

State of New Hampshire
OFFICE OF THE ATTORNEY GENERAL
Election Law Memorandum

TO: All New Hampshire Presidential Primary Candidates

FROM: Joseph A. Foster, New Hampshire Attorney General

DATE: February 1, 2016

RE: Application of RSA 664:14-a

The Attorney General has been asked to provide guidance as to the application of RSA 664:14-a, to political calls made to telephone numbers registered with the Federal Trade Commission's Do Not Call Registry, where a live person initiates the telephone call and, when the phone is not answered and an answering machine or system is initiated, then delivers a prerecorded political message.

A "prerecorded political message" is defined by RSA 664:14-a, I, as a prerecorded audio message delivered by telephone by: (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. As applied to candidates for nomination in the New Hampshire Presidential Primary ("Primary"), it is clear by the definition that the statute applies to prerecorded (1) audio messages, (2) delivered by telephone, and (3) containing information about or advocating the success or defeat of any person competing in the Primary.

The statute restricts the delivery of audio messages meeting the definition of a prerecorded political message in two ways:

The first restriction prohibits the delivery of such a message unless, within the first 30 seconds, the message identifies (a) the candidate or organization on whose behalf the person is calling, and (b) the name of the person or organization paying for the message. RSA 664:14-a, II.

The second restriction is the one relevant to the present inquiry. It prohibits the delivery of a prerecorded political message to any telephone number on any federal do not call list. RSA 664:14-a, III. The prohibition has no material exclusion; it is absolute. The statute makes no distinction between a prerecorded political message delivered by a live person or an automated dialing machine, nor does the statute distinguish between prerecorded political messages received by a live person or a telephone answering device. If the number called is on a federal do not call list, no prerecorded political message may be delivered. RSA 664:14-a, III.