LE SIGH: Another Court Holds the FTSA Is Constitutional, and Yes, Text Messages Are Calls under the TCPA (Probably)

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So I’m starting to get a little worried about the FTSA.

Specifically, that other firms are going to torpedo the critical constitutional
arguments before I can get in there.

The Plaintiff’s bar is so much craftier than the defense bar. On *Deserve to Win (Ep. 3)* Jay Edelson talked about how he essentially told the entire Illinois Plaintiff’s bar to stand down and not bring BIPA cases for a couple of years so his firm could establish good case law first.

I wish I could do that.

It pretty much works the opposite way on the Defense side. There is nothing I can do to tell the defense bar not to defend cases or raise arguments. I have to sit back and watch while other lawyers tread roughshod on critical constitutional arguments.

Meanwhile I’m mostly sidelined because every time we try to raise the argument the case seems to mysteriously disappear...

In any event, that was a long winded intro to some disappointing news here. A second court has now ruled that the Florida mini-TCPA—the FTSA—is constitutional. This one really hurts because some of the best arguments—those related to void for vagueness and the impact of *Barr* and content-specific speech restrictions were rejected wholesale. I really don’t like that.

The case is *Pariseau v. Built USA, LLC* 2022 WL 3139243 (M.D. Fl. August 5, 2022). It is definitely worth a read.

It probably didn’t help the Defendant’s cause that they also argued to the Court that text messages aren’t calls under the TCPA. The ship has sailed on that one folks. Sure if you want to preserve the issue for appeal, ok. But larding up a constitutional challenge with an argument that texts aren’t calls... no bueno.

Anyway sorry for the cranky pants post. I should be walking on clouds after the big CarGuard win, but I really really really don’t like the FTSA. It IS unconstitutional. And it would be a real shame if too much case law develops on the issue before the Troutman Firm can really get in there and have a hack at it.

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