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October 24, 2007

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WASHINGTON COUNTY

BY _____

The Honorable James L. Shumate
Fifth Judicial District Court
Washington County
220 North 200 East
St. George, Utah 84770

Re: *State v. Jeffs*, No. 061500526; in the
matter of Katie Baker

Dear Judge Shumate:

We are writing to urge you not to hold KUTV reporter Katie Baker in contempt of court for her unknowing and inadvertent violation of your Decorum Order prohibiting publication of identifying information of jurors in the *State v. Jeffs* matter.

Among the First Amendment's bedrock principles is the freedom of expression, including freedom from compelled speech. To require a citizen to speak in a particular manner goes against that long-standing principle — repeatedly upheld by the U.S. Supreme Court. *See, e.g., Wooley v. Maynard*, 430 U.S. 705 (1977) ("The right to speak and the right to refrain from speaking are complementary components of the broader concept of 'individual freedom of mind.'"), *West Virginia State Bd. Of Educ. v. Barnette*, 319 U.S. 624 (1943) (refusing to require schoolchildren to salute the American flag if their families' religious beliefs forbid it), *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334 (finding that citizens may not be required to place their names on political campaign literature).

The protection against compelled speech expressly extends to the media, the Supreme Court has held. In *Miami Herald Publishing Co. v. Tornillo*, the Court held that to require a newspaper to publish political candidates' comments was a violation of that publication's First Amendment rights to engage in the sort of reporting and public debate its editors — not the Court or any other outside party — saw fit. "The choice of material to go into a newspaper ... constitutes the exercise of editorial control and judgment. It has yet to be demonstrated how government regulation of this crucial process can be exercised consistent with First Amendment guarantees of a free press." 418 U.S. 241, 257 (1974).

Here, it is irrelevant whether Ms. Baker would be required to actually broadcast the story this Court has ordered her to produce. To require the production at all goes squarely against the First Amendment freedom from compelled expression our nation's jurisprudence has long supported.

The Honorable James L. Shumante
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Additionally, Ms. Baker has averred that she had no knowledge of the provision in the Court's Decorum Order pertaining to contact with prospective jurors. As she did not "willfully and knowingly" refuse to comply with that order, as required for a contempt charge under Utah law, Utah Code Ann. § 78-32-1-(5), this Court should not hold her in contempt.

Ms. Baker has admitted that she was in error for her broadcast, and she has apologized to the Court. To require her to produce a piece designated by the Court would be a grave violation of the First Amendment. We respectfully urge this Court to recognize that any contempt charge when Ms. Baker was not in willful or knowing violation of this Court's order would not only go against the First Amendment, but also Utah state law.

Respectfully,



Lucy A. Dalglish
Gregg P. Leslie
Corinna J. Zarek

cc: Mr. Jeffrey J. Hunt
Mr. Brock Belnap
Mr. Richard A. Wright
Mr. Walter Budgen

VIA FACSIMILE