

Robocalling into Florida: A Dicey Gamble in an Evolving Legal Landscape

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No one likes receiving telemarketing calls or text messages from strangers. That's one reason Congress enacted the Telephone Consumer Protection Act more than 30 years ago. Initially designed, in part, to combat the scourge of telemarketers interrupting Americans during weeknight dinners, the TCPA has evolved to cover not only telemarketing calls but also unwanted spam text messages. And because the TCPA awards plaintiffs a minimum of \$500 in statutory damages per call or text, the statute lends itself to class action lawsuits and has been the subject of widespread litigation across the country. In some ways, Florida has been the epicenter of robocall litigation over the last few years. After decades of TCPA litigation in Florida's federal courts, in July 2021, the Florida legislature passed the Florida Telephone Solicitation Act, often referred to as a "mini TCPA." Importantly, whereas the reach and breadth of the TCPA had been judicially narrowed over decades of litigation, the FTSA, as initially enacted, was very broad. This had the effect of putting thousands of previously compliant consumer-facing companies in the crosshairs of plaintiffs' lawyers in Florida. From July 2021 to July 2023, thousands of FTSA cases were filed and litigated. In July 2023, perhaps in response to this flood of litigation, the Florida legislature passed an amendment to the FTSA. While this amendment curtailed the scope of the FTSA, particularly with respect to unwanted text messages, to the point that some commentators contend it no longer presents a real risk for texting cases, there remain several provisions that pose a risk for consumer-facing entities placing calls into Florida. The best indicator that this statute continues to have legs is the continuing routine filing of new FTSA cases in Florida courts. Critically, shortly after the FTSA amendment, the Eleventh Circuit Court of Appeals issued a decision that broadened the text messaging risk in Florida under the TCPA. In July 2023, in *Drazen v. Pinto*, the Eleventh Circuit effectively reversed its prior 2019 decision in *Salcedo v. Hanna* and held that the receipt of a single unwanted text message is sufficient to create Article III standing. Following the Salcedo decision, federal TCPA text messaging case filings in the Eleventh Circuit had waned, because even in cases involving a high volume of text messages, it was evident that certifying a text message class would be challenging. With the *Drazen* decision, a major obstacle to class certification has now been removed. We expect the

Eleventh Circuit to once again become a major hotbed for TCPA text messaging cases. Under all the circumstances, it continues to be important for any consumer-facing companies that engage in outbound calling or texting into Florida — including insurance firms and securities firms — to examine their practices to ensure they comply with both the FTSA and the TCPA. *Carlton Fields played a role in Salcedo, as well as numerous other precedent-setting decisions, and has defended hundreds of TCPA and FTSA cases in Florida and nationally.*

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