

Content-Based Discrimination In Action: District Court Grants Summary Judgment Under The TCPA's Government-Backed Debt Exemption.

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Yesterday, [TCPA World covered](#) recent First Amendment challenges to the TCPA. Today we bring you an example of the TCPA's content-based discrimination in action. The Middle District of Florida recently granted summary judgment to Navient Solutions solely on the ground that it called to collect a federal student loan. See *Gaza v. Navient Solutions, LLC*, No. 8:18-cv-1049, 2019 U.S. Dist. LEXIS 39773 (M.D. Fla. Jan. 23, 2019). There was no need to analyze whether the plaintiff revoked consent, whether the defendant had consent in the first place, or whether the defendant used an ATDS. Instead, the case was dismissed based solely on the content of the call – that the defendant requested payment on a federal student loan.

None of this is to say that calls to collect government-backed debt *should* be covered by the TCPA. In fact, it's pretty clear from the opinion that the defendant deliberately called the plaintiff, meaning that it did not use a random or sequential number generator. *That* should end the inquiry – not the content of the speech. And if courts actually enforced that statutory requirement, there would be no need for the government-backed debt exemption because collection calls are not made to randomly or sequentially generated numbers. The only entities that use that technology are the auto-spammers and offshore scam artists the TCPA was meant to address.

We mentioned yesterday that plaintiffs and the government argued, incorrectly, that the government-backed debt exemption is relationship based rather than content based. The *Gaza* case, and others like it, help demonstrate why that is not the case. The lender-borrower relationship does not trigger the exemption; the content of the call triggers it. But the case is also a reminder that the TCPA was a relationship-based statute as originally enacted. Or, more accurately, it was an anti-relationship statute. Implicit in the random or sequential number generation requirement is that the caller *does not* have a relationship with the people it is spamming. Instead, the caller hopes it will eventually reach a few people who will give up their bank account information to “the warranty department,” or to “win a cruise,” or to “the IRS to avoid going to jail.” The statute would not cover entities like the defendant in *Gaza* that actually have a relationship with the person they are calling, because they would not use a random or sequential number generator. But until courts or the FCC restore some sanity and go back to the actual language of the statute, content-based discrimination will likely continue, as Congress and the FCC will be tempted to exempt their preferred speech from the TCPA's draconian penalties.

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