They’re At it Again: NCLC Submits Brief to Eleventh Circuit Asking it to Undo Glasser and Make TCPA Impossible to Comply With—But Whose Interests Are They Really Protecting?

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When National Consumer Law Center (“NCLC”) spokesperson Margot Saunders isn’t busy ducking my interview requests you might find her testifying before Congress that the robocall epidemic is being caused by legitimate American businesses. She once even told Congress that the TCPA is “straightforward and clear?” That’s just hilarious.

Well in a wonderful twist, the NCLC is now asking the Eleventh Circuit Court of Appeal to undo its hard work in Glasser and apply the TCPA more broadly than the statutory language suggests. Specifically, the NCLC urges the Court in connection with the Glasser re-hearing bid to hold that the TCPA applies to most all modern dialing devices—a position recently rejected by the Seventh Circuit Court of Appeals in Gadelhak.

Check out the over-the-top advocacy here:
This appeal raises questions of exceptional importance. The panel decision is based on an erroneous interpretation of the TCPA, conflicts with other precedent, and will have far-reaching consequences. It opens the floodgates to robocalls that tie up cell phones, emergency lines, and businesses.

Yep. Modern society will end if the TCPA is interpreted narrowly.

As we have already shown—repeatedly—the TCPA does nothing to prevent true robocalls. The statute is enforced almost solely against legitimate American businesses—that are not the problem. And even when the TCPA was interpreted as broadly as conceivable, the robocall epidemic got worse following the TCPA Omnibus ruling. Much worse—robocall volume quadrupled after that ruling, at least according to YouMail. So any argument linking TCPA expansion with robocall reduction is factually and demonstrably false. False. False. False.

So where is this argument coming from?

What few people realize is that the NCLC—which has become (IMO) essentially a lobbying organization for the consumer bar—has a massive vested interest in keeping the TCPA actionable—and it has nothing to do with preventing phone calls. Again, the TCPA is the single largest producer of multi-million dollar settlements in the history of American litigation. Well the NCLC itself is actually commonly listed as a cy pres recipient recipient in these rampant multi-million dollar TCPA class actions. That means if any of those millions of dollars go unused in these non-reversionary settlements, the money goes to the NCLC! Yep, the NCLC actually profits—I mean, it is a non-profit organization, but it still “profits” in the sense that it collects lots of money—when the TCPA is interpreted broadly and more lawsuits and settlements follow.

So a self-interested special interest group that stands to collect tons of cash from TCPA settlements submits an amicus brief to the Eleventh Circuit seeking a ruling that will promote more TCPA settlements. Bravo.

Now don’t get me wrong, the NCLC seems like a fine institution for the most part. It publishes some nifty legal guides and does some good work generally. But this whole push-for-a-broader-more-confusing-TCPA-by-labeling-legitimate-businesses-robocallers-and-pocekting-big-money-from-TCPA-settlements-all-the-while thing really irks me.

For those of you interested, the amicus brief can be found here: NCLC Brief

And for any readers at the NCLC— they follow my website naturally—the offer of an interview/discussion/debate still stands. Perhaps live on stage at the big TCPA Battle Royale at LeadsCon on March 30, 2020? I’ll be nice.

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