Federal Trial Court Rules Against Enforcement of TCPA Claims from 2015-2020

Ruling could have broad implications on thousands of pending cases

A federal district court has ruled that the Telephone Consumer Protection Act (TCPA) is unenforceable for violations occurring between November 2015 and July 6, 2020. The trial court in Creasy v. Charter Communications, in the Eastern District of Louisiana on September 28, 2020, dismissed all asserted TCPA violations alleged to have occurred before July 6, 2020 because a portion of the TCPA was unconstitutional until the Supreme Court “fixed” it on that date.

In Creasy, the co-plaintiffs claimed they received 130 robocalls and automated text messages in violation of the TCPA because they had not consented to such communications. The defendant, Charter Communications, filed a motion to dismiss based on the Supreme Court’s holding in Barr v. American Association of Political Consultants (decided on July 6, 2020). In Barr, a portion of the TCPA was declared unconstitutional under the First Amendment because it allowed the government to make robocalls to collect debts, but no one else. The Supreme Court “repaired” the TCPA by severing the government’s exemption and making robocalls illegal for everyone—the government included—commencing on July 6, 2020.

Charter Communications argued that if the TCPA was unconstitutional between 2015 and 2020, then plaintiffs cannot enforce it for any calls made during that period. (The government exception to the robocall ban was added to the TCPA in November 2015.) Judge Martin Feldman agreed with Charter Communications and dismissed Creasy’s claims for 129 of the 130 calls.

Judge Feldman wrote, “in the years in which § 227(b)(1)(A)(iii) [of the TCPA] permitted robocalls of one category of content (government-debt collection) while prohibiting robocalls of all other categories of content, the entirety of the provision was, indeed, unconstitutional. That fact deprives the Court of jurisdiction over much of this action … any added likelihood that defendants may evade liability for robocalls that Congress would have preferred to ban from 2015 to 2020 is the unfortunate price of the Court’s enforcement of a constitutionally dictated result.”

The only call for which Charter Communication faced liability is the last one, which was allegedly made on July 11, 2020, a few days after the TCPA was “repaired.” Charter Communications sought to have the claim for the remaining call dismissed on other grounds, which were denied by the trial court.

Siding again with Charter Communications, Judge Feldman temporarily stayed further proceedings in this case in order to allow the Supreme Court to weigh in on the issue in yet another case, Facebook v. Duguid, in which Facebook is challenging the way federal courts have expanded the TCPA’s definition of an illegal autodialer.

TAKEAWAY: The question begged by the Creasy ruling is whether it will be followed by courts around the nation that are considering the thousands of TCPA claims arising between November 2015 and July 2020. It seems likely, given that the Supreme Court has spoken on the unconstitutionality of the government exception to the robocall ban. A definitive answer could come in early 2021 when the Supreme Court decides Facebook v. Duguid, which is scheduled to be argued in November. Based on the recent passing of Justice Ruth Bader Ginsburg, it seems more likely that the increasingly
a conservative Supreme Court will limit the reach of the TCPA to the statute’s exact wording and no further. While the Creasy ruling is not binding on other federal courts, it is well reasoned and certainly worth considering. If your business is facing a TCPA claim for the period from November 2015 through July 2020, you should consult an experienced TCPA attorney to see if the Creasy ruling affects the claim.

**Tags:** Robocalls, TCPA