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## Equal Protection Clause Arguments Strike Down State Internet Statute

2002-04-23

In the ongoing battle to limit state legislative efforts to regulate internet commerce, a federal court has now turned to a new weapon – the Equal Protection Clause of the [Fourteenth Amendment to the United States Constitution](#).

Previous efforts have focused on other aspects of the federal constitution, in particular the Dormant Commerce Clause Doctrine. This doctrine limits states from treating out-of-state companies (who often use the Internet to solicit orders and to market their goods and services) differently from in-state companies offering the same goods and services, as was discussed in our [July 24, 2000 Internet Alert](#). Indeed, this doctrine continues to be a popular means to prohibit such preferential treatment. See *Bolick v. Roberts*, Civ. Action No. 3:99CV755 (E.D. Va. March 29, 2002), which struck down a Virginia statute prohibiting out-of-state wine makers from shipping directly to consumers which in-state makers are allowed to do. However, the Dormant Commerce Clause Doctrine is not a weapon to attack state Internet regulatory statutes which do not draw lines on a geographic basis. Nonetheless, courts are becoming more and more sensitized to Internet issues, and more suspicious of state attempts to regulate activities simply because they are practiced over the Internet. A federal district court in Utah recently accepted just such an argument in striking down Utah's Ordination

by Internet Statute. In *Universal Life Church v. Utah*, 2002 WL 87560 (D. Utah) the court turned to the Equal Protection Clause of the [Fourteenth Amendment to the United States Constitution](#). The court concluded that clause prohibited states from treating activities done through the Internet or by mail differently from the same activities done by fax, telephone or in person. The Utah statute prohibited the licensing and ordination of church ministers over the Internet or by mail, and refused to allow ministers ordained in such a fashion to perform marriages which would be recognized by Utah. The Universal Life Church (“ULC”) permitted such ordinations, and one of its ministers in Utah sued the State of Utah, attacking the restriction. The court rebuffed the minister’s arguments that the statute violated the Free Exercise of Religion or Due Process Clauses. However, the court did strike down the statute under the Equal Protection Clause of the [Fourteenth Amendment to the United States Constitution](#). The court concluded that, if the Utah Legislature was concerned with the manner in which an individual is able to become a ULC minister, there is no rational basis for the differential treatment between (1) ministers who applied via the Internet and mail, and (2) those who applied via fax, telephone or in person. The same information – a name and address – is all that is required to become a minister in the ULC, regardless of the manner in which such information is received. The court concluded that the Legislature had relied on a classification whose relationship to a goal is so attenuated as to render the distinction arbitrary and irrational. While the ULC is headquartered in California, its geographic location outside of Utah was irrelevant to the Court’s equal protection analysis. This constitutional approach, therefore, can be a more direct way of attacking state Internet regulatory statutes. States must regulate activities in the same fashion, without regard to whether they are practiced telephonically, personally, electronically or through cyberspace. In light of the Universal Life Church case, state efforts to regulate the sale of cars or other products

over the Internet are likely to face more intense equal protection analysis, and may fall unless they treat all sellers equally.