

Ninth Circuit Dials Back Robocall Exemption for Government Debt

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The Telephone Consumer Protection Act (TCPA) has long banned certain people from spamming your cellphone with “robocalls” placed through automated dialers. But this ban did not extend to all types of robocalls. If the call was placed to collect government-backed debts, then the TCPA allowed the use of an automated dialer. 47 U.S.C. § 227(b)(1)(A)(iii). That is, until courts began questioning the constitutionality of the exemption.

The Ninth Circuit recently ruled that this debt-collection exemption violates the First Amendment. The court held that the exemption favors speech about government-backed debts over other types of speech. As such, it amounts to a content-based restriction on free speech subject to strict scrutiny.

On appeal, the federal government argued the exemption protected a compelling government interest in personal and residential privacy.

But the Ninth Circuit labeled this argument as a “head-scratcher.” It noted “robocalls [placed] to collect government debt are just as invasive of privacy rights as robocalls placed for other purposes.” In fact, the court held the exemption impedes the TCPA’s statutory purpose of protecting privacy.

The court did not ax the entire statute, though. Instead, it severed the debt-collection exemption from the rest of the TCPA. The exemption, passed in 2015, “did not suddenly and silently become so integral to the TCPA that the statute could not function without it,” the court said.

The Ninth Circuit is now the second federal court of appeals to strike the debt-collection exemption as unconstitutional. The Fourth Circuit has also ruled that the exemption violates the First Amendment.

Read the full opinion: [Duguid v. Facebook Inc.](#), No. 17-15320 (9th Cir. June 13, 2019).

This article was written by Carlton Fields Summer Associate Cara Mannion.

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