

No. 19-511
In the
Supreme Court of the United States

FACEBOOK, INC.,

Petitioner,

v.

NOAH DUGUID, individually and on behalf of
himself and all others similarly situated,

Respondent,

and

UNITED STATES OF AMERICA,

Respondent-Intervenor.

MOTION FOR DIVIDED ARGUMENT

Pursuant to Rule 28.4 of the Rules of this Court, petitioner Facebook, Inc. moves to divide the oral argument for petitioner in the above case. This Court set the case for one hour of oral argument on Tuesday, December 8, 2020. Facebook moves to allocate 15 minutes of petitioner's oral argument time, including rebuttal, to Facebook and 15 minutes of petitioner's time to the United States of America as respondent supporting petitioner. Counsel for the United States has authorized us to state that the Solicitor General agrees with that allocation and therefore supports this motion. Granting this motion would not require the Court to enlarge the overall time for argument.

1. The Telephone Consumer Protection Act of 1991 (TCPA) broadly prohibits virtually all unsolicited calls made using “an artificial or prerecorded voice” (*i.e.*, robocalls), and also imposes limited restrictions on a specific type of telephone equipment prevalent at the time of its enactment: an “automatic telephone dialing system,” or ATDS. The TCPA’s private right of action permits anyone who suffers a violation of the TCPA’s restrictions to recover the greater of his actual damages or \$500 per call in statutory damages, with treble damages available if the violation was committed “willfully or knowingly.” 47 U.S.C. §227(b)(3)(B)-(C).

2. The private-party respondent, Noah Duguid, filed a putative class action alleging that Facebook violated the TCPA’s prohibitions on making calls using an ATDS by sending Duguid login-notification text messages regarding attempts to access a Facebook account associated with Duguid’s cellular telephone number. Facebook raised both statutory and constitutional defenses, and the United States intervened to defend the constitutionality of the TCPA. As relevant to this case, the court of appeals held that an ATDS need not use a random- or sequential-number generator; instead, it interpreted the definition of ATDS to include any device that has the capacity to store numbers to be called and to dial such numbers automatically, which would include virtually every cellular phone.

3. After addressing the constitutionality of the TCPA’s exception for government-debt-collection efforts in *Barr v. American Association of Political Consultants*, 140 S. Ct. 2335 (2020), this Court granted certiorari in this case on the question of whether the TCPA’s definition of ATDS encompasses any device that can

“store” and “automatically dial” telephone numbers, even if the device does not “us[e] a random or sequential number generator.” Although the United States initially intervened in the courts below to defend the constitutionality of the TCPA’s government-debt-collection exception, it remains a party to the case and has addressed the statutory question in a merits brief filed in support of petitioner. Facebook believes that dividing the argument time for petitioner between Facebook and the United States would be of material assistance to the Court. Petitioner Facebook obviously has a significant interest in this case both because the Court granted Facebook’s petition for certiorari and because Facebook was haled into court and threatened with liability under the TCPA for its targeted privacy- and security-enhancing login-notification messages. The United States has a significant interest in and perspective on the question presented because the case concerns the scope and administration of a key term in a federal statute administered by several federal agencies.

For the foregoing reasons, petitioner requests that the Court grant the motion for divided argument.

Respectfully submitted,



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