machine Statute (“ADMS”), Ind. Code § 24-5-14-5.

Second, the question of whether the TCPA’s disclosure requirement is content neutral says nothing about the status of the very different statute that Indiana has passed. The ADMS contains exceptions not found in the TCPA that limit the speakers who may speak through automated dialer machines based on the content of their speech. For instance, the ADMS allows automated calls by commercial speakers, schools and even debt collectors. All of these speakers are elevated above political speakers – who typically receive the most heightened protection under the First Amendment. *See* Plaintiff’s Brief of Appellee at 40-42. This distinction is made

based on the content of the calls. *Universal Elections* does not address whether disfavoring political speech while providing special benefits to commercial speakers or favoring speech by schools is content neutral. In *Universal Elections*, the identification requirement applied to all candidates. Moreover, there was no evidence in *Universal Elections* that the statute was being enforced unconstitutionally, which is not the case here. *See id.* at 42.

Third, because the ADMS exists within Indiana's statutory scheme for regulating telephone calls and not the separate federal system, the *Universal Elections* case says nothing about whether the ADMS is narrowly tailored. Moreover, whether a disclosure requirement is narrowly tailored is a fundamentally different question from whether the ADMS's ban on political speech is narrowly tailored. The *Universal Elections* case also does not address the evidence here that the primary burden imposed by the ADMS – the use of live operators – effectively closes off this form of communication or the evidence that the lack of immediate messaging during campaigns can only be effectively served through automated calling. *See* Brief of Appellee at 63-70. In contrast to the burdens of the ADMS, the *Universal Elections* case would have allowed the automated call under the TCPA but for the callers' failure to disclose the campaign who made the call.

Fourth, the *Universal Elections* case does not address the question of whether banning an entire mode of speech warrants strict scrutiny. That issue is addressed in detail by the Plaintiff in its brief. *See, e.g.*, Brief of Appellee at 45-53

Because of these distinctions, the Plaintiffs respectfully submit that the *Universal Elections* case has little to add to the issues before the Court.

Respectfully submitted,

/s/Mark J. Crandley

Mark J. Crandley (Atty No. 22321-53)

BARNES & THORNBURG LLP

11 South Meridian Street

Indianapolis, Indiana 46204

Telephone: (317) 236-1313

Facsimile: (317) 231-7433

Email: mark.crandley@btlaw.com

Attorney for Plaintiff Patriotic Veterans, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on April 20, 2014, a copy of the foregoing was served on all counsel of record via the Court's electronic filing system:

Thomas M. Fisher – tom.fisher@atg.in.gov

Heather Hagan McVeigh – heather.hagan@atg.in.gov

/s/Mark J. Crandley
Mark J. Crandley

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