

19-511 FACEBOOK, INC. V. DUGUID

DECISION BELOW: 926 F.3d 1146

LOWER COURT CASE NUMBER: 17-15320

QUESTION PRESENTED:

Congress enacted the Telephone Consumer Protection Act of 1991 ("TCP A") to prohibit calls made to a cell phone without consent using an "automatic telephone dialing system" ("ATDS"). That prohibition exempts calls made "to collect a debt owed to or guaranteed by the United States" or "made for emergency purposes." 47 U.S. §227 (b)(1)(A)(iii). Here, Petitioner was sued for violating this prohibition and defended on the ground, *inter alia*, that the prohibition unconstitutionally discriminated on the basis of content and that the text messages at issue here did not involve an ATDS. The Ninth Circuit agreed that the TCPA was unconstitutional, but denied Petitioner any relief by taking the extra ordinary step of rewriting the TCPA to prohibit more speech by eliminating the government-debt-collection exception. To make matters worse, the Ninth Circuit adopted a counter-textual and expansive definition of an ATDS that encompasses *any* device that can store and automatically dial telephone numbers - even if that device cannot store or produce them "using a random or sequential number generator," as the statutory definition requires, *id.* §227(b)(1)(A). That holding- which conflicts with the Third and D.C. Circuits - sweeps into the TCPA's prohibition almost any call or text made from any modern smartphone.

The questions presented are:

1. Whether the TCPA's prohibition on calls made using an ATDS is an unconstitutional restriction of speech, and if so whether the proper remedy is to broaden the prohibition to abridge more speech.
2. Whether the definition of ATDS in the TCPA 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."

LIMITED TO QUESTION 2 PRESENTED BY THE PETITION.

CERT. GRANTED 7/9/2020