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**SENATOR ERIC JOHNSON**  
District 1                      Republican

**COMMITTEES:**

Administrative Affairs, Chairman  
Joint Legislative Ethics, Co-Chair  
Appropriations  
Ethics  
Finance  
Regulated Industries and Utilities  
Rules  
Natural Resources, Ex-Officio

**PRESIDENT PRO TEMPORE**

February 20, 2008

Chairman Dianne Feinstein  
US Committee on Rules and Administration  
305 Russell Senate Office Building  
Washington, DC 20510

Dear Chairman Feinstein:

Thank you for the opportunity to comment on Senate Bill 379 which I introduced in Georgia to address problems relating to the use of automatic dialing and recorded message equipment (ADAD), or robocalls, as the public knows them. This bill doesn't ban political calls, but requires a "live" operator to ask if you want to hear a message from whomever. This will add expense and will greatly reduce the number of calls. Plus, they cannot leave a message if you don't answer. Schools calling parents, government emergencies, and existing business relationships are excluded.

I introduced this bill because as this technology becomes cheaper and cheaper, the use of these calls gets more and more frequent. While the use of this equipment is not limited to political campaigns, it is where we see the most use. I believe that the people of Georgia have gotten tired of the numerous messages on their answering machines and the constant interruptions of their day, particularly during political season. My fear is that the overuse of these types of calls will actually cause citizens to be less engaged in the political process. My bill doesn't completely make robocalls illegal, but simply requires that organizations, such as political parties and campaigns, get the consent of those they call ahead of time. I think that is reasonable for our citizens to expect and we, as politicians, shouldn't have any special rules which apply only to us.

SB 379 passed the full Senate on Tuesday, February 19 by a vote of 40-9 with broad bipartisan support. It now moves onto the House, where I am hopeful it will receive similar support.

Sincerely Yours,

A handwritten signature in black ink, appearing to be 'Eric Johnson', written over a horizontal line. The signature is fluid and cursive.

Senator Eric Johnson

9TH SENATORIAL DISTRICT

**DOMINIC PILEGGI**

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*The Majority Leader*



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## Senate of Pennsylvania

February 12, 2008

The Honorable Dianne Feinstein, Chairman  
U.S. Senate Committee on Rules and Administration  
Russell Senate Office Building, Room 305  
Washington, D.C. 20510

Re: Robo-Calls

Dear Senator Feinstein:

As we have entered the 2008 election cycle, we are once again confronted with the problem of automated, recorded messages used by political candidates, parties, committees and other political organizations.

These calls have proliferated to such an extent that they are now a serious annoyance for our citizens. Automated phone calls are always a nuisance, but the impact is amplified many times over during election seasons, when people can receive dozens of political robo-calls over the course of just a week or two. I can honestly say that I have never heard of anyone saying that they like to receive these calls.

According to statistics from the Pew Research Center, two-thirds of the registered voters in the nation - about 90 million people - received robo-calls in the 2006 election cycle. That will likely increase this year, as we choose a new President.

The volume of robo-calls has soared as the cost of making them has tumbled. A robo-calling operation may consist of little more than a personal computer hooked to a high-speed telephone line, making hundreds of calls simultaneously at a cost of less than \$100 per month.

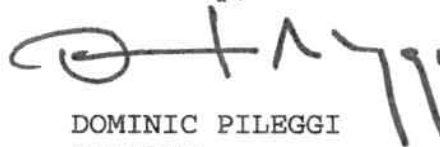
The Honorable Dianne Feinstein 2

February 12, 2008

With strong bipartisan support, I introduced Senate Bill 820 on May 2 of last year. SB 820, as amended in committee on January 30, would add political robo-calls to Pennsylvania's Do-Not-Call List.

I appreciate the national attention that your hearing will bring to this issue. I am hopeful that we will soon enact meaningful legislation in Pennsylvania to enable our citizens who so choose to stop receiving these calls.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Pileggi". The signature is stylized with a large loop at the beginning and a long, sweeping tail.

DOMINIC PILEGGI  
SENATOR

DP/EA/jez

# Commonwealth of Kentucky

## HOUSE OF REPRESENTATIVES

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**Jimmy Higdon**  
24<sup>th</sup> Legislative District

February 8, 2008

The Honorable Dianne Feinstein, Chair  
U.S. Committee on Rules and Administration  
United States Senate  
305 Russell Senate Office Building  
Washington, D.C. 20510

Dear Senator Feinstein:

I am honored that you have contacted me about my proposed legislation before the Kentucky House of Representatives that would outlaw campaign automated "robo-call" phone messages.

The idea for this legislation was the result of many of my constituents expressing their extreme outrage at receiving automated calls. The opposition to the bill has come from proponents of free speech, as well as from organizations who like the idea of automated calling.

My original bill would have made using automated calling equipment or recorded calls to communicate political messages a misdemeanor, punishable by fines ranging from \$50 to \$1,000. The latest version of the bill will be that people will be able to sign up to be placed on a "no political calls list," much like they are on the "no telemarketing calls list." The bottom line is people do not want these calls, particularly during their dinnertime and bedtime. The calls are becoming more and more of a nuisance to our constituents, and we are looking for a way to stop them.

Thank you again for contacting me. Please feel free to do so again if you need additional information.

Sincerely,

A handwritten signature in cursive script that reads "Jimmy Higdon".

Jimmy Higdon  
State Representative  
24th Kentucky House District



## State of Connecticut

### HOUSE OF REPRESENTATIVES

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MEMBER  
COMMERCE COMMITTEE  
ENERGY AND TECHNOLOGY COMMITTEE  
JUDICIARY COMMITTEE

February 25, 2008

The Honorable Dianne Feinstein  
Chairman, Senate Committee on Rules and Administration  
305 Russell Senate Office Building  
Washington, DC 20510

Re: Robocall Privacy Act, S. 2624

Dear Chairman Feinstein,

Thank you for the opportunity to submit written testimony concerning S. 2624, the Robocall Privacy Act, and for introducing this legislation. As a State Representative and Member of Connecticut's General Assembly, I have introduced and co-sponsored legislation to protect citizens, voters and families from the abusive and misleading use of automated telephone calls, *i.e.*, "robocalls," to support a political candidate or to advance a political or public policy agenda.

I represent the citizens and families of Stamford and New Canaan, Connecticut. In recent years, we have been involved in several very competitive campaigns at the local, state and federal level. My constituents, neighbors and my own family, however, have been subjected to a barrage of aggressive political robocalls in the last several years. Some robocalls are merely frequent or repetitive, and in that way, an annoyance. The abuses of robocall technology do not stop there, however. I have received reports from voters and constituents of robocalls that are materially misleading and contain false information. The most egregious example are calls that begin with a message suggesting that it is from one candidate, but is in fact an attack from the opposing candidate. Such calls begin with something like: "Stay tuned for a message about [Candidate X]." That initial statement is then followed by a short pause, and then by an attack on that candidate. These calls are misleading for several reasons. First, the recipient of the call is led to believe that the call is from a particular candidate, when in fact it is from his or

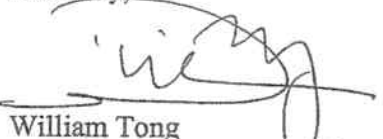
her opponent. Second, if the recipient is annoyed or upset by the robocall, the recipient is apt to blame the candidate identified on the call, as opposed to the sponsor. Third, I understand that calls have been purposefully made at inopportune times, such as the late evening, in the middle of the night, or early in the morning. By doing this, it seems the caller's purpose is to further magnify the recipient's anger at receiving the call, and if the call misleads the recipient as to who is sponsoring the call, the recipient is likely to blame the candidate who is the subject of the call, not the opponent-sponsor.

In the Connecticut General Assembly, I have co-sponsored House Bills 407 and 5660 to address political robocalls, and have introduced other bills addressed to the same subject. In my view, we must consider robocall legislation that may include (1) a requirement that any political robocall begin with the candidate identifying themselves in their own voice and stating the purpose of the call, their approval of the message, and that the call is automated (or, in the case of an organization, a legal representative of the organization stating the same information); (2) a do not call registry; and/or (3) restrictions on the days and hours during which such calls may be made.

Political speech, as you know, is the core of the First Amendment. Strongly defending political speech is among our highest duties and obligations as elected officials, and any measure that may limit, burden or encroach upon the most fundamental of our liberties must be approached with the most aggressive caution and skepticism. As is the case with all of our constitutional freedoms, our courts and constitutional jurisprudence recognizes that where necessary, the free exercise of political speech must be balanced with the safety, security and personal liberty of citizens and communities. Robocall technology, like any other, is subject to abuse. Calls that mislead voters or citizens on elections or important matters of public policy do substantial harm to our democratic process and freedoms. Calls that are made in the middle of the night or early morning, in an effort to harass and disturb people who need sleep and solitude -- such as working people, children, senior citizens, and the sick and infirm -- do not constitute the free exercise of political speech, but are instead a malicious threat to public safety and security.

I believe that we must work together, at the state and federal level, to curtail the abusive and misleading use of robocalls that poison our political debate. These calls do not enhance democratic liberties, but actually restrict our constitutional freedoms by disseminating false and misleading information concerning elections and public policy. I am grateful for your efforts, and stand ready to provide whatever assistance you need on this important issue.

Sincerely,



William Tong  
State Representative - 147<sup>th</sup> District

February 21, 2008

The Honorable Dianne Feinstein, Chairman  
U. S. Senate Committee on Rules and Administration  
305 Russell Senate Office Building  
Washington, DC 20510-6325

Dear Chairman Feinstein, Ranking Member Bennett, and Distinguished Members of the Senate Committee on Rules and Administration:

Thank you for the invitation to submit a letter to the Senate Committee on Rules and Administration.

For the last three years it's been my privilege to serve as Colorado's Attorney General. I succeeded your colleague, Ken Salazar, when he was elected to the U.S. Senate in 2004. In the course of my thirty year legal career I have also had the privilege of serving as the United States Attorney for Colorado and the elected District Attorney in Colorado Springs.

As I'm sure you do, I come very slowly to embrace any regulation of speech. But on the basis of my experience over the past few years I've come to the conclusion that government needs to act to protect citizens from the onslaught of robocalls that are invading their privacy and causing them much annoyance. Let me briefly explain how I came to this conclusion.

In June of 2001, Colorado passed a "no call" law, two years before the Federal Trade Commission's Do Not Call Registry went into effect. The 3.1 million Colorado phone numbers that are now registered are protected from most commercial telephone solicitations, but not from charitable or political solicitations. For the first few years citizens of Colorado were very appreciative of the additional privacy they enjoyed as a result of the no call law – complaints regarding telemarketers dropped from approximately 400 per day to less than 15 per day. But then came the increased use of automated dialing or robocalling to make political and some charitable solicitations. And over the last several election cycles the political robocalls have increased to the point where many citizens have become angry and are registering their complaints with my office and other regulatory agencies. In the last few years the Colorado No Call Registry has received over 9,000 complaints regarding robocalls. Our office also receives a high volume of such complaints.



In the days prior to Super Tuesday on February 5, some citizens in Colorado complained that they received as many as 10-15 robocalls per day.

Complainants tell us the following: They don't mind calls from candidates themselves or from live persons advocating on behalf of candidates. They can interact with such callers, ask them questions if they're so inclined, or tell them not to call again. But they tell us that robocalls do not generally provide them meaningful information. Rather, they find them harassing and annoying and an invasion of their privacy. Elderly citizens seem particularly affected by them, perhaps because they are more likely to be at home during the day. I've provided as an exhibit, a transcript of a complaint from an elderly disabled resident of Colorado which is very typical of the complaints we receive. The bottom line is that as a result of robocalls, the federal and state no call laws have lost much of their beneficial effect.

Having witnessed the increasing public revulsion toward robocalls, I decided to support legislation in Colorado to ban all robocalls, with the following exceptions:

1. Calls from law enforcement and public safety entities
2. Calls from schools or colleges to students, parents or employees
3. Calls which are authorized or consented to in advance by the recipient or where there is a preexisting personal or business relationship between the caller and the recipient.

It would also be permitted for a live person to call, identify the political or charitable organization he represents, and ask the recipient's permission to play a recording. The live operator must state the purpose of the message and provide the recipient an option to be excluded from future calls.

If such legislation was enacted, Colorado would join at least a dozen other states that restrict robocalls in some fashion. Our proposed statute is designed after one that has been enacted in Minnesota and upheld by the Eighth Circuit Court of Appeals.

We have carefully reviewed the case law that has been generated regarding limitations on robocalls and we believe our proposal is constitutional. The courts have found that residential privacy is a significant government interest and that robocalls are uniquely intrusive. But they also emphasize that restrictions on the time, place, or manner of engaging in protected speech must be justified without reference to the content of the regulated speech. Although political robocalls generate the most complaints, in order to remain content-neutral we have chosen not to target only political robocalls but all calls using pre-recorded messages. There is another bill introduced in Colorado legislature that attempts to more directly target political calls.

In the leading case of *Van Bergen v. Minnesota*, 59 F.3d 1541 (1995) the Eighth Circuit, getting to the essence of why banning virtually all robocalls is an acceptable limitation on speech, noted that people have been campaigning for elective office, soliciting for charities, spreading religious messages and selling products for centuries without the benefit of automated dialing machines and they can certainly continue to do so



Chairman Dianne Feinstein  
February 21, 2008  
Page 3

in the future. The bill we support leaves open ample alternative means to disseminate commercial, political or charitable messages that don't have the same disruptive impact on residential privacy.

In early February the *Denver Post* sponsored an online poll asking whether Coloradans wanted to ban robocalls. Although unscientific, over ninety percent of thirteen hundred respondents favored such a ban.

Unfortunately, on Wednesday, February 13<sup>th</sup> a Colorado State Senate Committee postponed indefinitely both bills that would limit robocalls in Colorado. It's apparent that the political parties in Colorado remain resistant to legislation at this point. But I predict that the growing level of public frustration will soon get the attention of Colorado legislators.

I applaud Senator Feinstein and other members of Congress who recognize that for most Americans, robocalls have indeed become a terrific nuisance and an unwanted invasion of their privacy. Because this is a matter that implicates interstate commerce and federal election activity, I believe Congress can properly weigh in. I would simply ask that whatever regulation of robocalls you undertake, that you retain the opportunity for states to experiment with their own means of dealing with the issue, if they are so inclined and if it is constitutionally permissible.

Thank you again for the opportunity to comment on the matter.

Sincerely,

JOHN W. SUTHERS  
Colorado Attorney General

# Nebraska State Legislature

SENATOR DIANNA R. SCHIMEK

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## COMMITTEES

Chairperson - Legislative Performance Audit  
Judiciary  
Transportation and Telecommunications  
Committee on Committees

February 26, 2008

The Honorable Diane Feinstein, Senator  
Senate Committee on Rules and Administration  
Russell Senate Office Building, Room 325B  
Washington, DC 20510

Dear Sen. Feinstein:

I have been informed that you will be introducing legislation that will regulate prerecorded telecommunications made through automatic dialing devices. As you may already know, I have introduced similar legislation in the Nebraska Legislature again this year.

Protecting residential privacy is a compelling state interest and LB 720 is a response to the public outcry on the way that prerecorded campaign telecommunications (also known as "robocalls") were used during the 2006 election.

At that time, several stories were reported in the local press about possible abuses of state law and robocalls which bordered on harassment. In one very contested congressional race, one such call was made to voters during the very early morning hours, with a claim the call was authorized by a candidate. It was never decided which, if either of the campaigns, made the phone call, and it was believed that it was possibly made by an unknown third party. The incidents were investigated but not enough information was available and no conclusion was reached.

We have also had callers utilize devices that make it very difficult to trace the ID of the person making the phone call. In these cases, a person does not know who to contact in order to request that they not receive additional calls.

The Legislature's Government, Military and Veterans Affairs Committee has held hearings on the matter and each one has yielded the same response: that the people of Nebraska want something done about the annoyances that result from the flagrant abuse of robocalls and they want regulation.

If you have questions regarding instances of robocall abuse or the legislation that I am carrying in Nebraska, do not hesitate to contact me or my aid, Nick Faustman. We can be reached at (402) 471-2632.

Sincerely,

A handwritten signature in black ink, appearing to read "DiAnna R. Schimek".

DiAnna R. Schimek



DANIEL H. LOWENSTEIN  
PROFESSOR OF LAW  
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SCHOOL OF LAW  
BOX 951476  
LOS ANGELES, CALIFORNIA 90095-1476

February 19, 2008

Chairwoman Dianne Feinstein  
Senate Committee on Rules and Administration  
Russell Senate Office Building 305  
Washington, D.C. 20510

Dear Senator Feinstein,

I am writing in support of the Robocall Privacy Act of 2008. Unfortunately, I received short notice of the pendency of this proposal at a time when my schedule is especially crowded, but in however brief and informal a manner I should like to express my approval of this very constructive legislation. My credentials as an authority on election law are summarized in the last paragraph of this letter.

I support the Robocall Privacy Act because it will protect citizens against intrusive or deceptive messages without inhibiting or discouraging campaign communications. Each of the substantive provisions is precisely designed to protect citizen interests without undue imposition on campaigns that wish to use robocall technology. Thus:

- The bill prevents robocalls between 9:00 p.m. and 8:00 a.m., the times when most people either are sleeping or desire quiet.
- The bill limits the number of calls from a campaign to a telephone line to two per day. Although this may cause a small number of calls not to be completed, at least on a given day, it is easily justified by the need to avoid undue harassment of recipients.
- The bill requires disclosure of the identity of the campaign making the call at the beginning of the call. This protects against deceptive messages seeming to come from a given candidate but actually designed to generate ill will toward that candidate. I address the free speech aspect of this provision below.
- The bill requires disclosure at the outset that it is, in fact, a recorded call. This avoids possible confusion and frustration and should be no imposition on the caller.
- The bill prevents blocking caller ID. This is consistent with the nearly universal practice of ethical campaign mail to identify the publisher of the mail on the outside.

I should like to make an additional comment about the third item above, requiring disclosure at the outset of the identity of the caller. As I mentioned in connection with the fifth

Senator Dianne Feinstein  
February 19, 2008  
Page 2

item, in the case of campaign mail, it is a universally recognized ethical practice to disclose on the outside of the mail who the mail is coming from. I am well aware that the First Amendment protects just as much against requiring speakers to utter a certain message as it protects against prohibiting a certain message. I believe strongly in this "compelled speech" doctrine and have successfully defended California slate mail publishers against unconstitutional state efforts to require certain prejudicial messages and symbols to appear on the face of slate mail. (See for example, the Order in *California Prolife Council Political Action Committee v. Scully*, E.D. Cal. 2001, available at <<http://www.law.ucla.edu/users/lowenstein/slatemailorder.pdf>>).

I do not believe that the Robocall Privacy Act violates the compelled speech doctrine, either in law or in principle. There is nothing prejudicial about requiring the calling organization to identify itself. The requirement that the identification occur at the beginning of the call is justified because of the possibility that the recipient will hang up before hearing the identification, as well as by the ability it gives the recipient to make an informed decision whether to go on listening. It is true that under some circumstances, not yet defined with clarity by the Supreme Court, anonymous political messages are constitutionally protected. The use of a telephonic medium that for all its convenience and efficiency can be intrusive and is vulnerable to deception is surely not one of the circumstances in which anonymity is protected.

A week or two ago I discussed the proposal with a member of your staff. At that time, consideration was being given to a provision that would require the recipient to take some affirmative action, such as pressing the star button, to permit the call to go forward. I am very glad that provision has been removed. It would have put robocalls at a disadvantage against most other media for political advertising, which do not require such affirmative action by the recipient. As a practical matter, it probably would have prevented a very high percentage of robocall messages from being heard.

I should add that I have no expertise on the technology used in distributing robocalls. I understand that the staff has sought to fashion the bill so that all its requirements can be met cheaply and expeditiously. It is conceivable that as deliberations on the bill continue, it will appear that some unintentional problem is created. If so, it should be relatively easy to modify the bill to achieve its purpose without undue imposition.

In its present form, the bill serves a very useful protective purpose at what appears to be minimal expense and inconvenience on the part of those who use robocall technology. For these reasons I commend you for proposing it and I urge its passage.

I graduated from Yale College in 1964 and from Harvard Law School in 1967. I had a Sheldon Travelling Fellowship from Harvard for 1967-68. From 1968-71 I served as a staff attorney at California Rural Legal Assistance. My work in election law began in 1971-75, when I served as special counsel and Deputy Secretary of State of California. In 1975 I was appointed by Governor Jerry Brown to be the first chair of the Fair Political Practices Commission, a position in which I served until 1979. I have been a professor at the UCLA Law School since 1979. My main specialty has been election law, and I have written about campaign finance,

Senator Dianne Feinstein  
February 19, 2008  
Page 3

redistricting, voting rights, political parties, initiatives, bribery, and many other aspects of election law. In 1995 I published the first 20<sup>th</sup> Century textbook on American election law. The book is now co-authored with Professor Richard Hasen and is in its third edition.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel H. Lowenstein". The signature is fluid and cursive, with a long horizontal stroke at the end.

Daniel H. Lowenstein



February 8, 2008

The Honorable Dianne Feinstein  
Senate Committee on Rules and Administration  
United States Senate  
Washington, DC 20510

Dear Senator Feinstein:

Common Cause supports the Robocall Privacy Act of 2008 and commends you for addressing the insidious and harmful election year problem of serial political robocalls designed to harass voters and discourage them from participating in the political process.

The mission of Common Cause has been to open up the political process to all citizens and give them a voice in the process. Abusive political serial robocalls are designed to do just the opposite – suppress voter participation.

In past elections our organization has run a voter hotline with other civic and political engagement organizations. In the November 2006 election, we received a number of complaints about serial political robocalls. In each instance, the automated phone call would be placed to a voter's home phone number - sometimes as many as 10 or 20 times a night. To stop the robocalls, citizens would have no recourse but to unplug their telephones – placing themselves at risk of not receiving other vital communication from family and other parties. The citizens who received these calls lodged complaints to our hotline. They were angry, upset, afraid and confused – and likely to join the millions of Americans who are already turned off by negative political campaigns.

The Robocall Privacy Act provides common sense guidelines and regulations to protect citizens from this destructive practice. We appreciate your leadership in helping to protect voters.

Sincerely,

Bob Edgar  
President  
Common Cause

February 24, 2008

The Honorable Diane Feinstein  
Chairman, Senate Committee on Rules and Administration  
305 Russell Senate Office Building  
Washington, DC 20510

Dear Senator Feinstein:

I am delighted that you are considering rules governing the use of political robocalls. I have heard nothing but complaints from California voters about the excessive use of robocalls by political candidates during the recent California Primary Election.

Californians are confused and angry about the excessive use of this tactic right before elections. Most of the ones that I have talked to are on the National Do Not Call list. They do not understand why they are subjected to the dreaded robocall. Some that I have talked to received fourteen from the Romney and McCain campaign in the weekend prior to the election. Many came as late as 9:55 pm and they started up again at 8 am. All of them had already voted absentee. I received five from the Clinton Campaign myself. This is an area that I plan to delve into after this election is over. We all have lots of anecdotal evidence but we really need to do a study on the effectiveness of this practice. I suspect that the persuasive value of robocalls is minimal.

This situation is particularly onerous in California where the California Public Utilities Commission has ruled that all machine generated calls, political and commercial, must be introduced by a live person that gives you the option of listening to the message. (CPUC Code, Sections 2871-2876). The database of complaints at the Commission about these calls is where I plan to begin our study.

Most consumers are furious about unwanted intrusions in their home environment. The large number who registered with the do not call list is evidence of this. They want a way to stop unwanted calls and complaints to their telephone carriers are growing. At a Minimum, the political robocallers should be forced to provide a name and phone number at the outset of the call so that the recipient can file a complaint. Even with caller ID, many of these are blocked numbers. The Senator might want to force them to unblock the phone number. At least the consumer would have a number to report to their carrier or to the CPUC. I still prefer the live voice and consumer permission that the CPUC code requires.

I have consulted the lead telecommunications commissioner at the CPUC on this issue. To her knowledge, very few instances of enforcement are on the record. I urge committee to restrict these annoying calls so that conform to California Code. I would also advocate stiff fines and penalties for those campaigns that violate the law.



Increasingly, California voters are requesting permanent absentee ballots. These voters are often the population that are targeted by political campaigns. They vote regularly and often give to political campaigns. They simply don't understand why they must be subjected to this practice. I hope that your committee will modify this disruptive practice. It is hard enough to get voters enthusiastic about elections. National polling data documents their disdain for politicians during the election season. These robocalls do nothing to dispel that belief.

I know that concerns for political speech and the 1st Amendment dominate this discussion but obviously the California CPUC code is a way to achieve both goals if it is enforced.

Sincerely,

A handwritten signature in cursive script that reads "Barbara O'Connor".

Barbara O'Connor, Ph.D.

Professor of Communications

Director of the Institute for the Study of Politics and Media

California State University, Sacramento

6000 J Street

Sacramento, California 95819