MAYORAL RACE

Text outreach has benefits and pitfalls

By Mike Morris

Mayoral challenger Ben Hall’s plan to engage 100,000 voters via text message quickly has drawn a lawsuit and questions about its legality and political wisdom.

The Hall campaign and some political observers, however, say the growing use of cellphone outreach in political campaigns is not only inevitable but a necessary innovation to better engage voters. Any legal uncertainties, they say, grow from lawyers’ abundance of caution and are driven by technology outpacing clear regulations.

Friendswood resident Joe Shields sued Hall on Monday for sending him a text touting a recent campaign ad. By Wednesday, Shields said he had settled the case with the California company Hall’s campaign hired to distribute the promotional messages, Politikast. The Hall campaign and Politikast have said records show all those receiving Hall’s texts “opted in” to receive messages, satisfying the federal Telephone Consumer Protection Act.

In a prepared statement, Politikast said it is “deeply committed to the privacy of text message recipients,” adding the firm works only on political and social issues, not commercial solicitation.

“Politikast is extremely confident about the quality of our data and reliability of our records that are certified as opt-in,” the statement said. “To achieve an unparalleled level of trust by the public officials we represent and the community at large, we invest a great deal of time, money, and effort in making sure we only target appropriate, consenting Americans.”

‘Proactive measures’

Hall press secretary Julia Smekalina stressed that, of the 100,000 messages sent, only Shields complained. She said the campaign is confident all those getting messages agreed to receive them at some point and said users can simply reply “stop” to cease the texts.

“Everyone is mobile now; everyone is on their phones,” Smekalina said. “You look at a city like Houston, with an 11 percent voter turnout during mayoral general elections — that’s really unfortunate. We have to take proactive measures to not simply just get the message out about a candidate but to encourage people to get involved in the political process, and that’s going to take innovation.”
Stricter cellphone laws

Federal rules prohibit unsolicited, prerecorded sales calls to landline phones but exempt political calls of that type, known as “robocalls.” The rules for cellphones are more restrictive: To receive cellphone calls or text messages, a person must give “express prior consent” or the situation must be an emergency, said Richard Alderman, dean of the University of Houston Law Center.

Politikast gathers some of its own user information and buys the rest from third parties such as Netflix and FreeCreditReport.com, according to an online presentation about its work. Alderman said he would be more comfortable if voters opted in directly with a campaign — texting a number announced at a rally, or entering their cell number on a campaign website, as often is done — rather than having the “opt in” come from an unrelated website.

“To legally send you text messages based on your consent, they must prove that you expressly agreed to receive the messages,” Alderman said. “I do not believe a broad consent satisfies the statutory requirement that the person ’expressly agree.’ ”

Smekalina said Politikast used the same data-purchasing technique to send 2 million text messages for President Barack Obama’s 2012 campaign in Florida.

Dallas attorney Chris Gober, who has worked with Republican campaigns, said he would advise clients to text only supporters who have directly opted in with the campaign.

Automated outreach, he added, always is a subject that gets scrutiny from campaign lawyers.

“I can certainly see some campaigns pushing the bounds where they’re purchasing cellphone lists,” he said. “You’ve got to rely on the companies that are providing these services, but I fully expect some of them to be overly aggressive and get some pushback from consumers.”

Shields, the Friendswood resident, has made somewhat of a sport of pushing back. In addition to suing Hall, court records show Shields has a lawsuit pending against Sears and two other firms under the Telephone Consumer Protection Act. He filed another under the act in February, and several more in years past.

“It’s a matter of respect,” said Shields, who says he never opted in to receive messages. “The only people who have our cellphone numbers are family and friends.”

Republican political consultant Matt Mackowiak said a shift toward mobile outreach is inevitable, adding such efforts are inexpensive and can be better targeted than TV ads or emails, which many ignore.

“The wave of the future is mobile,” he said. “My sense is probably that Hall wanted an efficient way to reach a lot of people, and mobile is something that trends younger. Younger voters may have less positive or less fully formed views of the incumbent mayor.”
Privacy issues

Other political observers urged caution.

Vincent Harris, who runs digital strategy for Republicans, said text messaging is best used to engage supporters, not to send en masse.

“Cellphones are personal, intimate and private. Unless someone has given access to their cellphone number, campaigns do themselves a disservice by sending unsolicited, unwarranted text messages,” he said.

“I get approached all the time by campaigns to do something like this, and it’s been a practice I’ve been adamantly against.”

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