October 23, 2020

ATTORNEY GENERAL RAOUL URGES U.S. SUPREME COURT TO BLOCK ROBOCALL LOOPHOLES

Chicago — Attorney General Kwame Raoul today joined a bipartisan coalition of 38 attorneys general in filing an amicus brief in Facebook v. Noah Duguid, a U.S. Supreme Court case that will determine the scope of the protections of the federal Telephone Consumer Protection Act (TCPA). This case is key to states' ability to protect residents from scammers who use abusive robocall tactics to threaten and scam people.

"Complaints related to robocalls are consistently among the most common consumer calls my office receives," Raoul said. "Robocalls are more than just a nuisance; they cost consumers time and sometimes money and have become more pervasive as scammers try to take advantage of the COVID-19 public health crisis. States must be able to take action and collaborate with the federal government to fight this illegal practice, and I urge the Supreme Court to side with consumers."

The TCPA, enacted in 1991, generally prohibits the use of an autodialer or an artificial or pre-recorded voice to make a call to cell phone users. At issue in the case is whether autodialers include any device that can store and dial numbers automatically, or whether autodialers are limited to devices that use a random number generator. In the brief, Raoul and the coalition argue that the TCPA applies to all kinds of devices that store and dial numbers automatically.

Raoul and the coalition argue that Facebook's attempt to narrow the definition of autodialers would leave consumers unprotected under the TCPA. Narrowing the definition would also harm states' ability to protect consumers under the TCPA and would limit collaboration among states and the federal government to take action against abusive robocallers.

Attorney General Raoul has been an advocate for protections against illegal robocalls. In March, Raoul joined a coalition of 33 attorneys general in filing a brief in the U.S. Supreme Court defending the anti-robocall provisions of the TCPA. In August 2019, Raoul joined a coalition of attorneys general from all 50 states and Washington D.C. in partnering with 12 phone companies to create a set of principles for telecom companies to fight robocalls. In June 2019, Raoul, in cooperation with the Federal Trade Commission, announced a major crackdown on robocalls that included 94 actions targeting operations around the country that were responsible for more than 1 billion calls. As part of that crackdown, Raoul filed a lawsuit against Glamour Services, LLC; Awe Struck, Inc.; and Matthew Glamkowski, the manager of Glamour Services and president of Awe Struck for allegedly using robocalling and telemarking to solicit home cleaning services. In May 2019, Raoul submitted comments to the Federal Communications Commission urging the adoption of its proposed rules on enforcement against caller ID spoofing.

Consumers who wish to file a consumer complaint concerning robocalls they have received can do so on the Attorney General's website or by calling the Consumer Fraud Hotline at 1-800-243-0618. Information about how consumers can add their number to the Do Not Call registry is also available on the Attorney General's website.

Joining Raoul in today's brief are the attorneys general of Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, the District of Columbia, Hawaii, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Tennessee, Vermont, Virginia, Washington, and Wisconsin

No. 19-511

IN THE

Supreme Court of the United States

FACEBOOK, INC.,
Petitioner,
v.
NOAH DUGUID, et al.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF NORTH CAROLINA, INDIANA, AND 35 OTHER STATES AND THE DISTRICT OF COLUMBIA AS *AMICI CURIAE* IN SUPPORT OF RESPONDENT

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INTEREST OF *AMICI* STATES[1]

The States of North Carolina, Indiana, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Hawaii, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Nevada, New Hampshire, New Jersey, New York, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Tennessee, Vermont, Virginia, Washington, and Wisconsin, and the District of Columbia, respectfully submit this brief as *amici curiae* in support of respondent Noah Duguid.

As this Court recognized last Term, the States "field a constant barrage of complaints" about robocalls. *Barr v. Am. Ass'n of Political Consultants, Inc.*, 140 S. Ct. 2335, 2343 (2020) (plurality opinion). This case is about a telephone technology that generates this barrage of complaints to States across the country: the automatic telephone dialing system, also known as an autodialer. An autodialer calls telephone numbers at a rapid clip, bombarding consumers with live or prerecorded messages.

Unsurprisingly, autodialers often find themselves at the center of telemarketing scams. This is true now more than ever, with the COVID-19 pandemic unleashing a torrent of telephone fraud. *See* Sarah

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[1] No counsel for any party authored this brief, in whole or in part, and no person or entity other than *amici* contributed monetarily to its preparation.

O'Brien, *Robocalls Are Spiking as Fraudsters Prey on Covid-19 Fears*, CNBC (May 19, 2020), https://cnb.cx/2RJjydi. In a shameless effort to profit off a public-health crisis, telemarketing schemes have falsely promised anxious consumers everything from free testing, to financial help, to miracle cures. Fed. Commc'ns Comm'n, *COVID-19 Robocall Scams* (July 17, 2020), https://bit.ly/2ZVbDhG.

States are on the front lines in the fight to prevent these and other abuses of telephone technology. Indeed, States frequently invoke their authority under the Telephone Consumer Protection Act of 1991 (TCPA), 47 U.S.C. § 227, as well as overlapping state laws, to sue robocallers who misuse autodialers. *See* Fed. Trade Comm'n, *Call It Quits: Robocall Crackdown 2019* (June 2019), http://bit.ly/2wxX0F9 (summarizing recent federal and state enforcement actions). Invoking a federal law allows States to collaborate with other States and the federal government to bring joint TCPA enforcement actions in federal court. The TCPA therefore gives States a way to pool their resources against particularly abusive robocallers. In some circumstances, that type of collaboration can be more efficient and effective than individual States proceeding separately against robocallers under separate state laws.

While States use the TCPA as a critical tool to protect consumers from illegal and fraudulent calls, Facebook threatens to undermine that effort. The TCPA generally prohibits the use of "any automatic telephone dialing system or an artificial or

prerecorded voice" to make a call to numbers assigned to a cellular telephone service. 47 U.S.C. § 227(b)(1)(A). An automatic telephone dialing system, in turn, is defined as "equipment which has the capacity—(A) to store or produce telephone numbers to be called, using a random or sequential number generator; and (B) to dial such numbers." *Id.* § 227(a)(1).

Under petitioner's reading of the TCPA's autodialer definition, however, the statute would cover only a narrow subset of autodialers—those that use a random or sequential number generator. This cramped interpretation would hamper State efforts to enforce the TCPA and to protect consumers from illegal calls. It would also allow robocallers to easily evade the statute's prohibitions. The better reading of the TCPA recognizes that an automatic telephone dialing system can include any device with the capacity to store and dial numbers automatically, regardless of whether it uses a random or sequential number generator.

The States speak from experience. Congress enacted the TCPA in part at the behest of the States, who feared that their own telephone privacy laws might prove inadequate to fully address interstate telephone fraud and abuse. S. Rep. No. 102-178, at 3 (1991), *reprinted in* 1991 U.S.C.C.A.N. 1968, 1970. Every state statute on the books when Congress passed the TCPA in 1991 defined the term automatic telephone dialing system in a way that would have included a device—like petitioner's—with the

capacity to store and dial numbers, even if the device did not use a random or sequential number generator. And Congress explicitly enacted the TCPA to reinforce these preexisting state autodialer bans. *Amici* States therefore seek to vindicate the original understanding of the TCPA so that they can continue to protect consumers from the harms caused by illegal telephone calls, including those placed using autodialer devices of all kinds.

In addition, because the TCPA expressly disclaims federal preemption of state telephone privacy laws, 47 U.S.C. § 227(f)(1), at least forty-one States and the District of Columbia currently have enforceable prohibitions or restrictions on the use of autodialer devices.[2] As a result, the *Amici* States also have a

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[2] *See, e.g.*, Ala. Code §§ 8-19A-3, -15; Ariz. Rev. Stat. Ann. § 44-1278(B)(5); Ark. Code Ann. § 5-63-204(a)(1); Cal. Pub. Util. Code §§ 2871-2876; Colo. Rev. Stat. Ann. § 18-9-311(1); Conn. Gen. Stat. § 42-288a(h); Del. Code Ann. tit. 15, § 8045A; D.C. Code § 34-1701; Fla. Stat. § 501.059; Ga. Code Ann. § 46-5-23; Idaho Code Ann. § 48-1003C; 815 Ill. Comp. Stat. §§ 305/1 to /30; Ind. Code §§ 24-5-14-1 to -13; Kan. Stat. Ann. § 50-670; Ky. Rev. Stat. Ann. §§ 367.461 to .469; La. Rev. Stat. Ann. §§ 45:810 to :817; Me. Rev. Stat. Ann. tit. 10, § 1498; Md. Code Ann., Pub. Util. § 8-204; Mass. Gen. Laws ch. 159, §§ 19B-19D; Mich. Comp. Laws §§ 445.111(g), 484.125; Minn. Stat. §§ 325E.26 to .31; Miss. Code Ann. §§ 77-3-451 to -459; Mont. Code Ann. §§ 30-14-1601 to -1606; Neb. Rev. Stat. §§ 86-236 to -257; Nev. Rev. Stat. §§ 597.812 to .818; N.H. Rev. Stat. Ann. §§ 359-E:1 to :6; N.J. Stat. Ann. §§ 48:17-27 to -31; N.M. Stat. Ann. § 57-12-22; N.Y. Gen. Bus. Law § 399-p; N.C. Gen. Stat. § 75-104; N.D. Cent. Code

strong interest in ensuring that this Court preserves their ability—under state law, as well as federal law—to protect their citizens from the harms caused by automatic telephone dialing systems. They therefore urge this Court to affirm the judgment of the Ninth Circuit.

SUMMARY OF THE ARGUMENT

Amici States acknowledge that the TCPA's definition of an automatic telephone dialing system is susceptible to multiple, plausible interpretations. As the thorough and thoughtful court of appeals decisions on this issue show, the autodialer definition is hardly a model of clarity.

Amici States respectfully submit, however, that respondent has the better reading of the TCPA based on the statute's plain text. Importantly, respondent's interpretation is the only reading of the autodialer definition that is consistent with the ordinary meaning of the definition's two key verbs: "store" and "produce." Moreover, this interpretation avoids rendering another portion of the TCPA superfluous.

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§§ 51-28-02, -04; Okla. Stat. tit. 15, § 755.1; Or. Rev. Stat. §§ 646A.370 to .376; 73 Pa. Stat. Ann. §§ 2241-2249; R.I. Gen. Laws § 5-61-3.4; S.D. Codified Laws §§ 37-30-23 to -29; Tenn. Code Ann. §§ 47-18-1501 to -1527; Tex. Util. Code §§ 55.121 to .138; Utah Code Ann. §§ 13-25a-101 to -111; Vt. Stat. Ann. tit. 9, § 2511; Va. Code Ann. §§ 59.1-518.1 to .4; Wash. Rev. Code § 80.36.400.

The original meaning of the TCPA when the statute was passed in 1991 also supports respondent's position. Congress enacted the TCPA in part out of concern that state consumer-protection laws might prove ineffective to fully address interstate telephone fraud and abuse. Every state statute that defined the term automatic telephone dialing system in 1991 understood that term to reach devices with the capacity to store and dial numbers from a predetermined list, regardless of whether a random or sequential number generator was used. Thus, it would have made little sense for Congress to intentionally depart from these state laws by adopting a *narrower* definition of an autodialer device in the TCPA. After all, it was Congress's explicit aim to supplement—not to shrink—preexisting state laws.

Moreover, Facebook's interpretation of the TCPA would lead to negative consequences. Narrowing the autodialer definition would harm the ability of States to protect consumers by collaborating with other States and the federal government to sue TCPA violators in federal court.

For these reasons, the Court should affirm the judgment of the Ninth Circuit.

ARGUMENT

I. Under The TCPA, An Automatic Telephone Dialing System Includes Devices That Dial Telephone Numbers From A Stored List.

A. The plain text supports respondent's reading of the statute.

Amici States acknowledge that the TCPA's definition of an automatic telephone dialing system is susceptible to multiple, plausible interpretations, but respectfully submit that respondent advances the most persuasive reading of the statute's plain text.

The TCPA defines an automatic telephone dialing system as "equipment which has the capacity—(A) to store or produce telephone numbers to be called, using a random or sequential number generator; and (B) to dial such numbers." 47 U.S.C. § 227(a)(1). The question here is: what word or words does the participial phrase "using a random or sequential number generator" modify?

Respondent contends that the participial phrase modifies only the verb "produce." Under that reading, the TCPA would cover devices with the capacity to (1) store telephone numbers to be called and dial them; or (2) produce telephone numbers to be called, using a random or sequential number generator, and dial them. In other words, a device would not need to use a random or sequential number generator to qualify as an autodialer. For example, a device that stores and dials telephone numbers from a targeted

list—say, a list of older individuals, who are most likely to fall prey to a telemarketing scam—would fall within the definition.[3]

By contrast, petitioner argues that the participial phrase modifies both the verb "produce" and the verb "store." Under that reading, the TCPA would cover devices with the capacity to (1) store telephone numbers to be called, using a random or sequential number generator, and dial them; or (2) produce telephone numbers to be called, using a random or sequential number generator, and dial them. In other words, only devices that use a random or sequential number generator would qualify as an autodialer. For example, a device that stores and dials telephone numbers from a targeted list—say, a list of financially distressed consumers whose personal financial information might be especially susceptible to being stolen—would fall outside the definition.[4] Or consider a more ambitious device that stores and then dials at random numbers from a list of every assigned U.S. cell

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[3] *See, e.g.*, Fed. Trade Comm'n, *Report to Congress: Protecting Older Consumers* 6 (Oct. 18, 2019), https://bit.ly/3ne7aRh ("Phone scams [are] most lucrative against older consumers," who "reported that a phone call was the initial contact method [for fraud] in numbers four times higher than all other contact methods combined.").

[4] *See, e.g.*, *FTC v. First Choice Horizon LLC*, No. 6:19-cv-1028 (M.D. Fla. 2019) (lawsuit involving a scam of this kind).

phone number currently in use. That would fall outside petitioner's definition too.

Lower court judges seeking to resolve this interpretive puzzle have managed to agree only that the text defies ready interpretation. As Judge Barrett put it, "[t]he wording of the provision . . . is enough to make a grammarian throw down her pen." *Gadelhak v. AT&T Servs., Inc.*, 950 F.3d 458, 460 (7th Cir. 2020). Judge Sutton has similarly lamented that "[c]larity . . . does not leap off this page of the U.S. Code." *Glasser v. Hilton Grand Vacations Co.*, 948 F.3d 1301, 1306 (11th Cir. 2020) (Sutton, J., sitting by designation). Judge Ikuta has confessed to "struggling with the statutory language," because "it is not susceptible to a straightforward interpretation based on the plain language alone." *Marks v. Crunch San Diego*, *LLC*, 904 F.3d 1041, 1051 (9th Cir. 2018). And Judge Cabranes has also admitted that "this statutory language leaves much to interpretation." *Duran v. La Boom Disco*, *Inc.*, 955 F.3d 279, 283 (2d Cir. 2020).

All told, lower court judges faithfully applying textualist methods of interpretation "have tried to fashion a plain text reading from these words," but have unanimously agreed that each possible interpretation "has its problems." *Allan v. Pennsylvania Higher Educ. Assistance Agency*, 968 F.3d 567, 572 (6th Cir. 2020).

That said, respondent's reading of the autodialer definition is the best interpretation of the statute's plain text. Recall that respondent interprets the participial phrase "using a random or sequential

number generator" to modify only the verb "produce," not the verb "store." That interpretation makes sense as a matter of ordinary English. A number generator, after all, *produces* numbers.

By contrast, under petitioner's reading, the participial phrase would also modify the verb "store." But a number *generator* cannot be used to *store* telephone numbers. *Marks*, 904 F.3d at 1050, 1052 & n.8; *Duran*, 955 F.3d at 284; *Allan*, 968 F.3d at 572. Indeed, consulting their plain meanings, a "generator" does not "store" in any sense of the word. *See Oxford English Dictionary* 437 (2d ed. 1989) (defining "generator" as "[s]omething which generates *or produces*" (emphasis added)).

Some courts have reasoned that a number generator can in fact store telephone numbers because, in the process of generating a random number, the device also stores that number—however briefly. *See Glasser*, 948 F.3d at 1307. But even if a generator could store telephone numbers in some metaphysical sense, that reading in turn creates a superfluity problem. Why include the verb "store" if any device that produces numbers stores those numbers too? Indeed, "[i]t would be odd for Congress to include both verbs if, together, they merely created redundancy in the statute." *Duran*, 955 F.3d at 284. This Court ordinarily interprets statutes to avoid creating redundancies of this kind. *See Duncan v. Walker*, 533 U.S. 167, 174 (2001).

To be sure, "[r]edundancy is not a silver bullet." *Rimini Street, Inc. v. Oracle USA, Inc.*, 139 S. Ct. 873,

881 (2019). But the redundancy caused by petitioner's interpretation is far greater than a single superfluous word. Petitioner's interpretation would render superfluous not only the verb "store," but also an entire portion of the TCPA's automated-call restriction—the statute's exception for calls "made with the prior express consent of the called party." 47 U.S.C. § 227(b)(1)(A). "[C]onsented-to calls by their nature are calls made to known persons, i.e., persons whose numbers are stored on a list and were *not* randomly generated." *Allan*, 968 F.3d at 575 (emphasis added). As a result, if the use of a random or sequential number generator were required for a device to qualify as an autodialer, the consent exception would have no meaningful application. *Id.*; *accord Marks*, 904 F.3d at 1051 (Ikuta, J.) (the existence of a consent exception "indicates that equipment that made automatic calls from lists of recipients was also covered by the TCPA"). And when, as here, "an interpretation would render superfluous another part of the same statutory scheme," "the canon against surplusage is strongest." *Marx v. Gen. Rev. Corp.*, 568 U.S. 371, 386 (2013).

Petitioner argues that even if the consent exception has no application to calls made using an autodialer, the exception would still apply to calls made using a prerecorded or artificial voice. Pet. Br. 40. But "the language of the statute does not make that distinction." *Duran*, 955 F.3d at 285 n.20. The TCPA says that the consent exception applies to *both* calls made using an automatic telephone dialing

system *and* calls made using an artificial or prerecorded voice. 47 U.S.C. § 227(b)(1)(A). Under petitioner's reading of the statute, however, the consent exception would be irrelevant to an entire category of calls that the TCPA otherwise prohibits.

In sum, although the TCPA's autodialer definition may not be a model of draftsmanship, *Amici* States respectfully submit that respondent has the better reading of the statute's text.

B. When Congress passed the TCPA in 1991, the ordinary meaning of an automatic telephone dialing system did not depend on the use of a random or sequential number generator.

Respondent's position also finds support in how the term "automatic telephone dialing system" was understood when Congress passed the TCPA. State consumer-protection statutes in place at the time show that the ordinary meaning of an automatic telephone dialing system did not require the use of a random or sequential number generator.

It is "a fundamental canon of statutory construction that words generally should be interpreted as taking their ordinary meaning at the time Congress enacted the statute." *New Prime Inc. v. Oliveira*, 139 S. Ct. 532, 539 (2019) (alterations and quotation marks omitted). The Court therefore "orient[s] [itself] to the time of the statue's adoption" to "examin[e] the key statutory terms." *Bostock v.*

Clayton Cty., 140 S. Ct. 1731, 1738-39 (2020); *see also id.* at 1767 (Alito, J., dissenting).

When Congress passed the TCPA in 1991, it wrote with the benefit of preexisting state efforts to curb telemarketing abuses. Indeed, by that time, more than half the States had already recognized the threat posed by automated calls and had enacted state laws to regulate them. S. Rep. No. 102-178, at 3, *reprinted in* 1991 U.S.C.C.A.N. 1968, 1970. And Congress counted more than "43,000 bills touching on the practice of direct marketing pending before state legislatures." H.R. Rep. 102-317, at 10 (1991).

But Congress worried that a federal law was needed because state laws might prove less than fully effective at redressing interstate conduct. Given potential practical difficulties with interstate enforcement of state law, a committee report concluded that "federal legislation is needed to . . . relieve states of a portion of their regulatory burden." *Id*. The States even asked Congress for supplemental federal legislation. S. Rep. No. 102-178, at 3, *reprinted in* 1991 U.S.C.C.A.N. 1968, 1970.

Congress delivered. By enacting the TCPA, Congress provided a uniform, federal ban on automated calls. 47 U.S.C. § 227(b)(1)(A). In the process, Congress also empowered the States, on their residents' behalf, to enforce the federal ban by suing illegal robocallers. *Id.* § 227(g)(1). And not only did Congress decline to preempt any state telephone privacy protections, it expressly *saved* from preemption any overlapping or more-stringent state

protections. *Id.* § 227(f)(1); *see Patriotic Veterans, Inc. v. Indiana*, 736 F.3d 1041, 1054 (7th Cir. 2013).

As this history shows, Congress designed the TCPA with state enforcement in mind. It is therefore all the more appropriate to look at the then-existing state laws that Congress aimed to supplement as evidence of the statute's ordinary meaning. *See New Prime*, 139 S. Ct. at 540 (relying in part on contemporaneous state statutes for evidence of a federal law's ordinary meaning).

Here is a survey of the 1991 state-law landscape. At least thirty-two States and the District of Columbia imposed some kind of prohibition on the improper use of autodialers. Nine of those States did not define the term.[5] The remaining States used one of four different formulations:

- At least ten States defined an autodialer as a device that (1) stored numbers to be called; or

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[5] Ariz. Rev. Stat. Ann. § 13-2918(A) (1986); Ark. Code Ann. § 5-63-204(a)(1) (1981); Colo. Rev. Stat. Ann. § 18-9-311(1) (1988); Conn. Gen. Stat. § 52-570c(a) (1990); Fla. Stat. § 501.059(7)(a) (1991); Nev. Rev. Stat. § 597.814 (1989); N.M. Stat. Ann. § 57-12-22(A) (1989); Wyo. Stat. Ann. § 6-6-104(a) (1987); *cf.* Mich. Comp. Laws § 484.125(4) (1980) (use of "automated dialing" is prima facie evidence of intent to violate prohibition on commercial advertising by prerecorded message).

(2) produced numbers to be called, using a random number generator.[6]

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[6] Cal. Pub. Util. Code § 2871 (1980) ("any automatic equipment which incorporates a storage capability of telephone numbers to be called or a random or sequential number generator capable of producing numbers to be called"); Kan. Stat. Ann. § 50-670(a)(5) (1991) ("any user terminal equipment which . . . [w]hen connected to a telephone line can dial, with or without manual assistance, telephone numbers which have been stored or programmed in the device or are produced or selected by a random or sequential number generator"); Mass. Gen. Laws ch. 159, § 19B (1986) ("any automatic terminal equipment which is capable of storing numbers to be called or producing numbers to be called, using a random or sequential number generator"); Miss. Code Ann. § 77-3-451 (1989) ("any automatic equipment which incorporates a storage capability of telephone numbers to be called or a random or sequential number generator capable of producing numbers to be called"); N.Y. Gen. Bus. Law § 399-p (1988) ("any automatic equipment which incorporates a storage capability of telephone numbers to be called or a random or sequential number generator capable of producing numbers to be called"); N.C. Gen. Stat. § 75-30(c) (1979) ("any automatic equipment which incorporates a storage capability of telephone numbers to be called or a random or sequential number generator capable of producing numbers to be called"); Okla. Stat. tit. 15, § 752(10) (1991) ("automatic equipment that . . . stores telephone numbers to be called, or has a random or sequential number generator capable of producing numbers to be called"); 52 Pa. Code § 63.1 (1988) ("[a]utomatic equipment used for solicitation which has a storage capability of multiple numbers to be called or a random or sequential number generator that produces numbers to be called . . . ."); R.I. Gen. Laws § 11-35-26(b) (1987) ("any automatic terminal equipment

- At least nine States did not use either the verb "store" or the verb "produce" to define an autodialer. Instead, these States used verbs like "select" and "dial," without any reference to a random or sequential number generator.[7]
- At least one State and the District of Columbia defined an autodialer only by looking to the device's ability to "convey" or "deliver" a prerecorded message, again without any reference to a random or sequential number generator.[8]
- And finally, at least three States defined an autodialer as a device that could store or produce numbers that were then called randomly or sequentially. Under these state

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which is capable of storing numbers to be called or producing numbers to be called, using a random or sequential number generator"); 16 Tex. Admin. Code § 23.32(a) (1986) ("automatic equipment . . . that is capable of storing numbers to be called, or has a random or sequential number generator capable of producing numbers to be called").

[7] Ga. Code Ann. § 46-5-23(a)(1) (1990); Ind. Code § 24-5-14-1 (1988); Iowa Code § 476.57(1) (1991); La. Rev. Stat. Ann. § 45:810(B)(1) (1991); Me. Rev. Stat. Ann. tit. 10, § 1498(1)(A) (1990); Minn. Stat. § 325E.26(2) (1987); Or. Rev. Stat. § 759.290(3)(a) (1989); Tenn. Code Ann. § 47-18-1501(b)(1) (1990); Wash. Rev. Code § 80.36.400(1)(a) (1987).

[8] D.C. Code § 34-1701(a)(1) (1991); S.C. Code Ann. § 16-17-446(A) (1991).

> laws, "randomly" and "sequentially" were adverbs used to describe how a call was placed, rather than adjectives used to describe a "number generator."[9] A number generator was not mentioned in these state laws at all.

Although these definitions varied substantially, they shared a common, critical feature: when Congress passed the TCPA, *every* state law that defined the term "autodialer" included a device with the capacity to store numbers to be called automatically, regardless of whether the device used a random or sequential number generator.

Pre-1991 state statutes therefore show that the ordinary understanding of an automatic telephone dialing system at the time Congress enacted the TCPA did not depend on the device's use of a random or sequential number generator. And as explained below, Congress explicitly acted against the backdrop of these state laws by passing a federal standard to supplement, not displace, preexisting state standards. *See* pp 18-19, *infra.* This history confirms that

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[9] 815 Ill. Comp. Stat. § 305/5(a) (1991) ("any telephone dialing or accessing device, machine, computer or system capable of storing telephone numbers which is programmed to sequentially or randomly access the stored telephone numbers"); N.H. Rev. Stat. Ann. § 359-E:1(I) (1989) ("any automatic terminal equipment which stores or produces numbers to be called randomly or sequentially"); S.D. Codified Laws § 37-30-23 (1991) (same).

respondent's interpretation of the TCPA is consistent with the statute's original meaning.

Supporting petitioner, the United States acknowledges some of this history, but draws precisely the wrong conclusion from it. According to the United States, Congress could have adopted any of the state-law autodialer definitions in place at the time, but chose not to. As a result, the United States contends, the TCPA's definition of an automatic telephone dialing system must necessarily be narrower than the definitions used in predecessor state laws. U.S. Br. 27-28. The United States therefore reads the statute to cover only devices using a random or sequential number generator. U.S. Br. 27.

It is true that the TCPA's autodialer definition differs from any of the contemporaneous state-law definitions. U.S. Br. 27-28. But as shown above, the state laws themselves were scattered, offering various formulations for what it meant for a device to qualify as an autodialer. So, it should come as little surprise that Congress chose not to adopt wholesale any specific state-law definition. There simply was no prevailing state-law model for Congress to replicate.

Instead, Congress drafted language to accomplish the same result as these disparate state laws. As explained above, the best reading of the TCPA's text is that an autodialer is a device with the capacity to (1) store telephone numbers to be called; or (2) produce telephone numbers to be called, using a random or sequential number generator. *See* pp 7-12, *supra*.

That was the most common formulation of the term among pre-TCPA state laws. *See* pp 15-16 n.6, *supra*. The prevalence of that definition among the state laws, which Congress sought to supplement, counsels in favor of reading the TCPA to be consistent with those preexisting laws.

The statute's enactment history supports this view as well. Congress passed the TCPA amid requests from the States for a federal automated-call restriction that would strengthen their own enforcement efforts. And the explicit aim of the legislation was to supplement—not shrink—the protections against autodialers that so many States already had in place. S. Rep. No. 102-178, at 3, *reprinted in* 1991 U.S.C.C.A.N. 1968, 1970.

No state law on the books in 1991 required an autodialer to use a random or sequential number generator. It is therefore implausible that Congress—solicitous as it was of the compelling interests States have in protecting citizens from telephone abuse and fraud—would have adopted an autodialer definition so much more circumscribed than the definitions state laws were using at the time.

In sum, state laws prior to the TCPA's passage show that the ordinary meaning of an automatic telephone dialing system in 1991 did not require the use of a random or sequential number generator. Thus, respondent's reading of the autodialer definition is the only interpretation that is consistent with how that term was understood when Congress enacted the TCPA.

II. Facebook's Parade-of-Horribles Argument Is Unpersuasive.

Facebook resists respondent's textualist reading of the TCPA by pointing to consequences. But the consequences of respondent's interpretation of the TCPA would not be "catastrophic," as Facebook claims. *See* Pet. Br. 45.

Facebook argues that imposing TCPA liability for the kind of "sensible, but inherently fallible, business practices" at issue here would go beyond the scope of Congress's concerns when it passed the TCPA. Pet. Br. 45. But repeatedly sending "security alerts" to phone numbers not connected with a Facebook account is hardly "sensible"—indeed, it is abusive. It is well-established that individuals have an expectation of privacy in their cell phones. *See Riley v. California*, 573 U.S. 373, 386 (2014). Congress designed the TCPA to safeguard privacy interests of this kind. *See, e.g.*, *Olney v. Progressive Cas. Ins. Co.*, 993 F. Supp. 2d 1220, 1227 (S.D. Cal. 2014) (denying motion to dismiss TCPA action where defendants repeatedly called wrong number); *Harris v. World Fin. Network Nat. Bank*, 867 F. Supp. 2d 888, 895-96 (E.D. Mich. 2012) (holding that plaintiff was entitled to treble damages for calls defendants made after plaintiff informed them that they were calling the wrong number); *Johnson v. Navient Sols., Inc.*, 315 F.R.D. 501, 502 (S.D. Ind. 2016) (holding that "because the Act prohibits automated calls to any cell phone number, once the user of that phone notifies

the originating entity that there is a wrong number, those calls must stop").

At bottom, Facebook's consequentialist argument is not really about protecting college students and their communication habits, *see* Pet. Br. 45, but about "updating" the TCPA through judicial decree. Perhaps the TCPA is indeed outdated in many ways. When Congress passed it nearly thirty years ago, calls to cell numbers cost the recipient money, which is why cold calls to cell numbers, but not landlines, are prohibited. 47 U.S.C. § 227(b)(1). Now, of course, most cell phone plans offer unlimited calls and texts, meaning that cost structures for cell phones more closely resemble those for landlines. In addition, smart phones did not exist in 1991, and only a highly capitalized telemarketer would have possessed a high-tech device that could store and dial telephone numbers. Nowadays, a majority of middle-school students have access to such technology in their pocket.[10] Yet, as the Court reinforced just last Term, the Court applies the text of statutes as written and does not update them to fit the times—it leaves that role to Congress. *See Bostock*, 140 S. Ct. at 1738 ("If judges could add to, remodel, update, or detract from old statutory terms inspired only by extratextual sources and our own imaginations, we would risk

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[10] *See, e.g.*, Anya Kamenetz, *It's a Smartphone Life: More Than Half of U.S. Children Now Have One*, NPR (Oct. 31, 2019), https://n.pr/3o9apKd.

amending statutes outside the legislative process reserved for the people's representatives.").

Even as the options grow for ordinary people to contact others without using telephone numbers, robocalls to cell numbers persist. Robocallers rely on cheap phone-number databases and cheap calling technology, even with a low hit rate, to make a profit. The TCPA therefore remains relevant. The Court should reject Facebook's attempt to update it into desuetude.

III. Facebook's Interpretation Of The TCPA Would Also Hinder State Enforcement Efforts.

Facebook's interpretation of the TCPA would also lead to negative consequences of its own. Specifically, Facebook's interpretation of the TCPA should be rejected because it would hinder state enforcement efforts.

States often use the TCPA to sue violators in federal court, asserting state-law claims using supplemental jurisdiction. For instance, Virginia recently settled a suit alleging both TCPA and state-law claims against a group of violators that "robocalled hundreds of thousands of consumers nationwide to pitch online car sale services, disregarding the National Do Not Call Registry, and deceiving consumers about the online car sale services they offer and their 'money back guarantee.'" *Virginia ex rel. Herring v. Skyline Metrics, LLC*, No. 7:19-cv-463, Dkt. 1 (W.D. Va. 2019). Moreover, the

TCPA's federal-law cause of action is especially critical for States that—unlike, in this example, Virginia—lack their own restrictions or prohibitions on autodialers under state law.

In addition, the TCPA allows multiple States to join forces in a single lawsuit against particularly abusive robocallers in a court that has undoubted jurisdiction over the violator, its records, and its financial accounts and other assets. In just one recent example, eight States brought suit in a Texas federal court against robocallers who "initiate millions of outbound telephone calls that deliver artificial or prerecorded voice messages . . . to residential and/or cellular telephone numbers." *Arkansas v. Rising Eagle Capital Grp. LLC*, No. 4:20-cv-2021, Dkt. 42 (S.D. Tex. 2020). In another example, four States, joined by the federal government, successfully sued a company that "committed more than 65 million violations of telemarketing statutes and regulations." *United States v. Dish Network LLC*, 954 F.3d 970, 973 (7th Cir. 2020).

Facebook's interpretation of the TCPA would undermine these types of multi-state and state-federal collaborations. By narrowing the TCPA's definition of an autodialer, Facebook would limit the universe of cases where States can pool their resources and bring enforcement actions—across multiple States or alongside the federal

government—to enforce the TCPA's protections against the most abusive robocall practices.

Indeed, without a federal-law violation to prosecute, States would be left to file separate, piecemeal lawsuits across a number of different state courts. To be sure, state enforcement actions of this kind can still be effective, but a federal claim under the TCPA is a particularly powerful tool for States seeking to enforce the law against the most abusive robocallers.

This Court should reject Facebook's interpretation of the TCPA and preserve the full ability of States to engage in multi-state and state-federal collaborations that protect consumers from illegal robocalls.

CONCLUSION

The judgment of the Ninth Circuit should be affirmed.

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

THE PEOPLE OF THE STATE OF ILLINOIS, **Plaintiff,** **v.** **GLAMOUR SERVICES, LLC, a Illinois Limited Liability Company; AWE STRUCK, INC., an Illinois Corporation; and MATTHEW GLAMKOWSKI, individually and in his capacity as Manager of Glamour Services, LLC and as President of Awe Struck, Inc.,** **Defendants.**	**No. 2019-cv-**

COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

1. Plaintiff, the People of the State of Illinois, by KWAME RAOUL, Illinois Attorney General, as a Complaint for Injunctive and Other Relief against Defendants Glamour Services, LLC, an Illinois limited liability company registered to do business in Illinois ("Glamour Services"), Awe Struck, Inc., an Illinois corporation ("Awe Struck"), and Matthew Glamkowski, as an individual and in his capacity as manager for Glamour Services, LLC and as President of Awe Struck, Inc., ("Glamkowski"), (collectively "Defendants"), states the following:

NATURE OF PLAINTIFF'S CLAIMS

2. This lawsuit arises under the Telephone Consumer Protection Act, 47 U.S.C. §227, *et seq*., ("TCPA"), and the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. §6101, *et seq*., ("Telemarketing Act"), to challenge Defendants' telephone solicitation practices. Plaintiff seeks a permanent injunction and other relief, based upon Defendants'

violations of the TCPA and of the Telemarketing Act in connection with placing telemarketing solicitations to consumers whose telephone numbers have been registered with the National Do Not Call Registry.

3. Plaintiff, as part of the same case or controversy, also brings this action pursuant to the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1 *et seq*., ("Consumer Fraud Act").

JURISDICTION AND VENUE

4. This court has jurisdiction over this matter pursuant to 28 U.S.C. §§1331 and 1337(a), 47 U.S.C. §227(g)(2), and 15 U.S.C. §6103(a), and supplemental jurisdiction over the state claims pursuant to 28 U.S.C. §1367.

5. Venue in this judicial district is proper pursuant to 28 U.S.C. §1391(b), in that a substantial part of the events or omissions giving rise to the claim occurred in this judicial district. Venue is also proper in this judicial district pursuant to 47 U.S.C. §227(g)(4) and 15 U.S.C. §6103(e), in that Defendants have transacted business in this district.

6. Plaintiff notified the Federal Communications Commission of this civil action in writing on or about June 21, 2019.

7. Plaintiff notified the Federal Trade Commission of this civil action in writing on or about June 21, 2019.

PARTIES

8. Plaintiff, as *parens patriae*, by and through its attorney, Kwame Raoul, Attorney General, is authorized by 47 U.S.C. §227(g)(1) to file actions in federal district court to enjoin violations of and enforce compliance with the TCPA on behalf of residents of the State of Illinois, and to obtain actual damages or damages of $500 for each violation, and up to treble that amount for each violation committed willfully or knowingly.

9. Plaintiff, as *parens patriae*, by and through its attorney, Kwame Raoul, Attorney General, is authorized by 15 U.S.C. §6103 to file actions in federal district court to enjoin violations of and enforce compliance with the Telemarketing Act on behalf of residents of the State of Illinois, and to obtain damages, restitution, or other compensation on behalf of residents of Illinois, or to obtain such further and other relief as the court may deem appropriate.

10. Plaintiff, by Kwame Raoul Attorney General of the State of Illinois, is charged, *inter alia*, with the enforcement of the Consumer Fraud Act, 815 ILCS 505/7.

11. Glamour Services is a limited liability company organized under the laws of the State of Illinois.

12. Glamour Services's principal place of business is 245 West Roosevelt Road, Suite 104, West Chicago, Illinois 60185.

13. Awe Struck is a corporation organized under the laws of the State of Illinois.

14. Awe Struck's principal place of business is 245 West Roosevelt Road, Suite 104, West Chicago, Illinois 60185.

15. Glamkowski is sued individually, and in his capacity as manager of Glamour Services and as president of Awe Struck.

16. Glamkowski manages the day-to-day operations of Glamour Services and Awe Struck.

17. Glamkowski approved, authorized, directed, and participated in Defendants' telephone solicitation scheme by: (a) creating and approving the scripts that employees, agents, or third parties use to make the telephone solicitations; (b) creating and recording in advance the "ringless" voicemails to be distributed; (c) purchasing lists of consumers to target for telephone solicitations; (d) directing, training, and supervising employees, agents, or third parties to make the telephone solicitations; (e) determining the number and frequency of the telephone solicitations; and (f) approving payment or paying employees, agents, or third parties to conduct the telephone solicitations.

18. As described below, Defendants Glamkowski, Glamour Services, and Awe Struck have engaged, and continued to engage in a pattern and practice of defrauding consumers; thus, to adhere to the fiction of a separate corporate existence between Defendants Glamkowski and Glamour Services or between Defendants Glamkowski and Awe Struck would serve to sanction fraud and promote injustice.

19. For purposes of this Complaint, any references to the acts and practices of Defendants shall mean that such acts and practices are by Glamkowski and/or through the acts of Glamour Services's and Awe Struck's respective owners, officers, directors, members, employees, partners, representatives, and/or other agents.

DEFENDANTS' BUSINESS PRACTICES

20. Defendants are, and at all times relevant to this Complaint have been, doing business and transacting business as a provider of certain services, including, but not limited to the following: (1)

window washing, (2) pressure washing, (3) air duct cleaning, (4) gutter cleaning, and (5) carpet cleaning (hereinafter "cleaning service(s)").

21. Defendants, in an attempt to sell their cleaning services, direct telemarketing solicitations to, or cause them to be directed to consumers, including but not limited to Illinois consumers.

Defendants' Unfair and Deceptive Telemarketing Activities

22. On at least 28 occasions since 2014, Illinois consumers have complained to the Illinois Attorney General of receiving unsolicited telemarketing calls from Defendants, despite being enrolled on the National Do Not Call Registry.

23. Defendants have sent telemarketing calls to Illinois consumers whose numbers are registered on the National Do Not Call Registry but who have not complained to the Illinois Attorney General's Office.

24. Over 1,000 consumer complaints have been submitted to law enforcement agencies by Illinois consumers who received unsolicited telemarketing calls from Defendants, despite being enrolled on the National Do Not Call Registry.

25. In numerous instances, Illinois consumers have complained that Defendants continued to call them despite the consumers informing Defendants they were on the National Do Not Call Registry and despite the consumers specifically requesting Defendants to take them off their call list(s).

26. In numerous instances, Defendants have initiated telephone solicitations to residential telephone subscribers in Illinois using an artificial or prerecorded voice to deliver a message without the prior express consent of the called subscribers.

27. In numerous instances, Defendants have initiated telephone solicitations that deliver prerecorded voice messages without identifying the identity of the seller Defendants.

28. These messages were prerecorded in the sense that Glamkowski recorded them ahead of time, and then the recording was played when the call was answered by consumers' voice mailboxes. The quality and preciseness of each message left confirm use of prerecorded messages. The number of consumers who report receiving identical messages confirms the messages were sent *en masse*.

29. In numerous instances, Defendants have harassed, hung up on, or otherwise failed to honor Illinois consumers' requests that they be removed from Defendants' telemarketing lists.

30. In numerous instances, Defendants have threatened Illinois consumers or used profane or obscene language against Illinois consumers during their telemarketing activities.

Defendants' Unfair and Deceptive Cleaning Service Practices

31. In some instances, Defendants have taken money from consumers and have failed to commence or complete the promised cleaning services and have failed to provide refunds to consumers.

32. In some instances, Defendants have failed to inform consumers of the prices Defendants intend to charge for each type of cleaning service prior to conducting work.

33. In some instances, the cleaning services Defendants perform are completed in a shoddy and unworkmanlike manner.

APPLICABLE STATUTES

FEDERAL LAWS

TELEPHONE CONSUMER PROTECTION ACT AND APPLICABLE RULES

34. The TCPA, enacted in 1991, amended the Communications Act of 1934 by adding 47 U.S.C. §227, which requires the Federal Communications Commission to

> ...initiate a rulemaking proceeding concerning the need to protect residential telephone subscribers' privacy rights to avoid receiving telephone solicitations to which they object. ... The regulations required by [the TCPA] may require the establishment and operation of a single national database to compile a list of telephone numbers of residential subscribers who object to receiving telephone solicitations, and to make that compiled list and parts thereof available for purchase. If the Commission determines to require such a database, such regulations shall– ... (F) prohibit any person from making or transmitting a telephone solicitation to the telephone number of any subscriber included in such database ...

47 U.S.C. §227(c)(1) and (c)(3).

35. On June 26, 2003, the Federal Communications Commission revised its rules and promulgated new rules pursuant to the TCPA. These new rules provide for a National Do Not Call Registry.

36. 47 C.F.R. §64.1200(c) provides in part: "No person or entity shall initiate any telephone solicitation to: ... (2) A residential telephone subscriber who has registered his or her telephone number on the national do-not-call registry of persons who do not wish to receive telephone solicitations that is maintained by the Federal Government."

37. 47 U.S.C. §227(a)(4) and 47 C.F.R. §64.1200(f)(14) provide in part: "The term telephone solicitation means the initiation of a telephone call or message for the purpose of encouraging the

purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person ..."

38. At all times relevant to this complaint, Defendants were engaged in the practice of conducting telephone solicitations as defined in the TCPA and the rules promulgated pursuant to the TCPA.

39. The TCPA provides in part:

> Whenever the attorney general of a State, or an official or agency designated by a State, has reason to believe that any person has engaged or is engaging in a pattern or practice of telephone calls or other transmissions to residents of that State in violation of this section or the regulations prescribed under this section, the State may bring a civil action on behalf of its residents to enjoin such calls, an action to recover for actual monetary loss or receive $500 in damages for each violation, or both such actions. If the court finds the defendant willfully or knowingly violated such regulations, the court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 times the amount available under the preceding sentence.

47 U.S.C. § 227(g)(1).

TELEMARKETING AND CONSUMER FRAUD AND ABUSE PREVENTION ACT AND TELEMARKETING SALES RULE

40. In 1994, Congress directed the FTC to prescribe rules prohibiting abusive and deceptive telemarketing acts or practices pursuant to the Telemarketing Act, 15 U.S.C. §§ 6101-6108. On August 16, 1995, the FTC adopted the Telemarketing Sales Rule (the "Original TSR"), 16 C.F.R. Part 310, which became effective on December 31, 1995. On January 29, 2003, the FTC amended the Original TSR by issuing a Statement of Basis and Purpose and the final amended TSR ("TSR"). Telemarketing Sales Rule, 68 Fed. Reg. 4580-01.

41. Among other things, the TSR established a "do-not-call" registry, maintained by the Commission (the "National Do Not Call Registry" or "Registry"), of consumers who do not wish to receive certain types of telemarketing calls. Consumers can register their telephone numbers on the Registry without charge either through a toll-free telephone call or over the Internet at https://donotcall.gov/.

42. Sellers, telemarketers, and other permitted organizations can access the Registry over the Internet at https://telemarketing.donotcall.gov/ to download the registered numbers. Sellers and telemarketers are prohibited from calling registered numbers in violation of the TSR. 16 C.F.R. § 310.4(b)(1)(iii)(B).

43. Consumers who receive telemarketing calls to their registered numbers can complain of Registry violations the same way they registered, through a toll-free telephone call to 1-888-382-1222 or over the Internet at https://donotcall.gov/, or by contacting law enforcement.

44. The TSR also requires a telemarketer to honor a person's request to no longer receive telemarketing calls made by or on behalf of the telemarketer. 16 C.F.R. §310.4(b)(1)(iii)(A).

45. The TSR prohibits a telemarketer from initiating an outbound telephone call that delivers a prerecorded message unless the message promptly discloses:

a. the identity of the seller;

b. that the purpose of the call is to sell goods or services; and

c. the nature of the goods or services.

16 C.F.R. §310.4(b)(1)(v)(B)(ii).

46. Defendants are each a "seller" or "telemarketer" engaged in "telemarketing," as defined by the TSR, 16 C.F.R. § 310.2(dd), (ff), (gg).

47. Section 6103(a) of the Telemarketing Act authorizes the Attorney General of a state to enforce the Telemarketing Act and the TSR, 15 U.S.C. §6103(a).

STATE LAW

CONSUMER FRAUD ACT

48. Section 2 of the Consumer Fraud Act, provides:

> Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact, or the use or employment of any practice described in section 2 of the 'Uniform Deceptive Trade Practices Act,' approved August 5, 1965, in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby. In construing this section consideration shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to section 5(a) of the Federal Trade Commission Act.

815 ILCS 505/2.

49. Subsection 1(f) of the Consumer Fraud Act defines "trade" and "commerce" as follows:

> The terms 'trade' and 'commerce' mean the advertising, offering for sale, sale, or distribution of any services and any property, tangible or intangible, real, personal, or mixed, and any other article, commodity, or thing of value wherever situated, and shall include any trade or commerce directly or indirectly affecting the people of this State.

815 ILCS 505/1(f).

50. Section 2Z of the Consumer Fraud Act states that any person who knowingly violates certain Illinois statutes, including the Automatic Telephone Dialers Act and the Telephone

Solicitations Act, "commits an unlawful practice within the meaning of this Act." 815 ILCS 5050/2Z.

51. Section 30(b) of the Automatic Telephone Dialers Act provides that "[i]t is a violation of this Act to play a prerecorded message placed by an autodialer without the consent of the called party." 815 ILCS 305/30.

52. Section 15 of the Telephone Solicitations Act states in relevant part:

> (a) No person shall solicit the sale of goods or services in this State by placing a telephone call during the hours between 9 p.m. and 8 a.m.
> (b) A live operator soliciting the sale of goods or services shall:
> 1. immediately state his or her name, the name of the business or organization being represented, and the purpose of the call; and
> 2. inquire at the beginning of the call whether the person consents to the solicitation; and
> 3. if the person called requests to be taken off the contact list of the business or organization, the operator must refrain from calling that person again and take all steps necessary to have that person's name and telephone number removed from the contact records of the business or organization so that the person will not be contacted again by the business or organization…
> (c) A person may not solicit the sale of goods or services by telephone in a manner that impedes the function of any caller ID when the telephone solicitor's service or equipment is capable of allowing the display of the solicitor's telephone number.

815 ILCS 413/15.

53. Section 25 of the Telephone Solicitations Act states in relevant part:

> (a) It is a violation of this Act to make or cause to be made telephone calls to any emergency telephone number as defined in Section 5 of this Act. It is a violation of this Act to make or cause to be made telephone calls in a manner that does not comply with Section 15.
> (b) It is a violation of this Act to continue with a solicitation placed by a live operator without the consent of the called party.
> (c) It is an unlawful act or practice and a violation of this Act for any person engaged in telephone solicitation to obtain or submit for payment a check, draft, or other form of negotiable paper drawn on a person's checking, savings, or other account or on a bond without the person's express written consent.

815 ILCS 413/25.

54. Section 7 of the Consumer Fraud Act provides:

> Whenever the Attorney General has reason to believe that any person is using, has used, or is about to use any method, act or practice declared by the Act to be unlawful, and that proceedings would be in the public interest, he may bring an action in the name of the State against such person to restrain by preliminary or permanent injunction the use of such method, act or practice. The Court, in its discretion, may exercise all powers necessary, including but not limited to: injunction, revocation, forfeiture or suspension of any license, charter, franchise, certificate or other evidence of authority of any person to do business in this State; appointment of a receiver; dissolution of domestic corporations or association suspension or termination of the right of foreign corporations or associations to do business in this State; and restitution.
>
> In addition to the remedies provided herein, the Attorney General may request and this Court may impose a civil penalty in a sum not to exceed $50,000 against any person found by the Court to have engaged in any method, act or practice declared unlawful under this Act. In the event the court finds the method, act or practice to have been entered into with intent to defraud, the court has the authority to impose a civil penalty in a sum not to exceed $50,000 per violation.

815 ILCS 505/7.

55. Section 10 of the Consumer Fraud Act provides, "In any action brought under the provisions of this Act, the Attorney General is entitled to recover costs for the use of this State." 815 ILCS 505/10.

VIOLATIONS

COUNT I - TCPA AND RULES

56. Paragraphs 1 through 55 are incorporated herein by reference.

57. Defendants have violated 47 U.S.C. §227(b)(1)(A)(iii), by engaging in a pattern or practice of initiating telephone solicitations through the use of automatic telephone dialing

systems or an artificial or prerecorded voice to telephone numbers assigned to cellular telephone services.

58. Defendants have violated 47 C.F.R. §64.1200(a) and 47 U.S.C. §227(b)(1)(B), by engaging in a pattern or practice of initiating telephone solicitations to residential telephone subscribers in Illinois, using an artificial or prerecorded voice to deliver a message without the prior express consent of the called subscribers.

59. Defendants have violated 47 C.F.R. §64.1200(c)(2) and 47 U.S.C. §227(c), by engaging in a pattern or practice of initiating telephone solicitations to residential telephone subscribers in Illinois, whose telephone numbers were listed on the National Do Not Call Registry.

PRAYER FOR RELIEF - COUNT I

WHEREFORE, Plaintiff prays that this honorable Court enter an Order:

A. Finding that Defendants have violated the TCPA;

B. Permanently enjoining Defendants from initiating telephone solicitations through the use of automatic telephone dialing systems or an artificial or prerecorded voice to telephone numbers assigned to cellular telephone services;

C. Permanently enjoining Defendants from initiating telephone solicitations to residential telephone subscribers using an artificial or prerecorded voice to deliver a messages without the prior express consent of the called subscribers;

D. Permanently enjoining Defendants from initiating telephone solicitations to residential telephone subscribers in Illinois, whose telephone numbers are listed on the National Do Not Call Registry;

E. Assessing against Defendants damages of $1,500 for each violation of the TCPA found by the Court to have been committed by Defendants willfully and knowingly; if the Court finds Defendants have engaged in violations of the TCPA that are not willful and knowing, then assessing against Defendants damages of $500 for each violation of the TCPA, as provided by 47 U.S.C. §227;

D. Assessing against Defendants all costs incurred by Plaintiff in bringing this action; and

E. Awarding Plaintiff such other and additional relief as the Court determines to be just and proper.

COUNT II - TSR

60. Paragraphs 1 through 59 are incorporated herein by reference.

61. In numerous instances, in connection with telemarketing, Defendants have initiated or caused a telemarketer to initiate an outbound telephone call to a person's telephone number on the National Do Not Call Registry in violation of the TSR, 16 C.F.R. § 310.4(b)(1)(iii)(B).

62. In numerous instances, in connection with telemarketing, Defendants have initiated or caused a telemarketer to initiate an outbound telephone call to a person who previously has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of Defendants, in violation of the TSR, 16 C.F.R. §310.4(b)(1)(iii)(A).

63. In numerous instances, in connection with telemarketing, Defendants have denied a person the right to be placed on any registry of names or telephone numbers that do not wish to receive calls by Defendants, including but not limited to, harassing persons that make such a request, hanging up on persons, and failing to honor persons' requests in violation of the TSR, 16 C.F.R. §310.4(b)(1)(ii).

64. In numerous instances, in connection with telemarketing, Defendants have engaged in the use of threats, intimidation, or the use of profane or obscene language against a person, in violation of the TSR, 16 C.F.R, §310.4(a)(1).

65. In numerous instances, in connection with telemarketing, Defendants have initiated outbound calls that deliver prerecorded voice messages that fail to disclose the identity of the seller in violation of the TSR, 16 C.F.R. §310.4(b)(1)(v)(B)(ii).

66. In numerous instances, in connection with telemarketing, Defendants have initiated telephone solicitations to residential telephone subscribers using an artificial or prerecorded voice to deliver a message without the prior express consent of the called subscribers in violation of the TSR, 16 C.F.R. §310.4(b)(1)(v)(A).

PRAYER FOR RELIEF- COUNT II

WHEREFORE, Plaintiff prays that this honorable Court enter an Order:

A. Finding that Defendants have violated the Telemarketing Act and the TSR;

B. Permanently enjoining Defendants from initiating telephone solicitations to person's telephone numbers on the National Do Not Call Registry;

C. Permanently enjoining Defendants from initiating or causing outbound telephone calls to be made to persons who have previously stated that they do not wish to receive telephone calls made by or on behalf of Defendants;

D. Permanently enjoining Defendants from denying a person the right to be placed on any registry of names or telephone numbers that do not wish to receive calls by Defendants, including but not limited to, harassing persons that make such a request, hanging up on persons, and failing to honor persons' requests;

E. Permanently enjoining Defendants from engaging in the use of threats, intimidation, or the use of profane or obscene language against a person in connection with telemarketing;

F. Permanently enjoining Defendants from initiating outbound calls that deliver prerecorded voice messages that fail to disclose the identity of the seller;

G. Permanently enjoining Defendants from initiating telephone solicitations to residential telephone subscribers using an artificial or prerecorded voice to deliver a message without the prior express consent of the called subscribers;

H. Assessing against Defendants damages for the residents of Illinois, rescission of contracts, the refund of monies paid, and the disgorgement of ill-gotten monies;

I. Assessing against Defendants all costs incurred by Plaintiff in bringing this action, including reasonable attorney's fees; and

J. Awarding Plaintiff such other and additional relief as the Court determines to be just and proper.

COUNT III - CONSUMER FRAUD ACT

67. Paragraphs 1 through 66 are incorporated herein by reference.

68. Defendants were at all times relevant hereto, engaged in trade and commerce in the State of Illinois, in that Defendants advertised, offered for sale, and sold products and services including, but not limited to cleaning services to Illinois consumers and billed Illinois consumers for the same.

69. Defendants engaged in a course of trade or commerce that constitutes deceptive and/or unfair acts or practices declared unlawful pursuant to Section 2 of the Consumer Fraud Act by

continuing to place telemarketing calls to Illinois consumers after they requested that Defendants cease this activity.

70. Defendants engaged in a course of trade or commerce that constitutes deceptive and/or unfair acts or practices declared unlawful pursuant to Section 2 of the Consumer Fraud Act by representing to consumers, expressly or by implication, with the intent that consumers rely on the representation, that it was legal to place telemarketing calls to consumers when in fact the consumers had placed their phone number on the National Do Not Call Registry.

71. Defendants engaged in a course of trade or commerce that constitutes deceptive and/or unfair acts or practices declared unlawful under Section 2 of the Consumer Fraud Act by performing work in a shoddy and unworkmanlike manner and failing to refund consumers' money.

72. Defendants engaged in a course of trade or commerce that constitutes deceptive and/or unfair acts or practices declared unlawful pursuant to Section 2 of the Consumer Fraud Act by taking money from consumers and failing to commence or complete the promised work and failing to provide refunds to consumers.

73. Defendants engaged in a course of trade or commerce that constitutes deceptive and/or unfair acts or practices declared unlawful pursuant to Section 2 of the Consumer Fraud Act by failing to inform consumers, with the intent that consumers rely on the omission, of the material term of the prices Defendants intend to charge for each type of service prior to conducting work.

74. Defendants engaged in a course of conduct or trade that constitutes deceptive and/or unfair acts or practices declared unlawful pursuant to Section 2Z of the Consumer Fraud Act by knowingly making or causing to be made telephone calls using an autodialer to play prerecorded

messages without the consent of the called parties in violation of the Automatic Telephone Dialers Act, 815 ILCS 305/30.

75. Defendants engaged in a course of conduct or trade that constitutes deceptive and/or unfair acts or practices declared unlawful pursuant to Section 2Z of the Consumer Fraud Act by knowingly failing to refrain from calling persons who had requested to be taken off Defendants' contact list(s), in violation of the Telephone Solicitations Act, 815 ILCS 413/15(b)(3), 815 ILCS 413/25(a).

76. Defendants engaged in a course of conduct or trade that constitutes deceptive and/or unfair acts or practices declared unlawful pursuant to Section 2Z of the Consumer Fraud Act by knowingly failing to inquire at the beginning of the call whether the person called consents to the solicitation, in violation of the Telephone Solicitations Act, 815 ILCS 413/15(b)(2), 815 ILCS 413/25(a).

77. Defendants engaged in a course of conduct or trade that constitutes deceptive and/or unfair acts or practices declared unlawful pursuant to Section 2Z of the Consumer Fraud Act by knowingly continuing with a solicitation placed by a live operator without the consent of the called party in violation of the Telephone Solicitations Act, 815 ILCS 413/25(b).

PRAYER FOR RELIEF- COUNT III

WHEREFORE, Plaintiff prays that this honorable Court enter an Order:

A. Finding that Defendants have violated Section 2 of the Consumer Fraud Act;

B. Finding that Defendants have violated Section 2Z of the Consumer Fraud Act by knowingly violating the Automatic Telephone Dialers Act and the Telephone Solicitations Act;

C. Permanently enjoining Defendants from continuing to place telemarketing calls to Illinois consumers after consumers request that Defendants cease this activity;

D. Permanently enjoining Defendants from representing to consumers, expressly or by implication, with the intent that consumers rely on the representation, that it was legal to place telemarketing calls to consumers when in fact the consumers had placed their phone number on the National Do Not Call Registry;

E. Permanently enjoining Defendants from performing work in a shoddy and unworkmanlike manner and failing to refund consumers' money;

F. Permanently enjoining Defendants from taking money from consumers and failing to commence or complete the promised work and failing to provide refunds to consumers;

G. Permanently enjoining Defendants from failing to inform consumers, with the intent that consumers rely on the omission, of the material term of the prices Defendants intend to charge for each type of service prior to conducting work;

H. Permanently enjoining Defendants from knowingly making or causing to be made telephone calls using an autodialer to play prerecorded messages without the consent of the called parties;

I. Permanently enjoining Defendants from knowingly failing to refrain from calling persons who had requested to be taken off Defendants' contact list(s);

J. Permanently enjoining Defendants from knowingly failing to inquire at the beginning of the call whether the person called consents to the solicitation;

K. Permanently enjoining Defendants from knowingly continuing with a solicitation placed by a live operator without the consent of the called party;

L. Ordering Defendants to pay full restitution to all affected Illinois consumers;

M. Ordering Defendants to pay a civil penalty of $50,000.00 per deceptive or unfair act or practice and an additional amount of $50,000 for each act or practice found to have been committed with intent to defraud, as provided in Section 7 of the Consumer Fraud Act, 815 ILCS 505/7;

N. Assessing a civil penalty in the amount of Ten Thousand Dollars ($10,000) for any method, act, or practice declared unlawful under the Consumer Fraud Act and directed towards a person 65 years of age or older;

O. Requiring Defendants to pay all costs for the prosecution and investigation of this action, as provided by Section 10 of the Consumer Fraud Act, 815 ILCS 505/10; and

P. Awarding Plaintiff such other and additional relief as the Court determines to be just and proper.

Dated: June 25, 2019

Respectfully submitted,

THE PEOPLE OF THE STATE OF ILLINOIS,
by KWAME RAOUL,
Illinois Attorney General

BY: _____
GREG GRZESKIEWICZ

BY: */s/ Tracy Walsh*
TRACY WALSH

KWAME RAOUL
Illinois Attorney General

SUSAN ELLIS, Chief
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KWAME RAOUL
ILLINOIS ATTORNEY GENERAL

Do Not Call Registry

Telemarketing calls are often an unwelcome annoyance. To reduce the amount of unwanted telemarketing calls you receive, you can register your home and cellular phone numbers on the nationwide Do Not Call Registry. The Attorney General's Office enforces the rules of the Do Not Call Registry to make sure that businesses follow the law and consumers do not become victims of fraud.

To register, visit https://donotcall.gov/register/reg.aspx
or call 1-888-382-1222 (TTY: 1-866-290-4236).

Easy on-line registration
Step 1 Enter up to three phone numbers and your email address
Step 2 Check that the information is correct
Step 3 Receive an email from verify@donotcall.gov within a few minutes. It will tell you if your number was previously registered or if the new registration is complete.

This service is free to consumers and doesn't require repeated enrollment—once you sign up, your registration will not expire.

However, it's important to know that, under federal and state law, a number of businesses or organizations still can call numbers on the registry, including:

- calls from organizations with which you have established a business relationship;
- calls for which you have given prior written consent;
- calls which are not commercial or do not include unsolicited advertisements;
- calls by or on behalf of tax-exempt non-profit organizations.
- calls that are political
- calls about charities
- calls about debt collection

The Do Not Call Registry stops **sales** calls from real companies. The Registry is a list that tells telemarketers what numbers not to call. The FCC does not and cannot block calls and the Registry can't stop calls from scammers who ignore the Registry. To get fewer unwanted calls, look into blocking unwanted calls. There are different call-blocking options for mobile phones, traditional landlines, and landlines that use the internet (VoIP). More information on call blocking can be found on the FCC website www.donotcall.gov.

For more information, please contact us.

Chicago Consumer Hotline	**Springfield Consumer Hotline**	**Carbondale Consumer Hotline**
1-800-386-5438	1-800-243-0618	1-800-243-5377
1-800-964-3013 TTY	1-877-844-5461 TTY	1-877-964-3013 TTY