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Good afternoon Senator Colapietro, Representative Stone and members of the General Law Committee. My name is Andrew Schneider, Executive Director of the ACLU of Connecticut, and I am here before you today to express our view that Senate Bill 407, An Act Prohibiting Political “Robo” Calls, diminishes the exercise of rights crucial to our democratic process. Therefore, we urge defeat of this bill.

A major purpose of the First Amendment is to protect political speech precisely because that assures a free and open exchange of ideas and information that is vital to a free society. Historically, the courts have afforded greater protection to political speech over other speech for that very reason. Currently, the Do Not Call registry exempts political calls and calls for charitable contributions because, unlike commercial calls, those calls involve speech that receive a higher degree of protection under the First Amendment.

Senate Bill 407 is also a content-based restriction of political speech by singling out an automated call “that promotes the success or defeat of any political campaign, candidate or party” for inclusion on the “no sales solicitation calls” listing. Yet at the same time, automated calls of a different political nature like those promoting the environment or opposing abortion are left unrestricted. The courts have generally viewed such content-based restrictions unfavorably because such restrictions are more likely to distort the “free marketplace of ideas” and more likely to be enacted for the unconstitutional purpose of suppressing undesirable speech.

In fact, even content-neutral restrictions of political speech are received with skepticism by the courts because either type of restriction reduces the free flow of ideas. One only has to look at recent decisions striking down ordinances banning political yard signs or the distribution of leaflets to see how vigilantly the courts protect political speech.

This bill would hinder the free use of one form of communication and thereby favor mediums which would be less advantageous for this type of political speech. Automated calls are one of the most effective ways to reach targets of political or charitable calls and so a restriction limiting those calls would be problematic because alternative avenues for those communications would not be available. For

example, direct mailings, calls by a live person, or door-to-door contacts are more costly, less timely, and less effective.

As importantly, the bill impinges not only upon the rights of the sender, but upon those of the recipient as well. It is long settled that the First Amendment protects the right of a willing listener to receive information as much as it protects the right to speak. True, this right, like any other, can be waived, but it is also settled law that the waiver must be knowing. Consumers who signed onto the no-call list knowingly waived their right to receive commercial messages, but they did not knowingly waive their right to receive political messages (including messages calling for the election of candidates) because such messages were exempted when the list was compiled. The bill, accordingly, blocks their access to information that they may wish to receive.

Ways to regulate these calls that do not infringe on First Amendment rights already exist under the requirements of the federal Telephone Consumer Protection Act (TCPA), and the Federal Trade Commission's implementing regulations. First of all, it should be said that a recipient can simply hang up. Under the TCPA, the recipient's phone line must be released within five seconds, which precludes the caller from immediately redialing the number for those who hang up. In addition, the TCPA requires the identification of the caller at the beginning of all automated calls, it prohibits the caller from making calls between the hours of 9 p.m. and 8 a.m., and it requires the caller to state the telephone number or address of the caller. Civil fines under the TCPA and negative publicity for violators adequately address abusive "robo" calls.

While political "robo" calls are a method of communication of some annoyance, the First Amendment, if it stands for anything, is for the protection of speech we find unpopular, offensive or even annoying. This legislation runs afoul of the First Amendment by singling out certain political speech for restriction when adequate alternative channels for this important medium of speech are not available. The purpose of this bill does not seem sufficient to justify stifling this form of communication. The ACLU of Connecticut therefore urges this Committee to reject this legislation.