



The Honorable Joseph Foster
Attorney General
33 Capitol Street
Concord, NH 03301

January 29, 2016

Re: Prerecorded political messages delivered by live callers

Dear General Foster:

I write to request written guidance regarding the application of RSA 664:14-a to certain messages delivered by federal candidates or political committees.

Specifically, our campaign is seeking clarification regarding whether a live caller may deliver a prerecorded message referencing a federal candidate to a New Hampshire resident registered on the federal Do Not Call List.

As you know, the relevant section of the code states:

- I. In this section, “prerecorded political message” means a prerecorded audio message delivered by telephone by:
 - (a) A candidate or political committee; or
 - (b) Any person when the content of the message expressly or implicitly advocates the success or defeat of any party, measure, or person at any election, or contains information about any candidate or party.
 - II. No person shall deliver or knowingly cause to be delivered a prerecorded political message unless the message contains, or a live operator provides, within the first 30 seconds of the message the following information:
 - (a) The Name of the candidate or of any organization or organizations the person is calling on behalf of.
 - (b) The name of the person or organization paying for the delivery of the message and the name of the fiscal agent, if applicable.
 - III. No person shall deliver or knowingly cause to be delivered a prerecorded message to any telephone number on any federal do not call list.
 - IV. (a) A violation of this section shall result in a civil penalty of \$5,000 per violation.
- RSA 664:14-a.

While New Hampshire voters prize their role as participants in the First in the Nation Primary, almost 80 percent of them also subscribe to the federal Do Not Call List in order to avoid receiving a raft of prerecorded political telephone calls during election season.

However, recent press accounts indicate that some campaigns have interpreted the New



Hampshire law very narrowly and believe it prohibits *only* prerecorded political messages delivered by an automatic dialing device when a voter answers the telephone. Conversely, they do not read the statute to prohibit live callers from delivering prerecorded voicemail messages to voters who do not answer the telephone, including to voters who have subscribed to the federal do not call list.

For example, senior advisor to John Kasich's campaign, former Attorney General Tom Rath, has told WMUR in the last week that live callers on behalf of Kasich for America are leaving prerecorded voicemail messages with New Hampshire voters who do not answer. As reported by WMUR earlier this week, "live callers left automated messages only when recipients of the calls did not answer their telephones, Rath said." *NH Attorney General reviewing charge of improper 'robocalls' by Kasich*, WMUR.com, Jan. 25, 2016 available here: <http://www.wmur.com/politics/attorney-general-reviewing-charge-of-improper-robocalls-by-kasich-campaign/37582264>.

To date, our campaign has abided by the plain meaning of New Hampshire's law and has refrained from delivering prerecorded messages to voters on the do not call list through *any* manner, whether it is via automatic dialing devices or via live callers when voters do not answer the telephone. Given the conduct of our opponents, we ask that your office immediately issue guidance regarding the application of this statute to level the regulatory playing field.

In addition, should you find that prerecorded political messages delivered by live callers to those on the federal Do Not Call List and who do not answer their telephones are unlawful under RSA 664:14-a, we respectfully request that you notify all campaigns engaged in such calls to cease and desist immediately.

With only 10 days until the New Hampshire primary, we would appreciate a response from your office by Monday, February 1, 2016. Thank you for your attention to this important matter.

Sincerely,

A handwritten signature in black ink that reads "Megan L. Sowards". The signature is written in a cursive, flowing style.

Megan L. Sowards
General Counsel

cc: The Honorable William M. Gardner, Secretary of State