

INSIGHT: High Court Wary of TCPA Debt Exemption, But Not TCPA, Bloomberg Law

*By Richard J. Perr, co-managing partner of the KD Philadelphia office and chair of Consumer Financial Services practice group
Bloomberg Law | May 21, 2020*

The U.S. Supreme Court on May 6 tackled the constitutionality of the Telephone Consumer Protection Act, an extremely popular law that restricts communications made with an automated telephone dialing system, such as telemarketing.

In Barr v. AAPC (No. 19-631), the Department of Justice sought to defend a 2015 amendment to the TCPA exempting the collection of government-owned debt from the restrictions of the TCPA, which precluded making automated calls to cellular telephones.

The American Association of Political Consultants (AAPC) challenged the exemption claiming that the decision by Congress to exempt government-owned debt from the TCPA constituted a content-based regulation of speech in violation of the First Amendment. The AAPC asked the court to sever from the statute not just the government debt exemption, but to invalidate the entire cellular telephone restriction.

It was believed before argument that the justices may have been split on the issue of whether the exemption was in fact a content-based regulation. The significance of this distinction is the level of scrutiny a court applies in examining a statute's validity.