

# Is the TCPA Robocall Restriction Enforceable?

December 08, 2020

**As with most things in law, the answer to whether the TCPA Robocall Restriction is enforceable is: it depends.**

When Congress passed an amendment to the TCPA in 2015 and added an exception to 47 U.S.C. § 227(b)(1)(A)(iii) (the Robocall Restriction) for those collecting debts owed to or guaranteed by the United States (the Government-Debt Exception), it rendered the entire Robocall Restriction unconstitutional and unenforceable. Since courts lack jurisdiction to enforce unconstitutional laws, the Robocall Restriction is not enforceable for any calls made between November 2, 2015 (when the Government-Debt Exception was added) and July 6, 2020 (when the Government-Debt Exception was severed from the TCPA by the Supreme Court). At least, that is what two U.S. District Court Judges have recently found, and the industry impact cannot be overstated. Billions of dollars in potential liability hang in the balance of whether these decisions hold. In essence, they found that there is a ‘get out of jail free card’ for any robocalls made during this five-year period.

A few weeks ago, the Chief Judge of the U.S. District Court for the Northern District of Ohio dismissed a putative TCPA class action because “the [Robocall Restriction] was unconstitutional at the time of the alleged violations,” and therefore the Court lacked subject matter jurisdiction over the claim. *Lindenbaum v Realgy LLC*, 2020 WL 6361915 (N.D. Ohio, Oct. 29, 2020). In reaching this conclusion, the Court agreed with *Creasy v. Charter Communications Inc.*, — F.Supp.3d —, 2020 WL 5761117 (E.D. La. Sept. 28, 2020), in which Judge Feldman found that the Robocall Restriction was unconstitutional and unenforceable for any calls made between November 2, 2015 and July 6, 2020. Both Judges reached this conclusion in reliance upon *Barr v. American Association of Political Consultants, Inc.*, 140 S.Ct. 2335 (2020), a fractured opinion in which the Supreme Court held that the Government-Debt exception created an unconstitutional content-based restriction on speech and severed it from the rest of the statute. However, as the Chief Judge explained, “the Court cannot wave a magic wand and make that constitutional violation disappear.”

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Our team presented a client webinar on Thursday, December 3, 2020 exploring these cases, the underlying rationale, strengths and weaknesses in the argument, and strategic considerations when making the argument.

## Related people

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