***Facebook* v. *Duguid*, No. 19-511**

Introduction: Today, the Supreme Court held 9-0 that equipment must be capable of random or sequential number generation in order to qualify as an "automatic telephone dialing system" under the Telephone Consumer Protection Act.

Background: The Telephone Consumer Protection Act of 1991 (TCPA), among other things, restricts certain communications made with an "automatic telephone dialing system" (ATDS). The statute defines an ATDS as equipment that can both "store or produce telephone numbers to be called, using a random or sequential number generator," and dial those numbers. The interpretive question before the Court was whether the phrase "using a random or sequential number generator" modifies both "store" and "produce," or just "produce." This question makes enormous practical difference: The use of random or sequential number generators is not common, while a wide range of equipment stores lists of numbers to be called. The courts of appeal were divided on the interpretive question. The Ninth Circuit held that Facebook's equipment, which sent text messages to a set list of numbers stored in its database rather than to random or sequentially generated numbers, nonetheless qualified as an ATDS.

Issue: Whether the TCPA's definition of an ATDS encompasses equipment that can store and dial telephone numbers, even if the device does not use a random or sequential number generator.

Court's Holding: In an opinion by Justice Sotomayor, a unanimous Supreme Court reversed. The Court held that "Congress' definition of an autodialer requires that in all cases, whether storing or producing numbers to be called, the equipment in question must use a random or sequential number generator." The Court began with the text, noting that "conventional rules of grammar" and punctuation support reading the phrase "using a random or sequential number generator" to apply to both antecedent verbs, "store" and "produce." The Court further reasoned that its textual conclusion was bolstered by the statutory context, because many of the TCPA's restrictions on the use of autodialers "target a unique type of telemarketing equipment that risks dialing emergency lines randomly or tying up all the sequentially numbered lines at a single entity." And the respondent's contrary interpretation, the Court warned, "would capture virtually all modern cell phones" and commonplace activities such as speed dialing or sending automatic text message replies.

Finally, the Court concluded that the respondent's counterarguments could not overcome the "clear commands" of the statutory text and the statutory context. For instance, the Court noted that the statute separately prohibits calls using artificial or prerecorded voices regardless of the technology used—prohibitions that are unaffected by Congress' narrow definition of an autodialer.

Justice Alito authored a concurrence, agreeing with the Court's interpretation of the statute but cautioning against "heavy reliance" on canons of interpretation, which he warns are not "inflexible rules" capable of mechanical application.

Read the opinion here.