

No. 19-631

---

IN THE  
**Supreme Court of the United States**

---

WILLIAM P. BARR, ATTORNEY GENERAL;  
FEDERAL COMMUNICATIONS COMMISSION,  
*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

---

---

**BRIEF OF AMICI CURIAE NATIONAL CONSUMER  
LAW CENTER, VERIZON, AND  
CONSUMER FEDERATION OF AMERICA  
IN SUPPORT OF NEITHER PARTY**

---

Christopher M. Miller	Tara Twomey
Christopher D. Oatway*	Counsel of Record
Leigh R. Schachter*	Margot F. Saunders*
Verizon	National Consumer Law Center
1300 I Street, NW	7 Winthrop Square
Washington, DC 20005	Boston, MA 02110
(202) 515-2470	(617) 542-8010
Christopher.d.oatway	TTwomey@nclc.org
@verizon.com	

*\*On the Brief*

**Counsel for Amici Curiae**

Dated: March 2, 2020

---

BATEMAN & SLADE, INC.

STONEHAM, MASSACHUSETTS

## TABLE OF CONTENTS

TABLE OF AUTHORITIES .....	v
INTEREST OF AMICI CURIAE .....	1
SUMMARY OF ARGUMENT.....	4
ARGUMENT .....	7
I.    THE TCPA’S PROHIBITION ON NON-CONSENSUAL AUTOMATED CALLS TO CELLULAR CUSTOMERS PROTECTS CONSUMER PRIVACY, INTERSTATE COMMERCE, AND THE NATION’S TELECOMMUNICATIONS SYSTEM.....	9
A.    Congress Intended the TCPA to Protect Consumers’ Privacy from Unwanted Calls.....	9
B.    Businesses Are Also Protected from Automated Calls Made Without Consent.....	11
C.    The TCPA Protects the Integrity of the Nation’s Telecommunications System.....	12

D.	Limited Exceptions to the Prohibition on Unconsented-to Calls to Cell Phones Are Not Inconsistent with the TCPA’s Purpose.....	13
II.	UNWANTED ROBOCALLS ARE EVEN MORE PERNICIOUS TODAY THAN IN 1991 WHEN CONGRESS IDENTIFIED STOPPING THEM AS A PUBLIC POLICY PRIORITY. ....	16
A.	Individuals and Businesses Increasingly Rely on Cell Phones as Their Primary Means of Communications. ....	16
B.	Technological Advances Have Made Sending Massive Numbers of Robocalls to Cellphones Inexpensive and Easy. ....	17
C.	Illegal Robocallers Have Developed Techniques to Avoid Detection, Impersonate Others’ Identities, and Bypass Tools that Service Providers Offer Their Customers to Block Unwanted Calls.....	19

III. THE TCPA'S LIMITATION ON ROBOCALLS WITHOUT CONSENT TO CELLULAR TELEPHONES IS CRUCIAL. ....21

A. The Consent Requirement is a Key Deterrent That Would Be Lost if the Provision Were Struck Down.....21

1. Multiple Stakeholders Actively Investigate and Successfully Prosecute TCPA Cases on Behalf of Cellular Subscribers. ....21

2. The Prohibition on Robocalls to Cellular Phones Without Consent is an Important Hook for Efficiently Investigating and Prosecuting Robocalls That Also Constitute Fraud.....23

3.	Residential Subscribers’ Experience Confirms That Removing the Consent Requirements for Cellular Subscribers Would Likely Cause Substantial Harm.....	25
B.	The Restriction on Robocalls to Cellular Phones Undergirds and Complements Multiple Industry and Regulatory Innovations That Protect Consumers from Unwanted Calls and Texts. ....	28
C.	The Restriction on Robocalls to Cellular Phones is Necessary to Protect Cellular Subscribers from Emerging and Future Techniques to Spam Customers. ....	30
	CONCLUSION.....	32

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.