The Environmental Law Center
at the American Tradition Institute

For Immediate Release – June 18, 2013
Contact: Craig Richardson, Executive Director, American Tradition Institute craig.r@atinstitute.org

RECENT MICHIGAN COURT CASE RULING REGARDING RENEWABLES HAS SIGNIFICANT IMPLICATIONS FOR ATI'S COLORADO SUIT, RENEWABLE MANDATES IN GENERAL

Washington, D.C. -- On June 7th, the U.S. Circuit Court of Appeals handed down a decision in a suit involving the Federal Energy Regulatory Commission (FERC) against the state of Michigan regarding a FERC plan to apportion costs for new power lines to transport wind power around the Great Lakes area. Michigan's 2008 Renewable Energy Standard (RES) law requires that only renewable energy derived from within Michigan are eligible to satisfy the state's requirement to use 10% of renewable energy sources by 2015, and the state argued that the FERC plan would require them to pay for expensive power lines designed to carry out of state renewable energy, namely wind.

In his decision, Judge Richard Posner noted that Michigan's renewable energy standard law that forbids out-of-state wind power from being credited toward a utility's RES requirement "trips over an insurmountable constitutional objection." In other words, portions of Michigan's RES are obviously unconstitutional. Judge Posner further explains, "Michigan cannot, without violating the commerce clause of Article I of the Constitution, discriminate against out-of-state renewable energy."

While the case specifically deals with Michigan's RES, the ruling has broader ramifications for RES laws across the country, and specifically could impact a Colorado case that the American Tradition Institute (ATI) is pursuing. In April 2011, ATI sued the State of Colorado and several officials over the constitutionality of the state's RES, which requires the state's major utilities (mainly Xcel Energy) to obtain 30 percent of their power generation from "renewable" sources by the year 2020. ATI claims that the Colorado RES discriminates against legal, safer, less costly, less polluting and more reliable in-state and out-of-state generators of electricity. This discrimination is forbidden by the Commerce Clause, which reserves the regulation of interstate commerce to the federal government.

"Colorado's response to our suit was not only to try to fight us in court, but once it became clear they would lose on the merits, they rushed to the legislature this spring to attempt to 'fix' their renewable energy standards," said Dr. David Schnare, Director of ATI's Environmental Law Center. "The truth is that Colorado knows its RES violated the commerce clause. ATI's arguments not only pushed the Colorado legislature to action, they presaged Judge Posner's arguments and clear and undeniable ruling that these RES's -- whether in Michigan, Colorado, or any of the other 30 states with similar laws -- are unconstitutional further add confidence that ATI will prevail in Colorado."

Schnare also notes that the decision in Michigan not only points to other states' RES's being found unconstitutional but also opens a healthy debate over wind power in general. "Judge Posner cleared the ground for the main assault on the RES concept -- that all state renewable mandates violate the dormant commerce clause," Schnare said. "RES cases like those in Michigan and Colorado will have the

net effect of putting wind on trial, not just at the state level but as a policy even at the federal level. These trials will be equivalent to a dozen house or senate hearings on why wind makes little sense, especially as they are not political processes but judicial ones that provides a firm platform for honest scientific debate, overseen by a neutral fact finder," he added.

Tom Tanton, ATI's Director of Science and Technology Assessment, sees a potential danger in the Michigan ruling. "There is no question that the courts are heading toward throwing out many of the elements of the state level renewable energy standards because they clearly violate the Commerce Clause," said Tanton. "Proponents of renewable energy mandates may instead push for a national RES, however. That would have a devastating impact on our economy, drive the cost of energy through the roof, and in the end do nothing to help the environment." he added.

The Colorado case is currently in federal district court in Colorado, and in early April 2013, the judge ruled on numerous discovery motions by ATI, Colorado, and outside parties. ATI is currently putting together a schedule for trial, and anticipates the case will be tried in early 2014. ATI's Environmental Law Institute is a non-profit advocacy organization that brought its case against Colorado because the renewable energy standard actually causes harm to the environment, does not protect public health, causes economic losses for labor and ratepayers and violates the Interstate Commerce Clause of the U.S. Constitution.

American Tradition Institute (ATI) is a public policy research and public interest litigation foundation advocating restoration of science and free-market principles on environmental issues, including air and water quality and regulation, responsible land use, natural resource management, energy development, property rights, and principles of stewardship. All supporting documents and images regarding the above-referenced litigation and findings may be accessed at www.atinstitute.org.

-30-