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Thomasenia P. Duncan, Esq.  
General Counsel  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20463

AOR 2009-27

**Re: Request for Advisory Opinion**

**VIA EMAIL**

Dear Ms. Duncan:

Pursuant to 2 U.S.C. § 473f and 11 C.F.R. § 112.1, America Future Fund Political Action (AFFPA), a federal political committee, by and through counsel, is requesting an advisory opinion on the questions set forth below. AFFPA wishes to distribute pre-recorded telephone calls (through the use of what is known as an “automatic dialing answering device,” or ADAD) as part of a nationwide program of political outreach.

AFFPA’s telephone calls will include content requiring them to be paid for with federal funds, and AFFPA understands that its calls will be, in all respects, subject to the requirements of the Federal Election Campaign Act, as amended (FECA). Specifically, AFFPA’s telephone calls will constitute a “telephone bank to the general public,” as that phrase is used in Federal Election Commission (FEC) regulations.<sup>1</sup> AFFPA’s telephone calls will also expressly advocate the election or defeat of one or more clearly identified candidates for Federal office, and/or solicit contributions to AFFPA. For all relevant purposes, AFFPA’s pre-recorded telephone calls will constitute “public communications.”<sup>2</sup> AFFPA’s proposed telephone calls will be developed and distributed independent of any federal candidate or party committee and will not be authorized by any federal candidate for purposes of FECA’s disclaimer requirements.

In order to comply with various federal requirements (described in more detail below), all of AFFPA’s pre-recorded telephone calls will follow this basic model:

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<sup>1</sup> See 11 C.F.R. § 100.28.

<sup>2</sup> See 11 C.F.R. § 100.26.

“I’m calling from American Future Fund Political Action. [*substantive message*] This call was paid for by American Future Fund Political Action, and was not authorized by any candidate or candidate’s committee. [*telephone number*].”

Many of the states in which AFFPA wishes to distribute pre-recorded telephone calls purport to place *additional* restrictions on the distribution of pre-recorded telephone calls. AFFPA requests an advisory opinion on the question of whether these additional state restrictions on pre-recorded telephone calls are preempted by FECA. Specifically:

- (1) Are state laws purporting to prohibit all pre-recorded telephone calls by federal political committees preempted by FECA?
- (2) Are state laws requiring prior consent, specifically through the use of a live operator, prior to delivery of a pre-recorded telephone call preempted by the Federal Election Campaign Act, as amended?
- (3) Are state laws purporting to prohibit federal political committees from engaging in fundraising via pre-recorded telephone calls preempted by FECA?
- (4) Are state laws purporting to require federal political committees to include additional disclaimers on pre-recorded telephone calls preempted by FECA?

### **Federal Law Applicable To Distribution of Pre-Recorded Telephone Calls**

Pre-recorded telephone calls distributed by a federal political committee are extensively regulated by a variety of provisions of FECA, including funding, disclaimer, and reporting requirements.<sup>3</sup>

FEC regulations require that all “public communications” made by a political committee must contain a prescribed disclaimer.<sup>4</sup> All pre-recorded telephone calls distributed by AFFPA will include a FEC-compliant disclaimer.

All funds disbursed by AFFPA in connection with these telephone calls will be reported as required on FEC Form 3X. 48-Hour and 24-Hour Schedule E Independent Expenditure reports will also be filed as required.

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<sup>3</sup> Certain political party committee phone banks are also subject to specific allocation rules. See 11 C.F.R. § 106.8.

<sup>4</sup> FEC regulations specify that a “telephone bank” is “more than 500 telephone calls of an identical or substantially similar nature [placed] within any 30-day period.” A “telephone bank to the general public” is deemed a “public communication.” 11 C.F.R. §§ 100.26, 100.28. For purposes of this Advisory Opinion Request, I represent that all AFFPA’s proposed pre-recorded telephone calls constitute “general public political advertising,” and that the concerns regarding the permissible scope of 2 U.S.C. § 441d raised by three Commissioners in MUR 5835 (DCCC) are not implicated here.

AFFPA will abide by all applicable funding requirements set forth in FECA and parallel FEC regulations.

AFFPA's proposed telephone calls will also conform to all applicable requirements enforced by the Federal Communications Commission (FCC), which has jurisdiction over the Telephone Consumer Protection Act.<sup>5</sup> Specifically, FCC regulations require all pre-recorded telephone calls to include a message at the beginning of the call indicating "the identity of the entity responsible for initiating the call."<sup>6</sup> Second, pre-recorded telephone calls must include a telephone number, other than the number of the ADAD.<sup>7</sup> Third, pre-recorded calls (generally) may not be placed to a cellular telephone.<sup>8</sup>

To summarize, FECA in no way restricts a federal political committee's basic ability to distribute pre-recorded telephone calls, but those calls are subject to federal funding, disclaimer, and reporting requirements. FCC requirements impose two additional disclaimer requirements on pre-recorded telephone calls, and also prohibit pre-recorded calls from being made to cell phones. (AFFPA intends to comply fully with these FCC requirements, and this advisory opinion request should not be construed as a request that the Commission in any way opine on any federal statute or regulation over which the FEC has no jurisdiction.)

### **Federal Preemption of State Laws**

With one exception for state and local party building funds, FECA provides that "the provisions of this Act, and of rules prescribed under this Act, supersede and preempt any provision of State law with respect to election to Federal office."<sup>9</sup> FEC regulations first adopted in 1980 further specify that "Federal law supersedes State law concerning the — . . . (2) Disclosure of receipts and expenditures by Federal candidates and political committees; and (3) Limitation on contributions and expenditures regarding Federal candidates and political committees."<sup>10</sup> These regulations also provide that the following areas of state election law are not superseded by FECA's provisions: the manner of qualifying as a candidate or political party organization; dates and places of elections; voter registration; prohibition of false registration, voting fraud, theft of ballots, and

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<sup>5</sup> The Federal Trade Commission (FTC) has jurisdiction over the Telemarketing and Consumer Fraud Abuse Prevention Act. AFFPA's proposed calls will be non-commercial in nature, and will not constitute "telemarketing" for FTC purposes.

<sup>6</sup> 47 C.F.R. § 64.1200(b)(1).

<sup>7</sup> 47 C.F.R. § 64.1200(b)(2).

<sup>8</sup> 47 CFR § 64.1200(a)(1)(iii).

<sup>9</sup> 2 U.S.C. § 453(a).

<sup>10</sup> 11 C.F.R. § 108.7(b)(3).

similar offenses; candidate's personal financial disclosure; and laws regarding state and local political party building funds.<sup>11</sup>

In August 2009, the FEC explained the preemption standard as follows:

The Act states that its provisions and the rules prescribed thereunder “supersede and preempt any provision of State law with respect to election to Federal office.” 2 U.S.C. 453; *see also* 11 CFR 108.7(a). The legislative history indicates that Congress intended “to make certain that the Federal law is construed to occupy the field with respect to elections to Federal office and that the Federal law will be the sole authority under which such elections will be regulated.” *H.R. Rep. No. 93-1239*, 93d Cong., 2d Sess. 10 (1974). According to the Conference Committee Report on the 1974 Amendments to the Act, “Federal law occupies the field with respect to criminal sanctions relating to limitations on campaign expenditures, the sources of campaign funds used in Federal races, the conduct of Federal campaigns, and similar offenses, but does not affect the States’ rights” as to other areas such as voter fraud and ballot theft. *H.R. Rep. No. 93-1438*, 93d Cong., 2d Sess. 69 (1974). The Conference Committee Report also states that Federal law occupies the field with respect to reporting and disclosure of political contributions to, and expenditures by, Federal candidates and political committees, but does not affect State laws as to the manner of qualifying as a candidate, or the dates and places of elections. *Id.* at 100-101.

In promulgating 11 CFR 108.7, the Commission stated specifically that Federal law supersedes State law with respect to the organization and registration of political committees supporting Federal candidates, disclosure of receipts and expenditures by Federal candidates and political committees, and the limitations on contributions and expenditures regarding Federal candidates and political committees. *Explanation and Justification of the Disclosure Regulations*, House Document No. 95-44, at 51 (1977). Section 108.7 also specifies that the Act does not supersede State laws relating to the manner of qualifying as a candidate or political party organization, dates and places of elections, voter registration, voting fraud, ballot theft, candidates’ personal financial disclosures, or funds used for the purchase or construction of State or local party office building. 11 CFR 108.7(c). **The Commission has previously stated that the legislative history of 2 U.S.C. 453 shows, “the central aim of the clause is to provide a comprehensive, uniform Federal scheme that is the sole source of regulation of campaign financing . . . for election to Federal office.”** Advisory Opinion 1988-21 (Wieder).<sup>12</sup>

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<sup>11</sup> 11 C.F.R. § 108.7(c).

<sup>12</sup> Advisory Opinion 2009-21 (West Virginia Secretary of State) (emphasis added). The reference to “criminal sanctions” in the legislative history was previously explained as being “of only limited significance.” *See* Advisory Opinion 2002-2 fn.2 (Gally).

Since the agency's earliest days, the FEC has issued Advisory Opinions concluding that various provisions of state laws purporting to regulate federal election campaigns and activities are preempted by FECA.<sup>13</sup> Federal courts have also issued rulings on the matter that are entirely consistent with, and offer support for, the FEC's traditional approach to the subject.<sup>14</sup>

### **Specific Questions Presented**

***(1) Are state laws purporting to prohibit all pre-recorded telephone calls by federal political committees preempted by the Federal Election Campaign Act, as amended?***

Both Arkansas<sup>15</sup> and Wyoming<sup>16</sup> prohibit all pre-recorded telephone calls made by political entities. With respect to federal political committees, each of these prohibitions is clearly a "[l]imitation on . . . expenditures regarding Federal candidates and political committees." 11 C.F.R. § 108.7(b)(3). These prohibitions do not occupy

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<sup>13</sup> See, e.g., Advisory Opinion 2009-21 (West Virginia Secretary of State), 2002-2 (Gally), 2000-24 (Alaska Democratic Party), 2000-23 (New York State Democratic Committee), 1999-12 (Campaign For Working Families), 1998-8 (Iowa Democratic Party), 1998-7 (Pennsylvania Democratic Party), 1995-48 (Day), 1995-41 (DCCC), 1995-10 (Helms), 1994-2 (Berglin), 1993-25 (Welch), 1993-21 (Ohio Republican Party), 1993-17 (Massachusetts Democratic Party), 1993-14 (Rhode Island Democratic State Committee), 1993-9 (Michigan Republican State Committee), 1993-8 (Duncan), 1991-22 (Durenburger), 1992-43 (Erwin), 1991-5 (Tennessee Democratic Party), 1990-6 (Pacific Power and Light), 1989-27 (Bryan), 1989-25 (New Hampshire Republican Party), 1989-12 (Feigenbaum), 1988-21 (Wieder), 1986-27 (Alaska Labor Independent Voters), 1986-11 (Mueller), 1982-29 (United Telecom Political Action Committee), 1981-27 (Archer), 1980-36 (Miller), 1978-54 (Democratic Party of Alabama), 1978-24 (Sonneland), 1976-10 (Snyder), 1975-14 (Massachusetts Office of Campaign and Political Finance).

<sup>14</sup> See, e.g., *Teper v. Miller*, 82 F.3d 989 (11th Cir. 1996) (finding state legislative session fundraising prohibition preempted); *Bunning v. Commonwealth of Kentucky*, 42 F.3d 1008 (6th Cir. 1994) (finding state's attempt to investigate poll preempted), *Weber v. Heaney*, 793 F.Supp. 1438 (D.Minn. 1992) aff'd 995 F.2d 872 (8th Cir. 1993) (finding state public funding law preempted). But see *Seltzer v. New York State Democratic Committee*, No. 00-CV-4077 (E.D.N.Y. 2000). The Commission expressed its disagreement with *Seltzer* in Advisory Opinion 2000-23, at footnote 2, and noted that *Seltzer* was inconsistent with other courts' rulings.

<sup>15</sup> Ark. Code § 5-63-204(a)(1) ("It is unlawful for any person to use a telephone for the purpose of offering any goods or services for sale, or for conveying information regarding any goods or services for the purpose of soliciting the sale or purchase of the goods or services, or for soliciting information, gathering data, or for any other purpose in connection with a political campaign when the use involves an automated system for the selection and dialing of telephone numbers and the playing of recorded messages when a message is completed to the called number" (emphasis added).).

<sup>16</sup> Wyo. Stat. § 6-6-104(a) ("No person shall use an automated telephone system or device for the selection and dialing of telephone numbers and playing of recorded messages if a message is completed to the dialed number, for purposes of: (i) Offering any goods or services for sale; (ii) Conveying information on goods or services in soliciting sales or purchases; (iii) Soliciting information; (iv) Gathering data and statistics; or (v) Promoting or any other use related to a political campaign" (emphasis added).).

the areas reserved to State regulation that are set forth in FECA's legislative history and FEC regulations, namely: the manner of qualifying as a candidate or political party organization; dates and places of elections; voter registration; prohibition of false registration, voting fraud, theft of ballots, and similar offenses; candidate's personal financial disclosure; and laws regarding state and local political party building funds. Accordingly, both prohibitions must be preempted by FECA.

In the most recent opinion on the matter of preemption by FECA, Advisory Opinion 2009-21, the Commission determined that a West Virginia statute prohibiting "any candidate committee, political action committee or political party committee," including federal committees, from expending funds for the purpose of paying for so-called "push polls." The Commission explained:

With respect to Federal elections, the West Virginia statute at issue here on its face limits expenditures by Federal political committees (including candidate committees) – one of the areas regulated by the Act and Commission regulations. . . . Moreover, with respect to Federal elections, the West Virginia statute does not address any of the areas that Congress intended to leave exclusively to the jurisdiction of the States (e.g., voter fraud, ballot theft, ballot qualifications, or dates and places of elections). . . . Accordingly, with respect to Federal elections, the West Virginia statute is expressly preempted by Federal law.<sup>17</sup>

Precisely the same conclusions can be made with respect to the prohibitions on pre-recorded calls found in Arkansas and Wyoming law. Furthermore, the Commission observed that:

**The Act and Commission regulations establish that limitations and restrictions on Federal candidate expenditures is an area to be regulated solely by Federal law.** The Act prescribes permissible and prohibited expenditures by Federal candidates. *See, e.g.,* 2 U.S.C. 431(9), 439a, 441a(j). Commission regulations implement these statutory provisions governing expenditures by Federal candidates, including expenditures for polling expenses. *See, e.g.,* 11 CFR 100.131-155, 106.2, 106.4, 113.2, 116.2, 116.11, 116.12. Specifically, with respect to this request, the West Virginia statute, if applied to Federal candidates, would impede those candidates' ability to make payment of polling expenses that are governed by the Act and Commission regulations. Under the Act's preemption clause, only Federal law could limit the ability of a Federal candidate to make expenditures for polling. 2 U.S.C. 453.

Similarly, in Advisory Opinion 2000-23 (New York State Democratic Committee), the Commission examined a state law that restricted the ability of a state party committee to make certain expenditures in support of candidates. The Commission concluded that because the statute limited expenditures regarding Federal candidates (rather than regulating "those areas defined as interests of the

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<sup>17</sup> Advisory Opinion 2009-21 (West Virginia Secretary of State).

State”), the New York law was preempted by the Act and Commission regulations.

The Commission concludes, therefore, that because W.Va. Code 3-8-9 limits expenditures by candidates and their principal campaign that are otherwise lawful under the Act and Commission regulations, the West Virginia statute is preempted as to Federal candidates and their principal campaign committees . . . by the Act and Commission regulations.<sup>18</sup>

For exactly the same reasons, the Commission should conclude that only Federal law may limit the ability of a federal political committee to make expenditures for pre-recorded telephone calls. Because the Arkansas and Wyoming statutes limit expenditures by political committees that are otherwise lawful under the Act and Commission regulations, the Arkansas and Wyoming statutes are preempted by FECA and FEC regulations, insofar as those state statutes apply to federal political committees.<sup>19</sup>

***(2) Are state laws requiring prior consent, specifically through the use of a live operator, prior to delivery of a pre-recorded telephone call preempted by the Federal Election Campaign Act, as amended?***

Several states permit political entities to make pre-recorded telephone calls, but only if the call recipient’s consent is first obtained. This consent is most commonly obtained through the use of a live operator who introduces the call and asks the call recipient for permission to play a pre-recorded message.

For example, North Dakota law provides that “[a] caller may not use or connect to a telephone line an automatic dialing-announcing device unless the subscriber has knowingly requested, consented to, permitted, or authorized receipt of the message or *the*

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<sup>18</sup> Advisory Opinion 2009-21 (West Virginia Secretary of State) (emphasis added).

<sup>19</sup> It should be noted that in Advisory Opinion 1980-47, the Commission determined that a Maryland statute that “prohibits the payment by a candidate or his committee of monies for ‘walk around services’ or any other services as a poll worker or distributor of sample ballots performed on the day of election.” The majority’s Advisory Opinion is drawn almost verbatim from the Office of General Counsel’s draft, which concluded that the Maryland statute was preempted. See Chairman Tiernan’s dissenting opinion, incorporating OGC’s draft opinion in its entirety. However, the majority omitted a paragraph recounting legislative history and replaced OGC’s concluding paragraph with a single sentence reaching the *opposite* conclusion: “The Commission concludes that the Maryland provisions are not preempted by the Act.” Chairman Tiernan was flummoxed, noting in a dissent the majority’s “naked conclusion” that was “[s]tripped of any supportive rationale, decorative analysis, or even cosmetic explanation.” Chairman Tiernan agreed with the Office of General Counsel’s draft that concluded, “Because the provisions of [the Maryland statute] are, in effect, limitations on expenditures, the Commission concludes that these provisions are preempted by the Act insofar as they might apply to the Committee’s proposed payments for election day services . . .” Nevertheless, the conclusion reached by the majority in Advisory Opinion 1980-47 appears to be inconsistent with the Commission’s conclusion in Advisory Opinion 2009-21, in which the Commission concluded that “limitations and restrictions on Federal candidate expenditures is an area to be regulated solely by Federal law.”

*message is immediately preceded by a live operator who obtains the subscriber's consent before the message is delivered.”*<sup>20</sup>

California<sup>21</sup>, Indiana<sup>22</sup>, Minnesota<sup>23</sup>, Mississippi<sup>24</sup>, Montana<sup>25</sup>, New Jersey<sup>26</sup>, and South Carolina<sup>27</sup> all have similar laws. In addition, North Carolina<sup>28</sup> requires prior consent for pre-recorded calls that make solicitations, and Tennessee<sup>29</sup> requires prior consent for pre-recorded calls that conduct polls or otherwise solicit information.

As applied to federal political committees, these “prior consent” laws purport to place limits on federal political committees’ ability to make federal expenditures. Due to the additional expense involved in using a live operator, the practical effect of these laws, in many instances, is no different than if the state prohibited such calls altogether (as Arkansas and Wyoming do). For the same reasons set forth above in the analysis to Question #1, the Commission should conclude with respect to Question #2 that only Federal law could limit the ability of a federal political committee to make expenditures for pre-recorded telephone calls, and because these “prior consent” laws limit expenditures by political committees that are otherwise lawful under FECA and FEC regulations, these statutes are preempted as to federal political committees.

***(3) Are state laws purporting to prohibit federal political committees from engaging in fundraising via pre-recorded telephone calls preempted by the Federal Election Campaign Act, as amended?***

Iowa law contains a general prohibition against the use of ADAD equipment, along with several exceptions.<sup>30</sup> One of those exceptions applies to “Calls made with ADAD equipment by a nonprofit organization or by an individual using the calls other than for commercial profit-making purposes or fund-raising, if the calls do not involve

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<sup>20</sup> N.D. Code § 51-28-02 (emphasis added).

<sup>21</sup> Cal. Pub. Util. Code § 2874.

<sup>22</sup> Ind. Code § 24-5-14-5(b).

<sup>23</sup> Minn. Stat. § 325E.27.

<sup>24</sup> MS Code § 77-3-455.

<sup>25</sup> Mont. Code § 45-8-216.

<sup>26</sup> N.J. Stat. § 48:17-28.

<sup>27</sup> S.C. Code § 16-17-446(A).

<sup>28</sup> N.C. Gen. Stat. § 75-104(b)(2).

<sup>29</sup> Tenn. Code § 47-18-1502(a).

<sup>30</sup> Iowa Code § 476.57(2)(a).

the advertisement or offering for sale, lease, or rental of goods, services, or property.”<sup>31</sup> This provision can be read to authorize a federal political committee to make pre-recorded telephone calls in Iowa, so long as those calls are not made for fundraising purposes. This is a restriction on the means by which a federal political committee may solicit contributions.

With respect to federal political committees, Iowa’s restriction is clearly a “[l]imitation on contributions . . . regarding Federal candidates and political committees.” 11 C.F.R. § 108.7(b)(3). This prohibition does not occupy any of the areas reserved to State regulation set forth in FECA’s legislative history and FEC regulations, namely: the manner of qualifying as a candidate or political party organization; dates and places of elections; voter registration; prohibition of false registration, voting fraud, theft of ballots, and similar offenses; candidate’s personal financial disclosure; and laws regarding state and local political party building funds. Accordingly, the restriction must be preempted by FECA.

The Commission has consistently held that state laws placing additional restrictions on contributions and the manner in which federal committees may raise funds are preempted by FECA.

In 1996, the FEC determined that a Georgia statute purporting to prohibit a sitting member of the State Senate from raising funds for his U.S. Senate campaign committee during a state legislative session was preempted by FECA. *See Advisory Opinion 1995-48 (Day)*. Georgia’s law provided that “No member of the General Assembly or that member’s campaign committee or a public officer elected statewide or campaign committee of such public officer shall accept a contribution during a legislative session.”<sup>32</sup> The FEC explained that Georgia’s law:

[P]laces restrictions on the time period when contributions may be made to Federal candidates, an area to be regulated solely by Federal law. . . . The [Federal Election Campaign] Act contains no provisions similarly limiting contributions made to Federal candidates during a State or Federal legislative session. Under the broad preemptive powers of the Act, only Federal law could limit the time during which a contribution may be made to the Federal election campaign of a State legislator.<sup>33</sup>

Shortly after the FEC issued *Advisory Opinion 1995-48*, a federal appeals court reached the same conclusion regarding federal preemption of the Georgia law. *See Teper v. Miller*, 82 F.3d 989 (11<sup>th</sup> Cir. 1996).<sup>34</sup>

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<sup>31</sup> Iowa Code § 476.57(2)(b)(1).

<sup>32</sup> Ga. Code § 21-5-35(a).

<sup>33</sup> *Advisory Opinion 1995-48 (Day)*.

<sup>34</sup> Similarly, the FEC held in 1993 that Washington State’s legislative session fundraising restriction was preempted. *Advisory Opinion 1992-43* involved a provision of a Washington state initiative (Section 11 of Initiative 134) that provided:

The Commission has also found that state laws placing restrictions on the ability of lobbyists to solicit contributions for state legislators who are also federal candidates are preempted. For example, in Advisory Opinion 2002-2, a regulated lobbyist in Maryland wished to raise funds for the federal campaign of then State Senator Christopher Van Hollen, Jr. Maryland law, however, prohibited state lobbyists from raising funds for members of Maryland's General Assembly. The Commission found Maryland's prohibition preempted to the extent it restricted the lobbyist's activities on behalf of Federal Candidate Van Hollen.

In similar matters, the Commission found that state laws prohibiting lobbyists from making contributions to state legislators who were also federal candidates were preempted. *See, e.g.*, Advisory Opinion 1994-2 (Berglin), 1993-25 (Welch), 1988-21 (Wieder)

***(4) Are state laws purporting to require federal political committees to include additional disclosures in pre-recorded telephone calls preempted by the Federal Election Campaign Act, as amended?***

Certain states purport to require federal political committees to include disclosures not otherwise required by FECA when placing pre-recorded telephone calls.

For instance, New York law provides "Whenever telephone calls are placed through the use of an automatic dialing announcing device, such device shall do all of the following: (a) state at the beginning of the call the nature of the call and the name of the person or on whose behalf the message is being transmitted and at the end of such message the address, and telephone number of the person on whose behalf the message is transmitted, provided such disclosures are not otherwise prohibited or restricted by any federal, state or local law; . . . ."<sup>35</sup> Thus, in order to comply with New York law, AFFPA's federally-compliant "basic model" pre-recorded telephone call would have to be modified to include a statement of "the nature of the call" at the beginning, and AFFPA's physical address would have to be added to the end of the call.

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During the period beginning on the thirtieth day before the date a regular legislative session convenes and continuing thirty days past the date of final adjournment, and during the period beginning on the date a special legislative session convenes and continuing through the date that session adjourns, no state official or a person employed by or acting on behalf of a state official or state legislator may solicit or accept contributions to a public office fund, to a candidate or authorized committee, or to retire a campaign debt.

A state senator wished to raise funds during Washington's legislative session to retire a federal campaign debt that remained from a losing Congressional bid. The FEC concluded that "Insofar as section 11 refers to the conduct of a state legislator and his authorized Federal campaign committees, the Commission concludes that the Act preempts the State's application of section 11." Advisory Opinion 1992-43 (Erwin).

<sup>35</sup> NY CLS Gen. Bus. §399-p(3).

Pennsylvania law provides that a public utility may not allow a pre-recorded telephone call to be made “over its network” unless, among other options, “The recorded message shall begin with, or be preceded by, a statement announcing the name, address and call-back telephone number of the calling party, the nature and purpose of the ensuing message, and the fact the message is a recording.”<sup>36</sup>

Some states that require “prior consent” (see Question #2 above) also prescribe certain disclosure requirements for the live operators that introduce pre-recorded messages. California law, for instance, provides that “Whenever telephone calls are placed through the use of an automatic dialing announcing device, the device may be operated only after an unrecorded, natural voice announcement has been made to the person called by the person calling. *The announcement shall do all of the following: (1) State the nature of the call and the name, address, and telephone number of the business or organization being represented, if any*” (emphasis added).<sup>37</sup> Mississippi has a substantially similar requirement.<sup>38</sup>

The FEC has consistently found that state laws requiring disclosures that go beyond what is required by FECA and FEC regulations, or state laws requiring that federal candidates use certain language in their communications, are preempted by federal law. Such laws purport to regulate the “[d]isclosure of . . . expenditures by Federal candidates and political committees,” which FEC regulations explicitly state are laws that must be preempted by Federal law. Furthermore, these disclosure requirements do not occupy any of the areas reserved for state regulation.

For example, in Advisory Opinion 1986-11, the Commission determined that an Ohio law requiring a federal candidate to include either the word “elect” or “for” in her campaign logo was preempted. In Advisory Opinion 1981-27, the Commission determined that a Houston, Texas ordinance requiring political advertisements to include specific language regarding the city’s anti-littering regulations was preempted. The Commission noted that “[t]he ordinance’s requirement that the ‘warning’ be affixed to all political advertising materials in Houston, Texas exceeds the Act’s disclosure requirements” and found the “excessive mandate” was preempted. In Advisory Opinion 1980-36, the Commission held that a provision of Ohio law requiring that political communications contain the name and address of the sponsoring organization’s chairman or secretary (or other person responsible for the communication) was preempted by FECA. Finally, in Advisory Opinion 1978-24, the Commission determined that a Washington statute requiring all campaign advertisements to disclose party affiliation was preempted by FECA. This opinion indicated that the Commission considered the Washington requirement to interfere with “the conduct of Federal campaigns,” as that phrase was used in the legislative history cited above.

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<sup>36</sup> 52 Pa. Code § 63.60.

<sup>37</sup> Cal. Pub. Util. Code § 2874.

<sup>38</sup> MS Code § 77-3-455.

The additional disclosures required by the statutes noted above are materially indistinguishable from the additional disclosures previously held to be preempted in Advisory Opinions 1986-11, 1981-27, 1980-36, and 1978-24. Accordingly, the Commission should find these laws preempted by FECA insofar as they apply to a federal political committee's pre-recorded telephone calls.

### **Conclusion**

The Commission has explained in the past that "the central aim" of 2 U.S.C. § 453 "is to provide a comprehensive, uniform Federal scheme that is the sole source of regulation of campaign financing . . . for election to Federal office" and referred to "the congressional aim of national uniformity." Advisory Opinion 1988-21 (Wieder). When it comes to federal political committees distributing pre-recorded telephone calls, the patchwork of state laws described above purporting to regulate these calls results in anything but "national uniformity." On behalf of AFFPA, I hereby request an advisory opinion from the FEC on the questions presented above.

Please do not hesitate to contact me if you have additional questions about this request.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jason Torchinsky', with a long horizontal flourish extending to the right.

Jason Torchinsky

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October 21, 2009

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General Counsel  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20463

**Re: Request for Advisory Opinion; Additional Submission**

**VIA E-MAIL**

Dear Ms. Duncan:

On October 13, 2009, America Future Fund Political Action (AFFPA), by and through counsel, submitted a request for an advisory opinion regarding the applicability of various state laws to its proposed nationwide program of political outreach to be conducted by pre-recorded telephone calls.

On October 21, 2009, I was contacted by an attorney in the Office of General Counsel regarding this request, and was informed that it was necessary to provide the specific statutory language for each state law cited in AFFPA's advisory opinion request. That language is included herein.

Additionally, I would like to confirm that for each of the four questions posed in AFFPA's advisory opinion request, AFFPA is only asking the Federal Election Commission (FEC) to consider the state statutes and provisions specifically referenced in that request.

**Additional Information**

Question #1 asks the FEC to consider laws in Arkansas and Wyoming. The statutory language was provided in footnotes 15 and 16, respectively, of AFFPA's advisory opinion request of October 13, 2009.

Question #2 asks the FEC to consider laws in North Dakota, California, Indiana, Minnesota, Mississippi, Montana, New Jersey, South Carolina, North Carolina, and Tennessee. The statutory language that AFFPA wishes the FEC to consider is as follows:

- **North Dakota.** North Dakota's statutory language was provided in AFFPA's advisory opinion request of October 13, 2009.

- **California.** Cal. Pub. Util. Code § 2874:

(a) Whenever telephone calls are placed through the use of an automatic dialing-announcing device, the device may be operated only after an unrecorded, natural voice announcement has been made to the person called by the person calling. The announcement shall do all of the following:

(1) State the nature of the call and the name, address, and telephone number of the business or organization being represented, if any.

(2) Inquire as to whether the person called consents to hear the prerecorded message of the person calling.

- **Indiana.** Ind. Code § 24-5-14-5:

(b) A caller may not use or connect to a telephone line an automatic dialing-announcing device unless:

(1) The subscriber has knowingly or voluntarily requested, consented to, permitted, or authorized receipt of the message; or

(2) The message is immediately preceded by a live operator who obtains the subscriber's consent before the message is delivered.

- **Minnesota.** Minn. Stat. § 325E.27:

A caller shall not use or connect to a telephone line an automatic dialing-announcing device unless: (1) the subscriber has knowingly or voluntarily requested, consented to, permitted, or authorized receipt of the message; or (2) the message is immediately preceded by a live operator who obtains the subscriber's consent before the message is delivered.

- **Mississippi.** MS Code § 77-3-455:

(1) Automatic dialing-announcing devices may be used to place calls over telephone lines only pursuant to a prior agreement between the persons involved, by which the person called has agreed that he or she consents to receive such calls from the person calling, or as specified in subsection (2) of this section.

(2) Whenever telephone calls are placed through the use of an automatic dialing-announcing device, such device shall be operated by a person who shall do all of the following:

(a) State the nature of the call and the name, address and telephone number of the business or organization being represented, if any.

(b) Inquire whether the person called consents to hear the prerecorded message of the person calling.

(c) Disconnect the automatic dialing-announcing device from the telephone line upon the termination of the call by either the person calling or the person called.

- **Montana. Mont. Code § 45-8-216:**

(1) A person may not use an automated telephone system, device, or facsimile machine for the selection and dialing of telephone numbers and playing of recorded messages if a message is completed to the dialed number for the purpose of:

(a) offering goods or services for sale;

(b) conveying information on goods or services in soliciting sales or purchases;

(c) soliciting information;

(d) gathering data or statistics; or

(e) promoting a political campaign or any use related to a political campaign.

(2) This section does not prohibit the use of an automated telephone system, device, or facsimile machine described under subsection (1) for purposes of informing purchasers of the receipt, availability for delivery, delay in delivery, or other pertinent information on the status of any purchased goods or services, of responding to an inquiry initiated by any person, or of providing any other pertinent information when there is a preexisting business relationship. This section does not prohibit the use of an automated telephone system or device if the permission of the called party is obtained by a live operator before the recorded message is delivered.

- **New Jersey. N.J. Stat. § 48:17-28:**

A caller within the State shall not use a telephone or telephone line to contact a subscriber within the State to deliver a recorded message other than for emergency purposes, unless the recorded message is introduced by an operator who shall obtain the subscriber's consent before playing the recorded message, or unless a prior or current relationship exists between the caller and the subscriber.

- **South Carolina. S.C. Code § 16-17-446:**

(A) "Adad" means an automatically dialed announcing device which delivers a recorded message without assistance by a live operator for the purpose of making an unsolicited consumer telephone call as defined in Section 16-17-445(A)(3). Adad calls include automatically announced calls of a political nature including, but not limited to, calls relating to political campaigns.

(B) Adad calls are prohibited except:

(1) in response to an express request of the person called;

(2) when primarily connected with an existing debt or contract, payment or performance of which has not been completed at the time of the call;

(3) in response to a person with whom the telephone solicitor has an existing business relationship or has had a previous business relationship.

- **North Carolina. N.C. Gen. Stat. § 75-104:**

(a) Except as provided in this section, no person may use an automatic dialing and recorded message player to make an unsolicited telephone call.

(b) Notwithstanding subsection (a) of this section, a person may use an automatic dialing and recorded message player to make an unsolicited telephone call only under one or more of the following circumstances:

(1) All of the following are satisfied:

a. The person making the call is any of the following:

1. A tax-exempt charitable or civic organization.

2. A political party or political candidate.

3. A governmental official.

4. An opinion polling organization, radio station, television station, cable television company, or broadcast rating service conducting a public opinion poll.

b. No part of the call is used to make a telephone solicitation.

c. The person making the call clearly identifies the person's name and contact information and the nature of the unsolicited telephone call.

(2) Prior to the playing of the recorded message, a live operator complies with

G.S. 75-102(c), states the nature and length in minutes of the recorded message, and asks for and receives prior approval to play the recorded message from the person receiving the call.

- **Tennessee. Tenn. Code § 47-18-1502:**

(a) It is unlawful for any person to use, to employ or direct another person to use, or to contract for the use of ADAD equipment for the purpose of advertising or offering for sale, lease, rental or as a gift any goods, services or property, either real or personal, primarily for personal, family or household use or for the purpose of conducting polls or soliciting information where:

(1) Consent is not received prior to the initiation of the calls as specified in subsection (b);

[\*\*\*]

(b) (1) A person may give consent to a call made with ADAD equipment when a live operator introduces the call and states an intent to play a recorded message. Any such consent shall apply only to a particular call and shall not constitute prior consent to receive further calls through the use of such ADAD equipment.

Question #3 asks the FEC to consider an Iowa law. That language appears below:

Iowa Code § 476.57:

1. *Definition.* As used in this section, "ADAD equipment" means automatic dialing-announcing device equipment which is a device or system of devices used, either alone or in conjunction with other equipment, for the purpose of automatically selecting or dialing telephone numbers without the use of a live operator to disseminate prerecorded messages to the numbers selected or dialed.

2. *Prohibition.*

a. Except as provided in paragraph "b", a person shall not use, employ, or direct another person to use, or contract for the use of ADAD equipment.

b. Except for ADAD equipment which randomly or sequentially selects the telephone numbers for calling, the prohibition in paragraph "a" does not apply to any of the following:

(1) Calls made with ADAD equipment by a nonprofit organization or by an individual using the calls other than for commercial profit-making purposes or fund-raising, if the calls do not involve the advertisement or offering for sale, lease, or rental of goods, services, or property.

Question #4 asks the FEC to consider laws in New York, Pennsylvania, California, and Mississippi.

- New York's, Pennsylvania's, and California's statutory language was provided in AFFPA's advisory opinion request of October 13, 2009.
- Mississippi's statutory language follows:

**MS Code § 77-3-455:**

**(1) Automatic dialing-announcing devices may be used to place calls over telephone lines only pursuant to a prior agreement between the persons involved, by which the person called has agreed that he or she consents to receive such calls from the person calling, or as specified in subsection (2) of this section.**

**(2) Whenever telephone calls are placed through the use of an automatic dialing-announcing device, such device shall be operated by a person who shall do all of the following:**

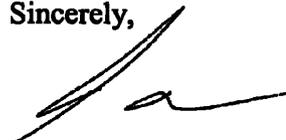
**(a) State the nature of the call and the name, address and telephone number of the business or organization being represented, if any.**

**(b) Inquire whether the person called consents to hear the prerecorded message of the person calling.**

**(c) Disconnect the automatic dialing-announcing device from the telephone line upon the termination of the call by either the person calling or the person called.**

Please feel free to contact me if you have any additional questions about this request.

Sincerely,



Jason Torchinsky

2009 OCT 29 PM 12: 02

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October 29, 2009

Thomasenia P. Duncan, Esq.  
General Counsel  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20463

**Re: Request for Advisory Opinion; Second Additional Submission**

**VIA E-MAIL**

Dear Ms. Duncan:

On October 13, 2009, America Future Fund Political Action (AFFPA), by and through counsel, submitted a request for an advisory opinion regarding the applicability of various state laws to its proposed nationwide program of political outreach to be conducted by pre-recorded telephone calls.

On October 21, 2009, I was contacted by an attorney in the Office of General Counsel (OGC) regarding this request, and was informed that it was necessary to provide the specific statutory language for each state law cited in AFFPA's advisory opinion request. That language was submitted on October 21.

On October 28, 2009, in a discussion with attorneys in OGC, Michael Bayes, also of this firm, was informed that OGC needed any information I had regarding whether specific states had taken the position that their robocall statutes were applicable to federal political committees.

Where I have specific information indicating that a state has applied its automated telephone call restrictions against a federal political committee, I have included that information. In some states, I am unaware of any such actions. This does not, however, mean that a state has concluded that its restrictions are not applicable to federal political committees. The absence of such information may simply indicate that no one has filed a complaint, that an enforcement agency has chosen not to pursue a complaint, that private out-of-court settlements may have been reached, or that the threat of enforcement has led federal political committees to comply with state law. Furthermore, the fact that *some* states have indicated that their statutes apply to federal political committees forces AFFPA to proceed cautiously with respect to *other* states with similar statutes. (In fact, the Congressional Research Service noted in a February 7, 2008, report, *Automated Political Telephone Calls ("Robo Calls") in Federal Campaigns: Overview*

*and Policy Options*, that “approximately 20 states reportedly restrict or ban such calls, or are attempting to do so.”)

Additionally, OGC requested additional information regarding whether exceptions existed in state statutes that our client felt it did not, or could not, satisfy. Each state’s statutory language regarding exemptions is included in the attachments, along with a statement of whether AFFPA believes it can satisfy those exemptions.

Please feel free to contact me if you have any additional questions about this request.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jason Torchinsky', with a long horizontal flourish extending to the right.

Jason Torchinsky

**APPLICABILITY OF STATE STATUTES TO FEDERAL POLITICAL COMMITTEES  
AND AVAILABLE EXEMPTIONS**

**ARKANSAS**

**Ark. Code § 5-63-204. Automated telephone solicitation.**

**(a) (1)** It is unlawful for any person to use a telephone for the purpose of offering any goods or services for sale, or for conveying information regarding any goods or services for the purpose of soliciting the sale or purchase of the goods or services, or for soliciting information, gathering data, or for any other purpose in connection with a political campaign when the use involves an automated system for the selection and dialing of telephone numbers and the playing of recorded messages when a message is completed to the called number.

**(2)** However, nothing in this section prohibits the use of:

**(A)** A telephone involving an automated system for the selection and dialing of telephone numbers and the play of recorded messages to:

**(i)** Inform the purchaser of the goods or services concerning receipt and availability of the goods or services for delivery to the purchaser; or

**(ii)** Convey information concerning any delay or pertinent information about the current status of any purchase order previously made; or

**(B)** An automated telephone system with a recorded message when the call is made or message given solely in response to a call initiated by the person to which the automatic call or recorded message is directed.

**(b)** Any person who violates any provision of this section upon conviction is guilty of a Class B misdemeanor and shall be punished accordingly.

**(c) (1)** The Attorney General, a prosecuting attorney, any law enforcement officer, or any telephone company serving an area from which automated telephone calls are made may seek injunctive relief to enforce the provision of this section.

**(2)** If a civil action is filed pursuant to this section, the prevailing party is entitled to a reasonable attorney's fee and court costs.

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“Person” is defined at Ark. Code § 5-1-102(13)(A) to include “any natural person” and “[w]hen appropriate, an “organization” as defined in § 5-2-501.” An “organization,” as set forth in § 5-2-501(3), “means a legal entity and includes: (A) A corporation, company, association, firm, partnership, or joint-stock company; (B) A foundation, institution, society, union, club, or

church; or (C) Any other group of persons organized for any purpose.” The statutory prohibition applies to “any other purpose in connection with a political campaign.” This broad language does not, on its face, exempt federal political campaigns or committees.

AFFPA believes that the statute set forth above applies to its proposed telephone calls, and that none of the listed exemptions are applicable.

**CALIFORNIA**

**Cal. Pub. Util. Code § 2872. Regulation and control of automatic dialing-announcing devices; Prohibitions**

- (a) The connection of automatic dialing-announcing devices to a telephone line is subject to this article and to the jurisdiction, control, and regulation of the commission.
- (b) No person shall operate an automatic dialing-announcing device except in accordance with this article. The use of such a device by any person, either individually or acting as an officer, agent, or employee of a person or corporation operating automatic dialing-announcing devices, is subject to this article.
- (c) No person shall operate an automatic dialing-announcing device in this state to place a call that is received by a telephone in this state during the hours between 9 p.m. and 9 a.m. California time.
- (d) This article does not prohibit the use of an automatic dialing-announcing device by any person exclusively on behalf of any of the following:
- (1) A school for purposes of contacting parents or guardians of pupils regarding attendance.
  - (2) An exempt organization under the Bank and Corporation Tax Law (Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code) for purposes of contacting its members.
  - (3) A privately owned or publicly owned cable television system for purposes of contacting customers or subscribers regarding the previously arranged installation of facilities on the premises of the customer or subscriber.
  - (4) A privately owned or publicly owned public utility for purposes of contacting customers or subscribers regarding the previously arranged installation of facilities on the premises of the customer or subscriber or for purposes of contacting employees for emergency actions or repairs required for public safety or to restore services.
  - (5) A petroleum refinery, chemical processing plant, or nuclear powerplant for purposes of advising residents, public service agencies, and the news media in its vicinity of an actual or potential life-threatening emergency.
- (e) This article does not prohibit law enforcement agencies, fire protection agencies, public health agencies, public environmental health agencies, city or county emergency services planning agencies, or any private for-profit agency operating under contract with, and at the direction of, one or more of these agencies, from placing calls through automatic dialing-announcing devices, if those devices are used for any of the following purposes:
- (1) Providing public service information relating to public safety.

**(2) Providing information concerning police or fire emergencies.**

**(3) Providing warnings of impending or threatened emergencies.**

These calls shall not be subject to Section 2874.

**(f) This article does not apply to any automatic dialing-announcing device that is not used to randomly or sequentially dial telephone numbers but that is used solely to transmit a message to an established business associate, customer, or other person having an established relationship with the person using the automatic dialing-announcing device to transmit the message, or to any call generated at the request of the recipient.**

**(g) The commission may determine any question of fact arising under this section.**

### **§ 2873. Restrictions on use of devices**

Automatic dialing-announcing devices may be used to place calls over telephone lines only pursuant to a prior agreement between the persons involved, whereby the person called has agreed that he or she consents to receive such calls from the person calling, or as specified in Section 2874.

### **§ 2874. Requirements for use of automatic dialing-announcing devices**

**(a) Whenever telephone calls are placed through the use of an automatic dialing-announcing device, the device may be operated only after an unrecorded, natural voice announcement has been made to the person called by the person calling. The announcement shall do all of the following:**

**(1) State the nature of the call and the name, address, and telephone number of the business or organization being represented, if any.**

**(2) Inquire as to whether the person called consents to hear the prerecorded message of the person calling.**

**(b) The calling person described in subdivision (a) shall disconnect the automatic dialing-announcing device from the telephone line upon the termination of the call by either the person calling or the person called.**

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AFFPA does not believe it satisfies any of the exemptions set forth in the above provisions. With respect to the applicability of the statute to political activities, the California

Public Utilities Commission issued an advisory notice, available at [http://www.cpuc.ca.gov/NR/rdonlyres/51D7DD5B-9902-4C3B-9EB3-B75F56CBB4C2/0/080129\\_RobocallADAD\\_FAQ.pdf](http://www.cpuc.ca.gov/NR/rdonlyres/51D7DD5B-9902-4C3B-9EB3-B75F56CBB4C2/0/080129_RobocallADAD_FAQ.pdf), indicating that “[p]olitical candidates or others supporting candidates or ballot issues” are subject to the statutes set forth above.

**INDIANA**

**Ind. Code § 24-5-14-5. Conditions for using automatic dialing-announcing device -- Exceptions.**

**(a)** This section does not apply to messages:

- (1)** From school districts to students, parents, or employees;
- (2)** To subscribers with whom the caller has a current business or personal relationship; or
- (3)** Advising employees of work schedules.

**(b)** A caller may not use or connect to a telephone line an automatic dialing-announcing device unless:

- (1)** The subscriber has knowingly or voluntarily requested, consented to, permitted, or authorized receipt of the message; or
- (2)** The message is immediately preceded by a live operator who obtains the subscriber's consent before the message is delivered.

**Ind. Code § 24-5-14-7. Disclosure by live operators.**

When a message is immediately preceded by a live operator, the operator must, at the outset of the message, disclose the following:

- (1)** The name of the business, firm, organization, association, partnership, or entity for which the message is being made.
- (2)** The purpose of the message.
- (3)** The identity or kinds of goods or services the message is promoting.
- (4)** If applicable, the fact that the message intends to solicit payment or the commitment of funds.

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As used in Indiana's statute, a "caller" is "an individual, corporation, limited liability company, partnership, unincorporated association, or the entity that attempts to contact, or contacts, a subscriber in Indiana by using a telephone or telephone line." Ind. Code § 24-5-14-2.

In 2008, the Indiana Supreme Court held that Section 24-5-14-5 “unambiguously reaches all autodialer calls and not just consumer transaction calls with commercial messages.” *State of Indiana v. American Family Voices, Inc.*, 898 N.E.2d 293, 297 (Ind. 2008). The question of the statute’s applicability to political calls was central to the case. The Court observed, “As can be easily inferred from the presence of the Democratic and Republican State Central Committees as amici in this case, this litigation raises questions as to the extent to which the Autodialer Law limits and may constitutionally limit the use of autodialers to convey political messages.” *Id.* at 295.

Under Indiana law, AFFPA’s proposed telephone calls are very clearly subject to Section 24-5-14-5 and its live operator requirement.

## IOWA

### **Iowa Code § 476.57 Limitations on use of ADAD equipment -- penalty.**

1. *Definition.* As used in this section, "*ADAD equipment*" means automatic dialing-announcing device equipment which is a device or system of devices used, either alone or in conjunction with other equipment, for the purpose of automatically selecting or dialing telephone numbers without the use of a live operator to disseminate prerecorded messages to the numbers selected or dialed.

2. *Prohibition.*

a. Except as provided in paragraph "b", a person shall not use, employ, or direct another person to use, or contract for the use of ADAD equipment.

b. Except for ADAD equipment which randomly or sequentially selects the telephone numbers for calling, the prohibition in paragraph "a" does not apply to any of the following:

(1) Calls made with ADAD equipment by a nonprofit organization or by an individual using the calls other than for commercial profit-making purposes or fund-raising, if the calls do not involve the advertisement or offering for sale, lease, or rental of goods, services, or property.

(2) Calls made with ADAD equipment relating to payment for, service of, or warranty coverage of previously ordered or purchased goods or services or to persons or organizations with a prior business relationship with the persons or organizations using the calls.

(3) Calls made with ADAD equipment relating to the collection of lawful debts.

(4) Calls made with ADAD equipment to members or employees of the organization making the calls.

(5) Calls made with ADAD equipment which use an initial prerecorded message of a duration no greater than seven seconds prior to a live operator intercept, or calls which involve an initial message from a live operator.

3. *Termination.* Calls made with ADAD equipment must terminate the connection with any call within ten seconds after the person receiving the call acts to disconnect the call.

4. *Penalty.* A violation of this section is a serious misdemeanor.

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AFFPA believes that certain of its proposed telephone calls – i.e., any calls that do not include fundraising appeals – are exempt from Iowa's statute under subsection (2)(b)(1) above. However, AFFPA's proposed telephone calls that seek to raise funds are not exempt under the terms of that provision, and no other exemption appears to apply to AFFPA.

## MINNESOTA

### **Minn. Stat. § 325E.27 USE OF PRERECORDED OR SYNTHESIZED VOICE MESSAGES**

A caller shall not use or connect to a telephone line an automatic dialing-announcing device unless: (1) the subscriber has knowingly or voluntarily requested, consented to, permitted, or authorized receipt of the message; or (2) the message is immediately preceded by a live operator who obtains the subscriber's consent before the message is delivered. This section and section 325E.30 do not apply to (1) messages from school districts to students, parents, or employees, (2) messages to subscribers with whom the caller has a current business or personal relationship, or (3) messages advising employees of work schedules.

### **325E.29 MESSAGE REQUIREMENTS**

Where the message is immediately preceded by a live operator, the operator must, at the outset of the message, disclose:

- (1) the name of the business, firm, organization, association, partnership, or entity for which the message is being made;
- (2) the purpose of the message;
- (3) the identity or kinds of goods or services the message is promoting; and
- (4) if applicable, the fact that the message intends to solicit payment or commitment of funds.

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The term "caller" is defined to include "a person, corporation, firm, partnership, association, or legal or commercial entity who attempts to contact, or who contacts, a subscriber in this state by using a telephone or a telephone line." Minn. Stat. § 325E.26, subd. 3.

In September-October 2004, Bush-Cheney '04, John Kerry for President, and the Republican Party of Minnesota each entered into a Stipulation and Consent Judgment with the State of Minnesota "permanently enjoining" each entity "from violating Minn. Stat. § 325E.27, including making telephone calls with an automatic dialing-announcing device unless: (1) the subscriber has knowingly or voluntarily requested, consented to, permitted, or authorized receipt of the message; or (2) the message is immediately preceded by a live operator who obtains the subscriber's consent before the message is delivered; or (3) [the entity] has a current business or personal relationship with the recipient of the call." *See* attached Stipulations and Consent Judgments. Thus, there is no question that Minnesota construes its statute to apply to federal political committees.

**MISSISSIPPI**

**Miss. Code § 77-3-455 Requirements for placing calls using automatic dialing-announcing devices**

(1) Automatic dialing-announcing devices may be used to place calls over telephone lines only pursuant to a prior agreement between the persons involved, by which the person called has agreed that he or she consents to receive such calls from the person calling, or as specified in subsection (2) of this section.

(2) Whenever telephone calls are placed through the use of an automatic dialing-announcing device, such device shall be operated by a person who shall do all of the following:

(a) State the nature of the call and the name, address and telephone number of the business or organization being represented, if any.

(b) Inquire whether the person called consents to hear the prerecorded message of the person calling.

(c) Disconnect the automatic dialing-announcing device from the telephone line upon the termination of the call by either the person calling or the person called.

**§ 77-3-459 Legislative intent; retroactive effect of article**

It is the intent of the Legislature that this article shall apply to any automatic dialing-announcing devices connected to any telephone line both prior and subsequent to July 1, 1989.

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The plain language of Mississippi's statute, coupled with its statement of legislative intent, leads AFFPA to conclude that its proposed telephone calls will be subject to Mississippi's restrictions and requirements.

**MONTANA**

**Mont. Code § 45-8-216 Unlawful automated telephone solicitation -- exceptions -- penalties.**

(1) A person may not use an automated telephone system, device, or facsimile machine for the selection and dialing of telephone numbers and playing of recorded messages if a message is completed to the dialed number for the purpose of:

- (a) offering goods or services for sale;
- (b) conveying information on goods or services in soliciting sales or purchases;
- (c) soliciting information;
- (d) gathering data or statistics; or
- (e) promoting a political campaign or any use related to a political campaign.

(2) This section does not prohibit the use of an automated telephone system, device, or facsimile machine described under subsection (1) for purposes of informing purchasers of the receipt, availability for delivery, delay in delivery, or other pertinent information on the status of any purchased goods or services, of responding to an inquiry initiated by any person, or of providing any other pertinent information when there is a preexisting business relationship. This section does not prohibit the use of an automated telephone system or device if the permission of the called party is obtained by a live operator before the recorded message is delivered.

(3) A person violating subsection (1) is subject to a fine of not more than \$ 2,500.

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The term "person" is defined to include "any individual, partnership, association, corporation, or other legal entity of any kind." Mont. Code § 45-8-205(6).

AFFPA believes that it constitutes a "person" under Montana law, that none of the statutory exemptions are applicable, and that the statute above could be applied to its proposed telephone calls. As a 2006 news article from *The Billings Gazette* explains, "In Montana, it's generally perceived that politicians and political promoters are breaking the law when they flood the phone lines with the so-called 'robo-calls.'" Linda Halstead-Acharya, *Robo-calls not illegal in some cases*, *The Billings Gazette* (Nov. 3, 2006) available at [http://www.helenair.com/news/state-and-regional/article\\_50a7abe4-1c33-5c28-8a19-0eff1aa1ed4c.html](http://www.helenair.com/news/state-and-regional/article_50a7abe4-1c33-5c28-8a19-0eff1aa1ed4c.html) and attached. However, the same article also states that the application of the law to "federal races" is "less clear." This conclusion, however, is not sourced to a Montana state official.

According to the *Gazette* article, a “public information officer” at the FEC spoke to a Montana resident named Kathleen Ralph, and “explained that the state could prohibit automated political calls for state campaigns, but federal law supersedes in the case of federal races. In other words, with no federal prohibition against such calls, [Conrad] Burns and [Jon] Tester promoters can continue to burn up the phone lines with the automated messages.” *Id.* A follow-up call from the newspaper yielded a more limited response from Michelle Ryan, as reflected in the attached article.

**NEW JERSEY**

**N.J. Stat. § 48:17-28. Delivery of certain recorded telephone messages prohibited**

A caller within the State shall not use a telephone or telephone line to contact a subscriber within the State to deliver a recorded message other than for emergency purposes, unless the recorded message is introduced by an operator who shall obtain the subscriber's consent before playing the recorded message, or unless a prior or current relationship exists between the caller and the subscriber.

As used in this section, "emergency purposes" means calls made necessary in any situation affecting the immediate health and safety of consumers; and "recorded message" shall not include automated recorded telephone operator introductions for the purposes of accepting a call or message.

---

New Jersey defines a "caller" as "a person who attempts to contact or contacts a subscriber in this State by telephone or using a telephone line." N.J. Stat. § 48:17-27. AFFPA does not know what it means to be "a caller within the State."

New Jersey's statute is, in AFFPA's view, unclear in several regards. However, it is routinely presented as applying to all political calls, regardless of whether those calls originated in New Jersey. For example, *Time* magazine recently wrote, "States like California, Indiana and New Jersey have banned political robo-calling outright . . ." M.J. Stephy, *A Brief History of Robo-Calls*, *Time* (Oct. 23, 2008) available at <http://www.time.com/time/politics/article/0,8599,1853436,00.html>.

AFFPA believes New Jersey's statute could be applied against its proposed telephone calls.

**NEW YORK**

**NY Gen. Bus. § 399-p. Telemarketing; use of automatic dialing-announcing devices and placement of consumer telephone calls**

1. Definitions. As used in this section, the following terms shall have the following meanings:

(a) "automatic dialing-announcing device" means any automatic equipment which incorporates a storage capability of telephone numbers to be called and is used, working alone or in conjunction with other equipment, to disseminate a prerecorded message to the telephone number called without the use of an operator;

(b) "person" means any natural person, firm, organization, partnership, association or corporation, or other entity, whether for-profit or not-for-profit;

(c) "consumer" means a natural person who is solicited to purchase, lease or receive a good or service for personal, family or household use;

(d) "consumer telephone call" means a call made to a telephone number by a telephone solicitor, whether by device, live operator, or any combination thereof, for the purpose of soliciting a sale of any consumer goods or services for personal, family or household purposes to the consumer called, or for the purpose of soliciting an extension of credit for consumer goods or services to the consumer called, or for the purpose of obtaining information that will or may be used for the direct solicitation of a sale of consumer goods or services to the consumer called or an extension of credit for such purposes; provided, however, that "consumer telephone call" shall not include a call made by a telephone corporation, as defined by subdivision seventeen of section two of the public service law, in response to a specific inquiry initiated by a consumer regarding that consumer's existing or requested telephone service; and

(e) "telephone solicitor" means a person who makes or causes to be made a consumer telephone call.

2. No person shall operate an automatic dialing-announcing device, nor place any consumer telephone call, except in accordance with the provisions of this section. The use of such device by any person, either individually or acting as an officer, agent, or employee of a person operating automatic dialing-announcing devices, is subject to the provisions of this section.

3. Whenever telephone calls are placed through the use of an automatic dialing-announcing device, such device shall do all of the following:

(a) state at the beginning of the call the nature of the call and the name of the person or on whose behalf the message is being transmitted and at the end of such message the address, and telephone number of the person on whose behalf the message is transmitted, provided such disclosures are not otherwise prohibited or restricted by any federal, state or local law; and

(b) disconnect the automatic dialing-announcing device from the telephone line upon the

termination of the call by either the person calling or the person called.

4. No person shall operate an automatic dialing-announcing device which uses a random or sequential number generator to produce a number to be called.

5. No automatic dialing-announcing device shall be used to call and no consumer telephone call shall be placed to an emergency telephone line including but not limited to any 911 or E-911 line, or any emergency line of any volunteer fire company or fire department; any emergency medical service, ambulance service, voluntary ambulance service or hospital ambulance service as defined in section three thousand one of the public health law; any hospital, nursing home, or residential health care facility as defined in section twenty-eight hundred one of the public health law; any adult care facility as defined in section two of the social services law; or any law enforcement agency or to the telephone line of any guest room or patient room of any hospital, nursing home, or residential health care facility as defined in section two thousand eight hundred one of the public health law, or any adult care facility as defined by section two of the social services law. It shall not constitute a violation of this subdivision if the person who places such a call can affirmatively establish that the call was placed inadvertently despite good faith efforts on the part of such person to comply with the provisions of this section and such person has implemented a procedure to prevent subsequent calls from being placed to a particular prohibited telephone number.

6. A telephone solicitor shall not make a consumer telephone call to a consumer unless the telephone solicitor [fig 1] conforms with subparagraph one of paragraph b of subdivision six of section three hundred ninety-nine-pp of this article. Nothing contained herein shall be deemed to limit, annul, alter, or affect the provisions of subdivision three of this section.

6-a. No telephone solicitor or person who places any consumer telephone call or who operates an automatic dialing-announcing device and no employer of any such telephone solicitor or person shall intentionally cause to be installed, or shall intentionally utilize, any blocking device or service to prevent the name and/or telephone number of such solicitor or person, or the name and/or telephone number of his or her employer, from being displayed on a caller identification device of the recipient of any such consumer telephone call. A violation of this subdivision shall be subject to the provisions of subdivision eight of this section.

7. (a) Federal, state or local municipalities, or any subdivision thereof, using an automatic dialing-announcing device for emergency purposes shall be exempted from the provisions of this section.

(b) Notwithstanding the provisions of paragraph (a) of this subdivision, any entity which operates a telephone warning or alert system which utilizes any such device for emergency purposes shall also be exempted from the provisions of this section.

8. Whenever there shall be a violation of this section, an application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violations; and if it shall appear to the satisfaction of

the court or justice, that the defendant has, in fact, violated this section an injunction may be issued by such court or justice enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules, and direct restitution. Whenever the court shall determine that a violation of subdivision three, four or five of this section has occurred, the court may impose a civil penalty of not more than two thousand dollars per call, up to a total of not more than twenty thousand dollars, for calls placed in violation of such subdivisions within a continuous seventy-two hour period. Whenever the court shall determine that a violation of subdivision six of this section, or a violation of subdivision six-a of this section, has occurred, the court may impose a civil penalty of not more than two thousand dollars. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

9. In addition to the right of action granted to the attorney general pursuant to this section, any person who has received a telephone call in violation of subdivision three, four or five of this section may bring an action in his own name to enjoin such unlawful act or practice, an action to recover his actual damages or fifty dollars, whichever is greater, or both such actions. The court may, in its discretion, increase the award of damages to an amount not to exceed three times the actual damages up to one thousand dollars, if the court finds the defendant willfully or knowingly violated such subdivisions. The court may award reasonable attorney's fees to a prevailing plaintiff.

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AFFPA believes that is satisfies the above definition of "person," and that New York's statute applies to its proposed telephone calls.

## NORTH CAROLINA

### **N.C. Gen. Stat. § 75-104. Restrictions on use of automatic dialing and recorded message players**

(a) Except as provided in this section, no person may use an automatic dialing and recorded message player to make an unsolicited telephone call.

(b) Notwithstanding subsection (a) of this section, a person may use an automatic dialing and recorded message player to make an unsolicited telephone call only under one or more of the following circumstances:

(1) All of the following are satisfied:

a. The person making the call is any of the following:

1. A tax-exempt charitable or civic organization.

2. A political party or political candidate.

3. A governmental official.

4. An opinion polling organization, radio station, television station, cable television company, or broadcast rating service conducting a public opinion poll.

b. No part of the call is used to make a telephone solicitation.

c. The person making the call clearly identifies the person's name and contact information and the nature of the unsolicited telephone call.

(2) Prior to the playing of the recorded message, a live operator complies with G.S. 75-102(c), states the nature and length in minutes of the recorded message, and asks for and receives prior approval to play the recorded message from the person receiving the call.

(3) The unsolicited telephone call is in connection with an existing debt or contract for which payment or performance has not been completed at the time of the unsolicited telephone call.

(4) The unsolicited telephone call is placed by a person with whom the telephone subscriber has made an appointment, provided that the call is conveying information only about the appointment, or by a utility, telephone company, cable television company, satellite television company, or similar entity for the sole purpose of conveying information or news about network outages, repairs or service interruptions, and confirmation calls related to restoration of service.

(5) The person plays the recorded message in order to comply with section 16 C.F.R. Part 310.4(b)(4) of the Telemarketing Sales Rule.

(6) The unsolicited telephone call is placed by, or on behalf of, a health insurer as defined in G.S. 58-51-115(a)(2) from whom the telephone subscriber or other covered family member of the health insurer receives health care coverage or the administration of such coverage, provided that the call is conveying information related to the telephone subscriber or family member's health care, preventive services, medication or other covered benefits.

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In 2008, an organization called Women's Voices, Women Vote "landed in legal hot water in North Carolina for robo-calling voters after the primary registration date and for not identifying the group in the call. Voters and watchdog groups complained about the calls, and North Carolina Attorney General Roy Cooper ordered them to stop on Wednesday [April 31, 2008]. . . . In a statement released on its Web site, the group explains that the calls were part of a general-election outreach effort in 24 states and coincided with mailings that conveyed a similar 'hurry up and register' message." Shailagh Murray, *Women's Voices, Women Vote: Did the Outreach Overreach?*, Washington Post (May 4, 2008) available at <http://www.washingtonpost.com/wp-dyn/content/article/2008/05/03/AR2008050301870.html>. In October 2008, Women's Voices, Women Vote settled with North Carolina's Attorney General for \$100,000. See attached press release. While AFFPA has no intention of failing to properly identify itself, as required by Federal disclosure laws, this episode plainly demonstrates that AFFPA's proposed telephone calls will be considered to be subject to North Carolina's law.

AFFPA's proposed calls will be exempt from North Carolina's restrictions so long as no "telephone solicitations" are included. That term includes requests to make a "charitable donation," see N.C. Gen. Stat. § 75-101(9), which AFFPA believes could be construed to include a political donation.

## **NORTH DAKOTA**

### **N.D. Code. § 51-28-02. Use of prerecorded or synthesized voice messages.**

A caller may not use or connect to a telephone line an automatic dialing-announcing device unless the subscriber has knowingly requested, consented to, permitted, or authorized receipt of the message or the message is immediately preceded by a live operator who obtains the subscriber's consent before the message is delivered. This section and section 51-28-05 do not apply to a message from a public safety agency notifying a person of an emergency; a message from a school district to a student, a parent, or an employee; a message to a subscriber with whom the caller has a current business relationship; or a message advising an employee of a work schedule.

### **51-28-03. Message requirements.**

When the message is immediately preceded by a live operator, the operator must disclose at the outset of the message:

1. The name of the business, firm, organization, association, partnership, or entity for which the message is being made;
2. The purpose of the message;
3. The identity or kinds of goods or services the message is promoting; and
4. If applicable, the fact that the message intends to solicit payment or commitment of funds.

### **51-28-04. Requirements on automatic dialing-announcing devices.**

A caller may not use an automatic dialing-announcing device unless the device is designed and operated so as to disconnect within ten seconds after termination of the telephone call by the subscriber. A caller may not use an automatic dialing-announcing device that uses a random or sequential number generator unless the equipment excludes calls to the following telephone numbers:

1. Emergency telephone numbers, including 911, of any hospital, medical physician, health care facility, ambulance or emergency medical provider, fire protection facility, or law enforcement agency.
2. Any guest room or patient room of a hospital, health care facility, elderly care home, or similar establishment.
3. A paging service, a cellular telephone service, a specialized mobile radio service, or any service for which the called party is charged for the call.

4. The telephone numbers maintained on a do-not-call list established pursuant to section 51-28-09.

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North Dakota defines a “caller” as “a person, corporation, firm, partnership, association, or legal or commercial entity that attempts to contact, or that contacts, a subscriber in this state by using a telephone or a telephone line.” N.D. Code § 51-28-01(2). AFFPA believes it constitutes a “caller” in North Dakota and that it does not satisfy any of the exemptions set forth above.

In early 2008, North Dakota’s Attorney General became involved in a dispute between the McCain and Romney presidential campaigns involving automated calls that were not preceded by a live operator. *See* John Barnes, *McCain Robo-Calls Traced To Kent GOP Chair*, The Grand Rapids Press (Feb. 16, 2008) *available at* [http://blog.mlive.com/grpress/2008/02/mccain\\_robocalls\\_traced\\_to\\_ke.html](http://blog.mlive.com/grpress/2008/02/mccain_robocalls_traced_to_ke.html) and attached.

In a February 3, 2008, letter from John McCain 2008 General Counsel Trevor Potter to Attorney General Wayne Stenehjem, Mr. Potter wrote, “It is our understanding that such calls [robocalls] are not permitted by North Dakota law (absent a live operator introduction and other requirements).” *See* letter attached. Thus, in the most recent Presidential campaign, both candidates and North Dakota’s Attorney General operated under the assumption that the state’s live operator requirement applied to federal political committees.

**PENNSYLVANIA**

**52 Pa. [Admin.] Code § 63.60 (2009). Automatic Dialing Announcing Devices (ADAD)**

(a) Upon receipt of a complaint in which the complainant can identify the ADAD user, the public utility shall inform the ADAD user of the service standards set forth in subsection (b). A subsequent complaint may result, after notice, in suspension of the ADAD user's service.

(b) A public utility may not knowingly permit an ADAD to be connected or operated over its network unless one of the following applies:

(1) A prior written agreement exists between the called and calling parties.

(2) The ADAD is used in accordance with the following standards:

(i) Within 10 seconds after the called-party terminates the call, the ADAD automatically shall create a disconnect signal or an on-hook condition allowing the called-party's line to be released. The ADAD shall terminate calls completed and a disconnect or an on-hook condition shall be created within 15 seconds of termination.

(ii) The recorded message shall begin with, or be preceded by, a statement announcing the name, address and call-back telephone number of the calling party, the nature and purpose of the ensuing message, and the fact the message is a recording.

(iii) No calls are permitted to be made to emergency telephone numbers of hospitals, fire departments, law enforcement offices or other entities providing emergency services.

(iv) No calls may be made on a Sunday before 1:30 p.m. or after 9 p.m. or before 9 a.m. or after 9 p.m. during the remainder of the week.

(v) The public utility shall make a determination either at the time of application for use or at the time the utility becomes aware of the use of the ADAD that no substantial impairment of service will occur as a result of the use of ADAD.

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AFFPA believes this provision could be applied by officials or public utilities in Pennsylvania against its proposed telephone calls.

**SOUTH CAROLINA**

**S.C. Code § 16-17-446. Regulation of automatically dialed announcing device (ADAD).**

(A) "Adad" means an automatically dialed announcing device which delivers a recorded message without assistance by a live operator for the purpose of making an unsolicited consumer telephone call as defined in Section 16-17-445(A)(3). Adad calls include automatically announced calls of a political nature including, but not limited to, calls relating to political campaigns.

(B) Adad calls are prohibited except:

- (1) in response to an express request of the person called;
- (2) when primarily connected with an existing debt or contract, payment or performance of which has not been completed at the time of the call;
- (3) in response to a person with whom the telephone solicitor has an existing business relationship or has had a previous business relationship.

(C) Adad calls which are not prohibited under subsection (B):

- (1) are subject to Section 16-17-445(B)(1), (2), and (3);
- (2) shall disconnect immediately when the called party hangs up;
- (3) are prohibited after seven p.m. or before eight a.m.;
- (4) may not ring at hospitals, police stations, fire departments, nursing homes, hotels, or vacation rental units.

(D) A person who violates this section, upon conviction, must be punished as provided in Section 16-17-445(F).

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AFFPA believes that the exemptions set forth at subsection (B) above are not applicable to its proposed telephone calls. AFFPA also believes that its proposed telephone calls are "of a political nature including, but not limited to, calls relating to political campaigns."

At least one news report in October 2008 indicated that South Carolina political party officials believed the statute applied to federal political committees. When a Freeborn, Minnesota Democratic County Commissioner received a McCain robocall, he "demanded that he be connected to the supervisor" because "state law dictates that any such calls be made by an actual human." Sam Stein, *McCain Using Same Robocall Firm That Helped Smear Him In*

2000, Huffington Post (Oct. 17, 2008) *available at*  
[http://www.huffingtonpost.com/2008/10/17/report-mccain-using-same\\_n\\_135699.html](http://www.huffingtonpost.com/2008/10/17/report-mccain-using-same_n_135699.html).

**TENNESSEE**

**Tenn. Code § 47-18-1502. Unlawful use of ADAD equipment – Consent to calls.**

(a) It is unlawful for any person to use, to employ or direct another person to use, or to contract for the use of ADAD equipment for the purpose of advertising or offering for sale, lease, rental or as a gift any goods, services or property, either real or personal, primarily for personal, family or household use or for the purpose of conducting polls or soliciting information where:

(1) Consent is not received prior to the initiation of the calls as specified in subsection (b);

(2) Such use is other than between the hours of eight o'clock a.m. (8:00 a.m.) and nine o'clock p.m. (9:00 p.m.);

(3) The ADAD equipment will operate unattended, or is not so designed and equipped with an automatic clock and calendar device that it will not operate unattended, even in the event of power failures;

(4) Such use involves either the random or sequential dialing of telephone numbers;

(5) The telephone number required to be stated in subdivision (a)(7) is not, during normal business hours, promptly and personally answered by someone who:

(A) Is an agent of the person or organization in whose behalf the automatic calls are made; and

(B) Is willing and able to provide information concerning the automatic calls;

(6) The automatic dialing and recorded message player does not automatically and immediately terminate its connection with any telephone call within ten (10) seconds after the person called:

(A) Fails to give consent for the playing of a recorded message; or

(B) Replaces the receiver on the person's telephone;

(7) The recorded message fails to state clearly the name and telephone number of the person or organization initiating the call within the first twenty-five (25) seconds of the call and at the conclusion of the call; or

(8) Such use involves calls to:

(A) Telephone numbers which, at the request of the customer, have been omitted from the telephone directory published by the telephone company or cooperative serving the customer; or

(B) Hospitals, nursing homes, fire protection agencies, or law enforcement agencies.

**(b) (1)** A person may give consent to a call made with ADAD equipment when a live operator introduces the call and states an intent to play a recorded message. Any such consent shall apply only to a particular call and shall not constitute prior consent to receive further calls through the use of such ADAD equipment.

**(2) (A)** Any person wishing to receive telephone calls through the use of ADAD equipment shall give written consent to the person using, employing, directing another person to use, or contracting for the use of such ADAD equipment.

**(B)** Any form used for such written consent by any person using, employing, directing another person to use, or contracting for the use of such ADAD equipment shall clearly and conspicuously state its purpose and effect, and clearly and conspicuously give notice of how such consent may be withdrawn.

**(C)** A record of such written consent shall be maintained by the person to whom consent is given, and shall be made available to the authority or its authorized representative, without further action, during normal business hours and following reasonable notice.

**(D)** Such consent shall, unless withdrawn, be valid for a period of two (2) years from the date on which it is executed; and such record of written consent shall be maintained by the person to whom consent is given for at least the same period of time.

**(E)** Any consent to receive telephone calls through the use of ADAD equipment shall be void and withdrawn on the fifteenth day following the receipt of a letter withdrawing such consent. It is unlawful for any person to whom written consent is given to fail to maintain the record of such written consent for the time required by this subdivision, or to prevent or hinder the authority or its authorized representative from inspecting any such record of written consent.

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For purposes of this statute, the term "person" includes "a natural person, individual, governmental agency, partnership, corporation, trust, estate, incorporated or unincorporated association, and any other legal or commercial entity however organized." Tenn. Code § 47-18-103(9). AFFPA believes that if its proposed telephone calls are made "for the purpose of conducting polls or soliciting information," then it will be subject to Tennessee's statute.

## WYOMING

### **Wyo. Stat. § 6-6-104. Unlawful automated telephone solicitation; exceptions; penalties.**

(a) No person shall use an automated telephone system or device for the selection and dialing of telephone numbers and playing of recorded messages if a message is completed to the dialed number, for purposes of:

- (i) Offering any goods or services for sale;
- (ii) Conveying information on goods or services in soliciting sales or purchases;
- (iii) Soliciting information;
- (iv) Gathering data and statistics; or
- (v) Promoting or any other use related to a political campaign.

(b) This section shall not prohibit the use of an automated telephone system or device described under subsection (a) of this section for purposes of informing purchasers of the receipt, availability or delivery of goods or services, any delay or other pertinent information on the status of any purchased goods or services or responding to an inquiry initiated by any person, or the use of an automated telephone dialing system as authorized by W.S. 40-12-303.

(c) Any person violating subsection (a) of this section is guilty of a misdemeanor punishable by imprisonment for not more than six (6) months, a fine of not more than seven hundred fifty dollars (\$750.00), or both.

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Wyoming's statute broadly prohibits the use of an ADAD device "for purposes of . . . [p]romoting or any other use related to a political campaign." AFFPA does not believe it satisfies any of the exemptions set forth in subsection (b) above.

The applicability of Wyoming's prohibition to federal political messaging is well-documented. In 2006, "Right to Life of Wyoming, an anti-abortion group, admitted that its national affiliate made automated calls to support U.S. Rep. Barbara Cubin, R-Wyo., before realizing the practice is illegal in the state. . . . [Wyoming Secretary of State Joe] Meyer said it's possible that he would turn that case over to prosecutors." Jared Miller, *Campaign Calls Draw Scrutiny*, Casper Star Tribune (Nov. 15, 2006), available at [http://www.trib.com/news/top\\_story/article\\_82db5bc9-435a-5acb-a710-6f5d20631d43.html](http://www.trib.com/news/top_story/article_82db5bc9-435a-5acb-a710-6f5d20631d43.html) and attached.

More recently, an official with Wyoming's Elections Division referred a complaint regarding Barack Obama campaign automated telephone calls to the state Attorney General. See Joan Barron, *State Gets Complaints on Obama Calls*, Casper Star Tribune (Feb. 20, 2008),

available at [http://www.trib.com/legislature/news/article\\_a334993a-d772-5f87-944b-0422db152c6d.html](http://www.trib.com/legislature/news/article_a334993a-d772-5f87-944b-0422db152c6d.html) and attached.



## WHEN ARE ROBOCALLS LEGAL?

### 1. What is a robocall and how does it work?

A "robocall" is when you answer your phone and find that you are listening to a recording. These calls are placed by machines which are called automatic dialing announcing devices (ADADs or robocalls). They store hundreds, even thousands, of telephone numbers, and then dial them automatically and play a recorded message.

### 2. When can robocalls (ADADs) be used? What companies or agencies can use them?

Robocalls are only legal when introduced by a live person unless:

- 1) You are a member or a client of a company or organization that uses them to deliver messages (such as an announcement about a sale) or;
- 2) The police, fire or emergency service agency uses them to contact you about an emergency.

*If you want to read the law, see Public Utilities Code sections 2871-2876.*

### 3. What about the robocalls I get around election time about political candidates or other election issues?

Political candidates or others supporting candidates or ballot issues also must follow the law and about using Robocalls, which is found in the California Public Utilities Code, Sections 2871-2876.

### 4. What can I do if I receive a robocall that I think is illegal?

- 1) Call your local telephone company to file a complaint. You must give them the name of who called and if possible the telephone number of the robocaller (it may be provided in the message.)
- 2) Your telephone company will then tell the business that it is not following the law and may give it some time to correct the problem.
- 3) If the business does not correct the use of the robocaller by the time given by the telephone company, the telephone company can disconnect the phone line.
- 4) If you are not satisfied with the telephone company's response to your robocall complaint, you may contact the CPUC's Consumer Affairs Branch by filing a complaint online at <http://www.cpuc.ca.gov/PUC/forms/Complaints/> or by telephone at 1-800-649-7570 or in writing to:

California Public Utilities Commission  
Consumer Affairs Branch 505 Van  
Ness Avenue San Francisco, CA  
94102-3298



3

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Case Type: Other Civil

State of Minnesota, by its Attorney  
General, Mike Hatch,

Court File No. \_\_\_\_\_

Plaintiff,

FILED  
Court Administrator

SEP 21 2004

09.04.9224

vs.

 Deputy

STIPULATION AND  
CONSENT JUDGMENT

Bush-Cheney '04, Inc.,

Defendant.

The State of Minnesota, by its Attorney General, Mike Hatch, and Bush-Cheney '04, Inc ("Bush-Cheney '04"), hereby stipulate and agree as follows:

1. The Complaint in this matter was filed on September 14, 2004. Bush-Cheney '04, by agreement of the parties, has not filed an Answer to the Complaint.

2. This Stipulation and Consent Judgment is not an admission of a violation of law for any purpose, and is not an acceptance by Bush-Cheney '04 of the validity of the complaints received to date.

3. Bush-Cheney '04 has been advised by its legal counsel of the meaning and effect of this Stipulation and Consent Judgment.

4. Thomas J. Josefiak declares that he is the General Counsel of Bush-Cheney '04 and, as such, has been authorized to enter this Stipulation and Consent Judgment on behalf of Bush-Cheney '04.

5. This Stipulation and Consent Judgment constitutes a full and final resolution between the Attorney General and Bush-Cheney '04 of all claims brought by the Attorney General for the alleged conduct described in the Complaint, up to and including the date of the

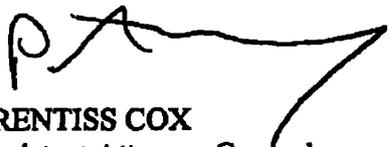
signing of this Stipulation and Consent Judgment on behalf of the Attorney General, as long as Bush-Cheney '04 is in compliance with the terms of this Agreement.

6. The parties stipulate to entry of the following Order in this matter. The State of Minnesota may appear *ex parte* to present this Stipulation and Consent Judgment to the Court.

IT IS HEREBY ORDERED that Bush-Cheney '04 and its employees, officers, directors, agents, successors, assignees, affiliates, merged or acquired predecessors, parent or controlling entities, subsidiaries, and all other persons acting in concert or participation with it are permanently enjoined from violating Minn. Stat. § 325E.27, including making telephone calls with an automatic dialing-announcing device unless: (1) the subscriber has knowingly or voluntarily requested, consented to, permitted, or authorized receipt of the message; or (2) the message is immediately preceded by a live operator who obtains the subscriber's consent before the message is delivered; or (3) Bush-Cheney '04, Inc. has a current business or personal relationship with the recipient of the call.

Dated: September 20, 2004

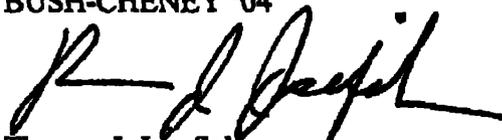
MIKE HATCH  
Attorney General  
State of Minnesota



PRENTISS COX  
Assistant Attorney General  
Atty. Reg. No. 218844

445 Minnesota Street, #1400  
St. Paul, Minnesota 55101-2131  
(651) 297-4606 (Voice)  
(651) 297-7206 (TTY)  
ATTORNEYS FOR  
STATE OF MINNESOTA

BUSH-CHENEY '04



Thomas J. Josefak  
General Counsel

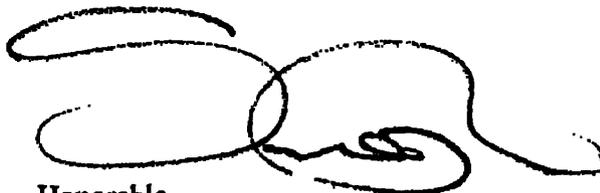
DATED:

9/16/04

IT IS SO ORDERED.

Dated:

9 21 .04



Honorable  
Judge of Ramsey County District Court

AG: #1241971-v1

2  
STATE OF MINNESOTA  
COUNTY OF RAMSEY

DISTRICT COURT  
SECOND JUDICIAL DISTRICT

Case Type: Other Civil

State of Minnesota, by its Attorney  
General, Mike Hatch,

Court File No. \_\_\_\_\_

Plaintiff,

FILED  
Court Administrator  
OCT 29 2004  
By [Signature] Deputy

CO-04-10617

vs.

**STIPULATION AND  
CONSENT JUDGMENT**

Republican Party of Minnesota,

Defendant.

The State of Minnesota, by its Attorney General, Mike Hatch, and the Republican Party of Minnesota hereby stipulate and agree as follows:

1. The Complaint in this matter was filed on October 29, 2004. The Republican Party of Minnesota, by agreement of the parties, has not filed an Answer to the Complaint.
2. This Stipulation and Consent Judgment is not an admission of a violation of law for any purpose. The Republican Party of Minnesota asserts that it has not violated the law for any purpose and the Republican Party of Minnesota's execution and delivery of this Stipulation and Consent Judgment is not and should not be deemed an acceptance of the validity of any of the complaints received to date.
3. The Republican Party of Minnesota has been advised by its legal counsel of the meaning and effect of this Stipulation and Consent Judgment.
4. Corey Miltimore declares that he is the Executive Director of the Republican Party of Minnesota and, as such, has been authorized to enter this Stipulation and Consent Judgment on behalf of the Republican Party of Minnesota.

5. This Stipulation and Consent Judgment constitutes a full and final resolution between the Attorney General and the Republican Party of Minnesota of all claims brought by the Attorney General for the alleged conduct described in the Complaint, up to and including the date of the signing of this Stipulation and Consent Judgment on behalf of the Attorney General, as long as the Republican Party of Minnesota is in compliance with the terms of this Agreement.

6. The parties stipulate to entry of the following Order in this matter. The State of Minnesota may appear *ex parte* to present this Stipulation and Consent Judgment to the Court.

IT IS HEREBY ORDERED that the Republican Party of Minnesota and its employees, officers, directors, agents, successors, assignees, affiliates, merged or acquired predecessors, parent or controlling entities, subsidiaries, and all other persons acting in concert or participation with it are permanently enjoined from violating Minn. Stat. § 325E.27, including making telephone calls with an automatic dialing-announcing device unless: (1) the subscriber has knowingly or voluntarily requested, consented to, permitted, or authorized receipt of the message; or (2) the message is immediately preceded by a live operator who obtains the subscriber's consent before the message is delivered; or (3) the Republican Party of Minnesota, has a current business or personal relationship with the recipient of the call.

IT IS FURTHER ORDERED that this Order shall remain in effect until November 10, 2006.

Dated: *October 28, 2004*

MIKE HATCH  
Attorney General  
State of Minnesota

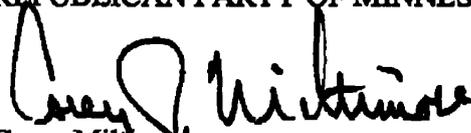


PRENTISS COX  
Assistant Attorney General  
Atty. Reg. No. 218844

445 Minnesota Street, #1400  
St. Paul, Minnesota 55101-2131  
(651) 297-4606 (Voice)  
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ATTORNEYS FOR  
STATE OF MINNESOTA

REPUBLICAN PARTY OF MINNESOTA

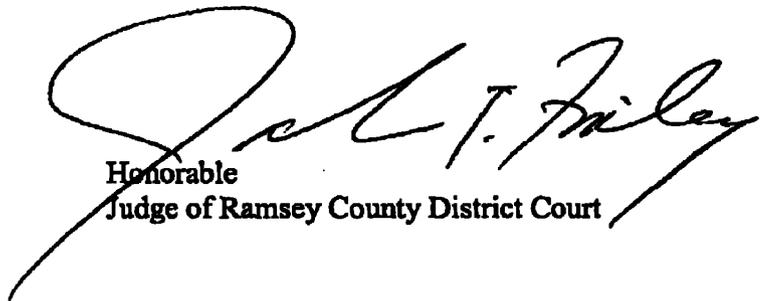


Corey Miltimore  
Executive Director

DATED: *28 OCT 2004*

IT IS SO ORDERED.

Dated: *10/29/04*



Honorable  
Judge of Ramsey County District Court

AG: #1241971-v1

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Case Type: Other Civil

State of Minnesota, by its Attorney  
General, Mike Hatch,

Court File No. CB-04-10302

Plaintiff,

FILED  
Court Administrator

vs.

OCT 28 2004

John Kerry for President, Inc.,

By  Deputy

**STIPULATION AND  
CONSENT JUDGMENT**

Defendant.

The State of Minnesota, by its Attorney General, Mike Hatch, and John Kerry for President, Inc ("John Kerry for President"), hereby stipulate and agree as follows:

1. The Complaint in this matter was filed on October 20, 2004. John Kerry for President, by agreement of the parties, has not filed an Answer to the Complaint.

2. This Stipulation and Consent Judgment is not an admission of a violation of law for any purpose, and is not an acceptance by John Kerry for President of the validity of the complaints received to date.

3. John Kerry for President has been advised by its legal counsel of the meaning and effect of this Stipulation and Consent Judgment.

4. Ken Martin declares that he was the State Director of John Kerry for President and, as such, has been authorized to enter this Stipulation and Consent Judgment on behalf of John Kerry for President.

5. This Stipulation and Consent Judgment constitutes a full and final resolution between the Attorney General and John Kerry for President of all claims brought by the Attorney General for the alleged conduct described in the Complaint, up to and including the date of the

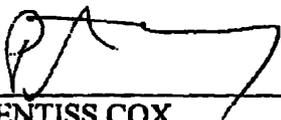
signing of this Stipulation and Consent Judgment on behalf of the Attorney General, as long as John Kerry for President is in compliance with the terms of this Agreement.

6. The parties stipulate to entry of the following Order in this matter. The State of Minnesota may appear *ex parte* to present this Stipulation and Consent Judgment to the Court.

IT IS HEREBY ORDERED that John Kerry for President and its employees, officers, directors, agents, successors, assignees, affiliates, merged or acquired predecessors, parent or controlling entities, subsidiaries, and all other persons acting in concert or participation with it are permanently enjoined from violating Minn. Stat. § 325E.27, including making telephone calls with an automatic dialing-announcing device unless: (1) the subscriber has knowingly or voluntarily requested, consented to, permitted, or authorized receipt of the message; or (2) the message is immediately preceded by a live operator who obtains the subscriber's consent before the message is delivered; or (3) John Kerry for President, Inc. has a current business or personal relationship with the recipient of the call.

Dated: October 29 2004

MIKE HATCH  
Attorney General  
State of Minnesota

  
PRENTISS COX  
Assistant Attorney General  
Atty. Reg. No. 218844

445 Minnesota Street, #1400  
St. Paul, Minnesota 55101-2131  
(651) 297-4606 (Voice)  
(651) 297-7206 (TTY)

ATTORNEYS FOR  
STATE OF MINNESOTA

JOHN KERRY FOR PRESIDENT

DATED: 10/18/04

  
Ken Martin  
State Director

IT IS SO ORDERED.

Dated: 10.20.04

  
Honorable \_\_\_\_\_  
Judge of Ramsey County District Court

AG: #1302744-v1



## Robo-calls not illegal in some cases

LINDA HALSTEAD-ACHARYA - The Billings Gazette - 11/03/06 | Posted: Thursday, November 2, 2006 11:00 pm

Rules blur in federal races

**BILLINGS (LEE)** -- The phone lines are abuzz with them and there's little chance for letup before Election Day. The question is, are those automated, pre-recorded political phone calls illegal or are they merely annoying?

In Montana, it's generally perceived that politicians or political promoters are breaking the law when they flood the phone lines with the so-called "robo-calls."

Fifteen years ago, the Legislature passed a statute banning their use for political campaigns. Their legality, however, is less clear when it comes to federal races, such as the hotly contested Senate race between Democrat Jon Tester and Republican incumbent Conrad Burns.

Kathleen Ralph, a Columbus resident, received two of the messages in the past few weeks. Believing them to be illegal, she decided to find out why the people running for office to make laws were so flagrantly breaking a law.

"That really bothered me," she said.

Tracking the calls sent Ralph on a phone quest herself. Her first attempt to trace a robo-call connected her to another automated message. The message told her the call couldn't be traced until she'd received three calls from the same number. Next, she called Qwest, only to be told that she'd need a subpoena before the company would release the name of the caller.

One referral after another sent Ralph through a string of agencies, from local law enforcement to the Public Service Commission, to consumer services to the Office of Political Practices. Eventually, Ralph was directed to call the Federal Elections Commission.

A public information officer at that agency was the first to offer Ralph an answer. The officer explained that the state could prohibit automated political calls for state campaigns, but federal law supersedes in the case of federal races. In other words, with no federal prohibition against such calls, Burns and Tester promoters can continue to burn up the phone lines with the automated messages.

A call from The Gazette to the FEC, however, yielded a less definitive response. Michelle Ryan, a spokesperson for the FEC, said the robo-calls don't fall under their purview, except for the fact that they must include the proper disclaimer.

"But there's nothing in our regulations that would prohibit those calls," she said, directing inquiries to the Federal Communications Commission.

A call to the FCC reached one of that agency's attorneys, who asked not to be named or quoted. He did point out, however, that when Congress passed the legislation for the national Do Not Call Registry in 2003, the bill specifically exempted three types of calls: calls from nonprofits, calls from businesses with which the individual had had prior business and calls from political organizations.

Rosemary Kimball, director of media relations for the FCC, said questions concerning the legality of automated messages have come up before. In fact, parties from six states sought rulings on the issue in May 2005. The decision is pending, she said.

Just a week ago, however, U.S. District Judge Larry McKinney did make a decision regarding a similar matter in Indiana. He ruled that the state could prohibit automated political calls from a California-based group.

Judy Beck, public information officer for Montana Attorney General Mike McGrath, believes that decision may have national implications.

"That's where we may get some definitive law," she said.

In the meantime, she advises anyone who believes the law has been broken to contact local law enforcement. She admits, however, that robo-calls may not top their list of criminal concerns.

# The Washington Post

## Women's Voices, Women Vote: Did the Outreach Overreach?

By Shailagh Murray  
Sunday, May 4, 2008

Women's Voices, Women Vote is one of those little advocacy organizations with a lot of big names attached: Former White House chief of staff John Podesta is a board member, Hillary Rodham Clinton campaign manager Maggie Williams has consulted, and founder Page Gardner worked for the 1992 Bill Clinton campaign, to name a few.

But for all the paid and unpaid talent associated with the group, which focuses on registering unmarried women to vote, it's landed in legal hot water in North Carolina for robo-calling voters after the primary registration date and for not identifying the group in the call.

Voters and watchdog groups complained about the calls, and North Carolina Attorney General Roy Cooper ordered them to stop on Wednesday. Some saw a turnout-suppression conspiracy because the group's allies include so many Clinton supporters, especially Podesta and Williams.

On Friday, Barack Obama's campaign weighed in by circulating the transcript of a National Public Radio report on the calls. It noted that the North Carolina calls seemed to heavily skew to African Americans, including many women who had already registered, causing them to question whether they were eligible to vote in the primary on Tuesday.

In a statement released on its Web site, the group explains that the calls were part of a general-election outreach effort in 24 states and coincided with mailings that conveyed a similar "hurry up and register" message. But in other states as well, the mailings and calls were placed after primary registration deadlines had passed, sowing confusion and leading to other legal complaints against the group.

"The calls were scheduled to coincide with the arrival of the voter registration applications," the group said in a statement. "We regret any confusion that has arisen as a consequence of this timing." Podesta weighed in as well, calling the North Carolina situation "a mistake of judgment and execution, and not an attempt to disenfranchise voters."

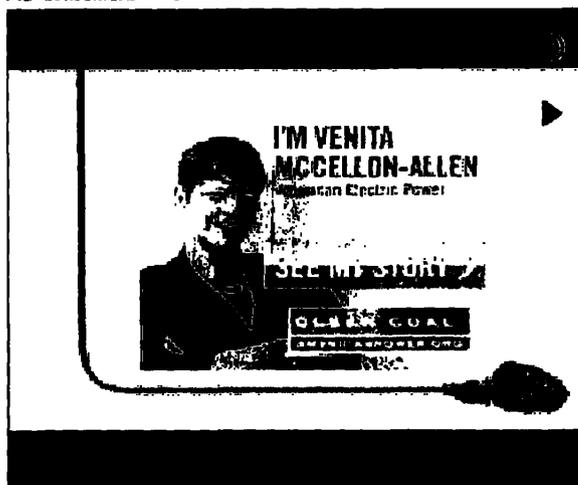
Although the calls have stopped, the group is chasing down postal trucks to withdraw the mailers from circulation. Inside the organization, there is plenty of finger-pointing about who's to blame -- but by the end of the week, even some of the bloggers who had raised the specter of a Clinton conspiracy seemed to accept that shoddy management, despite all that talent, was the more likely culprit.

### Who Backs Whom

The race for Democratic superdelegates reached a milestone this week, when Barack Obama pulled even with Hillary Clinton in the battle for House and Senate support. As of Friday, they had 97 lawmakers each, while 92 remain uncommitted.

Some patterns are obvious. Clinton dominates with female members of Congress, with 36 endorsements to

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Obama's 17, with 11 uncommitted. Obama is backed by 23 members of the Congressional Black Caucus, while Clinton has 15 CBC supporters, with three still uncommitted.

Nearly half of Clinton's endorsements, or 46 total, represent three states: New York, New Jersey and California. Obama's support is more geographically diverse, with over a third coming from states west of the Mississippi River.

One curious trend is the large number of Geoff Garin clients who have endorsed Obama. Garin, president of Peter D. Hart Research Associates, a leading polling firm, became a key part of Clinton's message team with the demotion of Mark Penn in April, and it has polled for her campaign since March.

In the weeks since, quite a few Garin clients signed up with the other team, including Sen. Robert Casey (Pa.) and Reps. Lois Capps (Calif.), Baron P. Hill (Ind.) and David E. Price (N.C.). Oklahoma Gov. Brad Henry also endorsed Obama in April. In fact, most of Garin's political clients listed on his firm's Web site are either with Obama or are uncommitted.

Only one, North Carolina Gov. Mike Easley, has declared support for Clinton in recent weeks, although Kentucky Gov. Steve Beshear, another Garin client, is believed to be leaning in Clinton's direction.

Two lopsided categories show members who won their seats in the big Democratic sweep of 2006, and the most vulnerable Democrats on 2008 tickets. Nearly half of these lawmakers remain uncommitted, but those who have picked candidates prefer Obama. One Democrat who fits both categories, Indiana's Hill, signed on with the senator from Illinois even though he's the underdog in Hill's conservative district. Hill was lured in part by the thousands of new student voters the Obama campaign has registered on the Indiana University campus in Bloomington.

### **Freshmen**

Among freshman House and Senate members, the following are with Clinton: Sen. Sheldon Whitehouse (R.I.) and Reps. Michael Arcuri (N.Y.), Yvette D. Clarke (N.Y.), Kirsten Gillibrand (N.Y.), John Hall (N.Y.), Joe Sestak (Pa.) and Betty Sutton (Ohio).

And here's Obama's freshman lineup: Sens. Robert P. Casey Jr. (Pa.), Amy Klobuchar (Minn.) and Claire McCaskill (Mo.) and Reps. Bruce Braley (Iowa), Julia Carson (Ind.), Kathy Castor (Fla.), Stephen I. Cohen (Tenn.), Phil Hare (Ill.), Baron Hill (Ind.), Paul W. Hodes (N.H.), Hank Johnson (Ga.), Steve Kagen (Wis.), Dave Loebsack (Iowa), Christopher S. Murphy (Conn.), Patrick J. Murphy (Pa.), Ed Perlmutter (Colo.), Carol Shea-Porter (N.H.), Tim Walz (Minn.), Peter Welch (Vt.) and John Yarmuth (Ky.).

### **Vulnerables**

Clinton has signed up just two lawmakers -- Gillibrand and Sestak -- who are targeted by Republicans in 2008. Obama has gained support from six vulnerables: Reps. John Barrow (Ga.), Melissa Bean (Ill.), Hill, Christopher Murphy (Conn.), Patrick Murphy (Pa.) and Shea-Porter.

These vulnerables remain uncommitted: Sen. Mary Landrieu (La.) and Reps. Nancy Boyda (Kan.), Chris Carney (Pa.), Joe Donnelly (Ind.), Gabrielle Giffords (Ariz.), Nick Lampson (Tex.), Tim Mahoney (Fla.), Jim Marshall (Ga.), Harry E. Mitchell (Ariz.), Ciro D. Rodriguez (Tex.) and Zack Space (Ohio).

### **Uncommitted**

Four senators elected in 2006 remain neutral: Sherrod Brown (Ohio), Benjamin L. Cardin (Md.), Jon Tester (Mont.) and James Webb (Va.). And these 2006 House members are uncommitted: Boyda (Kan.), Carney (Pa.), Courtney (Conn.), Donnelly (Ind.), Ellsworth (Ind.), Giffords (Ariz.), Hirono (Hawaii), Klein (Fla.),

Lampson (Tex.), Mahoney (Fla.), McNerney (Calif.), Mitchell (Ariz.), Rodriguez (Tex.), Sarbanes (Md.), Shuler (N.C.) and Wilson (Ohio).

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## AG COOPER WINS \$100,000 FROM VOTER GROUP FOR ROBO CALLS

Release date: 10/21/2008

### ***Some voters confused by Women's Voices Women Vote robo calls***

**Raleigh:** A group that made political telemarketing calls that did not comply with North Carolina law has agreed to pay \$100,000 in penalties and is barred from operating in the state before the November election, Attorney General Roy Cooper said Wednesday.

The group, Women's Voices Women Vote, began calling people in North Carolina shortly before the May primary election. The prerecorded calls, also known as robo calls, told people that they would soon receive voter registration forms in the mail, which they should fill out and submit. But the deadline to register by mail had passed, and some call recipients already were registered to vote, causing confusion.

Political robo calls are prerecorded telephone calls made by candidates, campaigns and advocacy groups using automated dialers. Under state law, political campaigns and non-profits making prerecorded calls must identify who is making the call, the nature of the call, and provide contact information for the group that makes the call.

The calls did not identify Women's Voices Women Vote or tell how to contact them, so people who were confused by the robo calls were not able to ask for clarification.

"My office takes quick action against robo calls that don't strictly follow the law," Cooper said. "People who don't want these calls shouldn't get them at all. The law needs to be stronger so that the Do Not Call Registry applies to political robo callers just like any other telemarketer."

Cooper launched an investigation in April into calls made by Women's Voices Women Vote and demanded that the group stop the calls. Cooper's office received complaints about the calls from consumers, the NAACP and Democracy North Carolina.

Women's Voices Women Vote today agreed to pay \$100,000 in civil penalties for its prerecorded calls to North Carolina residents. The money will go to North Carolina schools.

Under today's settlement agreement, Women's Voices Women Vote agrees not to resume any voter registration, education, turnout or similar activities in the state until after the November 4 election. Any future voter activities by the organization in North Carolina must comply with state law and the group would have to provide the Attorney General's Office with a written description of how it would ensure its compliance with the law.

With Election Day just weeks away and early voting already underway, North Carolinians are receiving political

robo calls from other groups and campaigns. Earlier this year Cooper urged political parties and candidates to honor the Do Not Call Registry and reminded them to abide by state law that requires disclosures on robo calls.

People who join the Registry are protected from commercial calls by both state and federal laws, but those laws currently exclude political robo calls. Cooper had asked lawmakers to include political robo calls in the Do Not Call legislation.

"Telemarketers that break our laws will face action from my office, whether they're calling to pitch you a product or to win your vote," Cooper said. "If you get illegal telemarketing calls, let my office know about it."

To report telemarketers or candidates that make calls unlawfully, consumers can call 1-877-5-NO-SCAM toll free within the state or download a consumer complaint form at [www.ncdoj.gov](http://www.ncdoj.gov).

To check on their voter registration status, people can visit the state Board of Elections web site at <http://www.sboe.state.nc.us/VoterLookup.aspx> or contact their local county board of elections by telephone.

Contact: Noelle Talley, (919) 716-6413

North Carolina Department of Justice / Roy Cooper, Attorney General (919) 716-6400



February 3, 2008

Attorney General Wayne Stenehjem  
State Capitol  
600 E. Boulevard Ave., Dept. 125  
Bismarck, ND 58505

Dear Attorney General Stenehjem:

I understand that you have received a complaint from the Romney for President campaign regarding phone calls made to residents of North Dakota. The complaint suggests that “robocalls” and live-operator calls have been made to North Dakota residents from a number associated with a volunteer call center operated by the McCain 2008 campaign, and that these calls are falsely being represented by the callers as being from the Romney campaign.

First, I sympathize with the Romney campaign in their frustration with such dirty-trick calls: the McCain campaign has been the target of numerous phone banking operations during this primary campaign, so we are familiar with both the anger such calls generate among voters and the difficulty in tracking down their true source.

Second, I can state categorically that the McCain campaign is not doing any pre-recorded or “robocalls” into the State of North Dakota. It is our understanding that such calls are not permitted by North Dakota law (absent a live operator introduction and other requirements). We have not authorized any such calls and are unaware of any being made on our behalf.

Third, we can confirm that John McCain 2008 does have an authorized volunteer call center located at 1701 Porter Street SW, Wyoming, MI 40519. Additionally, this call center makes calls that originate from the number (616) 477-0932. However, I have personally reviewed the script of calls being made from that center, and none of them mention Governor Romney or the Romney campaign, and all of them contain the appropriate disclaimer “Paid for by John McCain 2008.” They are standard “positive” voter identification calls, asking the recipient if they intend to vote for Senator McCain in the North Dakota caucuses, and if they respond affirmatively, then asking them if they need information on the location of the caucuses.

We are not in a position to know whether the calls described by the Romney campaign have in fact occurred. They may simply be the result of call recipients’ confusion. Our own supporters in North Dakota tell us they are receiving a large number of bothersome calls from callers purporting to be from the Romney campaign. It is very possible that the



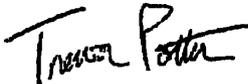
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two campaigns are calling the same lists of North Dakota Republicans and therefore our call center's number is in the call recipients' Caller ID backlog along with the Romney campaign's number. Complaining call recipients may have simply mixed up the two numbers. Also, the calls may be the result of so-called "spoofing." The McCain campaign is aware from its own experiences as the target of phone banks that technology exists where a caller can mask or alter the displayed phone number of a call. A caller can also apparently send a false number to a person's caller ID device. Therefore, if the calls described by the Romney campaign are being made in North Dakota, it is possible that such hacking techniques are being used to disguise the true originators of the calls and falsely attribute them to a number known to belong to the McCain volunteer call center in Michigan.

John McCain 2008 fully supports all efforts to investigate these tactics. We share your concern that these calls not only harass and deceive North Dakota voters, but also harm the foundations of the electoral process. If you have any questions, please contact us at 703-418-2008.

Sincerely,

A handwritten signature in black ink that reads "Trevor Potter". The signature is written in a cursive style with a large, stylized "P" and "T".

Trevor Potter  
General Counsel  
John McCain 2008



Everything Michigan

## McCain "robo-calls" traced to Kent GOP chair

By John Barnes

February 16, 2008, 2:06PM

Dirty tricks in North Dakota?

We may never know, though an investigation by that state's attorney general traced illegal "robo-calls" there to an office in Wyoming.

Former Massachusetts Gov. Mitt Romney's camp asked the state to look into the calls.

Romney officials traced the calls to Michigan-based Contact Services, a volunteer center for the campaign of Arizona Sen. John McCain and a business registered under Dave Dishaw, Kent County GOP chairman.

McCain spokesman John Yob said the campaign only hired people to turn out for the North Dakota presidential caucuses.

A North Dakota attorney general official concluded it wouldn't be able to find the source of the calls without a "significant" investment. □

*Read the entire Polpourri column Sunday on [mlive.com/grpress](http://mlive.com/grpress) or in Sunday's Press*

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Home / News

Secretary of State says he'll ask prosecutors to look into allegations

## Campaign calls draw scrutiny

- Story
- Discussion

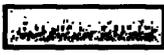
JARED MILLER Star-Tribune capital bureau | Posted: Wednesday, November 15, 2006 12:00 am  
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 Photo of Joe Meyer, Wyoming Secretary of State. File photo, Casper Star-Tribune.

CHEYENNE - Wyoming Secretary of State Joe Meyer will ask local and federal prosecutors to look into allegations of illegal automated campaign calls before last week's general election.

Meyer's office received three complaints about illegal calls linked to the contentious U.S. House race and the race for governor.

Meanwhile, the spokeswoman for Democrat Gary Trauner's apparently unsuccessful U.S. House campaign said illegal calls may have influenced that race. Linda Stoval said stronger laws are needed to prevent future violations.

"I would certainly say that in a race this close, it could have had an impact," Stoval said.

Meyer will ask the Laramie County district attorney to look into the report of an "unfriendly, almost threatening male voice" urging a Cheyenne voter to support Republican candidates.

He'll ask the U.S. attorney's office to consider a complaint about someone using a fake New York accent to misrepresent Trauner's position on key issues. Trauner moved to Wyoming from New York more than 16 years ago.

A Laramie voter complained after a caller directed her to an incorrect polling location when she disclosed her support for incumbent Gov. Dave Freudenthal. That allegation will go unchecked.

"There's no state statute against dirty tricks," Meyer said.

In addition, Right to Life of Wyoming, an anti-abortion group, admitted that its national affiliate made automated calls to support U.S. Rep. Barbara Cubin, R-Wyo., before realizing the practice is illegal in the state. The group later apologized. Meyer said it's possible that he would turn that case over to prosecutors.

Cubin's campaign denied any involvement in illegal campaign calls.

State law prohibits calls that combine automated dialing devices with recorded messages. The crime is a misdemeanor and carries a maximum sentence of six months in jail and a \$750 fine.

Meyer, who originally declined to pursue the allegations, said a state law that prohibits automated calling is geared toward telemarketing sales and carries little disincentive in political campaigns, especially for large out-of-state organizations.

The expense and unlikelihood of prosecuting and extraditing out-of-state callers is also prohibitive, said Meyer, who termed the existing statute "not effective."

"If they want to get serious about it, the only way I know how to do it is to have a \$50,000 fine or \$25,000 fine against any organization or group that authorizes these kind of calls," he said.

Automated calls were a major issue in the 2002 gubernatorial primary.

GOP candidates criticized fellow Republican Eli Bebout of Riverton after the National Rifle Association initiated automated calls on his behalf shortly before the election. Bebout won the race but was defeated by Freudenthal in the general election.

Democratic gubernatorial candidate Paul Hickey's campaign placed automated calls but halted them after learning they were illegal. Hickey is from Cheyenne.

Also that year, the Wyoming Republican Party used an automated recording of President Bush's voice to urge support for GOP candidates. It eventually halted the calls because they did not properly identify the sponsor.

"We always get a few complaints," Meyer said.

Stoval said the Trauner campaign received a number of complaints about automated calls supporting Cubin. A few thousand calls statewide could have made the difference in a close race, she said. Cubin won the race by 1,012 votes out of 193,369 cast, according to unofficial results.

John Powell, spokesman for the U.S. attorney's office in Cheyenne, said the complaints will be evaluated for possible violations of law. A call to the Laramie County district attorney's office was not returned Tuesday.

Reach Star-Tribune capital bureau reporter Jared Miller at (307) 632-1244 or at {M3jared.miller@casperstartribune.net.

Posted in Top\_story on *Wednesday, November 15, 2006 12:00 am*

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## State gets complaints on Obama calls

- Story
- Discussion

JOAN BARRON Star-Tribune capital bureau | Posted: Monday, January 12, 2009 12:00 am | Loading...

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**CHEYENNE** - The Wyoming attorney general's office will be notified of illegal automated phone calls on behalf of Democratic presidential candidate Barack Obama.

Peggy Nighswonger, administrator of the elections division of the secretary of state's office, said she received one e-mail complaint about the automated campaign phone calls. The e-mail complained said the call on Friday evening featured Michelle Obama, wife of the candidate, asking for support in the upcoming state Democratic caucuses.

Nighswonger, who said she also received one of the automated calls at home, noted that Monday, Presidents' Day, was a state holiday, which could account for the absence of more complaints.

"We will probably write to the state and national Democratic Party and advise them that it is not allowable in Wyoming," Nighswonger said.

Shannon Gibson of the Obama campaign said the illegal phone calls were unintentional.

"We took them down as quickly as possible," Gibson said. "And in total they ran for about an hour."

Nighswonger said the secretary of state's office received similar complaints of illegal phone calls during earlier election cycles.

During the 2006 general election, the office received three complaints about illegal calls linked to the U.S. House race and the race for governor. One complaint was about someone using a fake New York accent to misrepresent Democratic U.S. House candidate Gary Trauner's position on key issues.

A spokesman for Trauner, who lost a close race to Republican incumbent Barbara Cubin, said the calls could have had an impact on Trauner's tally. Cubin won the race by 1,012 votes out of 193,369 cast, according to unofficial results. Trauner is a former New York resident.

Another complaint was about an almost threatening male voice urging a Cheyenne voter to support Republican candidates.

Joe Meyer, then secretary of state, now state treasurer, turned the complaints over to the Laramie County district attorney and the U.S. attorney's office.

Right to Life of Wyoming admitted its national affiliate made automated calls to support Cubin before realizing the calls are illegal in Wyoming, Meyer said. Cubin's campaign denied any connection with the illegal campaign calls.

State law prohibits calls that combine automated dialing devices with recorded messages. The crime is a misdemeanor and carries a maximum sentence of six months in jail and a \$750 fine.

The automated calls also were an issue in the 2002 gubernatorial primary election, with complaints about both Republican and Democratic candidates.

Meanwhile, 11 Wyoming legislators are endorsing Obama, including eight who appeared at a news conference Monday morning at the Obama Wyoming campaign headquarters in Cheyenne.

The 11 Democratic legislators who are supporting the Illinois senator are Sens. Mike Massie of Laramie and Ken Decaria of Evanston, and Reps. Debbie Hammons, Worland; Ross Diercks, Lusk; Pete Jorgensen, Jackson; Patrick Goggles, Ethete; Lori Millin and Mary Throne, both Cheyenne; Stan Blake, Green River; Marty Martin, Rock Springs; and Jane Warren, Laramie.

The Obama campaign has four offices across Wyoming. The state Democratic county conventions are March 8.

Contact Joan Barron at [joan.barron@trib.com](mailto:joan.barron@trib.com) or by phone at 307-632-1244.

Posted in News on *Monday, January 12, 2009 12:00 am*

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