

U.S. Supreme Court to Review TCPA: Here Are All Of the Czar's First Amendment Articles In One Place

Article By:

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As one of the leading constitutional law scholars in the nation *cough* I have written repeatedly on the subject of the First Amendment dimensions of the TCPA. As [Sara just reported, the U.S. Supreme Court has now taken up the issue in the context of the TCPA's content-specific exemptions.](#)

Notably the ruling in *AAPC* will have a huge impact on every American's First amendment rights. If the government can draw hugely expansive restrictions on speech—using content-specific exemptions to protect only certain favored speech—our freedom of speech becomes illusory. Yet that is precisely what the TCPA does—effectuating the single broadest restriction on constitutionally-protected speech in our nation's history, while simultaneously exempting the government's own speech from this expansive restriction.

While the [Fourth and Ninth Circuit Courts of Appeal have struck down the challenged exemption](#), there are numerous additional content-specific exemptions within the TCPA that have been recognized by the FCC and live on. More to the point— the remedy to an unconstitutional restriction on speech must be to strike down the restriction, not to expand it by removing exemptions piecemeal.

So that TCPAWorld can have the full context here, I have collected my various writings on the subject compiled over the years. Some of this material is currently attributable to my former firms. Don't let that confuse you. This is all my work, and I hope you find it enjoyable and educational. Without further ado, works on the constitutionality of the TCPA by Eric J. Troutman:

- In March, 2016 I first dove [into the TCPA and explained why the FCC's expansive definition of ATDS rendered the TCPA definitively unconstitutional.](#)
- In August, 2017 I explained [why the then-recent decisions applying a watered-down strict scrutiny analysis to the TCPA were undermining our constitutional freedoms.](#)
- In August, 2018 I dove deeper into the [“Constitutional Dimension” of the TCPA, explaining why the then-pending Gallion First Amendment TCPA appeal was likely to have long-lasting impact.](#)

- In September, 2018 [I addressed the amicus briefs supporting the *Gallion* challenge and emphasized why the TCPA must be struck down, and not merely subject to severance.](#)
- Also in September, 2018, and shortly following the *Marks* ruling, I explained why the expansion of the TCPA continued to hurt our constitutional rights, while doing nothing to stop robocalls: [“The TCPA is a Clunker that Doesn’t Stop Robocalls– the Courts Should Now Stand Down and Defer to the FCC’s Promising Solutions.”](#)
- In October, 2018 I penned my most blistering assault on the constitutionality of the TCPA to date: [“TCPA on the Front Line: The Battle for the Future of American Free Speech is Quietly Taking Shape in an Appeal Over “Robocalls””](#)
- In April of 2019 I broke the news that the Fourth Circuit Court of Appeal had struck [down the TCPA’s government-backed debt exemption and explored the impact on TCPAWorld.](#)
- In May of 2019, the Czarina and I teamed up to fully explain [“What’s At Stake In Battle Over TCPA Constitutionality” as an “Expert Analysis” for Law360.](#)
- Also in May of 2019 the Godfather of TCPA class actions and I [got together on Unprecedented to discuss the TCPA’s First Amendment dimensions.](#)
- In August 2019, I predicted [this battle was going to the Supreme Court.](#)
- In September of 2019 I explored [the bizarreness of the Ninth Circuit striking down a narrower restriction on the use of automated technology to deliver messages, just weeks after it upheld the TCPA.](#)
- In October, 2019 I covered Facebook’s petition to the U.S. Supreme Court [addressing the Ninth Circuit’s refusal to strike down the TCPA and electing, instead, to sever a content-specific exemption to save the statute.](#)
- Also in October, 2019 I covered the related–[although separate–issue of the TCPA’s vague ATDS provisions rendering the statute unenforceably void under the due process clause.](#)

There’s the full catalog folks. Happy reading.

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