Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Rules and Regulations Implementing the	)	
Telephone Consumer Protection Act of 1991	)	CG Docket No. 02-278
	)	
Petition for Rulemaking and Declaratory Ruling	)	CG Docket No. 05-338
of Craig Moskowitz and Craig Cunningham	)	

PUBLIC COMMENT OF AMERICANS FOR PROSPERITY

Vic Bernson
Vice President and General Counsel
Americans for Prosperity
1310 N. Courthouse Rd., Ste. 700
Arlington, VA. 22201
703.224.3225
vbernson@afphq.org

Dated: March 10, 2017

I. The Proposed Rule Adversely Affects Grassroots Advocacy Organizations

Grassroots advocacy has a "traditional and important role . . . in American politics." *Fed. Elec. Comm'n v. Wis. Right to Life, Inc.*, 551 U.S. 449, 502 (2007). Scholars have noted that "[g]rassroots activities are an essential aspect of a successful government relations program. . . . Reaching legislators at the grassroots level is of immense value."[1]

The benefits of grassroots advocacy assume that advocacy organizations are able to contact their network of volunteers and grassroots activists.[2] Grassroots advocacy is never a one-size-fits-all situation. It "may require different levels of engagement and can take different forms at different times."[3] For example, "Sometimes, just a few members of the House or the Senate need to hear from their constituents. These legislators may be on a particular committee or may represent a critical vote . . . . At other times, contact with legislators from across the state may be needed because the issue is of such major consequence or because the vote on the issue is at a more critical juncture."[4] Adoption of the proposed rule could result in a chilling effect on grassroots organizations, who would be unable to contact many of their grassroots activists if the FCC modified its definition of "prior express consent."

Americans for Prosperity is a national grassroots organization that advocates for "lower taxes, less government regulation, and economic prosperity for all."[5] The organization's advocacy reaches issues such as energy, healthcare, labor and employment, government

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[1] Nevin J. Mindlin, *Department on the Hill: 'Time and Treasure'*, 27 Pa. Lawyer 52, 52 (2005).
[2] *See, e.g.*, C. Cora True-Frost, *The Security Council and Norm Consumption*, 40 N.Y.U. J. Int'l L. & Pol. 115, 154 & n. 132, 241-42 (2007) (discussing the importance of grassroots networks in the pursuit of global human rights campaigns).
[3] Nevin J. Mindlin, *Department on the Hill: 'Time and Treasure'*, 27 Pa. Lawyer 52, 53 (2005).
[4] Nevin J. Mindlin, *Department on the Hill: 'Time and Treasure'*, 27 Pa. Lawyer 52, 53 (2005).
[5] *Americans for Prosperity*, https://americansforprosperity.org. (last visited Mar. 9, 2017).

spending, education, and taxation. In addition to work on national policies, Americans for Prosperity is engaged in advocacy on both the state and local level.

The Organization has a network of 3.2 million grassroots activists who have expressed an interest in the organization, the organization's policy objectives, and have consented to contact from the Organization when they provided their contact information to the Organization. Under the FCC's 1992 and 2008 Rules, Americans for Prosperity is allowed to contact these individuals because they are members of our grassroots network. Individuals become part of the Organization's grassroots network by providing their contact information either through our website, by filling out an internet form, or by providing information on a sign-in sheet to one of our events. Under the Commission's 2008 Order, using this contact information to activate portions of the grassroots network is permissible because "provision of a cell phone number .. . reasonably evidences prior express consent by the cell phone subscriber to be contacted . . . ."[6]

The Commission's prior rules implementing the Telephone Consumer Protection Act have reasonably concluded that if a call is "closely related to the purpose for which the telephone number was originally provided," then the telephone-subscriber's consent may be inferred from the provision of their phone number.[7] The individuals who form the Organization's grassroots network provided their phone number and other contact information *with the expectation* that they would receive subsequent contacts. If the Commission alters its rule to require that consumers provide prior express consent to be contacted, the ramification for grassroots organizations is chilled political speech. Similarly situated non-profit civic advocacy

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[6] *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket no. 02-278, 32 F.C.C.R. 559, 564 ¶ 9; FCC 07-232, 2008 WL 65485 (rel. Jan. 4, 2008).

[7] *See In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, WC Docket No. 07-135, FCC 15-72, 30 F.C.C.R. 7961, 7991-92 ¶ 52, 8028-29 & n.474, ¶ 141 (rel. July 10, 2015).

organizations will now be required to retroactively obtain consent to contact from our network of activists. This saps time that can be better used activating the grassroots network to mobilize in support of the grassroots organization's mission.

II. The TCPA Was Never Intended to Hamper Issue Advocacy

The Commission's consistent perspective has been that neither the TCPA nor its implementing regulations are intended to affect "tax-exempt non-profit organizations [or] calls for political purposes."[8] Adoption of the proposed rule has the unintended consequence of eviscerating this traditional safeguard. Requiring grassroots organizations to obtain the recipients' prior written express consent[9] of issue awareness phone calls flies in the face of the Commission's longstanding tradition. Neither the language of the TCPA nor any of the Commission's prior implementing regulations purport to extend to non-profit or other tax exempt organizations, and to the extent that the proposed rule attempts to do so, it should be rejected by the Commission.

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[8] *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CC Docket No. 92-90, Notice of Proposed Rulemaking, 25 FCC Rcd. 1501, 1502, ¶ 3 (2010). *See also* FCC, *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, FCC 12-21 at ¶17 (Rel. Feb. 15, 2012).

[9] *See Proposed Rule*, at p. 47.