

Supreme Court to Review the Constitutionality of the Government-Backed Debt Exception to the TCPA

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The TCPA is off to an exciting start this new year.

On Friday, January 10, 2020, the Supreme Court granted the filed in [*Barr v. American Association of Political Consultants Inc.*](#), to review the constitutionality of the government-backed debt exception to the TCPA. The question presented is:

“Whether the government-debt exception to the TCPA’s automated-call restriction violates the First Amendment, and whether the proper remedy for any constitutional violation is to sever the exception from the remainder of the statute.”

The case was appealed from the Fourth Circuit, which found that the government debt exception violated the First Amendment. U.S. Attorney General William Barr and the FCC then petitioned the Supreme Court to review the Fourth Circuit’s decision.

To understand the background of this case, we need to rewind to 2015. That year, Congress enacted the Bipartisan Budget Act of 2015, which included a modification to the TCPA. The TCPA generally prohibits the use of an automatic telephone dialing system (“ATDS”) or an artificial or prerecorded voice to make calls to a cellular telephone without the prior express consent of the called party. The 2015 budget bill created an exception to the TCPA for calls “made solely to collect a debt owed or guaranteed by the United States.”

In April of last year, the Fourth Circuit struck down on this government debt exception, finding that the TCPA is a content specific statute but this provision failed to survive strict scrutiny. The court concluded that this government debt exception was “fatally underinclusive” because it authorized “many of the intrusive calls that the automated call ban was enacted to prohibit” and “impedes the privacy interests of the automated call ban.”

The Fourth Circuit also found that the proper remedy is to sever the government debt exception from the rest of the TCPA, leaving the automated call restrictions in place.

In their Petition for Certiorari, the Petitioners argue that the exception does survive strict scrutiny and therefore is constitutional, because the government debt exception regulates economic activity (e.g.

collecting debts owed to the U.S. government) and not the words used during the call.

Oral arguments are likely to be held this Spring and a decision should be issued before June 2020, when the Supreme Court's term ends.

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