

# Consumer Groups Take on Facebook at the U.S. Supreme Court to Stop Deluge of Robocalls

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## ***National Consumer Law Center, Consumer Federation of America, and Consumer Reports submit amicus in Duguid v. Facebook***

WASHINGTON, D.C. — Unwanted robocalls invade the privacy of Americans, diminish the usefulness of cell phones, and can threaten public safety. Yet Facebook wants the U.S. Supreme Court to so narrowly define prohibitions on calls made to cell phones with an automated telephone dialing system (an autodialer) that it would nullify Congress' efforts to protect consumers from unwanted autodialed calls, according to an amicus brief submitted late last Friday by the National Consumer Law Center, Consumer Reports, and the Consumer Federation of America to the U.S. Supreme Court in *Facebook v Duguid*.

By enacting the Telephone Consumer Protection Act (TCPA) in 1991, Congress demonstrated its intent to protect consumers, businesses, and telecommunications systems from unwanted and intrusive calls. The linchpin of the TCPA is the prior consent requirement. Congress specifically intended to safeguard Americans from abusive calls by permitting autodialed calls to cell phones, hospital emergency lines, and other protected lines only with the prior express consent of the receiving party (except in cases of emergency). The elegance of this construct, which requires consent for calls to cell phones and other protected numbers (including hospital, emergency, and poison control lines), is that it gives the people *being called* control over their phones.

"Facebook hopes to render the TCPA's restriction on autodialing meaningless by convincing a majority of the Justices that it applies only to equipment that is no longer in use," **said Margot Saunders, senior counsel at the National Consumer Law Center.** "A ruling in Facebook's favor would open Americans up to a deluge of robocalls that they cannot stop."

The Second, Sixth, and Ninth Circuits have issued common-sense decisions finding that the TCPA's definition of an autodialer includes systems that store numbers on a list and dial them. Facebook and its supporters argue that the definition only includes dialers that dial random or sequentially generated numbers. But unless the caller is calling from a list, the caller has no way of ensuring that it is only calling people who have *consented*—as Congress intended.

The rules regarding consent are relevant only if the caller has a list of stored numbers for parties that have consented to autodialed calls.

"The facts are clear — if these calls can only legally be made with the recipients' prior agreement,

they can only be made to those people's numbers, not to random numbers," **said Susan Grant, CFA's Director of Consumer Protection and Privacy.** "Facebook's argument is not based on the statute or the clear intent of Congress and, if it is accepted, we'll be flooded with unwanted and unstoppable autodialed calls."

The calling industry and the trade groups lobbying on their behalf support Facebook's position, because they want to make cheap robocalls, billions of them, without worrying about consent. If the Court adopts the definition pressed by Facebook, autodialed calls and texts to cell phones and other protected lines will be virtually uncontrollable. It would eliminate protections against unwanted calls for *all* non-telemarketing texts to all cell phones. Business cell phones would be entirely unprotected from *all* automated texts (even those involving telemarketing), and from *all* automated calls that do not include a prerecorded voice. The primary safeguard against the constant invasion of privacy and threat to public safety—consent—would fall.

"For years, robocalls have invaded consumers' privacy and subjected us all to incessant harassment," **said George Slover, senior policy counsel at Consumer Reports.** "Now, callers are trying to gut the Telephone Consumer Protection Act, a key privacy statute that has helped rein in these unwanted robocalls. We urge the Supreme Court to uphold the 9th Circuit's decision, so that consumers have some control over the robocalls they receive."

Oral arguments in *Facebook v. Duguid* are scheduled for December 8.

For more information, including tips for consumers to reduce robocalls, visit NCLC's Robocalls & Telemarketing page.