

SCOTUS Opinion: Government Collections Robocalls Violate the First Amendment

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The 1991 Telephone Consumer Protection Act originally barred practically all robocalls to cell phones, but in 2015 Congress carved out an exception to allow robocalls solely for the purpose of collecting a debt owed to the Government. Certain political groups filed suit arguing that that exception violated the First Amendment, and thus the entire robocall ban should be invalidated. The Fourth Circuit held that the exception did not survive strict scrutiny, and severed it from the robocall exception.

The Court, with a fractured majority, affirmed. A 6-3 majority, in an opinion by Justice Kavanaugh held that the exception violated the First Amendment because it was content-based, and there was not sufficient justification to allow government debt robocalls but not others. Five members of that majority applied strict scrutiny to the analysis, while Justice Sotomayor believed intermediate scrutiny should apply. A 7-2 majority of the Court, helmed again by Justice Kavanaugh, further held that the government debt exception was severable from the rest of the robocall ban. Justice Breyer, joined by Justices Ginsburg and Kagan, concurred that the offending provisions struck down by the majority was severable from the robocall ban, but argued that the exception should be upheld under an intermediate scrutiny analysis. Justice Gorsuch, joined in part by Justice Thomas, agreed that the exception violated the First Amendment under strict scrutiny, but would have not severed it from the rest of the Act.

A link to the opinion in *Barr v. American Association of Political Consultants, Inc.* is here:

https://www.supremecourt.gov/opinions/19pdf/19-631_2d93.pdf

TAGGED: First Amendment, Telephone Consumer Protection Act, strict scrutiny, *Barr v. American Association of Political Consultants Inc.*, robocalls, severable