

STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

MICHAEL A. DELANEY, ATTORNEY GENERAL
STATE OF NEW HAMPSHIRE

V.

BASS VICTORY COMMITTEE

PETITION FOR CIVIL PENALTIES

NOW COMES the State of New Hampshire, by the Attorney General, and complains against the Bass Victory Committee (the "Bass Committee") as follows:

A. SUMMARY OF THE CASE

1. This is an action for civil penalties against the Bass Committee pursuant to RSA 664:21. By this action, the Attorney General seeks civil penalties against the Bass Committee for engaging in push-polling, as defined in RSA 664:2, XVII, in violation of RSA 664:16-a, I.

B. THE PARTIES

2. New Hampshire Attorney General Michael A. Delaney has authority under New Hampshire law to enforce the provisions of RSA 664:16-a. *See* RSA 7:6-c (Attorney General may investigate and prosecute violations of election laws) and RSA 664:21, VI (b) (Attorney General may petition the court to levy civil penalties against violators of RSA 664:16-a).

3. The Bass Committee is the political organization for United States Congressman Charles F. Bass, FEC Committee Identification C00302570, which has its principal place of business at 114 North Main Street, Suite 200, Concord, New Hampshire.

C. JURISDICTION AND VENUE

4. This Court has jurisdiction over this matter pursuant to RSA 664:21, VI (b), which states that “[t]he court, upon petition of the attorney general, may levy upon any person who violates the provisions of RSA 664:16-a . . . a civil penalty in an amount not to exceed \$1,000 per violation.” Venue in this county is appropriate under RSA 507:9.

D. FACTUAL ALLEGATIONS

5. In September of 2010, the New Hampshire Attorney General’s Office received information regarding push-poll telephone calls made to New Hampshire residents that were described as being negative against United States Congressional Candidate, Ann McLane Kuster.

6. On October 24, 2011, the Attorney General’s Office issued a subpoena, pursuant to RSA 664:20, to the Bass Committee. The subpoena requested the production of documents relating to calls made in September 2010. In response to the subpoena, on October 25, 2011, the Bass Committee provided the Attorney General’s Office with a script for the poll conducted in September 2010. The Bass Campaign also informed the Attorney General’s Office that the script was prepared by the Tarrance Group, and that 400 calls were placed by Voter Consumer Research using the script.

7. On November 3, 2011, the Bass Committee, through its legal counsel, informed the Attorney General’s Office that the Bass Committee had checked its records and could not locate any correspondence between the campaign and the Tarrance Group. In response, the Attorney General’s Office withdrew its subpoena.

8. On February 1, 2012, after further investigation, the Attorney General’s Office issued a second subpoena, pursuant to RSA 664:20, to the Bass Committee in order to verify the accuracy of prior representations that no correspondence between the campaign and the Tarrance Group

could be located. The subpoena specifically sought the production of all communications between the Bass Committee and the Tarrance Group relating to polling calls made in September 2010. In response to the subpoena, on February 6, 2012, the Bass Campaign provided the Attorney General's Office with over 500 pages of e-mail records, including drafts of the script and numerous e-mail communications between employees and agents of the Bass Committee and the Tarrance Group.

9. Under RSA 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.

10. The final version of the script provided by the Bass Committee demonstrates that: (1) the calls were made on behalf of the Bass Committee; (2) asked questions about Ann McLane Kuster which implied or conveyed information about her character, status or political stance or record; and (3) was conducted in a manner that was likely to be construed by a voter to be a survey or poll to gather statistical data for entities or organizations which were acting independent of any political party, candidate or interest group. As such, the script establishes that the campaign engaged in push-polling as defined in RSA 664:2, XVII.

11. Under RSA 664:16-a, I,

[a]ny 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.

12. The documents provided by the Bass Committee in response to the second subpoena establish the Bass Campaign was involved with editing the drafts of the script. The documents further establish that the first four drafts of the script contained the following statement at the end of the survey for the caller to read: “The Tarrance Group wishes to thank you for participating in this survey – which was commissioned and paid for by the Bass Victory Committee . . . 603-226-6000. Good night.” In an email, dated September 16, 2010, to the Tarrance Group, the Bass Campaign’s Campaign Manager asked:

Could we change the disclaimer at the end to NRCC since they are paying for half of it? I’d rather have any issues about ‘push polling’ be blamed on them (sorry Brock), rather than us – especially with the date rape drug question in there.

13. In an email to the Bass Campaign, dated September 16, 2010, the Tarrance Group attached the fifth draft of the script and stated in the e-mail: “I changed the disclaimer to the NRCC [National Republican Congressional Committee], BUT I need Brock’s permission to do that.” By e-mail, dated September 16, 2010, the NRCC gave its approval to replace the Bass Committee with the NRCC. The fifth draft and the sixth (and final) draft of the script contained the following statement for the caller to read: “The Tarrance Group wishes to thank you for participating in this survey – which was commissioned and paid for by the National Republican Congressional Committee . . . 202-479-7050. Good night.”

E. CAUSE OF ACTION

Count I – Civil Penalty

14. The allegations contained in the preceding paragraphs are repeated and incorporated herein.

15. By engaging in conduct that violates RSA 664:16-a, I, the Bass Committee is “subject to penalty under RSA 664:21, V and VI.” RSA 664-a, II (“Any person or entity who violates paragraph I shall be subject to penalty under RSA 664:21, V and VI”).

16. Pursuant to RSA 664:21, VI (a)-(b), the Bass Committee is liable for civil penalties up to \$1,000 per violation of RSA 664:16-a. The penalties sought in this Court are requested for all presently known violations of RSA 664:16-a, as well as any identified after the filing of this Petition.

17. The State seeks discovery against the Bass Committee regarding its violation of RSA 664:16-a, and an order from this Court against the Bass Committee for payment of civil penalties of up to \$1,000 per violation of RSA 664:16-a.

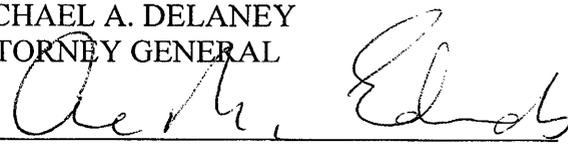
F. PRAYERS FOR RELIEF

WHEREFORE, the State requests that this Honorable Court:

- A. Order the Bass Committee to pay a civil penalty of up to \$1,000 for each violation of RSA 664:16-a, I; and
- B. Grant such other relief as this Court deems just and equitable.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE
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