



Political Organizations File Suit Over Constitutionality of TCPA

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American Association of Political Consultants, Inc. et al. v. Lynch, Civil Action No. 5:16-cv-00252 (E.D.N.C., May 12, 2016).

On May 12, 2016, five politically based organizations filed a suit against Loretta Lynch, in her official capacity as Attorney General of the United States seeking a declaratory judgment that the Telephone Consumer Protection Act's ("TCPA") restrictions on automated or prerecorded calls to cell phones are an unconstitutional violation of their First Amendment rights because the restrictions are content-based and cannot withstand strict scrutiny. Compl. ¶ 2.

The five named plaintiffs represent a wide swath of the American political spectrum and consist of:

American Association of Political Consultants, Inc.: "a bipartisan, nonprofit association of political professionals located in McLean, Virginia and organized under § 501(c)(6) of the Internal Revenue Code ("IRC");"

Democratic Party of Oregon, Inc.: "located in Portland, Oregon and organized as a tax-exempt nonprofit organization under § 527 of the IRC;"

Public Policy Polling, LLC: "a limited liability for-profit company located in Raleigh, North Carolina;"

Tea Party Forward PAC: "located in Alexandria, Virginia and organized as a tax-exempt nonprofit organization under § 527 of the IRC;" and

Washington State Democratic Central Committee: "the Democratic Party in the State of Washington and is located in Seattle, Washington . . . [and] is organized under § 527 of the IRC."

See *Compl.* ¶¶ 6-10.

The suit seeks preliminary and permanent injunctions enjoining the enforcement of the TCPA against these five named plaintiffs; a declaratory judgment pursuant to Fed. R. Civ. P. 57 and 28 U.S.C. § 2201 that the TCPA on its face is unconstitutional as it violates the First Amendment to the United States Constitution; an award of nominal damages in the amount of \$1.00 as a result of Defendant's

violation of Plaintiffs' constitutional rights; and an order requiring that Defendant pay all costs, interest, and attorneys' fees as may be incurred with this civil action as allowed by law. Compl. Prayer for Relief, ¶¶ 1-6.

The Plaintiffs allege that the TCPA is a content-based restriction on speech in violation of the First Amendment. Compl. ¶¶ 33-44. Plaintiffs base this claim, on the fact that, "[s]ince 1992, the FCC and Congress have passed at least six exemptions to the cell phone call ban which apply based on the identity of the caller and/or the content of the exempted calls." Compl. ¶ 25. These exemptions result in "favoring commercial speech over the noncommercial speech of Plaintiffs" in violation of the first amendment. Compl. ¶¶ 43-43.

Plaintiffs further allege that the TCPA's content-based restrictions should be subjected to strict scrutiny and that the TCPA cannot overcome this level of review because the restrictions are under-inclusive based on the six listed exemptions and the restrictions are not narrowly tailored to further any compelling government interest. Compl. ¶¶ 46-56. The view a copy of the Complaint, please click [here](#).

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