

Consumer Lending Update

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U.S. SUPREME COURT NIXES TCPA EXEMPTION FOR GOVERNMENT DEBT-RELATED COLLECTION CALLS

Recently, the United States Supreme Court struck down a provision of the federal Telephone Consumer Protection Act (TCPA) which exempted certain government debt-related collection calls from the TCPA's coverage. *Barr v. Am. Ass'n of Political Consultants*, 140 S. Ct. 2335 (2020).

Subject to limited exceptions, prior to making an autodialed informational call or sending a text to a consumer's mobile phone, the TCPA requires the caller to first obtain the consumer's prior express consent. One exception allows a caller to call or text a consumer's mobile phone solely to collect a debt owed to or guaranteed by the United States without prior express consent (Government Debt Exception). This exception effectively excluded from the TCPA's coverage debt collection calls related to many federally guaranteed student loan and mortgage debts.

In *Barr*, the Court held in a 6-3 decision that the Government Debt Exception violated the First Amendment to the United States Constitution. The Court found the Government Debt Exception was a content-based speech restriction subject to strict scrutiny under the First Amendment, meaning the

speech must be justified by "compelling" interests. The Court found that debt collection was not a compelling interest. The Court agreed with the parties who had brought suit in opposition to the Government Debt Exception, who had argued that the exception unjustifiably favored government debt collection-speech over other forms of government-related speech not specifically excepted from the TCPA, such as political speech, charitable fundraising, and commercial advertising.

Although the Court struck down the Government Debt Exception in its decision, it otherwise upheld the TCPA.

The takeaway from the *Barr* case is the continued importance of obtaining a consumer's prior express consent before making an informational call or sending a text to a consumer's mobile phone (telemarketing rules are even stricter). The TCPA carries heavy penalties, and thus institutions are encouraged to contact Anne McEville at AMcEville@ABLAWYERS.COM for further information regarding TCPA policies and practices.



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