**Charlie Bass Push Poll Civil Case 2012/13**

A “Push Poll” Problem: New Hampshire on the right track to fix misguided law and protect real survey and opinion research

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Thanks to the state’s misguided “push poll” law, New Hampshire has proven a legal minefield for political survey and opinion research. However, legislation advanced in the state legislature this year, and the dismissal of a high-profile court case on June 17, 2013, indicate a final fix may be just around the corner in early 2014.

The legal pitfalls for polling in New Hampshire

Many researchers abstain from political survey and opinion research in New Hampshire to avoid compromising their science and their clients. The state's “push poll” law requires ordinary research calls to disclose their sponsors when asking mundane questions about relatively objective or factual matters in an election.

The existing law biases legitimate political research calls in New Hampshire, 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 can distort the answers provided by respondents and makes it extremely difficult to produce scientifically and statistically valid data.

Real researchers doing real research have been ensnared by this law. For instance, supposed violations cost OnMessage, Inc. $15,000 in 2012 and Mountain West Research $20,000 in 2010.

NH AG v. Bass case dismissed, affirming federal preemption

The Attorney General of New Hampshire, Michael Delaney, had filed suit seeking civil penalties against the reelection campaign of then-Congressman Charlie Bass (R-NH) for engaging in “push polls” as defined under state law (New Hampshire Attorney General v. Bass Victory Committee). Surprisingly, Delaney continued to push the case after Rep. Bass was defeated in the general election last November, and Rep. Bass continued to defend against the case instead of seeking a settlement.

The Marketing Research Association (MRA) and American Association of Political Consultants (AAPC) filed an amicus brief to the case on February 15, 2013.

Most recently, on June 17, the Merrimack County Superior Court granted Rep. Bass’ motion and dismissed the Attorney General’s case, “on the grounds that federal law preempts the State’s claim.” The court based its decision on Advisory Opinions from the Federal Election Commission (FEC), especially the MRA-supported Advisory Opinion 2012-10, in which the FEC determined that the New Hampshire provision requiring disclaimers on “certain campaign-related telephone surveys made on behalf of federal candidates, their authorized campaign committees, or other federal political committees that refer only to candidates for federal office is preempted by” federal law.

S.B. 196: Legislature stumbles forward to fix the law

Sponsored by Senators Jeb Bradley (R) and David Pierce (D), S.B. 196 passed the New Hampshire Senate on April 18, but ran into trouble in the House.

As amended, S.B. 196 defines “push polling” as: “(a) Calling voters on behalf of, in support of, or in opposition to, any candidate for public office by telephone; (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; (c) Conducting such calling as part of a series of like telephone calls that consist of 2,000 connected calls that last less than 2 minutes in presidential, gubernatorial, United States senatorial, or United States congressional elections; or conducting such calling as part of a series of like telephone calls that consist of 500 connected calls that last less than 2 minutes in executive council, state senate, state representative, city, town school district, or village district elections; and (d) Conducting such calling for purposes other than bona fide survey and opinion research.”

S.B. 196 defines “Bona Fide Survey and Opinion Research” as “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. Bona fide survey and opinion research includes message testing, which is the study for research purposes of how individuals react to positive or negative information on a candidate, elected public official, or ballot question.”

Persons engaging in “push polling” under S.B. 196 would be required to, “prior to asking any person contacted a question relating to a candidate: (a) Inform the person that the telephone call is a "paid political advertisement;" and (b) Identify the organization making the call and the organization paying for the call; and (c) Provide a valid, current, publicly-listed telephone number for the organization making the call; and (d) Identify that the telephone call is being made on behalf of, in support of, or in opposition to a particular candidate or candidates for public office and identify that candidate or candidates by name.”

The legislation, drafted and amended several times with the assistance of MRA and AAPC, would ameliorate the situation for political survey and opinion research in New Hampshire by exempting bona fide research from the “push polling” restrictions and setting thresholds of the number of like calls to help distinguish between a real poll and a deceptive political advocacy campaign masquerading as a real poll.

Unfortunately, the issues proved complex and the House Election Law Committee ran out of time to properly consider S.B. 196 in 2013. The bill has been retained and we expect it to be atop the Committee’s priorities when the legislature reconvenes in January, 2014.

Waiting for next year

More than a few within the national Republican and Democrat parties’ have questioned the wisdom of retaining New Hampshire’s protected status as home to the first-in-the-nation Presidential primary. The battles over pollsters prosecuted for violating the state’s misguided “push poll” law, which impedes legitimate survey and opinion research instead of deterring deceptive political advocacy campaigns, has only added fuel to the fire of calls to junk the state’s footing in the primary process. However, with the Bass case dismissed and S.B. 196 looking positive for early next year, MRA remains hopeful that New Hampshire can properly address the deficiencies in its law and carve out appropriate protections for bona fide research in time to save its coveted position.

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