

## Northern District of Florida Picks Side in Creasy Split

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In the aftermath of *Barr v. American Association of Political Consultants, Inc.*—the Supreme Court decision from July that held the TCPA’s government-debt exception to be an unconstitutional content-based restriction on speech—the country’s district courts cannot agree on whether they may adjudicate TCPA claims alleging conduct that transpired during the life of the exception (*i.e.*, during the period from November 2, 2015 to July 6, 2020).

Recently, the Northern District of Florida weighed in on the issue, concluding that it *did* have subject-matter jurisdiction over TCPA conduct that, according to the complaint, occurred between October 2019 and February 2020. In the case, *Rieker v. National Car Cure, LLC*, the defendant argued that the district court lacked jurisdiction over this time period because the version of the statute on which the TCPA claim was based contained the government-debt exception, which was later pronounced invalid. Case No. 3:20-cv-5901, at \*1 (N.D. Fla. Jan. 5, 2021); *see also Creasy v. Charter Commc’ns, Inc.*, 2020 WL 5761117 (E.D. La. Sept. 28, 2020) (adopting this reasoning). In response, the plaintiff emphasized that *Barr* invalidated only one provision of the TCPA and allowed the rest of the statute to stand. *Id.*

After noting that not a single circuit court has addressed this issue, the Northern District sided with those districts that have said they will hear TCPA claims originating from the roughly four-year period that the government-debt exception remained on the books. The court explained that this outcome is consistent with the plurality opinion from *Barr*, “in which Justice Kavanaugh clearly stated (albeit in dicta) that ‘our decision today does not negate the liability of parties who made robocalls covered by the robocall restriction.’” *Id.* (quoting *Barr*, 140 S. Ct. at 2355 n.12). The court thus denied the defendant’s motion to dismiss and allowed the plaintiff’s TCPA claim to proceed.

*Rieker* gives a taste of what may come for defendants who make the *Creasy* argument in Florida’s Northern District. Then again, the recent [intra-district split](#) in the state’s Middle District shows that district judges won’t necessarily follow their colleagues’ guidance on this issue.

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