

Comment on AOR 2012-10



March 15, 2012

Federal Election Commission
Office of General Counsel
999 E Street, N.W.
Washington, DC 20463

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FAX (Office of General Counsel): 202-219-3923

Subject: AOR Number 2012-10 (Greenberg Quinlan Rosner Research, Inc.)

I write in support of the advisory opinion request from Greenberg Quinlan Rosner Research¹ confirming that the provision of New Hampshire's "push poll" law (Revised Statutes 664:16-a(I)), insofar as it purports to require that certain disclaimers be made in the course of bona fide survey and opinion research by telephone that refer strictly to candidates for federal office, are preempted by the Federal Election Campaign Act.

1. The Marketing Research Association

The Marketing Research Association (MRA) is the leading and largest association dedicated solely to promoting the interests of the survey and opinion research profession, whose membership includes large and small companies, non-profit organizations, academic institutions, and government entities. MRA promotes, advocates and protects the integrity of the research profession and strives to improve the research process, research participation and quality.

2. The difference between bona fide research and a "push poll"

So-called "push polling" is not polling at all – it is a form of negative phone banking fraudulently disguised as polling. While polling can be properly used to test messages, "push polling" is not a test, but rather an effort to communicate those messages by giving that communication the appearance of polling.

Roll Call's Stuart Rothenberg² has summarized the difference between real research and "push polls", saying "Polls are methodologically rigorous public opinion surveys of generally 500 to 1,000 people intended to learn about and measure voters opinions and test possible campaign messages. Advocacy telephone calls, on the other hand, are made to tens of thousands of people and are intended to create or change opinion."

¹ <http://saos.nictusa.com/aodoce/1204675.pdf>

² "For the Thousandth Time, Don't Call Them "Push Polls"." Stuart Rothenberg. *Roll Call*. March 8, 2007.

In that *Roll Call* article, Stu Rothenberg stated that a “push poll” should never enter the “lexicon, since it does nothing but confuse two very different and totally unrelated uses of the telephone.” That is why MRA refers to “push polls” as “deceptive persuasion calls”, to better fit the term to the activity.

Political persuasion calls are a campaign advocacy technique used to “push” a voter away from a particular candidate or issue and toward another – they are not a legitimate, scientific poll. A persuasion call under the guise of a poll is a particularly unethical and deceptive activity.

MRA has been battling against “push poll” activities for years, seeking to educate consumers, political professionals, and legislators and regulators on the difference between bona fide research,³ and political persuasion under the guise of research – and the damage that such deceptive activities inflict on bona fide research.

MRA and the entire survey and opinion research profession oppose the practice of “push polling” or similar deceptive persuasion calls. It is abusive to voters, candidates, parties, and organizations. More broadly, each such call abuses the research profession by giving recipients a misleading and negative view of what research is and how it works – making them much less likely to participate in future survey and opinion research studies.

“Push poll” calls are usually 30-60 seconds in duration, ask only a few leading or misleading questions and are placed to many thousands of people. Legitimate research calls generally take at least a few minutes, ask carefully designed questions, collect demographic information and are placed to a small representative sample of a particular segment of the public. In short, “push polls” are designed solely to influence potential voters – sharing information instead of collecting it, and shaping opinion instead of analyzing it.

Serious polls can include “push” questions that contain some explosive or even incorrect information, but that doesn’t make them campaign advocacy calls. Testing possible messages is a legitimate survey research function. Message testing is used, targeting a small sample, in order to gauge responses on whether an issue is useful or meaningful in an election. Such messages can be considered positive, negative or plainly neutral.

3. The negative impact of New Hampshire law on bona fide telephone research

The New Hampshire statute requires “any person who engages in push-polling” to “inform any person contacted that the telephone call is being made on behalf of, in support of, or in

³ Bona Fide Survey and Opinion Research: -- the term “bona fide survey and opinion research” means the collection and analysis of data regarding opinions, needs, awareness, knowledge, views, experiences and behaviors of a population, through the development and administration of surveys, interviews, focus groups, polls, observation, or other research methodologies, in which no sales, promotional or marketing efforts are involved and through which there is no attempt to influence a participant's attitudes or behavior.

opposition to a particular candidate for public office, identify that candidate by name, and provide a telephone number from where the push-polling is conducted.”⁴

The scope of the law would not be problematic for research if it only targeted actual “push polling”. Unfortunately, the definition of a “push poll” is written so broadly as to incorporate bona fide survey and opinion research practices:

NH Code, Section 664:2 (XVII). “Push-polling” means:

- (a) Calling voters on behalf of, in support of, or in opposition to, any candidate for public office by telephone; and
- (b) Asking questions related to opposing candidates for public office which state, imply, or convey information about the candidates character, status, or political stance or record; and
- (c) Conducting such calling in a manner which is likely to be construed by the voter to be a survey or poll to gather statistical data for entities or organizations which are acting independent of any particular political party, candidate, or interest group.

While the intent of the law appears to have been to combat “push polls”, the scope also seems to include most any poll that asks about a candidate’s “character, status, or political stance or record”. This includes not only research calls testing negative messages, but also polls questioning voters’ opinions on relatively objective or verifiable issues and concerns.

As a result, many legitimate political research calls in New Hampshire end up being irreparably biased, distorting the results of research and making it impossible to accurately reflect the thoughts and opinions of New Hampshire residents. Disclosure of who paid for or commissioned a poll and their relationship to a political candidate or organization can completely distort the answers respondents provide to research questions.

Researchers go to great lengths to eliminate bias from all aspects of the research process, from the wording of questions to the accent of the interviewers. In most instances, the interviewer administering the questions is unaware who sponsored the research, or why. The bias that would result from such disclosure would make it extremely difficult to produce scientifically and statistically valid data – an essential tool for any company, organization, or political candidate.

This demand for bias-inducing disclosures in bona fide research, even before the two recent cases in which the Attorney General of New Hampshire brought fines, has led researchers who understand the law (and its implications) to avoid doing political and public opinion telephone research in New Hampshire, a crucial federal electoral battleground.

MRA and our coalition partners have endeavored to convince the Attorney General and the legislature to fix this law to protect bona fide research, but so far to no avail.

⁴ Section 664:16-a Identification Required. – I. Any person who engages in push-polling, as defined in RSA 664:2, XVII, shall inform any person contacted that the telephone call is being made on behalf of, in support of, or in opposition to a particular candidate for public office, identify that candidate by name, and provide a telephone number from where the push-polling is conducted.

II. Any person or entity who violates paragraph I shall be subject to penalty under RSA 664:21, V and VI.

4. Conclusion

For these reasons, as well as the case law outlined in GQQR's filing, MRA requests that the Commission prevent states from imposing their own varying rules that might interfere with the ability to conduct bona fide survey and opinion research mentioning strictly federal candidates.

Sincerely,

A handwritten signature in black ink, appearing to read "Howard Fienberg". The signature is stylized and cursive.

Howard Fienberg, PLC
Director of Government Affairs
Marketing Research Association (MRA)