

Political Phone Calls: Don't Get Disconnected from the Law

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With the 2008 election fast approaching, many PACs and other organizations are planning to use live telephone banks and prerecorded messages as part of their strategy to reach voters this fall. Although telephonic communications represent an age-old way to communicate with members of the public regarding candidates and issues, this relatively inexpensive form of communication can present many traps for the unwary, some of which are discussed below:

- **Federal Election Commission (FEC) Regulations.** Under federal campaign finance law, all communications that contain express advocacy or are made by candidates/political committees must contain the appropriate federal disclaimer. States and localities may have their own disclaimer requirements that apply to political communications discussing state and local candidates/issues.
- **Federal Communications Commission (FCC) Regulations for Robocalls.** Even for telephone calls that involve state candidates and issues, the FCC's regulation of pre-recorded telephone calls comes into play. Among other things, such calls must state—at the beginning of the message—the identity on whose behalf the call is made. Moreover, such calls may not be made to certain numbers, including emergency numbers, guest/patient rooms at a hospital, etc.
- **Restrictions on the Use of Voter Lists.** Many states provide electronic or printed copies of their registered voter lists to individuals or entities upon request, usually for a small fee. A number of these states place additional restrictions on the use of these lists, including which entities may obtain them (e.g., only candidates and political committees, any registered voter, etc.) and the purposes for which the contact information may be used (e.g., express advocacy or GOTV calls, issue advocacy, soliciting contributions, non-commercial purposes, etc.).
- **Regulation of Robocalls.** Many states have enacted restrictions on calls using automated equipment, particularly those that use so-called Automatic Dialing-Announcing Devices (ADAD). Some states require users of ADAD equipment to prefile scripts with a regulatory body, while others require callers to obtain the consent of a recipient prior to playing a recorded message.
- **Grassroots Lobbying.** If a telephone call asks the recipient to "call their legislator" or "let the governor know" that the individual supports or opposes a particular piece of legislation or executive action, the call may be reportable activity under that state's lobbying law. While not every state regulates such

"grassroots" communications, there can be a myriad of registration and reporting requirements in those that do.

- **State "Do Not Call" Lists.** Although adopted primarily in response to unwanted commercial solicitations, the "Do Not Call" laws in some states cover certain types of political communications. Moreover, some states are currently exploring whether to expand the scope of their "Do Not Call" lists to cover all political phone calls. If the lists' coverage is expanded as some state legislators and citizen advocates have proposed, candidates, political committees, and other organizations would not be allowed to call individuals who have signed up on that state's "Do Not Call" list.