

# Louisiana Decision Provides Defendants with Another Avenue to Challenge the Constitutionality of the TCPA

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The United States Supreme Court's [July 6, 2020 decision](#) in Barr v. American Association of Political Consultants, was something of a [disappointment](#) for Telephone Consumer Protection Act defendants because the Court refused to declare the statute unconstitutional in its entirety. Instead, the Court opted to sever from the statute the 2015 amendment that rendered the law offensive as an unconstitutional restriction on speech in violation of the First Amendment. The decision to sever the amendment, rather than to invalidate the statute in its entirety, appeared to leave the landscape unchanged except for those engaged in efforts to collect government debts (the subject of the now-invalidated amendment).

The [September 28, 2020 decision](#) in Creasy v. Charter Communications, Inc., C.A. No. 20-1199 (E.D. La.) revives the importance for all TCPA defendants of the constitutional challenge at issue in Barr. While acknowledging that Barr is binding authority, the Creasy Court, in an issue it recognized as one of first impression, addressed itself to the question of how to handle TCPA claims that accrued during the period from the 2015 adoption of the constitutionally defective amendment until July 6, 2020, when the Supreme Court issued Barr and severed and nullified that amendment.

The Creasy Court held that, during that period, the TCPA was constitutionally defective in whole. As a result, the Court held that it had no subject matter jurisdiction to enforce an unconstitutional and thus invalid law with respect to claims accruing between the adoption of the 2015 amendment and July 6, 2020. The Court dismissed all such claims and stayed the narrow TCPA claim that remained, pending the announcement of the Supreme Court's decision in Facebook, Inc. v. Duguid, No. 19-511, where the Court is expected to decide whether the definition of an "automatic telephone dialing system" under the TCPA should be construed expansively (as plaintiffs prefer) or more narrowly (as defendants contend).

Creasy, a district court decision, has only persuasive value in other venues. TCPA defendants, however, can and should add to their arsenal the constitutional and jurisdictional defenses advanced and adopted in Creasy.