
Barr v. American Association of Political Consultants Inc., No. 19-631

The Telephone Consumer Protection Act of 1991 (TCPA) prohibits most automated calls or texts to cell phones, but it makes an exception for calls or texts that seek to collect on U.S. government debts. Today, the Supreme Court held that this exception violates the First Amendment because it applies to only certain types of speech. The Court then severed the government-debt exception from the rest of the statute.

Background: The TCPA forbids anyone from making unsolicited automated calls or texts to cell phones. But the TCPA permits autodialed calls or texts that seek to collect debts owed to or guaranteed by the federal government. 47 U.S.C. § 227(b)(1)(A)(iii).

The plaintiffs, organizations that wish to place autodialed calls or texts for political purposes, sued the government, alleging that this provision violates the Free Speech Clause of the First Amendment. The district court rejected that argument. The Fourth Circuit reversed, holding that the provision permitting debt-related autodialed calls and texts is unconstitutional and should be severed from the remainder of the statute.

Issue: Whether the government-debt provision in the TCPA violates the First Amendment, and, if so, what remedy is appropriate.

Court's Holding: In a plurality opinion authored by Justice Kavanaugh, the Supreme Court held that the government-debt provision violates the First Amendment because it discriminates based on the content of speech—for example, calls to collect government debts are allowed while calls to promote a political candidate are forbidden. The Court then held that the appropriate remedy is to sever that provision rather than to invalidate the entire TCPA. Chief Justice Roberts and Justice Alito joined both aspects of the plurality opinion, and Justice Thomas joined the First Amendment holding.

In separate opinions, Justice Gorsuch and Justice Sotomayor each agreed that the exception is an unconstitutional content-based restriction on speech. Justice Gorsuch agreed with the plurality's application of strict scrutiny. Justice Sotomayor explained that the exception failed to survive intermediate scrutiny.

All members of the Court other than Justices Thomas and Gorsuch agreed that the appropriate remedy is to sever the unconstitutional provision rather than invalidate the entire TCPA.