March 3, 2020

ATTORNEY GENERAL RAOUL DEFENDS ANTI-ROBOCALL PROVISIONS

Chicago — Attorney General Kwame Raoul joined a coalition of 33 attorneys general in filing a brief with the U.S. Supreme Court arguing for the preservation of the anti-robocall provisions of the federal Telephone Consumer Protection Act (TCPA).

The TCPA, enacted in 1991, is a critical piece of federal consumer-protection law allowing individuals to sue illegal robocallers or states to sue on their residents' behalf. A decision in the U.S. Court of Appeals for the 4th Circuit recently invalidated a portion of the act, potentially jeopardizing the entire federal robocall ban. In the brief, Raoul and the coalition argue that eliminating the robocall ban threatens the ability of states to fight one of the most pressing consumer protection issues residents face. In January 2020 alone, Americans received more than 4.7 billion robocalls

"Complaints related to robocalls continue to be among the most common consumer complaints my office receives," Raoul said. "Robocalls cost consumers time and money, as well as violate their privacy. I will continue to protect the rights of Illinois consumers by fighting against this illegal practice."

In the brief, Raoul and the coalition assert that if the recent exemption for federal government debt collection is held to be unconstitutional, the TCPA's severability clause should remove that exemption from the remaining robocall ban rather than invalidate the ban entirely. The coalition maintains that the robocall ban is critical in safeguarding personal and residential privacy by prohibiting intrusive robocalls.

Attorney General Raoul has been a consistent advocate for protections against illegal robocalls. 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 the brief are the attorneys general of Alabama, Alaska, Arkansas, Connecticut, Delaware, Hawaii, Idaho, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nevada, New Hampshire, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Utah, Virginia, Washington, West Virginia, and Wisconsin.

No. 19-631

IN THE

Supreme Court of the United States

WILLIAM P. BARR, ATTORNEY GENERAL, ET AL.,
Petitioners,

v.

AMERICAN ASSOCIATION OF POLITICAL CONSULTANTS, INC., ET AL.,
Respondents.

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

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

CASES [CONT'D]

CASES [CONT'D]

CASES [CONT'D]

STATUTES

STATUTES [CONT'D]

STATUTES [CONT'D]

STATUTES [CONT'D]

STATUTES [CONT'D]

STATUTES [CONT'D]

STATUTES [CONT'D]

OTHER AUTHORITIES

OTHER AUTHORITIES [CONT'D]

INTEREST OF *AMICI* STATES[1]

The States of Indiana, North Carolina, Alabama, Alaska, Arkansas, Connecticut, Delaware, Hawaii, Idaho, Illinois, Iowa, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nevada, New Hampshire, North Dakota, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Utah, Virginia, Washington, West Virginia, and Wisconsin respectfully submit this brief as *amici curiae* in support of the United States Attorney General.

For decades, the States and the federal government have sought to protect consumers from unwanted robocalls—automated telephone calls that deliver a prerecorded message. These calls invade consumer privacy with harassing messages that come at all hours, day and night. Indeed, robocalls are the most common source of consumer complaints at many State Attorney General offices. *Comment from the State Attorneys General Supporting Enactment of the Telephone Robocall Abuse Criminal Enforcement and Deterrence ("TRACED") Act* 1 (Mar. 5, 2019), *available at* http://bit.ly/390krVu. By seeking to eliminate the robocall ban in its entirety, respondents threaten the ability of States to fight one of the most pressing consumer-protection issues that their residents face.

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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.

The robocall problem shows no signs of abating. In January 2020 alone, Americans received more than 4.7 billion robocalls. YouMail Robocall Index, *January 2020 Nationwide Robocall Data* (last visited Feb. 19, 2020), *available at* https://robocallindex.com/2020/january. And technological advances have helped robocalls proliferate. Robocalls inflict "more of a nuisance and a greater invasion of privacy than calls placed by 'live' persons." S. Rep. No. 102-178, at 4 (1991), *reprinted in* 1991 U.S.C.C.A.N. 1968, 1972. They are notoriously cheap, which allows telemarketers to use them to bombard consumers with vast numbers of unwanted sales pitches and survey demands. *Id.* at 2. And because robocalls cannot engage with call recipients except in preprogrammed ways, they "do not allow the caller to feel the frustration of the called party." *Id.* at 4. Moreover, these calls have become far more than just a nuisance. Last year alone, robocalls defrauded Americans of more than $10 billion. Truecaller, *Phone Scams Cause Americans To Lose $10.5 Billion In Last 12 Months* (Apr. 17, 2019), *available at* http://bit.ly/2HCT08r.

The Telephone Consumer Protection Act of 1991 (TCPA), Pub. L. No. 102-243, 105 Stat. 2394, is a critical piece of federal consumer-protection legislation that generally prohibits the use of any "automatic telephone dialing system or an artificial or pre-recorded voice" to make a call to numbers assigned to a cellular telephone service. 47 U.S.C. § 227(b)(1)(A). The TCPA also grants both state and federal courts concurrent jurisdiction over TCPA claims, *Mims v. Arrow Fin.*

Servs., LLC, 565 U.S. 368, 372 (2012), and State Attorneys General have partnered with federal agencies to enforce the robocall ban, *see, e.g.*, Fed. Trade Comm'n, *Call It Quits: Robocall Crackdown 2019: Federal, State, and Local Actions* (June 25, 2019) (describing recent enforcement actions), *available at* http://bit.ly/2wxX0F9; Comment from the State Attorneys General, at 2–3 (same); *accord* 47 U.S.C. § 227(g)(1) (permitting parens patriae actions by states to sue for any "pattern or practice" of violating the TCPA).

In addition, as the TCPA expressly forecloses federal preemption of state telephone privacy laws, 47 U.S.C. § 227(f)(1), forty States have enforceable prohibitions or restrictions on the use of robocalls.[2] Many of

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[2] Ala. Code § 8-19A-3(3)(a); Alaska Stat. § 45.50.475(a)(4); Ariz. Rev. Stat. Ann. §§ 13-2919, 44-1278; Ark. Code § 5-63-204; Cal. Civ. Code § 1770(a)(22)(A); Cal. Pub. Util. Code § 2871; Colo. Rev. Stat. §§ 18-9-311, 6-1-302(2)(a); Conn. Stat. §§ 16-256e, 52-570c; Fla. Stat. § 501.059(8)(a); Ga. Code § 46-5-23; 815 Ill. Comp. Stat. § 305/1; Ind. Code § 24-5-14-5; Kan. Stat. § 50-670; Ky. Stat. § 367.461; La. Rev. Stat. Ann. § 45:810; Me. Rev. Stat. tit. 10, § 1498; Md. Pub. Util. Code § 8-204; Mass. Gen. Laws ch. 159C § 3, ch. 159 § 19B; Mich. Stat. § 484.125; Minn. Stat. §§ 325E.26, 332.37(13); Miss. Code §§ 77-3-451–59; Mont. Code § 45-8-216(1)(a)–(d); Neb. Stat. §§ 86-236 to 86-258; Nev. Stat. §§ 597.812, 597.814, 597.816, 597.818; N.H. Rev. Stat. Ann. § 359-E:1 to E:6; N.J. Stat. Ann. § 48:17-28; N.M. Stat. Ann. § 57-12-22; N.Y. Gen. Bus. Law § 399-p; N.C. Stat. § 75-104; N.D. Cent. Code § 51-28-04; 15 Okla. Stat. § 755.1; 21

these state laws were patterned on the federal robocall ban at issue here. In addition, many States also have separate restrictions on placing telemarketing calls of any type (even by a live operator) to consumers who register for no-call lists.[3]

Okla. Stat. § 1847a; Or. Rev. Stat. § 646A.370; 73 Pa. Stat. § 2245.2(j); R.I. Stat. §§ 5-61-3.4, 11-35-26; S.D. Stat. § 37-30-23; Tenn. Code Ann. § 47-18-1502; Tex. Bus. & Com. Code § 305.001; Utah Code Ann. § 13-25a-103; Va. Code § 59.1-518.2; Wash. Code § 80.36.400; Wis. Stat. § 100.52(4).

Two more States have enacted robocall prohibitions that have been enjoined. *See* S.C. Stat. § 16-17-446 (enjoined by *Cahaly v. Larosa*, 796 F.3d 399 (4th Cir. 2015)); Wyo. Stat. § 6-6-104 (enjoined by *Victory Processing, LLC v. Michael*, 333 F. Supp. 3d 1263 (D. Wyo. 2018), *appeal filed*, No. 18-8063 (10th Cir.)).

[3] *See* Ind. Code § 24-4.7-4-1; Alaska Stat. § 45.50.475; Ariz. Rev. Stat. Ann. § 44-1282; Cal. Bus. & Prof. Code § 17591; Colo. Rev. Stat. § 6-1-904; Ga. Code Ann. § 46-5-27; Haw. Rev. Stat. § 481P-2; Idaho Code Ann. § 48-1003A; Kan. Stat. Ann. § 50-670; La. Rev. Stat. Ann. § 45:844.16; Me. Rev. Stat. tit. 10, § 1499-B; Mass. Gen. Laws ch. 159C, § 1; Mich. Comp. Laws § 445.111a; Mont. Code Ann. § 30-14-1602; Nev. Rev. Stat. § 228.550; N.H. Rev. Stat. Ann. § 359-E:11; N.J. Stat. Ann. 56:8-130; N.M. Stat. Ann. § 57-12-22; N.C. Gen. Stat. § 75-102; N.D. Cent. Code § 51-28-04; 73 Pa. Cons. Stat. § 2245.2; R.I. Gen. Laws § 5-61-3.5; S.C. Code Ann. § 37-21-70; S.D. Codified Laws § 49-31-99; Tenn. Code Ann. § 65-4-410; Tex. Bus. & Com. Code Ann. § 304.051; Utah Code Ann. § 13-25a-109; Vt. Stat. Ann. tit. 9, § 2464a; Va. Code Ann. § 59.1-514; Wis. Stat. § 100.52; Wyo. Stat. Ann. § 37-2-132.

Notwithstanding the compelling government interests at stake, the Fourth Circuit deemed a narrow TCPA exemption for calls to collect debt backed by the federal government to be impermissible content-based discrimination. But that ruling overlooks that the exception applies based on a call's purpose and the relationship between the parties—not based on the call's content.

The Fourth Circuit correctly held, however, that the proper remedy for any First Amendment problem with the federal-government-debt exemption was to sever the exemption and leave in place the robocall ban. Similar to the TCPA, state telephone privacy laws frequently include minor, incidental exemptions justified on content-neutral grounds. Because such laws protect the privacy of consumers, *Amici* States have a compelling interest in defending the TCPA's robocall ban as written—and in preserving the underlying restriction even if the challenged exemption is unlawful. The *Amici* States also have a strong interest in ensuring this Court reaches a ruling that will preserve their ability, under state law, to protect their citizens from the harms caused by robocalls.

SUMMARY OF THE ARGUMENT

No court has ever questioned the constitutionality of the TCPA's robocall restriction. Not even respondents argue that the robocall ban, standing alone, violates the First Amendment. Nor could they: the robocall restriction is a classic content-neutral speech

regulation. It applies to anyone who makes a robocall to speak on any topic—or no topic at all—and is narrowly tailored to serve the government's compelling interests to protect individual and residential privacy.

Respondents instead claim that a single, narrow exemption from the robocall ban—the federal-government-debt exemption, which exempts calls made "solely" to collect a debt owed to or backed by the federal government, 47 U.S.C. § 227(b)(1)(A)(iii)—violates the First Amendment. That exemption, however, is content-neutral—it applies depending on a call's purpose (to collect a debt) and depending on the debtor-creditor relationship between the call recipient and the federal government. Its applicability does not depend on the content of the call. And as a content-neutral speech regulation, the federal-government-debt exemption easily survives intermediate scrutiny by directly—and narrowly—advancing a substantial government interest in protecting the public fisc.

Even if the Court holds that the federal-government-debt exemption *does* violate the First Amendment, it should abide by the TCPA's severability clause and sever the exemption from the remaining robocall ban rather than invalidate the ban entirely. The robocall ban is fully functional even without the exemption; it was enforced for twenty-four years before Congress added the exemption to the TCPA in 2015, which proves Congress did not intend the ban to be conditioned on the exemption. Indeed, the case for severability is sufficiently straightforward that the

Court may wish to consider it first. *See I.N.S. v. Chadha*, 462 U.S. 919, 931 n.7 (1983) ("In this case we deem it appropriate to address questions of severability first.").

ARGUMENT

I. The Robocall Ban Safeguards Personal and Residential Privacy in Conformity with the First Amendment

A. The ban prohibits highly intrusive robocalls regardless of content and therefore passes First Amendment scrutiny

The TCPA permissibly prohibits the use of any "automatic telephone dialing system or an artificial or prerecorded voice" to make "any call" to a cell phone. 47 U.S.C. § 227(b)(1)(A)(iii). No court has ever held that such a blanket ban on robocalls violates the First Amendment. Indeed, every court to consider the matter has held that such laws are valid, content-neutral regulations on the manner by which speech is delivered. *See Patriotic Veterans, Inc. v. Zoeller*, 845 F.3d 303 (7th Cir. 2017) (upholding Indiana's robocall ban); *Gomez v. Campbell–Ewald Co.*, 768 F.3d 871 (9th Cir. 2014) (upholding the TCPA before it was amended to add the federal-government-debt exemption), *aff'd on other grounds*, 136 S.Ct. 663 (2016); *Bland v. Fessler*, 88 F.3d 729 (9th Cir. 1996) (upholding California's robocall ban); *Van Bergen v. Minnesota*, 59 F.3d 1541, 1549–56 (8th Cir. 1995) (upholding the TCPA and

Minnesota's robocall ban); *Moser v. Fed. Commc'ns Comm'n*, 46 F.3d 970 (9th Cir. 1995) (upholding the TCPA).

These decisions are well-justified. Under the First Amendment, laws that "serve[ ] purposes unrelated to the content of expression" are constitutional so long as they "promote[ ] a substantial government interest that would be achieved less effectively absent the regulation." *Ward v. Rock Against Racism*, 491 U.S. 781, 791, 799 (1989) (internal quotation marks and citations omitted). The robocall ban concerns the manner, not the content, of speech, and is narrowly tailored to serve the government's interests in protecting consumers' personal and residential privacy.

1. To decide whether a statute is content-based, the Court first looks to the statute's text and asks whether the statute draws content distinctions "on its face." *Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2228 (2015). If the statute is facially neutral, the Court then looks to the statute's purpose, subjecting it to strict scrutiny only if it "cannot be justified without reference to the content of the regulated speech" or was adopted because of the government's disagreement with the message the speech conveys. *Id.* at 2227. Here, neither the text nor the purpose of the robocall ban pertain to the content of a telephone call's speech.

First, the text of the robocall ban does not draw content-based distinctions. By its terms, the robocall ban applies to "any call," 47 U.S.C. § 227(b)(1)(A)(iii),

so content is irrelevant. Instead, the prohibition applies based on the technology used to make and receive calls: It prohibits calling a cell phone with an "automatic telephone dialing system" or an "artificial or prerecorded voice." *Id.* The statute therefore bans robocalls selling products, promoting candidates, pranking friends, or addressing any other topic. Indeed, a caller could violate the statute without saying a word. *See McCullen v. Coakley*, 573 U.S. 464, 480 (2014) (explaining that the challenged law was content-neutral because one could violate it "without . . . uttering a word").

Second, the purpose of the robocall ban does not reflect impermissible content-based discrimination. Congress enacted the restriction because "telephone subscribers consider automated or prerecorded calls, regardless of the content or the initiator of the message, to be a nuisance and an invasion of privacy"—not because the calls discussed any specific subject. Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, § 2(10), 105 Stat. 2394. Nothing in the legislative record shows that Congress adopted the restriction because of disagreement with the messages that robocalls convey.

2. Because the robocall ban is content-neutral, it is reviewed under intermediate scrutiny. *Ward*, 491 U.S. at 791. Under that standard, restrictions on speech are constitutional so long as they are narrowly tailored to further an important government interest.

See id. The robocall ban principally serves the important government interest in protecting personal and residential privacy.

The Court has recognized that "in the privacy of the home . . . the individual's right to be left alone plainly outweighs the First Amendment rights of an intruder." *Fed. Commc'ns Comm'n v. Pacifica Found.*, 438 U.S. 726, 748 (1978). When Congress enacted the TCPA, it found robocalls to be "pervasive" and an "intrusive invasion of privacy" that "outraged" consumers. Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, § 2(1), (5), (6), 105 Stat. 2394. Congress observed that consumers found robocalls to be a particularly severe invasion of privacy because "automated calls cannot interact with the customer except in preprogrammed ways," and "do not allow the caller to feel the frustration of the called party." S. Rep. No. 102-178, *reprinted in* 1991 U.S.C.C.A.N. 1968, 1972.

Advances in technology have enabled even more widespread privacy invasions. Robocall software is inexpensive and easy to access online. Marguerite M. Sweeney, *Do Not Call: The History of Do Not Call and How Telemarketing Has Evolved*, Nat'l Attorneys Gen. Training & Research Inst. (Aug. 2016), *available at* http://bit.ly/2SbCCkn. Robocalls have proliferated as a result. *See id*.

Although the specific provision challenged here applies to calls made to cellphones—calls that may or may not take place in the home—the privacy interests

at stake are no less compelling. 47 U.S.C. § 227(b)(1)(A)(iii). After all, residential landline phones are increasingly rare. *See* Stephen J. Blumberg & Julian V. Luke, Nat'l Ctr. for Health Statistics, *Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, July–December 2017* 2, *available at* https://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201806.pdf (finding that more than half all households in the United States no longer have landline phones). As a result, in the modern era, protecting residential telephone privacy means protecting against harassing calls to cell phones. In any event, individuals have constitutionally protected expectations of privacy in their cellphones. *Carpenter v. United States*, 138 S. Ct. 2206, 2218 (2018); *Riley v. California*, 573 U.S. 373, 393–94 (2014). The proliferation of robocalls undermines that compelling privacy interest.

The robocall ban is narrowly tailored to serve these government interests. By prohibiting calls using an automatic telephone dialing system or an artificial or prerecorded voice, Congress targeted precisely the kinds of calls that are most likely to invade individual privacy. *See Moser v. Fed. Commc'ns Comm'n*, 46 F.3d 970, 975 (9th Cir. 1995) ("Congress may reduce the volume of intrusive telemarketing calls without completely eliminating the calls.").

For these reasons, the general robocall ban easily passes intermediate scrutiny.

B. The federal-government-debt exemption applies regardless of call content and complies with the First Amendment

Exemptions from a prohibition on speech necessarily facilitate speech. Thus, "[i]t is always somewhat counterintuitive to argue that a law violates the First Amendment by abridging *too little* speech." *Williams-Yulee v. Florida Bar*, 575 U.S. 433, 448 (2015). Although a law's underinclusivity can "raise[ ] a red flag, the First Amendment imposes no freestanding underinclusiveness limitation." *Id.* at 449 (internal quotation marks and citations omitted). Exemptions raise First Amendment concerns only when they discriminate based on content and thereby betray government disfavor of a particular topic or viewpoint, or when they reveal insufficient tailoring. *See id.*; *see also City of Ladue v. Gilleo*, 512 U.S. 43, 50–51 (1994).

Neither of these concerns is implicated here. In 2015, Congress amended the TCPA to add an exemption for calls "made solely to collect a debt owed to or guaranteed by the United States." Bipartisan Budget Act of 2015, Pub. L. No. 114-74, § 301(a), 129 Stat. 584, 588, codified at 47 U.S.C. § 227(b)(1)(A)(iii). The federal-government-debt exemption is both content-neutral and sufficiently tailored to advance important government goals.

1. The federal-government-debt exemption does not depend on a call's content

The federal-government-debt exemption depends only on the purpose of the call and the relationship of the call recipient to the federal government—*not* on the call's content. It applies only when the call is placed for a specific purpose—"solely to collect a debt"—and only when the call recipient is in debt to the government or a government-backed creditor. 47 U.S.C. § 227(b)(1)(A)(iii).

As courts have held, speech regulations of this kind are content-neutral. *See Wisconsin v. Mitchell*, 508 U.S. 476, 489 (1993) (holding that motive-based speech regulations are content-neutral); *Zoeller*, 845 F.3d at 304 (same, for laws that regulate communications based on the relationship of the parties involved); *Van Bergen*, 59 F.3d at 1550 (same).

Deciding whether a call fits within the federal-government-debt exemption does not require delving into the content of speech. What the caller says on the call does not determine whether the federal-government-debt exemption applies. The exemption is therefore content-neutral. *See McCullen*, 573 U.S. at 479.

2. The federal-government-debt exemption survives intermediate scrutiny

As discussed, a content-neutral speech regulation need only satisfy intermediate scrutiny; it is constitu-

tional if it advances a substantial or important government interest without substantially burdening more speech than necessary. *Ward*, 491 U.S. at 799–800. Here, the federal-government-debt exemption serves the substantial government interest of protecting the public fisc. *See Duguid v. Facebook, Inc.*, 926 F.3d 1146, 1156 (9th Cir. 2019) (crediting this interest), *petition for cert. pending*, No. 19-511 (filed Oct. 17, 2019). The exemption is also sufficiently tailored to achieve that interest. *Ward*, 491 U.S. at 800.

The Fourth Circuit held otherwise, but only by concluding, without evidence, that the federal-government-debt exemption would swallow any residential-privacy benefit conferred by the general robocall ban. But to be sufficiently narrowly tailored, a content-neutral law prohibiting a manner of speech need only have a "reasonable fit" with its objective. *See Bd. of Trs. of the State Univ. of N.Y. v. Fox*, 492 U.S. 469, 480 (1989) ("What our decisions require is a 'fit' between the legislature's ends and the means chose to accomplish those ends—a fit that is not necessarily perfect, but reasonable." (internal citations omitted)). And here, even with the federal-government-debt exemption, the robocall ban is reasonably tailored to advance the government's interest in protecting individual and residential privacy. The exception applies only to calls made "solely to collect a debt owed to or guaranteed by" the federal government, 47 U.S.C. § 227(b)(1)(A)(iii), and the record contains no evidence showing that such calls make up such a significant

percentage of all robocalls that the exemption would significantly erode the robocall ban's privacy benefits.

The Fourth Circuit also erred when it faulted the federal-government-debt exemption for lacking the consent rationale of the TCPA's exceptions for emergency calls and calls pertaining to certain business relationships. Consent underscores the content neutrality of those exemptions, but (as explained above) the federal-government-debt exemption achieves content-neutrality in its own way. The relevant question for narrow-tailoring purposes is whether, notwithstanding the federal-government-debt exemption, the robocall ban reasonably advances the mission of safeguarding individual and residential privacy. While many people may owe debts backed by the federal government, robocalls are used far beyond this narrow context. It therefore stands to reason that the general commercial use of low-cost robocalls is far more massive, and correspondingly far more intrusive, than automated calls made "solely" to collect federal-government debts.

In any case, without actual proof that government-debt robocalls would erase the privacy gains of the general robocall ban, the Court should not presume such a result. By way of example, nearly two decades ago Indiana adopted a do-not-call registry law that exempted calls placed by employees or volunteers of newspapers, real estate and insurance agents, and charities. Notwithstanding these exemptions, nearly 98% of those registered for the no-call list reported

that they observed benefits from the law. *Nat'l Coal. of Prayer, Inc. v. Carter*, 455 F.3d 783, 785 (7th Cir. 2006).

As this experience shows, even exemptions from telephone privacy protections that seem significant on the surface may not significantly diminish the benefits of a basic underlying prohibition on intrusive and unwanted calls. Similarly here, notwithstanding the federal-government-debt exemption, the TCPA's robocall ban advances the government's robust interest in protecting individual and residential telephone privacy. Accordingly, the law is sufficiently narrowly tailored overall to withstand First Amendment scrutiny.

II. If Invalid, the Federal-Government-Debt Exemption Is Severable from the Remainder of the Robocall Ban

Because the TCPA's robocall ban is itself a valid, content-neutral prohibition, *see supra* Part I.A., even if the federal-government-debt exemption is invalid, the Court should sever the exemption and permit enforcement of the underlying robocall ban.

The Court has repeatedly held that "[t]he unconstitutionality of a part of an Act does not necessarily defeat or affect the validity of its remaining provisions." *Free Enterprise Fund v. Public Co. Accounting Oversight Bd.*, 561 U.S. 477, 508 (2010) (quoting *Champlin Refining Co. v. Corporation Comm'n of Okla.*, 286 U.S. 210, 234 (1932)). Accordingly, "the

'normal rule' is 'that partial, rather than facial, invalidation is the required course.'" *Id.* (quoting *Brockett v. Spokane Arcades, Inc.*, 472 U.S. 491, 504 (1985)); *see also Regan v. Time, Inc.*, 468 U.S. 641, 652 (1984) ("[A] court should refrain from invalidating more of the statute than is necessary").

That is, "[w]hen confronting a constitutional flaw in a statute," the Court generally "sever[s] any 'problematic portions while leaving the remainder intact.'" *Free Enterprise Fund*, 561 U.S. at 508. (quoting *Ayotte v. Planned Parenthood of N. New Eng.*, 546 U.S. 320, 328–29 (2006)). The Court declines to sever *only* when (1) the statute's other provisions are "incapable of functioning independently," or (2) when "the statute's text or historical context makes it evident that Congress . . . would have preferred no [statute] at all to" one without the offending provision. *Id.* at 509 (internal quotation marks and citations omitted). Neither of these conditions is present here.

1. The TCPA is plainly capable of functioning without the federal-government-debt exemption. It operated without the exemption for more than two decades, from the time the TCPA was originally enacted in 1991, *see* Pub. L. 102-243, 105 Stat. 2394, until the exemption was added in 2015, *see* Pub. L. 114-74, Title III, § 301(a), 129 Stat. 588. During that time, no one ever claimed that the robocall ban was somehow ineffective because it *lacked* an exception for calls to collect debts owed to the federal government. Moreover,

many *Amici* States have enacted robocall bans patterned, except for the federal-government-debt exemption, after the TCPA, which confirms that the exemption is not critical to the ban's proper functioning.

In addition, the TCPA prohibits "*any* call" made "using *any* automatic telephone dialing system or an artificial or prerecorded voice," and provides just three narrow exemptions to this rule—(1) calls made for "emergency purposes," (2) calls made with the "prior express consent of the called party," and (3) calls "made solely to collect a debt owed to or guaranteed by the United States." 47 U.S.C. § 227(b)(1)(A) (emphasis added). Faced with such a statute, the commonsense solution is to invalidate the narrow federal-government-debt exemption and allow the broad prohibition on robocalls to continue in force.

That is, for example, what the Court did in *Sorrell v. IMS Health Inc.* 564 U.S. 552 (2011). There, the challenged law permitted pharmacies to "share prescriber-identifying information with anyone for any reason save one: They must not allow the information to be used for marketing." *Id.* at 572 (citing Vt. Stat. tit. 18, § 4631). The Court held that singling out marketing for disfavored treatment was unconstitutional and that the *exemption* therefore could not be enforced. *Id.* at 580.

Indeed, the Court has declined to invalidate an entire statute on First Amendment grounds even when

the regulation is "pierced by exemptions and inconsistencies." *Greater New Orleans Broad. Ass'n, Inc. v. United States*, 527 U.S. 173, 190 (1999). The federal statute at issue in *Greater New Orleans Broadcasting* prohibited radio and television stations from broadcasting advertisements for lotteries and similar games of chance, but exempted gaming conducted by (1) an Indian tribe pursuant to a tribal-state compact, (2) state and local governments, (3) nonprofits, and (4) commercial organizations where the promotional activity was ancillary to the organization's primary business. *Id.* at 178–79. Although the Court concluded that these exemptions undermined the government's rationale for the broadcast prohibition, it did *not* invalidate the entire law; it instead "h[e]ld that [the law] may not be applied to advertisements of private casino gambling that are broadcast by radio or television stations located in Louisiana, *where such gambling is legal*." *Id.* at 176 (emphasis added); *see also* 1999 WL 642904 (E.D. La. Aug. 23, 1999) (decision on remand "declaring unconstitutional those portions of [federal law] which prohibit advertisements of private casino gambling that are broadcast by radio or television stations located in Louisiana").

The TCPA's broad prohibition on robocalling is far more workable than the exemption-riddled broadcasting prohibition the Court allowed to remain in place in *Greater New Orleans Broadcasting*. Accordingly, the Court's First Amendment cases reinforce the conclusion that the robocalling prohibition's independent functionality should ensure the prohibition continues

in force even if the Court concludes that the federal-government-debt exemption is unconstitutional.

2. Because the TCPA "remains 'fully operative as a law'" without the federal-government-debt exemption, the Court "must sustain its remaining provisions '[u]nless it is evident that the Legislature would not have enacted those provisions . . . independently of that which is [invalid].'" *Free Enterprise Fund*, 561 U.S. at 509 (quoting *New York v. United States*, 505 U.S. 144, 186 (1992)) (alterations in original); *see also Alaska Airlines v. Brock*, 480 U.S. 678, 685 (1987). "[A] court cannot use its remedial powers to circumvent the intent of the legislature," *Nat. Fed. of Indep. Businesses v. Sebelius*, 567 U.S. 519, 586 (2012) (quoting *Ayotte*, 546 U.S. at 330), and the "relevant inquiry" is therefore "whether the statute [as severed] will function in a *manner* consistent with the intent of Congress," *Alaska Airlines*, 480 U.S. at 685 (emphasis in original). Accordingly, the TCPA's robocall ban should be allowed to continue in force "[u]nless it is evident that the Legislature would not have enacted those provisions which are within its power, independently of that which is not." *Id.* at 684 (quoting *Buckley v. Valeo*, 424 U.S. 1, 108 (1976) (*per curiam*)).

The surest way to determine whether Congress would have adopted the statute even absent the invalid provision is the existence of an explicit severability clause. "[T]he inclusion of such a clause creates a presumption that Congress did not intend the validity of the statute in question to depend on the validity of the

constitutionally offensive provision." *Id.* at 686. And here the TCPA *does* include a severability clause: "If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the remainder of the chapter and the application of such provision to other persons or circumstances shall not be affected thereby." 47 U.S.C. § 608.

While the Court has in some circumstances declined to apply severability clauses, it has done so only where the challenger has shown a "clear probability that the Legislature would not have been satisfied with the statute unless it had included the invalid part." *Carter v. Carter Coal Co.*, 298 U.S. 238, 312–13 (1936). The Court may invalidate an entire statute notwithstanding a severability clause only if "the provisions . . . are so interwoven that one being held invalid the others must fall." *Id.* at 313; *see also Reno v. Am. Civil Liberties Union*, 521 U.S. 844, 884 (1997) (ignoring severability clause where "[t]he open-ended character of the [statute] provides no guidance whatever for limiting its coverage"); *Williams v. Standard Oil Co. of La.*, 278 U.S. 235, 242–43 (1929) (refusing to apply severability clause where non-severable provisions were "mere adjuncts" or "mere aids" to the unconstitutional provision), *overruled in part on other grounds*, *Olson v. Nebraska ex rel. W. Reference & Bond Ass'n*, 313 U.S. 236 (1941); *Hill v. Wallace*, 259 U.S. 44, 70 (1922) (explaining that provision was "so interwoven" with the remaining statute "that they cannot be separated").

The TCPA is far from such extreme circumstances. Again, Congress enacted the robocall ban in 1991, more than two decades before it added the federal-government-debt exemption in 2015. This timing proves both that the ban and exemption are not so interwoven as to justify disregarding the law's express severability clause. It also shows that Congress was satisfied with the ban sans exemption. One cannot plausibly infer that Congress would have repealed the ban altogether in 2015 if it had lacked the votes for the exemption. Thus, Congress would never have intended for the exemption to threaten the validity of the robocall ban itself. *See Ayotte*, 546 U.S. at 330 ("[T]he touchstone for any decision about remedy is legislative intent, for a court cannot use its remedial powers to circumvent the intent of the legislature").

Moreover, retaining the robocall ban while striking the exemption fulfills the legislative purpose of "protecting telephone consumers from th[e] nuisance and privacy invasion" of robocalls—not to mention the severability clause. 47 U.S.C. §§ 227, 608. Congress enacted the TCPA in light of evidence that "residential telephone subscribers consider automated or prerecorded telephone calls, regardless of the content or the initiator of the message, to be a nuisance and an invasion of privacy." *Id.* § 227. The robocall ban protects that privacy with or without the federal-government-debt exemption, and it did so for twenty-four years before Congress added the exemption.

3. In respondents' view, however, the TCPA's express severability directive merely requires the Court to sever the *robocall ban* from the remainder of the TCPA. Similar to many severability clauses, section 608 directs courts to sever an invalid "provision" from the "remainder" of the statute. *Id.* § 608. But while respondents argue that the entirety of section 227(b)(1)(B) constitutes the relevant severable "provision," the term "provision" does not imply any particular level of generality. Over the run of the Court's precedents, a severable "provision" has included "anywhere from six words to 281." Kenneth A. Klukowski, *Severability Doctrine: How Much of a Statute Should Federal Courts Invalidate*, 16 Tex. Rev. L. & Pol. 1, 78 (2011). In some cases it has meant "one subpart of one subsection of a statute," *id.* (citing *I.N.S. v. Chadha*, 462 U.S. 919, 932 (1983)), but in other cases it has meant "one paragraph of an otherwise-valid section," *id.* (citing *Alaska Airlines v. Brock*, 480 U.S. 678, 697 (1987)), or even "a single clause," *id.* (citing *Brockett v. Spokane Arcades, Inc.*, 472 U.S. 491, 494 (1985)).

Indeed, it is not too much to say that the fundamental unit of a statute subject to severability can be but a single word—"[t]hat is, a court can remedy a violation of the Constitution by striking down a single word or a group of words, but it need not strike down the larger legislative unit (be it a section, statute, chapter, or title) that contains those words." Eric S. Fish, *Severability as Conditionality*, 64 Emory L.J. 1293, 1313 (2015); *see also Hershey v. City of Clearwater*, 834 F.2d 937, 939 (11th Cir. 1987) ("The fact that

an invalid portion of a statute is not self-contained in separate sections does not prohibit the court from applying the severability rule to strike the invalid portion and to preserve the rest of the enactment.").

Respondents also contend that because they have "challenged the TCPA's *restriction* on automated calls," not the exemption, they have fully answered the severability question. Br. of Respondents in Support of Cert. 18–19 (emphasis in original). But legislative intent and functionality—not the relief claimants demand—is the test for severability. *See Ayotte*, 546 U.S. at 330.

If severability were answered simply by deferring to the plaintiff, the Court's discussion of severability in *Free Enterprise Fund*, for example, would have been much shorter—and would have reached the opposite result. There, the plaintiffs wanted "a declaratory judgment that the [Public Company Accounting Oversight] Board is unconstitutional and an injunction preventing the Board from exercising its powers." 561 U.S. at 487. The Court, however, refused to grant such relief: It held that the constitutional problem should be fixed by simply refusing to enforce the restrictions on Board members' removal, rejecting the "far more extensive" alterations to the statute the plaintiffs had proposed. *Id.* at 510.

Similarly, in *United States v. Booker*, the Court enjoined provisions of the federal sentencing guidelines that made their application mandatory, even though

Booker challenged the judicial determination of the sentencing enhancements, not their mandatory nature. 543 U.S. 220, 245 (2005). Salvaging maximum application of the statute was most "consistent with Congress' likely intent in enacting the Sentencing Reform Act" because it "preserve[d] important elements of that system while severing and excising two provisions." *Id.* at 265.

The same is plainly true here. The principles of minimal judicial intervention and maximum statutory salvage require that, if the federal-government-debt exemption violates the First Amendment, the Court should, per 47 U.S.C. § 608, sever that "provision" from the "remainder" of the robocall ban, which should remain fully enforceable.

CONCLUSION

The judgment of the Fourth Circuit should be reversed.

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

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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