



# Judicial Watch

*Because no one is above the law!*

VIA FACSIMILE (801) 538-1133  
AND U.S. MAIL

October 30, 2008

Lt. Governor Gary Herbert  
State of Utah Elections Office  
State Capitol, Ste. 220  
Salt Lake City, UT 84114

**Re: Electioneering Text Messages Within Polling Places**

Dear Lt. Governor Herbert:

Utah, like many states, imposes restrictions on political speech around and within polling places. The U.S. Supreme Court has reaffirmed the constitutionality of these statutes because "a long history, a substantial consensus, and simple common sense show that some restricted zone around polling places is necessary to protect" what the Court calls a "fundamental right" to "cast a ballot in an election free from the taint of intimidation and fraud." *Burson v. Freeman*, 504 U.S. 191, 211 (1992). To achieve this end, Utah law specifically states, "A person may not, within a polling place or in any public area within 150 feet of the building where a polling place is located: (i) do any electioneering . . . ." Utah Code § 20A-3-501(2)(a). "Electioneering" is defined to include "any oral, printed, or written attempt to persuade persons to refrain from voting or to vote for or vote against any candidate or issue . . . ." Utah Code § 20A-3-501(1)(a).

Judicial Watch, Inc. is a non-partisan educational foundation that promotes transparency, accountability, and integrity in government and fidelity to the rule of law. Through its educational endeavors, Judicial Watch advocates high standards of ethics, law, and morality in our nation's public life and seeks to ensure that government officials do not abuse the powers entrusted to them by the American people. Judicial Watch, Inc. is concerned that Senator Barack Obama and his presidential campaign may violate Utah Code § 20A-3-501(2)(a) on November 4, 2008 by text messaging voters while they are at Utah polling places.

According to media reports, Senator Barack Obama's presidential campaign sent text messages to New Hampshire voters on primary day encouraging them to vote for Senator Obama. See Exhibit 1. Because the campaign found this strategy particularly effective in influencing 18 to 24 year old voters, it appears that the campaign intends to text message voters on Election Day again encouraging them to vote for Senator Obama. See Exhibit 2.

Many of these voters will be voting in Utah. Because a great many individuals carry cellular telephones and are able to receive text messages anywhere and almost instantaneously upon transmission, it is highly likely that Utah voters will receive and read Obama campaign text messages inside Utah polling places and even in voting booths.

When drafting the statute, legislators focused on the popular and prevalent method of electioneering on Election Day: signs and face-to-face contact between campaign workers and voters. Since that time, electioneering has drastically changed. Modern technology, such as text messaging, has become a fundamental component of campaigning. Throughout the past year, Senator Obama and his presidential campaign have sent out countless text messages informing voters of developments in the Senator's campaign, including dates/times of the Senator's public appearances and the selection of the Senator's running mate, and encouraging them to vote for Senator Obama.

Even if an individual is planning on voting for Senator Obama on Election Day, a voter should be able to enter a polling place and cast his or her vote without being subjected to yet more electioneering. Secrecy, privacy, and freedom from outside influence in the polling

place are fundamental to ensuring a fair voting process. The people of Utah must be free to cast their votes without electioneering text messages inside polling places. Utah law requires no less.

Judicial Watch, Inc. requests that the Elections Office conduct an inquiry into this matter. If the Office determines that text messaging a voter within a polling place violates Utah Code § 20A-3-501(2)(a), Judicial Watch, Inc. requests that the Office ask Senator Obama and his campaign to forego their plans to text message Utah voters after the polls open on Election Day, or fashion some other, equally effective remedy.

Thank you for your attention to this matter.

Sincerely,

JUDICIAL WATCH, INC.

*Thomas J. Fitton (PJ)*

Thomas J. Fitton  
President

Enclosures

# Judicial Watch, Inc.

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## FACSIMILE TRANSMISSION

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FIRM: State of Utah

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