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July 18, 2007

County Boards of Election  
County Superintendents and Deputy Superintendents of Elections

Re: Exit Polling

Dear Election Officials:

This letter represents the Attorney General's determination regarding exit polling within 100 feet of the outside entrance to a polling place and supersedes any prior guidance offered by this office. For the following reasons, your offices are advised that exit polling may be conducted by credentialed representatives of the media and non-partisan interest groups within the 100-foot exclusionary zone. The prohibition on electioneering within this area remains in effect. Nor shall any "entry" polling, the distribution of materials, or attempts to assist voters within the 100-foot exclusionary zone be permitted.

The Attorney General's Office first sanctioned exit polling by the media in a letter opinion dated June 2, 1988 (the "1988 Opinion"). Prior to the issuance of that opinion, exit polling was disallowed on the premise that it was electioneering. Pursuant to several provisions of Title 19, Election Laws of New Jersey, N.J.S.A. 19:34-6, 7 and 15, no electioneering can be conducted within the polling place or room, or within 100 feet from the outside entrance to a polling place. In 1988, however, the Ninth Circuit Court of Appeals, in the matter of Daily Herald Co. v. Munro, 838 F. 2d 380 (9<sup>th</sup> Cir. 1988), held that exit polling by the media is an activity protected by the First and Fourteenth Amendments of the United States Constitution. In response, the Attorney General's Office issued the 1988 letter opining that exit polling by the media was permissible and did not constitute electioneering. This practice has continued to the current time.

Prior to the November 2006 General Election, non-partisan interest groups requested permission to exit poll and to offer assistance to voters, including by pamphleteering, within the 100 foot exclusionary zone. In a letter dated August 31, 2006, this Office indicated that it was inclined



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to permit non-partisan public interest groups to conduct exit polling and to distribute voters' rights pamphlets to voters entering or exiting the polling place. This letter generated comment from a wide range of interests, including election officials and public interest groups. As a result, it was determined that further deliberation was required.

It is undisputed that the State has a compelling interest in securing the right to vote freely and effectively. See, e.g., Burson v. Freeman, 504 U.S. 191 (1992) (affirming a state's right to prohibit electioneering within a designated area of a polling place). Title 19 clearly delineates restrictions that are intended to protect voters' rights and the sanctity of the voting process. N.J.S.A. 19:34-6 provides that no person shall "obstruct or interfere with the entrance to any polling place, or obstruct or interfere with any voters, or loiter, or do any electioneering within any polling place or within one hundred feet thereof". Similarly, N.J.S.A. 19:34-7 prohibits electioneering and loitering as well as the solicitation of voters. Finally, N.J.S.A. 19:34-15 defines prohibited activities to include a ban on the distribution of any "circular or printed matter" or the offering of "any suggestion or solicit any support for any candidate, party or public question" within the above-prescribed 100-foot zone. Because of the importance of free access to the polls, the Legislature made the violation of these statutes a crime.

The State's compelling interest in protecting the electoral process does not justify a per se prohibition of exit polling. As the Ninth Circuit Court of Appeals recognized in Daily Herald, supra, exit polling involves freedom of speech and as such is protected under the First and Fourteenth Amendments of the United States Constitution. Because voters are approached after casting a ballot, exit polling does not necessarily interfere with free access to the polling place. See, e.g., CBS Broadcasting, Inc. v. Cobb, N. 06-22463, 9 (S.D. Fla. October 24, 2006) (holding that prohibiting exit polling within a 100-foot "no solicitation" zone was unconstitutional because the State "failed to provide any meaningful evidence that exit polling has any history of leading to voter intimidation, impeding voter access to the polls, or encouraging election fraud").

Although the 1988 Opinion concerned a request by the media to exit poll, we do not see a reason to distinguish between media and non-partisan interest group exit polling, provided that such polling is conducted in a manner that does not obstruct the entrance to a polling place or interfere with voters entering or leaving the polls.

There is, however, a distinction between approaching voters as they are entering a polling place and approaching voters as they are exiting the polling place. Approaching a voter before he or she enters the polling place, whether it be to offer assistance, distribute pamphlets, or ask questions, may hinder free access to the polling place and intimidate voters. As the United States Supreme Court stated in Burson, a state has the right to decide that "the[] last 15 seconds before its citizens enter the polling place should be their own, as free from interference as possible. We do not find that this is an unconstitutional choice." 504 U.S. at 210. The provisions of Title 19, as set forth above, evince an intent by the New Jersey Legislature to permit voters to enter a polling place without interference, obstruction, or intimidation. The fundamental right to cast a ballot in an

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election free from the taint of intimidation and fraud [Burson, 504 U.S. at 211] underscores the State's prohibition against approaching voters, who are on their way to cast a ballot, within 100 feet of the polling place.

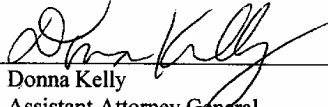
Finally, while exit polling is permissible, it must be conducted in a non-obstructive manner. Attached hereto is the Attorney General directive that sets forth the specific parameters of exit polling and procedures that need to be followed to assure the orderly conduct of the election. These directives are to be effective commencing with the November 2007 General Election.

Kindly contact this office if you have any questions.

Sincerely yours,

ANNE MILGRAM  
ATTORNEY GENERAL OF NEW JERSEY

By: \_\_\_\_\_

  
Donna Kelly  
Assistant Attorney General

DK/ac



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July 18, 2007

County Boards of Election  
County Superintendents of Elections

Directive on Exit Polling:  
Media and Non-Partisan Public Interest Groups

In my dual capacity as the State's Chief Law Enforcement Officer and Chief Election Official, you are hereby directed to permit exit polling activity by representatives of the media and non-partisan public interest groups on election days.

The following guidelines apply to all exit polling activity within 100 feet of the outside entrance to a polling place:

1. At least two weeks before an election, a representative of a media outlet or a non-partisan public interest group must submit a letter to the applicable county board of election, identifying polling place locations where the exit polling is to be conducted.
2. The county board of election must provide an authorization letter for exit polling to the media and/or non-partisan interest group. This letter is to include the procedures that are set forth in this directive.
3. Any person conducting an exit poll must display credentials, provided by the applicable county board of election, that identify his or her name and the organization that is conducting the exit polling.
4. At all times, exit polling must be conducted in a way that does not obstruct any voter or other authorized individual who is entering or leaving the polling place.



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5. Exit polling must be conducted only when a voter is exiting the polling place, and the voter's participation is strictly voluntary.

6. Exit polling can be conducted within the 100 foot zone from the outside entrance to the polling place.

7. Exit polling cannot be conducted inside the polling place, including the passageway to the polling room and the room itself.

8. There can be no electioneering on behalf of any candidate, political party or group, or referendum within the 100 foot zone.

9. No campaign paraphernalia, signs or other insignia can be displayed by any person conducting an exit poll within the 100 foot zone.

10. Any person conducting an exit poll within the 100 foot zone must comply with any directive from an election official or authorized representative to assure the orderly conduct of the election.

11. Persons conducting an exit poll cannot poll, assist, or offer materials to voters entering the polling place.



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