

WAIT FOR REAL?: State Lawmaker Stuck in Perrong TCPA Suit Over Tele Town Hall –But Was This Just Bad Lawyering?

Article By:

Eric J. Troutman

So the TCPA (and Perrong) has struck again. And we have, perhaps, reached a new low.

Official government communications are generally thought of as beyond the reach of the TCPA. This is true both from a sovereign immunity standpoint and also from the standpoint of FCC rulings that have, mostly, confirmed the government is not a “person” regulated by the statute. (This is to be distinguished from candidates who are NOT the government and MUST comply with the TCPA.)

But this is not entirely true. In its latest ruling on the subject the Commission has confirmed that state and federal governments may speak with immunity but local governments may not.

So that’s what makes this new ruling out of Pennsylvania so weird. The case is *Perrong v. Mathew Bradford* 2023 WL 6119281 (E.D. Pa. Sept. 18, 2023).

Perrong, of course, needs no introduction.

Bradford is, apparently, an elected member of the PA house.

He sent messages to PA voters related to a tele townhall he wanted to hold related to a new way to obtain health insurance. Here is the message:

“I want to help you connect to the health care coverage plan that best fits you and your family. Hello, this is State Representative [Matt Bradford]. Join me on Tuesday, January 5, for a virtual information session on Pennie, the new way to connect Pennsylvanians to health care coverage. This event will focus on often underserved and overlooked communities, so please spread the word. Featuring representatives from Pennie and the NAACP of Greater Norristown, the virtual event will start at 6:30 PM Tuesday, January 5. You can reserve your spot and find out more by visiting my website at repbradford.com. You can also call my office for more information by dialing 610-222-3490. That’s 610-222 3490. This is State Representative Matt Bradford. Let’s get connected on January 5.”

Perrong received the message—sent by a platform called Cleo Communications, LLC—and sued.

Now what is interesting here is that this message should have been immune from statutory reach by

virtue of the FCC's finding that official state messages are not subject to the TCPA. But Bradford's counsel—apparently—missed that issue entirely.

Instead the argued only that an ATDS was not used to send the messages and the messages were not subject to the DNC.

One problem—Perrong alleged the messages were *prerecorded*. And that, of course, alone is sufficient to trigger the statute.

Bradford's lawyers apparently didn't know that and failed to address the prerecorded call portion of the claim until reply. So the Court refused to dismiss the claim in its entirety.

Yep, Perrong is suing an elected official in PA for an official government message—and he survived a motion to dismiss. Just wild.

Other pieces of the case were thrown out, however.

The Court concluded an ATDS was not used—properly following [Panzarella's determination](#) that only a system that actually USES an ROSNG in connection with the messages at issue is an ATDS—and also concluded that offering a state run program is not a solicitation. Interesting language here tat might be useful to lead generators:

“There's a difference between telling people about how to search for something and telling them what to choose.”

Keep that in mind.

At bottom this is a case that never should have got off the ground floor. But it is fascinating for government officials to keep an eye on.

More soon on this one.

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