

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 FOR RESPONDENTS

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QUESTION PRESENTED

The Telephone Consumer Protection Act (TCPA) imposes liability of up to \$1,500 for any call or text message made or sent without prior express consent to a cellphone using an automatic telephone dialing system or an artificial or prerecorded voice. That broad prohibition on speech, however, is subject to a host of exceptions, including for calls made “to collect a debt owed to or guaranteed by the United States,” calls by the government itself, and calls advancing various government-approved messages.

In the decision below, the Fourth Circuit recognized that the TCPA’s restriction on speech is content-based and not narrowly tailored to any compelling government interest. Accordingly, the court held that the statute violates the First Amendment. But instead of invalidating the TCPA’s ban on speech, the court took the extraordinary step of rewriting the statute to prohibit *more* speech. Specifically, the Fourth Circuit purported to fix the constitutional defect by striking the government-debt exception from the statute, while leaving all of the statute’s unconstitutional speech restrictions—and all of its other exceptions—intact.

The question presented is:

Whether the TCPA’s cellphone-call prohibition is an unconstitutional content-based restriction of speech, and if so whether the Fourth Circuit erred in addressing the constitutional violation by broadening the prohibition to abridge more speech.

RULE 29.6 STATEMENT

Respondent Public Policy Polling, LLC has no parent corporation, and no publicly held company owns 10 percent or more of its stock. The remaining respondents are nonprofit organizations.

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