

Justin Penn Analyzes Novel Ruling that Could Stop Many TCPA Class Actions in their Tracks

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Hinshaw partner Justin Penn—the chair of the firm’s Consumer Financial Services practice—recently discussed a notable federal court ruling in Louisiana. In *Creasy v. Charter Communications*, the court ruled the U.S. Supreme Court’s July 6, 2020 ruling in [Barr v. American Association of Political Consultants](#)—which struck down as unconstitutional an exemption to the TCPA that allowed automated calls to be made to collect federally backed debts—meant that courts don’t have the power to enforce robocall and text message violations that occurred between when Congress added the exemption in November 2015 and when the Supreme Court severed it in its July ruling.

Penn said that by finding that the defendant debt collector callers, like government-backed debt collectors, are immune from liability during the time that the exemption was operative, the court reiterated the high court’s rationale that such unequal treatment couldn’t be tolerated, and a decision to the contrary would likely produce “dangerous consequences” that could dissuade other courts from departing from the Louisiana court’s reasoning.

“As [the defendant] correctly put the issue in its briefing, any conclusion other than the one reached by [the court] would mean Congress could pass an unconstitutional exemption to favor the political party in power, and the resulting discriminatory statute could be used to penalize the opposing party until it was ultimately stricken from the statute by the Supreme Court years later,” Penn said. “That result is untenable and it is fundamentally inconsistent with the First Amendment.”

[Read the full article \(subscription may be required\)](#)

“Novel TCPA Ruling Lays Groundwork For Fresh Circuit Split” was published by *Law360*, October 9, 2020.

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