

CRS Report for Congress

Automated Political Telephone Calls (“Robo Calls”) in Federal Campaigns: Overview and Policy Options

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R. Sam Garrett
Analyst in American National Government
Government and Finance Division



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Summary

Prerecorded telephone messages that provide information about political candidates or urge voters to go to the polls are a common campaign tactic. Anecdotal accounts suggest that the public often objects to the volume and frequency of these automated political calls (also called “auto calls” or “robo calls”). In response, several bills (H.R. 248, H.R. 372, H.R. 479, H.R. 894, H.R. 1298, H.R. 1383, H.R. 1452, and H.R. 4298) introduced in the 110th Congress would add the calls to the federal do not call list, require additional reporting about the calls, or otherwise regulate the calls. None of that legislation has advanced beyond introduction, but the Committee on House Administration, Subcommittee on Elections, held an oversight hearing on automated political calls on December 6, 2007. Despite the often negative anecdotal information about automated political calls, they remain an inexpensive, effective way to reach hundreds or thousands of voters quickly. Campaigns and groups often rely on automated political calls to respond to last-minute campaign developments.

Empirical research and data about automated political calls are extremely limited. Data from surveys and the Federal Election Commission (FEC) suggest that during the 2006 election cycle, a majority of American voters received automated political calls and that various political committees spent millions of dollars on those efforts. Despite media reports of strong public disdain for automated political calls, the FEC has received few recent formal complaints on the issue. Cases concerning automated political calls accounted for just 1.7% of FEC enforcement matters closed between October 2003 and February 2008. However, FEC enforcement data are not necessarily a reliable indicator of public sentiment toward automated political calls. The Federal Communications Commission (FCC) reportedly does not track data about complaints it receives on automated political calls.

This report provides an overview of how automated political calls are used in federal campaigns. This includes attention to recent spending estimates and polling data about automated political calls. The report also discusses legislation introduced in the 110th Congress that would affect the calls. Policy options discussed in the report include maintaining the status quo, gathering additional data, revising federal disclosure or disclaimer requirements, adding the calls to the federal do not call list, or restricting the number and timing of calls. Some of those options would likely involve contentious questions about which organizations and messages should be regulated by campaign finance law. Potentially related constitutional issues are not addressed in this report.

This report will be updated as events warrant.

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Automated Political Telephone Calls (“Robo Calls”) in Federal Campaigns: Overview and Policy Options

Introduction

Automated political calls generally include prerecorded messages that provide information about candidates or urge voters to go to the polls.¹ They are also used to announce events and solicit campaign volunteers. The calls are an inexpensive way to reach large numbers of voters quickly. The calls can therefore play an important role in get-out-the-vote (GOTV) and voter-education activities. Those who oppose the calls generally argue that they are intrusive, that too many calls are placed to individual voters, or that they are too often used to convey negative information. Identifying those responsible for calls is also a concern.

The Federal Election Campaign Act (FECA) does not require detailed reporting about automated political calls.² Political committees also have few incentives to make information about automated calls public. In addition to this lack of data from regulators and practitioners, campaign tactics and political consulting receive limited scholarly attention. Academic research that does exist tends to focus on campaign strategists, especially political consultants such as pollsters and media specialists. By contrast, those providing automated political calls (so-called “vendors”) often receive limited attention.³

Empirical research about automated political calls is extremely limited. Data from one survey and the FEC suggest that during the 2006 election cycle, a majority of American voters received automated political calls and that various political

¹ This report refers to American campaigns. Due to political culture and technical infrastructure, automated political calls are rare outside the U.S. See Michael Coleman, “Do Not Robocall? Depends on Your Country,” *Campaigns & Elections*, September 2007, pp. 44-45.

² On FECA, see 2 U.S.C. § 431 et seq.

³ See, for example, David A. Dulio, *For Better or Worse? How Political Consultants are Changing Elections in the United States* (Albany: State University of New York Press, 2004), chapt. 2. On the distinction between various kinds of political consultants, see Dennis W. Johnson, “The Business of Political Consulting,” in James A. Thurber and Candice J. Nelson, eds., *Campaign Warriors: Political Consultants in Elections* (Washington: Brookings Institution Press, 2000), pp.37-52; and R. Sam Garrett, “‘Adrenalized Fear’: Crisis-Management in U.S. House and Senate Campaigns” (Ph.D. diss., American University, 2005), chapt. 4. Prof. Johnson also provided a telephone consultation on these points (with R. Sam Garrett, November 16, 2007).

committees spent millions of dollars on those efforts. Despite media reports of strong public disdain for automated political calls, the FEC has received few formal complaints on the issue recently.

Several bills introduced in the 110th Congress would impose additional regulations on automated political calls, but would not necessarily apply to all circumstances in which the calls are used. Many of the concerns surrounding automated political calls are not about the calls themselves, but about how those calls are used. Congress, therefore, has various options for addressing automated political calls, if it chooses to do so at all. Aside from maintaining the status quo, one relatively cautious option would be gathering additional data before choosing a policy approach. Federal agencies and the oversight process could provide such information. Another relatively limited approach would be to encourage voluntary changes by practitioners. By contrast, if Congress chose to require policy changes, it could add political calls to the do not call list or restrict the timing or number of calls. Finally, Congress could place additional disclosure or disclaimer requirements on political calls. Some of those options would likely involve difficult questions about which groups and messages are devoted to campaign activities versus policy advocacy.

Franked Calls Versus Campaign Calls

This report focuses on how automated calls are used during campaigns. From the outset, however, it is important to remember that not all automated calls containing political information are campaign-related. Although automated *campaign* calls can be controversial, many Members reportedly find *official* (franked) automated calls useful. According to one political consultant, official automated calls have been used to announce “town hall” meetings, solicit constituent input on votes, and provide information about federal programs (e.g., student loans).⁴ House Commission on Congressional Mailing Standards staff reported similar uses for franked calls, which have become increasingly common.⁵ Discussion at a December 2007 hearing held by the Committee on House Administration, Subcommittee on Elections, suggested a desire among some Members to curtail unwanted campaign calls while preserving official calls.

⁴ Telephone interview with Marty Stone, CEO, Stones’ Phones, conducted by R. Sam Garrett, November 14, 2007. In addition to being a political consultant specializing in voter contact, Stone is a member of an American Association of Political Consultants (AAPC) working group monitoring automated-calls legislation. That group’s recommendations are discussed later in this report.

⁵ Telephone conversation between Jack Dail, Staff Director, House Commission on Congressional Mailing Standards, and Matthew E. Glassman, November 15, 2007. Although the frank is normally associated with official mail, Members are also permitted to use these funds for automated calls or e-mail. On franking regulations, see CRS Report RS22710, *Congressional Franking Privilege: An Overview*, by Matthew E. Glassman, p. 2.

Federal Disclaimer and Disclosure Requirements

Automated political calls are subject to relatively little federal regulation, although approximately 20 states reportedly restrict or ban such calls, or are attempting to do so.⁶ FCC and FEC regulations each place different restrictions on automated political calls. The FEC regulations apply only to political committees or individuals engaged in express advocacy, which proposes election or defeat of federal candidates. By contrast, the FCC regulations appear to apply to all prerecorded or automated calls, regardless of whether they are political or commercial. Regulations promulgated by both agencies require that automated political calls provide certain identifying information. Finally, the Federal Trade Commission's (FTC) National Do Not Call Registry exempts political calls. Therefore, even individuals whose telephone numbers appear on the registry may still receive automated political calls.

Federal Election Commission Requirements. FECA does not specifically address automated political calls. However, the FEC has determined that various requirements related to political advertising apply to automated calls.⁷ In particular, "telephone banks" are included in the definition of "public communications," a form of political advertising that must contain certain information.⁸

Messages from telephone banks (and other sources) paid for by authorized political committees (i.e., candidates' principal campaign committees), must contain what FEC regulations refer to as a "disclaimer" clearly stating that the committee paid for the communication.⁹ Similarly, messages *not* authorized by candidate committees (e.g., by party committees) must clearly state that a candidate committee

⁶ See, for example, Susan Saulny, "States Seek Limits on 'Robocalls' in Campaigns," *New York Times*, April 25, 2007, at [http://www.nytimes.com/2007/04/25/us/politics/25calls.html?_r=1&hp&oref=slogin]; Joseph Sanscrainte, "States Enforce Limits on Robocalls," *DMNews*, at [http://www.dmnnews.com/cms/dm-news/legal-privacy/38770.html], October 27, 2006; "Missouri AG Seeks to Expand No-Call Law to Cover Cell, Fax, Automated Political Calls," *Money & Politics Report*, November 20, 2006, at [http://pubs.bna.com/NWSSTND/IP/BNA/mpr.nsf/SearchAllView/576C34E794B957738525722A0006AAB7?Open&highlight=MISSOURI,AG]; and Testimony of William E. Raney, exhibit A, "Existing Prerecorded Call Laws Affecting Political Calls," before the Committee on House Administration, Subcommittee on Elections, December 6, 2007. The hearing record has not yet been published. Mr. Raney provided with author with a copy of his testimony via e-mail.

⁷ See, for example, Federal Election Commission, First General Counsel's Report in Matters Under Review (MUR) 5584 and 5585, January 26, 2006, p. 5, at [http://eqs.nictusa.com/eqsdocs/00005777.pdf].

⁸ On the definition of "public communications," see 2 U.S.C. § 431(22). Telephone banks include "more than 500 telephone calls of an identical or substantially similar nature within any 30-day period," which would be consistent with automated political calls. See 2 U.S.C. § 431(24).

⁹ 11 C.F.R. § 110.11(b)

is not responsible for the call and must provide the “full name and permanent street address, telephone number, or World Wide Web address of the person who paid for the communication.”¹⁰ The latter requirement also appears to apply to “general public political advertising” (including telephone banks) paid for by “any person” that expressly advocates the election or defeat of a clearly identified federal candidate or solicits funds.¹¹

The requirements discussed above suggest that automated political calls paid for by political committees (i.e., candidate committees, political action committees (PACs), or party committees) must include disclaimers identifying the sponsor. The same is true for other “persons” engaging in express advocacy (advocating the election or defeat of particular candidates) or fundraising. However, it is possible that entities *other* than political committees could avoid disclaimer requirements as long as they did not engage in express advocacy or fundraising related to federal candidates. These entities or individuals also would not normally fall under FEC jurisdiction. To summarize, automated political calls that propose election or defeat of federal candidates, or solicit funds for those candidates, appear to require disclaimers identifying the sponsor. However, these requirements do not appear to apply to calls that are not sponsored by political committees or that do not engage in express advocacy or fundraising for federal candidates. Therefore, FEC disclaimer requirements do not necessarily apply to 527s, interest groups, or other entities that make automated political calls.¹²

FECA also requires political committees to report information about their spending — whether on political calls or any other good or service. Specifically, committees must itemize disbursements totaling more than \$200 to a single source.¹³ Reports submitted to the FEC must include the name and address of the payee, date of payment, and a brief description of the purpose of disbursement. However, political committees are generally not required to use particular terminology when itemizing expenditures, as long as their descriptions are specific enough to determine the purpose.¹⁴ Policy guidance issued by the FEC in 2007 did not address how automated political calls should be described in expenditure reports.¹⁵ (This topic is discussed in more detail later in this report.) Therefore, although payments for automated calls must be disclosed, committees are largely free to determine how they wish to characterize their expenditures on reports submitted to the FEC. Unless a committee chooses to be particularly specific — which is unlikely because these

¹⁰ Ibid.

¹¹ 2 U.S.C. § 441d(a)

¹² On 527s, see CRS Report RL33888, *Section 527 Political Organizations: Background and Issues for Federal Election and Tax Laws*, by R. Sam Garrett, Erika Lunder, and L. Paige Whitaker.

¹³ 11 C.F.R. § 104.3(b)(3). Reporting time frames vary by committee type. See, for example, 11 C.F.R. § 104.3(b).

¹⁴ For example, for authorized committees, itemized descriptions such as “phone banks” are acceptable, but “get-out-the-vote” is too vague. See 11 C.F.R. § 104.3(b)(3)(B).

¹⁵ Federal Election Commission, “Statement of Policy: ‘Purpose of Disbursement’ Entries for Filings With the Commission,” 72 *Federal Register* 887, January 9, 2007.

disclosures are available to opponents and the media — FEC reports do not necessarily indicate how much committees spend on automated calls or whether they purchase automated calls at all.

Federal Communications Commission Requirements. FCC regulations place various technical restrictions on automated calls. Specifically, without the recipient’s consent, automated calls to cellular phones, paging services, and certain medical facilities are prohibited.¹⁶ In addition, prerecorded calls must clearly state the identity of the “business, individual, or other entity” responsible for initiating the call at the beginning of the message.¹⁷ FCC regulations provide that prerecorded calls placed with automatic dialers (“autodialers”) must also state the telephone number for the business, individual or entity responsible for initiating the call.¹⁸ Calling the number provided may not result in a fee other than normal local or long-distance charges (i.e., 900-numbers are prohibited).¹⁹ Although telephone solicitations such as product sales must occur during particular times of day,²⁰ those requirements do not apply to calls made by, or on behalf of, tax-exempt nonprofit organizations,²¹ such as political committees. Other technical requirements also apply. However, some of those requirements do not apply to calls sponsored by nonprofit organizations.²²

Automated Political Calls: Uses and Industry

Automated calls can be used offensively or defensively, as when criticizing an opponent or responding to criticism. The calls are often employed in the final days before elections to mobilize (or discourage) voters, when it is too late to purchase other services with last-minute campaign contributions. According to one political consultant, political committees are increasingly also turning to automated calls earlier during election cycles to solicit voter input (through automated responses) or to coincide with mailings and other messages.²³ Another consultant noted that automated calls can encourage event-attendance and other grassroots engagement.²⁴

¹⁶ Relevant FCC regulations refer to calls made using “automatic” dialing systems and “prerecorded” voices. See 47 C.F.R. § 64.1200(a)(1). For a summary of FCC requirements discussed in this section, see Federal Communications Commission, Consumer & Governmental Affairs Bureau, “Unwanted Telephone Marketing Calls,” FCC Consumer Fact Sheet, at [<http://www.fcc.gov/cgb/consumerfacts/tpa.html>].

¹⁷ 47 C.F.R. § 64.1200(b)(1)

¹⁸ The number provided may not be for the autodialer itself. 47 C.F.R. § 64.1200(b)(2)

¹⁹ Ibid.

²⁰ 47 C.F.R. § 64.1200(c)(1)

²¹ 47 C.F.R. § 64.1200(f)(9)

²² See, for example, 47 C.F.R. § 64.1200(a).

²³ Telephone interview with Marty Stone conducted by R. Sam Garrett, November 14, 2007.

²⁴ Telephone interview with John Giesser, CEO, Spoken Hub, conducted by R. Sam Garrett, November 19, 2007. In addition to being a political consultant specializing in voter contact, (continued...)

Automated calls are inexpensive (a few cents per call) and can be quickly produced and implemented. They also provide public officials or other activists with an ability to reach hundreds or thousands of voters in a matter of hours.²⁵ However, some campaigns reportedly are beginning to fear a “diminished impact” on voters because of a “flood of auto calls” just before elections.²⁶

The Automated Political Calls Industry. Various campaign strategists might be involved in the decision to make automated political calls, but implementation typically rests with telemarketing firms. Some professional political consultants also specialize in automated calls. Data about the political consulting profession are frequently limited because consultants identify themselves by various titles, are often self-employed, and frequently do both political and non-political work. All these factors make tracking the profession difficult, particularly in terms of specialized groups such as those providing automated calls. A legislative working group of the American Association of Political Consultants (AAPC) recently identified 129 firms claiming to provide automated political calls.²⁷ The group’s research suggested that no more than 10-20 of the 129 firms are professional political consulting firms, with the remainder primarily engaged in other business ventures.²⁸ The AAPC figure is roughly consistent with a 2006-2007 estimate compiled by Dennis Johnson, professor of political management at George Washington University and a former political consultant. Johnson identified 28 “telephone and direct voter

²⁴ (...continued)

Giesser is a member of an American Association of Political Consultants (AAPC) working group monitoring automated-calls legislation. That group’s recommendations are discussed later in this report.

²⁵ Donald P. Green and Alan S. Gerber cite a figure of approximately \$0.05 per call in *Get Out the Vote! How to Increase Voter Turnout* (Washington: Brookings Institution Press, 2006), p. 66. According to CRS Internet research, some firms charge as little as \$0.01-\$0.02 per call.

²⁶ Telephone interview with Marty Stone, November 14, 2007. According to one scholarly review, live calls, particularly those placed by well-trained volunteers, are generally more effective than automated ones. See Donald P. Green and Alan S. Gerber, *Get Out the Vote!*, p. 80.

²⁷ The AAPC body was alternatively characterized as a “subcommittee” and “working group.” In telephone interviews with CRS, group members Marty Stone and John Giesser described it as an informal entity. (Telephone interview with Marty Stone, November 14, 2007; telephone interview with John Giesser, November 19, 2007).

²⁸ Telephone interview with Marty Stone, November 14, 2007. The AAPC figures were based on Internet research and searches of industry trade publications, such as *Campaigns & Elections* magazine (now *Politics*). This estimate appears reasonable (but would be difficult to verify) given the limited publicly available information. Using trade publications to infer information about the consulting industry is also a common practice in academic research. However, in the absence of law or regulations defining political consulting or requiring detailed disclosure about the types of services political committees purchase, and from whom, it is unclear precisely how many firms that provide automated political calls are operating in the United States. It is also unclear how much of their business volume reflects political calls.

contact” firms operating in 2006-2007, but did not differentiate between firms offering automated calls versus other services. Johnson found, however, that voter contact is a small subset of the political consulting industry, particularly compared with more common specializations such as direct mail (126 firms), media consulting (78 firms), and polling/research (76 firms).²⁹

Although few firms specialize in automated political calls, computer technology is reportedly making it easier for those without specialized knowledge to pursue political telemarketing.³⁰ One consultant asserted that a “bifurcation” exists between professional political consultants and other firms or individuals offering automated calls. He also suggested that limited knowledge among the latter group could account for technical problems associated with some calls, such as late-night or truncated calls, and that an ability to place automated calls does not necessarily imply professional knowledge of how to use those calls effectively in campaigns.³¹ (Of course, consultants have incentives to suggest that their services are unique compared with competitors. This report takes no position on that viewpoint.)

Spending Estimates. Comprehensive data about the total cost of, or spending on, automated political calls is publicly unavailable. However, some estimates, based on anecdotal information, are available. For example, a 2007 *Campaigns & Elections* (C&E) magazine report estimated that the two major parties’ congressional campaign committees “spent over \$600,000 on robocalls in nearly 50 congressional districts” in the final week of the 2006 general election campaign.³²

Lack of Clear Spending Data: A Brief Case Study. Even when working from FEC data, spending on automated political calls is often unclear. Because of their prominent roles in mobilizing voters, congressional campaign committee are possible sources for examining spending on automated political calls. None of the four committees — the Democratic Congressional Campaign Committee (DCCC),

²⁹ Dennis W. Johnson, *No Place for Amateurs: How Political Consultants are Reshaping American Democracy*, 2nd ed. (New York: Routledge, 2007), p. 241.

³⁰ See, for example, J. Todd Foster, “Are Phones Obsolete? The Evolution of Telephone Consulting,” *Campaigns & Elections*, July 2006, pp. 32-36. Although the article focused on traditional telephone banks rather than automated political calls, Marty Stone told CRS that technology is also easing barriers to entry with respect to automated calls (telephone interview with R. Sam Garrett, November 14, 2007).

³¹ Telephone interview with Marty Stone, November 14, 2007. Stone’s distinction between vendors and professional political consultants is consistent with academic literature cited elsewhere in this report.

³² Tom Jennemann, “Ready to Play Phone Tag?” *Campaigns & Elections*, September 2007, pp. 42-43. According to Jennemann, the C&E estimate was based on identifying payments to known automated-calls vendors, as itemized in FEC reports. A reporter then confirmed with Democratic Congressional Campaign Committee (DCCC) and National Republican Congressional Committee (NRCC) “sources” which payments were actually for automated calls. E-mail correspondence between Tom Jennemann, correspondent, *Campaigns & Elections*, and R. Sam Garrett, November 15, 2007. That methodology would not account for payments to subcontractors or firms not known for making automated calls. It also would not account for non-DCCC or NRCC spending.

Democratic Senatorial Campaign Committee (DSCC), National Republican Congressional Committee (NRCC), and National Republican Senatorial Committee (NRSC) — appear to publicize information about their spending on automated political calls. Required information provided on their FEC reports also provides little detail about how much the committees spent on automated political calls.³³

In fact, of 467 “purpose of disbursement” descriptions listed by the four party committees in 2005-2006, none used the terms “automated calls,” “robo calls,” “prerecorded calls,” or other language clearly indicating automated political calls.³⁴ The committees spent approximately \$8.6 million on activities itemized with some variation of the term “telemarketing,” but it is unclear what proportion of those expenses, if any, were for automated calls. In addition, a large proportion of the “telemarketing” expenses were from one committee (the DCCC), suggesting that others simply chose not to use the term frequently in their reports. The \$8.6 million figure also does not include other large disbursements that *could* represent automated calls, including expenditures itemized as “generic phone banks” or using variations of the word “telephone.” Without additional information, however, the exact purpose of those disbursements is unclear.

Some caveats are important to consider when interpreting the party-spending information. First, as noted above, the party committees are not required to provide detailed information about automated political calls, or any other expense, in their FEC reports. Indeed, examples of acceptable itemized disbursements provided by the FEC do not include references to automated political calls.³⁵ Second, analyzing data from four party committees is simpler than doing so for hundreds or thousands of candidate committees, PACs, etc. Therefore, the party committees provide a snapshot of possible automated calls spending. Importantly, however, various other political committees also contract for automated political calls. Despite these limitations, this brief case study reinforces the point that data on automated-calls spending are elusive — even when examining FEC reports.

Frequency of Calls and Voter Reaction. Despite the lack of firm data on the number of calls placed or the amount of money spent, it is clear that many voters receive automated political calls. The Pew Internet & American Life Project and the Pew Research Center for the People & the Press found that 64% of registered voters received automated political calls during the “final stages” of the 2006 campaign.³⁶

³³ In response to a CRS request, the FEC provided totals for itemized expenditures, by type of expense, reported by the four committees during 2005 and 2006. FEC press officer Robert Biersack provided the data via e-mail, November 8, 2007.

³⁴ The author conducted this analysis. Although the FEC data listed 467 different “purpose of disbursement” itemizations, that figure overstates the total number of *unique* expenditures. For example, many itemized terms were duplicates or differed only slightly (i.e., “food and beverages” versus “food/beverage”).

³⁵ Federal Election Commission, “Statement of Policy: ‘Purpose of Disbursement’ Entries for Filings With the Commission,” p. 887.

³⁶ Lee Rainie, Director, Pew Internet Project, “Robo-calls during the 2006 election,” Pew Internet & American Life Project, December 2006, available at (continued...)

As **Table 1** below shows, automated calls were the second-most-commonly reported form of voter contact late in the 2006 elections. (However, the poll did not include television or radio advertising.) Only a slightly higher proportion of respondents reported receiving direct mail than automated calls, but more than twice as many respondents reported receiving automated calls compared with live calls, home visits, or e-mail. According to the Pew data, Republicans were slightly more likely than Democrats to report receiving automated calls. Half of the surveyed Independents reported receiving calls.

Table 1. Self-Reported Voter Contacts During the Final Weeks of the 2006 Election Cycle

	All Respondents	Registered Voters	Rep.	Dem.	Ind.
Received mail urging vote for particular candidate	61%	71%	67%	62%	58%
Received recorded phone call	56%	64%	63%	58%	50%
Received phone call from live person	20%	24%	24%	20%	16%
Visited at home	16%	18%	18%	17%	14%
Received e-mail	12%	14%	16%	12%	11%

Source: Pew Internet & American Life Project November 2006 Election Survey.

Notes: The survey N was 2,562 with a margin of error of $\pm 2\%$.

Although these data indicate what proportion of voters received automated political calls, it is important to note that they provide little additional detail. For example, the data do not indicate what portion of the automated calls were aimed at increasing or decreasing turnout, reinforcing loyalty among decided voters versus swaying undecided ones, etc. Therefore, it is unclear how many calls were used for allegedly positive, negative, offensive, or defensive purposes.

As with other data about automated political calls, little or no systematic information about voter reaction to automated calls is available. However, anecdotal accounts typically suggest strong public disdain for such calls, particularly in states featuring several competitive elections. In some districts during the 2006 elections,

³⁶ (...continued)

[http://www.pewinternet.org/pdfs/PIP_Robocalls06.pdf]. “Final stages” refers to Pew questions about contacts voters received “in the past two months.” The Pew surveys were conducted in November and December 2006, so the results would reflect calls received between September and December 2006.

some voters reportedly received 20 calls in a single day.³⁷ Some sources cited far lower numbers (e.g., 5-10, or fewer, calls per day), but reports indicated that these calls were nonetheless frustrating to recipients.³⁸ In Missouri, the state Attorney General received more than 600 consumer complaints regarding automated political calls in the weeks leading up to the 2006 elections.³⁹ In response to public aggravation over automated political calls, Citizens for Civil Discourse, which describes itself as “a non-partisan and non-profit group of ordinary citizens,” recently established a free National Political Do Not Contact Registry.⁴⁰ Such services depend on voluntary compliance by those making automated political calls.

Effect on Voter Turnout. Scholarly research on the effectiveness of telephone voter contact, particularly through automated calls, is limited.⁴¹ Commenting on data from automated-calls efforts conducted during the 2000 elections, political scientists Donald P. Green and Alan S. Gerber concluded that:

robo calls have a minimal effect on [voter] turnout. From the standpoint of cost-efficiency, even a tiny positive effect might make this inexpensive technology worthwhile. Thus far, however, experimenters have yet to isolate this tiny positive effect. Robo calls might help you to stretch your resources in ways that allow you to contact the maximum number of people, but don’t expect to move them very much, if at all.⁴²

It is important to note that Green and Gerber’s conclusions appear to be based on their review of a small number experiments focused on turnout among ethnic groups in particular areas. In the absence of additional research on automated calls, much remains unknown — including what effect, if any, calls containing negative information have on depressing turnout, and what impact the calls might have on encouraging other forms of campaign engagement, such as volunteering.

³⁷ See, for example, Susan Saulny, “States Seek Limits on ‘Robocalls’ in Campaigns;” and Charles Babington and Alec MacGillis, “It’s a Candidate Calling. Again.” *Washington Post*, November 7, 2006, p. A8.

³⁸ Ibid.; Jennifer Duck, “Dems Claim GOP Launched ‘Dirty’ Phone Campaign,” ABCnews.com, November 6, 2006, at [<http://abcnews.go.com/Politics/story?id=2633458&page=1>]; and State of Missouri, Office of the Attorney General, “Automated political calls need to be covered by Missouri’s No Call law,” press release, November 15, 2006, at [<http://ago.mo.gov/newsreleases/2006/111506.htm>].

³⁹ Office of the Attorney General, “Automated political calls need to be covered by Missouri’s No Call law.”

⁴⁰ See “Stop Political Calls Now,” at [<http://www.stoppoliticalcalls.org/index.php>].

⁴¹ For an overview of the literature on telephone outreach, see Alan S. Gerber and Donald P. Green, “Do Phone Calls Increase Voter Turnout? A Field Experiment.” *The Public Opinion Quarterly*, vol. 65, no. 1 (Spring 2001), pp. 75-85. CRS research using various databases of published and unpublished scholarship confirmed Gerber and Green’s characterization of the literature as sparse.

⁴² Donald P. Green and Alan S. Gerber, *Get Out the Vote!*, pp. 70-71.

Campaign Enforcement Issues

Recent FEC Activity. The FEC is responsible for enforcing the FECA requirements discussed at the beginning of this report. Even so, campaigns often respond to perceived misconduct by opponents through political advertising or by encouraging media scrutiny rather than by pursuing formal enforcement of FEC regulations. In addition, although the commission frequently receives telephone or mail complaints from the public regarding automated calls, these individuals rarely follow-up by filing formal complaints.⁴³ Therefore, although FEC enforcement activity provides one measure of automated political calls, it is not a comprehensive indicator of all potentially objectionable behavior associated with those calls.⁴⁴

Enforcement data are available for closed (but not pending) cases. Although they do not necessarily represent ongoing controversies, data from these closed cases provide some measure of recent complaints concerning automated calls.⁴⁵ Overall, the FEC appears to receive few complaints about automated political calls. Specifically, in response to a CRS request, the FEC identified eight enforcement cases concerning automated political calls that were closed between October 2003 and February 2008.⁴⁶ During the same period, the FEC closed a total of 476 Matters Under Review (MURs), the term used to describe the commission's initial process for receiving and assessing complaints.⁴⁷ Therefore, just 1.7% (8 of 476) of MURs closed between October 2003 and February 2008 concerned automated political calls.

Documentation in the commission's Enforcement Query System (EQS) shows that the FEC either dismissed the complaints or declined to take additional action after

⁴³ Duane Pugh, Deputy Director, Congressional Affairs, FEC, provided consultations regarding this point and other FEC enforcement issues (e-mail and telephone consultations with R. Sam Garrett, November 2007; February 2008).

⁴⁴ On a related note, in the absence of a legislative mandate, the *FCC* does not compile data about complaints it receives on automated political calls (Kevin Washington, FCC legislative affairs, telephone consultation with R. Sam Garrett, November 30, 2007).

⁴⁵ FECA prohibits disclosing information about pending cases. See 2 U.S.C. § 437g(a)(12)(A).

⁴⁶ These cases are Matters Under Review (MURs) 5401, 5455, 5584, 5585, 5588, 5601, 5649, and 5819. A ninth case, initially designated as MUR 5882, was opened but dismissed after the individual filing the complaint reportedly failed to respond to requests for additional information (telephone consultation with Duane Pugh, February 6, 2008). This report assumes that the FEC's number (eight cases) represents all closed enforcement cases related to automated political calls during the time period under consideration. Commission staff reportedly identified these cases through keyword searches that could indicate complaints about automated political calls. CRS research using EQS suggests that the number of relevant MURs is indeed small. CRS keyword searches for variations of the term "robo call" revealed only five closed cases in the entire database, some of which were already included in the listing provided by the FEC. (Searches using other terms returned overly broad results that appeared to be unrelated to automated political calls.)

⁴⁷ R. Sam Garrett, telephone consultation with Duane Pugh, November 16, 2007.

investigation in all but two of the eight cases.⁴⁸ The agency accepted a conciliation agreement in one of the remaining cases (MUR 5588). In the second case (MUR 5649), the commission referred the matter to its Alternative Dispute Resolution (ADR) program, but rejected a proposed conciliation agreement and dismissed the case after the candidate reportedly was indicted “on other campaign-related matters.” The commission stated that it chose to dismiss the case based on the possibility that the criminal indictment “could eventually lead to this agency activating [another] enforcement matter,” thereby creating a possible conflict of interest.⁴⁹

To summarize, the MUR data suggest that automated political calls have been the subject of few formal complaints to the FEC. When complaints did occur, the commission rarely decided to take enforcement action. Automated-calls issues in those cases generally concerned an alleged failure to include disclaimers indicating who paid for the calls.⁵⁰ Some complaints also alleged that automated dialers were used in “push polling,” in which voters are presented with negative information about a candidate under the guise of an opinion poll.⁵¹ (Push polls are not illegal, although many political professionals say they are unethical.⁵²) When deciding not to pursue additional action in these cases, the FEC generally determined that no violation had occurred, that the agency was unable to identify a responsible party (e.g., in the case of “anonymous” calls), or that pursuing the cases was an inefficient use of resources.⁵³ One possible explanation for the small number of enforcement cases is that “[t]he 2004 election cycle was the first in which the disclaimer requirement applied to telephone banks, and some committees were unaware” of the requirement.⁵⁴ As noted previously, it is also possible that although the public and opposing campaigns often find automated political calls objectionable, they choose not to file complaints or they are unable to establish that FECA violations occurred. FEC enforcement data therefore are not necessarily a reliable indicator of public sentiment toward automated political calls.

⁴⁸ The author conducted the analysis described in this section.

⁴⁹ This case appears in EQS as ADR-271. For a discussion of the facts of the case and the commission’s decision-making, see the “Statement of Reasons” document, Commissioners Scott E. Thomas et al., in the matter of Taff for Congress, and Kimberly S. Stewart, Treasurer, ADR 271/MUR 5649, November 10, 2005, at [<http://eqs.nictusa.com/eqsdocs/00004D02.pdf>]. The quoted passage appears on page 2.

⁵⁰ See, for example, Federal Election Commission, “Factual and Legal Analysis” related to MUR 5401, March 9, 2007, at [<http://eqs.nictusa.com/eqsdocs/00005EE2.pdf>].

⁵¹ See, for example, Federal Election Commission, “General Counsel’s Report” related to MUR 5455, November 2, 2006, at [<http://eqs.nictusa.com/eqsdocs/0000594C.pdf>].

⁵² On consultant views of push polls and other ethics issues, see, for example, R. Sam Garrett, Paul S. Herrnson, and James A. Thurber, “Perspectives on Campaign Ethics,” in Stephen C. Craig, ed. *The Electoral Challenge: Theory Meets Practice* (Washington: CQ Press, 2006), pp. 203-224.

⁵³ See, for example, “Factual and Legal Analysis” related to MUR 5401.

⁵⁴ “Statement of Reasons” document, Commissioners Scott E. Thomas et al., in the matter of Taff for Congress, and Kimberly S. Stewart, Treasurer, p. 2.

Professional Enforcement. In addition to federal enforcement, a professional trade association could take enforcement action related to automated political calls. When they join or renew their membership, American Association of Political Consultants (AAPC) members agree to follow the organization’s code of ethics.⁵⁵ The code does not explicitly address automated political calls but condemns “false or misleading attacks” on opponents or family members and encourages campaigns to document criticisms of opponents. A separate AAPC policy statement, adopted by the organization’s board of directors in 1995, condemns push polling.⁵⁶ Although AAPC members are subject to limited sanctions (if the organization chooses to pursue internal enforcement) the code does not apply to non-members. Former AAPC ethics committee member James A. Thurber, an American University political scientist, reported that ethics-enforcement cases are rare and minimally effective.⁵⁷ However, details about AAPC enforcement cases are publicly unavailable.

Pending Legislation

Eight bills introduced in the 110th Congress could directly affect automated political calls.⁵⁸ As **Table 2** (below) shows, none of these bills has advanced beyond committee referral. These bills fall into three categories. Specifically, the bills would: (1) add political calls to the FTC do not call list; (2) revise disclosure or disclaimer requirements; or (3) regulate political calls generally, which could include automated calls. As this section explains, the AAPC has also proposed legislative recommendations about automated political calls. The “Policy Options” section below discusses potential ramifications associated with these and other approaches.

⁵⁵ Applicants must sign the Code of Ethics. See the organization’s online application at [http://www.theaapc.org/content/membership/AAPC_Online_application.pdf].

⁵⁶ American Association of Political Consultants, “Statement on Push Polling,” at [<http://www.theaapc.org/content/resources/statement.asp>].

⁵⁷ James A. Thurber, Director, Center for Congressional and Presidential Studies, American University, telephone consultation with R. Sam Garrett, November 28, 2007.

⁵⁸ In addition, although not otherwise addressed in this report, two bills prohibiting “deceptive practices” in federal elections could also have ramifications for automated calls. The findings section of S. 453 (Obama), reported by the Senate Judiciary Committee in October 2007, references automated political calls in previous elections. A related House measure, H.R. 1281 (Emanuel), does not reference such calls. As with some other bills that would affect telemarketing generally, these do not appear to be focused on automated political calls.

Table 2. 110th Congress Legislation Relevant for Automated Political Calls

Bill	Sponsor	Committee Referral (Most Recent Major Action)	Major Provisions on Automated Political Calls
H.R. 248	Foxx	Energy and Commerce (no additional action)	Would add automated political calls to the FTC Do Not Call Registry
H.R. 372	Altmire	Energy and Commerce (no additional action)	Would add automated political calls to the FTC Do Not Call Registry
H.R. 479	Doolittle	Energy and Commerce (no additional action)	Would add “any politically-oriented telephone calls” to the FTC Do Not Call Registry
H.R. 894	Price (NC)	House Administration (no additional action)	In addition to e-mail and Internet provisions, would extend disclaimer and “stand-by-your-ad” requirements to prerecorded messages
H.R. 1298	Petri	House Administration (no additional action)	Would require disclosure of the identity of the person funding telephone/electronic polls to respondents; would require disclosure of total costs and funding sources for the poll, number of households contacted, and questions asked (if results not to be made public) to the FEC
H.R. 1383	Lofgren	Judiciary (no additional action)	In addition to other provisions, would establish penalties for using “automatic telephone dialing system[s]” or prerecorded messages to transmit deceptive information about federal campaigns and elections
H.R. 1452	Maloney	House Administration (no additional action)	Would require disclosure to the FEC of specified phone-bank costs, funding sources, households contacted, and questions asked/information provided
H.R. 4298	Stupak	Energy and Commerce (no additional action)	Would add “politically-oriented recorded message[s]” to the FTC Do Not Call Registry

Source: CRS analysis.

Revising the Do Not Call Framework. H.R. 248 (Foxx) and H.R. 372 (Altmire) are very similar. Both bills would add calls containing recorded political messages to the federal do not call list. H.R. 479 (Doolittle) and H.R. 4298 (Stupak) propose a broader approach by adding “any politically-oriented telephone calls” (H.R. 479) or “politically-oriented recorded message[s]” (H.R. 4298) to the do not call list.

Revising Disclosure and Disclaimer Requirements. H.R. 894 (Price, NC) would extend some FECA disclaimer requirements for broadcast advertising to prerecorded telephone messages.⁵⁹ The bill would also apply existing “stand-by-your-ad” requirements to automated political calls. Under that provision, automated messages would have to include a statement, at the beginning of the call, indicating candidate approval of the content of the recording.⁶⁰ Similarly, H.R. 1383 (Lofgren) would establish penalties for calls that did not contain certain identifying information. Penalties would also apply to calls providing false information about federal elections, voter eligibility, or candidates’ party affiliations.

Other Bills That Could Affect Automated Political Calls. Other bills summarized in **Table 2** relate to political calls generally but could also affect automated calls. H.R. 1298 (Petri) would require additional disclosure about potential push polls, which are sometimes delivered via automated calls. H.R. 1452 (Maloney) would require disclosure to the FEC of specified phone-bank costs, funding sources, households contacted, and questions asked or information provided.⁶¹ As with H.R. 1298, H.R. 1452 is not limited to automated political calls.

AAPC Recommendations. An AAPC working group is monitoring federal and state legislation concerning automated political calls. In June 2007, that group, according to one of its leaders, agreed that “by promoting legislation which includes prudent rules we could demonstrate our industry’s commitment both to the responsible use of pre-recorded message delivery and to the prohibition of irresponsible and abusive use of the technology.”⁶² The working group recommended requiring disclaimers within the first 10 seconds of calls, electronic opt-out options for those receiving unwanted calls, and accurate “Caller ID” information. Other recommendations propose limiting the number of daily calls a political committee may sponsor and prohibiting “misrepresentation” or falsifying a caller’s “identity or purpose.”⁶³ At the same time, the working group warned against restricting free speech though “restrictive and overly sweeping laws.”⁶⁴ An

⁵⁹ The relevant section of FECA is 2 U.S.C. § 441d(a).

⁶⁰ On “stand by your ad,” see 11 C.F.R. § 110.11(c)(3)(I). See also Sec. 3 of H.R. 894.

⁶¹ H.R. 1452 specifies a definition of “federal election phone bank” that is different from the current FECA “telephone bank” definition discussed above. The bill would apply to particular calls that solicited contributions, explicitly advocated for election or defeat of candidates, or “provided...information” about federal candidates during the final 25 days of an election campaign.

⁶² Marty Stone, CEO, Stones’ Phones, e-mail to R. Sam Garrett, November 15, 2007.

⁶³ Ibid.

⁶⁴ Ibid.

attorney for the AAPC reiterated those positions at a House Subcommittee on Elections hearing in December 2007.⁶⁵

The AAPC recommendations suggest a desire by some political consultants to differentiate political professionals from generic “vendors,” who some consultants say have abused automated-call technology. CRS takes no position on the validity of that perspective. Some of the AAPC’s recommendations appear to be similar to existing federal requirements. These include provisions relating to identifying the party making automated calls and providing information about how to request that the recipient not receive future calls. However, some of the existing requirements do not apply to political calls. There also appears to be uncertainty about which regulations apply to political calls versus non-political calls. Adopting regulations similar to those the AAPC recommends could clarify which regulations apply to which calls, and when. They could also create consistency between time-of-day restrictions on commercial calls and political calls.⁶⁶

Policy Options

Congress could choose several approaches to regulating automated political calls — or not to do so at all. This section provides comments on various options. It also discusses broader issues that are likely to affect whatever policy options Congress chooses.

Maintain the Status Quo. Congress could choose not to pursue additional regulation of automated political calls. This option would likely be appealing to those who believe that the benefits of automated calls outweigh their negative consequences. As noted previously, those who favor automated political calls believe that they provide important information to voters. Automated calls can also be valuable for responding quickly to last-minute attacks. Some Members also rely on automated calls for official (franked) communications. If Congress chose to maintain the status quo, existing federal requirements would remain in place. The states would be free to consider additional regulation as they choose. Campaign committees and others would likely continue their current campaign practices.

Gather Additional Data. Congress might also choose to gather additional information before deciding on a policy solution. Although automated political calls are believed to be unpopular, little is known about how many calls are made, how much money is spent on the calls, how the calls affect voters, and whether the calls are used illegally or unethically. Without such information, it could be difficult to define the full extent of policy problems, if any, and to develop appropriate solutions.

⁶⁵ Testimony of William E. Raney before the Committee on House Administration, Subcommittee on Elections, December 6, 2007. The hearing record has not yet been published. Mr. Raney provided with author with a copy of his testimony via e-mail.

⁶⁶ Although the subject of federal preemption is beyond the scope of this report, adopting broader federal standards than are currently in place could also alleviate diverse treatment of automated political calls by the states. On the other hand, additional federal law could also inhibit individual states’ efforts to regulate political calls.

Federal agencies and the oversight process could provide useful additional data. For example, as noted elsewhere in this report, because the FCC has not been directed to do so, the agency reportedly does not maintain statistics on consumer complaints about automated political calls. Similarly, although the FEC can compile data about relevant complaints upon request, it does not routinely release information about automated political calls. Congress could request or direct both agencies to maintain and release data about automated-calls complaints. Through the oversight process or by making requests to academics or other researchers, Congress could also encourage more polling attention to automated political calls. Empirical data on public reaction to automated political calls, and the effect of those calls on voter turnout, is especially lacking.

Gathering additional information through federal agencies or researchers could clarify whether automated political calls are merely annoying or whether they represent a substantial public policy concern. Such research might also find that the issue is not as prominent as media accounts often suggest. Regardless of the findings, defining the scope of the problem by gathering more information could make the policy response more precise. On the other hand, because of their personal involvement in campaigns and automated political calls, lawmakers might feel that additional research is unnecessary. Gathering additional information could also be a lengthy process, particularly if Congress requests data over a long time period.

Encourage Voluntary Changes by Practitioners. If Congress determines that concerns surrounding automated calls are primarily about how the calls are used rather than the calls per se, it could choose to encourage different behavior. Voluntary change would not necessarily require any legislative or regulatory action. For example, Congress could use the oversight process, or decisions by individual Members regarding their own campaigns, to encourage practitioners to release more information about how and when they make automated political calls, to limit the number or timing of the calls, or to curtail automated calls that criticize opponents.

A voluntary approach could be attractive to those who believe that governmental intervention in campaigns is unnecessary. Perhaps more importantly, despite anecdotal impressions, there is no clear standard for what constitutes objectionable content, how many calls are too many, etc. It could be difficult to translate these subjective concerns into precise legislative proposals. Therefore, Congress might avoid legislation altogether by encouraging, but not requiring, practitioners to change their behavior. However, without legislative or regulatory action, or strong public pressure, those who make automated political calls would have few incentives to change their practices. As the preceding discussion of the AAPC code of ethics suggests, existing norms among political consultants do not necessarily address automated political calls. Professional enforcement cases are reportedly rare. There is also no guarantee that political consultants are responsible for allegedly negative consequences stemming from automated calls. Therefore, if Congress chose to encourage voluntary changes, it would need to carefully consider which behaviors, and by whom, it wanted to address.

Revise Disclosure Requirements. Congress could require political committees or others to report to the FEC (or another agency) more information about how automated political calls are used in campaigns. As explained previously, FECA requires political committees to report spending exceeding \$200, including on political calls. However, although expenses must be itemized, FEC regulations do not require substantial detail

about those expenses. As the brief case study highlighting the party committees' spending shows, automated calls (or any other expense) are not always clearly identifiable in FEC reports — even when those reports are filed consistent with FECA and FEC regulations.

Legislative action or an FEC rulemaking would be necessary to require political committees to provide more information about how they use automated political calls. Such efforts might include requiring use of more specific terms or categories on FEC reports than are currently required. In 2006, the FEC reconsidered its requirements regarding filing terminology.⁶⁷ After receiving only two public comments on the issue, the agency largely declined to require additional detail. At that time, the commission noted that the term “phone banks” provided sufficient detail to itemize “a disbursement to a vendor providing phone bank services.”⁶⁸ The FEC did not address other telephone expenses, including automated political calls. If Congress wanted to require more specificity regarding reporting about automated political calls, it could encourage the FEC to reconsider its regulations on itemized disbursements.⁶⁹ Congress could also amend FECA. In particular, additional requirements about expenses could be added to the section of the law detailing itemized reports.⁷⁰

Additional information about spending on automated calls, or other details, such as when the calls were made and why, would provide greater transparency about what role automated calls play in campaigns. On the other hand, requiring detailed information about automated political calls would be largely at odds with current regulations. Campaign finance reporting emphasizes providing information about the source and amount of campaign money, not how that money is used to execute campaign strategy. Perhaps most importantly, unless Congress chose to extend disclosure requirements to non-political committees (e.g., 527 organizations that are not registered as political committees), new disclosure requirements would not necessarily apply to all organizations responsible for the calls.

Revise Disclaimer Requirements. Congress could also require those making calls to provide more information to recipients. As noted previously, some disclaimer requirements already apply to automated political calls, which raises the question of whether additional enforcement measures, or increased oversight surrounding enforcement, is necessary. Even attempted enforcement can be difficult. For example, as the FEC has noted in some enforcement cases, field investigations do not necessarily reveal the identities of those responsible for launching “anonymous” automated calls. Therefore, just as regulations do not necessarily address moral issues related to campaign

⁶⁷ Federal Election Commission, “Statement of Policy: ‘Purpose of Disbursement’ Entries for Filings With the Commission,” p. 887.

⁶⁸ *Ibid.*, p. 888.

⁶⁹ The FEC could not act in the short term due to vacancies at the commission. See CRS Report RS22780, *The Federal Election Commission (FEC) With Fewer than Four Members: Overview of Policy Implications*, by R. Sam Garrett.

⁷⁰ 2 U.S.C. § 434(b)

ethics, additional disclaimer requirements will not necessarily ensure that those intent on breaking the law provide truthful information when making automated calls.⁷¹

There is, however, room for requiring additional disclaimers if Congress chose to do so. In particular, existing disclaimer requirements do not necessarily apply to “outside groups” or individuals sponsoring calls that do not explicitly call for election or defeat of federal candidates or engage in fundraising. If Congress wanted disclaimer requirements to apply more broadly, it could amend the definition of “political committee” in FECA — a topic that is frequently controversial — or place additional requirements on all entities using automated calls, regardless of whether or not they are political committees. Doing so, however, potentially raises contentious issues that extend well beyond automated political calls. These include questions about which groups and individuals should be regulated by campaign finance law and which political messages constitute campaign speech versus policy-oriented speech.

Revise the Do Not Call Framework. As noted previously, several bills introduced in the 110th Congress propose to add automated political calls to the national do not call list. The do not call bills would provide consumers with a way of opting out of political calls. This approach would not necessarily affect the content of automated political calls.

Adding political calls to the do not call list represents an arguably modest policy change, especially because the list is already in place and widely popular. This change could occur relatively quickly while avoiding some of the complications of other policy options. For example, if “political calls” were defined broadly, questions about which organizations were making the calls (e.g., political committees versus outside groups) would presumably be inconsequential. By contrast, questions about political-committee status would likely affect some other policy options. Nonetheless, any effort to restrict political calls, including adding them to the do not call list, could raise constitutional questions (a topic that is beyond the scope of this report). This option would also not address concerns about the content of automated political calls.

Restrict the Timing or Number of Calls. Congress could also limit automated political calls to certain hours of the day or restrict the number of calls made to a single recipient. Several states have reportedly placed time or other restrictions on automated calls.⁷² The AAPC recommendations also include limiting the number of calls political committees could make in one day to the same number.

This policy option could reduce the number of calls voters receive, which appears to be a significant concern in the debate over automated political calls. However, one challenge associated with this approach would be determining how many calls are “too many” and what hours are acceptable. In addition, although this policy option could

⁷¹ See, for example, Candice J. Nelson, David A. Dulio, and Stephen K. Medvic, eds. *Shades of Gray: Perspectives on Campaign Ethics* (Washington: Brookings Institution Press, 2002).

⁷² Testimony of William E. Raney, exhibit A, “Existing Prerecorded Call Laws Affecting Political Calls.” The hearing record has not yet been published. Mr. Raney provided with author with a copy of his testimony via e-mail.

decrease the *volume* of calls voters receive (e.g., if a single entity could place only a certain number of calls to the same person per day), it would not necessarily reduce the *frequency* of calls for those voters who live in states that produce competitive campaigns. In fact, if groups were limited to a certain number of calls, it is possible that other organizations could emerge solely for the purpose of placing multiple calls to the same voters. Constitutional considerations (speech issues) that could affect this policy option are beyond the scope of this report.⁷³

Conclusion

Much remains unknown about automated political calls. Although empirical data are limited, estimates suggest that the calls reach at least a majority of American voters, occur frequently during federal campaigns, and could represent millions of dollars in spending by various political committees. Despite media accounts of strong public disdain for automated political calls, the FEC has received few formal complaints on the issue since 2003. Several bills introduced in the 110th Congress would impose additional regulations on automated political calls, but would not necessarily apply to all circumstances in which the calls are used.

Congress has several policy options for restricting automated political calls, if it chooses to do so. Aside from maintaining the status quo, a relatively cautious option might be gathering additional data before choosing a policy approach. Federal agencies and the oversight process could provide additional information. Another relatively limited approach would be to encourage voluntary changes by practitioners. By contrast, if Congress chooses to require policy changes, it could add political calls to the do not call framework or restrict the timing or number of calls. Finally, Congress could place additional disclosure or disclaimer requirements on political calls. Some of those options would likely involve sensitive questions about which groups and messages should be covered by campaign finance law.

⁷³ For additional information on constitutional regulation of campaign speech, see, for example, CRS Report RL30669, *Campaign Finance Regulation Under the First Amendment: Buckley v. Valeo and Its Supreme Court Progeny*, by L. Paige Whitaker.

Methodological Appendix

As this report discusses, publicly available data about automated political calls are virtually nonexistent. FECA does not require detailed reporting about automated political calls. Political committees also have few incentives to make information about automated calls public because doing so potentially alerts opposing candidates, groups, and the media to campaign strategy. In addition to this lack of data from regulators and practitioners, scholarly literature is limited. Academic research that does exist tends to focus on campaign strategists, such as media consultants and pollsters, but not on vendors who provide technical services such as automated calls. Automated calls as a campaign tactic have also received limited scholarly attention.

Given the limited publicly available information about automated political calls, CRS employed a broad research strategy designed to gather as much information as possible. This included author consultations with staff at the FCC, FEC, prominent political scientists, staff from the four national congressional campaign committees,⁷⁴ the American Association of Political Consultants (AAPC), individual political consultants, and a political journalist. CRS also conducted keyword searches in databases that provide archives of news sources, scholarly journals, dissertations, and polling data (e.g., LexisNexis, Proquest, JSTOR, Polling the Nations, etc.).⁷⁵ The author also conducted telephone interviews with three political consultants and analyzed disclosure and enforcement data provided by the FEC. Use of individual data sources is documented in the text of this report.

Finally, Internet research revealed many political web log (“blog”) references to automated political calls in recent elections. Many of these entries contained claims about allegedly unethical or illegal campaign practices. Because CRS cannot verify the information contained in these blogs, it is not included in this analysis.

⁷⁴ These include the Democratic Congressional Campaign Committee (DCCC), Democratic Senatorial Campaign Committee (DSCC), National Republican Congressional Committee (NRCC), and National Republican Senatorial Committee (NRSC).

⁷⁵ CRS analyst Kevin Coleman, information research professional Heather Negley, legislative attorney L. Paige Whitaker, and the author, conducted database searches. The author is responsible for analysis of that research.