

FREQUENTLY ASKED QUESTIONS (FAQS) ABOUT POLITICAL CALLS

The Office of the Indiana Attorney General receives many inquiries from political party organizations, candidates, committees and the general public about political calls. The following FAQs shed light on how political calls are treated under Indiana's telephone privacy laws, including the Telephone Solicitation of Consumers Act, Ind. Code 24-4.7 ("Do Not Call law") and the Regulation of Automated Dialing Machines Act, Ind. Code 24-5-14 ("Auto Dialer law").

For the purpose of these FAQs, the term "political calls" includes calls made for polling, information, advocacy and solicitations for political contributions. This document is not an official opinion of the Office of the Indiana Attorney General and should not substitute for advice from your private legal counsel.

Question: Does the Indiana Do Not Call law prohibit political calls to numbers on the Do Not Call list?

Answer: The Do Not Call law prohibits *telephone sales calls* to numbers on the Do Not Call list. A "telephone sales call" is defined by Ind. Code § 24-4.7-2-9 as "a telephone call made to a consumer for any of the following purposes:

- (1) Solicitation of a sale of consumer goods or services.
- (2) Solicitation of a charitable contribution.
- (3) Obtaining information that will or may be used for the direct solicitation of a sale of consumer goods or services or an extension of credit for such purposes...

Typically, political calls fall outside the definition of a telephone sales call because they are not solicitations as described in Ind. Code § 24-4.7-2-9. If a call is not a telephone sales call, then the call is not prohibited under the Do Not Call law.

Question: Is a call soliciting a political contribution treated the same under the Do Not Call law as a call soliciting a charitable contribution?

Answer: For purposes of the Do Not Call law, a charitable organization is one that is exempt from federal income taxation under Section 501 of the Internal Revenue Code. See Ind. Code § 24-4.7-1-1(3). Such organizations are permitted to make telephone sales calls to numbers on the Do Not Call list, but only if the call is made by an employee or volunteer of the organization. Social welfare organizations which are tax exempt under Section 501(c)(4) of the Internal Revenue Code, would be included in this exemption.

Requests for political donations are often made by organizations that are not classified under Section 501, and therefore, the exemption in Ind. Code § 24-4.7-1-1(3) would not apply. Thus, we must look at whether a request for a political contribution is a telephone sales call. A request for a donation to a candidate or campaign is, in most cases, not soliciting the sale of consumer goods or services, or obtaining information that may lead to a sale. A request for a political donation is also not soliciting a charitable contribution. The Do Not Call statute does not define

“charitable contribution.” However, looking to the IRS for guidance, we find charitable contribution defined in IRS Publication No. 526 (2015):

A charitable contribution is a donation or gift to, or for the use of, a qualified organization. It is voluntary and is made without getting, or expecting to get, anything of equal value...Qualified organizations include nonprofit groups that are religious, charitable, educational, scientific, or literary in purpose, or that work to prevent cruelty to children or animals.

A political organization is not primarily religious, charitable, educational, scientific or literary in purpose. The Internal Revenue Code also dictates that certain solicitations for political contributions must contain a disclaimer stating that it is *not* a charitable contribution. See 26 U.S.C. § 6113.

In conclusion, a solicitation for a political contribution does not fall under the definition of a telephone sales call, and therefore, the Do Not Call law would not apply to calls made for that purpose.

Question: Are political robo-calls permitted in Indiana?

Answer: Indiana’s Auto Dialer law prohibits most prerecorded calls, commonly known as “robo-calls,” made via an automatic dialing-announcing device (“ADAD”) regardless of the subject matter of the message.

An ADAD is defined as:

...a device that: (1) selects and dials telephone numbers; *and* (2) working alone or in conjunction with other equipment, disseminates a prerecorded or synthesized voice message to the telephone number called.

Question: Are robo-calls involving commercial solicitations the primary focus of the Auto Dialer law?

Answer: Some have a misconception that the Auto Dialer law only prohibits robo-calls involving a commercial message. This argument was rejected by the Indiana Supreme Court in *State v. American Family Voices*, 898 N.E.2d 293 (Ind. 2008). The term “commercial telephone solicitation” is defined in the Auto Dialer law, but only referenced in the section restricting the time of day that a commercial robo-call can be placed, subject to the other prohibitions and requirements in the law. The main prohibition in the Auto Dialer law applies to *all* calls placed using an ADAD, with a few narrow exceptions described below.

Question: Are some robo-calls allowed under Indiana law?

Answer: Indiana law permits prerecorded calls from school districts to students, parents or employees; calls to subscribers with whom the caller has a current business or personal relationship; and calls advising employees of work schedules. Ind. Code § 24-5-14-5(a). In addition, prerecorded message calls are permitted if (1) the subscriber has knowingly or voluntarily requested, consented to, permitted, or authorized receipt of the message; or (2) the message is

immediately preceded by a live operator who obtains the subscriber's consent before the message is delivered. Ind. Code § 24-5-14-5(b).

Question: What about Tele-Town Halls?

Answer: Tele-Town Halls are auto-dialed prerecorded message calls to constituents for the purpose of obtaining the constituents' participation in a conference call with a public officeholder.

A call inviting participation in a Tele-Town Hall must comply with Indiana law just like any other call. An auto-dialed prerecorded message call inviting a constituent to join a Tele-Town Hall is permitted if (1) the subscriber has knowingly or voluntarily requested, consented to, permitted, or authorized receipt of the message; or (2) the message is immediately preceded by a live operator who obtains the subscriber's consent before the message is delivered. Ind. Code § 24-5-14-5(b).

Question: What if a call is dialed via machine and then a live operator talks to the person who answers the call?

Answer: If a machine selects and dials telephone numbers and *does not also disseminate a pre-recorded message*, it is not an "automatic dialing-announcing device" ("ADAD") under Indiana law. Ind. Code § 24-5-14-1. The Auto Dialer law prohibits only calls made via ADAD.

Question: What if a call is dialed via machine, then a live operator speaks or reads a message to an answering machine or voicemail?

Answer: A live person speaking or reading a political message on an answering machine or voicemail is no different than a live person talking to a live person answering the telephone call. There is no dissemination of a prerecorded message, therefore, no ADAD. If no ADAD, then there is no violation of the Auto Dialer law.

Question: What if the live operator plays a prerecorded message on a person's answering machine or voicemail?

Answer: Ind. Code § 24-5-14-5(b) provides:

A caller may not use or connect to a telephone line an automatic dialing-announcing device unless: (1) the subscriber has knowingly or voluntarily requested, consented to, permitted, or authorized receipt of the message; or (2) the message is immediately preceded by a live operator who obtains the subscriber's consent before the message is delivered.

Recipients could make it clear in their voice mail or answering machine prompt that they only wish to receive name and number of the person calling. In those instances, the required permission inviting a message is not present. However, when a voicemail prompt invites a message to be left, it provides permission for a human operator to leave a prerecorded message.

Question: We've all encountered technology that understands and responds to human speech. Must the recipient's consent be obtained by a human being?

Answer: The Auto Dialer statute requires the caller to obtain consent prior to the call or at the outset of the call by means of a live operator. Ind. Code § 24-5-14-5(b)(2).

The Indiana Supreme Court addressed this scenario in *State of Indiana v. Economic Freedom Fund, et al.* 959 N.E.2d 794, 803 (Ind. 2011). According to the Court, "the Autodialer Law prohibits [the caller] from disseminating robocalls when [the caller] has not obtained the subscriber's consent prior to the call or when [the caller] does not use a live operator to obtain the consent at the outset of the call.

Question: Are there special rules for making robo-calls to wireless phones?

Answer: Indiana's telephone privacy laws do not distinguish between calls to land-lines and calls to wireless telephones, so the laws apply equally to both types of communication. The federal Telephone Consumer Protection Act and its related regulations prohibit most automatic dialer calls to cellular phones, unless the person receiving the call consented in writing. See 47 U.S.C. § 227(b)(1)(A)(iii).