

# TCPA Update

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## What will we cover?

- TCPA Cases increasing in 2025
- Supreme Court Decisions Loom Large
- Major theories today
- Primary defenses
- How to protect yourself

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## TCPA Cases Increasing Throughout 2025

- All data from webrecon.com
  - October 2025
    - 235 TCPA cases filed, 171 of these (72.8%) were filed as class actions
    - While this is a month-to-month decrease over September 2025 (down 18.4%), filings for 2025 in total are up 56.6% year-over-year from 2024
  - Long story short, the TCPA is back in full force
  - If you are using outbound calls as part of your sales campaigns, TCPA compliance is not voluntary – it is more important than ever!

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## Major Supreme Court Decisions Affecting TCPA

- 2024 and 2025 brought major changes to federal administrative law
  - In 2024, the Supreme Court overturned the longstanding doctrine known as *Chevron* deference
    - *Chevron, USA, Inc. v. Natural Resources Defense Council, Inc.*, 467 US 837 (1984)
    - *Chevron* required district courts to defer to agency interpretations of statutes Congress authorized them to administer, even where a court may believe the agency to be wrong
    - Created many disputes among what was proper scope of agency power, and proper scope of Article III power to interpret the law
    - For purposes of the TCPA, the Federal Communications Commission has authority to issue regulations pursuant to the statute – that fact will loom large over TCPA litigation for the foreseeable future
  - In 2025, the Supreme Court ruled that a law known as the Hobbs Act does not prevent district courts from ruling on a challenge to a TCPA regulation by a party being sued under it

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## The Death of *Chevron* Deference

- *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024)
  - Focus on Article III requirements of courts to determine what the law is
  - Historically courts had deferred to agency determinations of fact, but not determinations of law
  - *Chevron* flipped that on its head, requiring judges to accept agency interpretations of law in certain circumstances: “*Chevron* turns the statutory scheme [under the Administrative Procedure Act] for judicial review of agency action upside down.”
  - Upshot – courts now must interpret the law, and no longer need to defer to agency interpretations of a statute

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## The Hobbs Act Does not Preclude District Court Jurisdiction over TCPA Regulations

- *McLaughlin Chiropractic Associates, Inc. v. McKesson Corp.*, 606 US 146 (2025)
  - The Hobbs Act provides exclusive jurisdiction to the Courts of Appeals “to enjoin, set aside, suspend (in whole or in part), or to determine the validity of . . . all final orders of the [FCC] . . .” 28 USC 4342(1)
  - Relying on this statute, plaintiffs have argued for years that FCC determinations related to the TCPA may not be attacked in district courts – i.e., that district courts must defer to these interpretations
    - For instance, the FCC determination that text messages fall under the ambit of the TCPA (more on this to come later in this presentation)
  - Some courts, including the 9<sup>th</sup> Circuit, agreed with this interpretation

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## The Hobbs Act Does not Preclude District Court Jurisdiction over TCPA Regulations

- *McLaughlin Chiropractic Associates, Inc. v. McKesson Corp.*, 606 US 146 (2025)
  - The McKesson case arises from the TCPA's limitations on marketing solicitations sent by fax machine, specifically Title 47 of the U. S. Code, Sections 227(b)(1)(C) and (2)(D), which prohibits "a business from sending an 'unsolicited advertisement' by fax to a 'telephone facsimile machine' absent an opt-out notice informing recipients that they can choose not to receive future faxes."
  - The plaintiff alleged violations based on faxes sent in 2009 and 2010, which were allegedly sent without the opt-out notices.

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## The Hobbs Act Does not Preclude District Court Jurisdiction over TCPA Regulations

- *McLaughlin Chiropractic Associates, Inc. v. McKesson Corp.*, 606 US 146 (2025)
  - As the litigation progressed, two important things occurred:
    - (1) the district court certified a class of fax recipients that did not distinguish between those who received the fax on a standard, phone-based fax machine and those who received it using new, email-based fax technology in which the recipient receives the fax in their email; and
    - (2) an unrelated party petitioned the FCC for a ruling on whether the email-based fax technology is covered under the TCPA's fax solicitation limitations
  - The FCC issued its ruling during the pendency of the McKesson trial court proceedings, finding that "an online fax service is not a 'telephone facsimile machine.'" As a result, the FCC found that "the TCPA would not prohibit faxes received through online fax services."

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## The Hobbs Act Does not Preclude District Court Jurisdiction over TCPA Regulations

- *McLaughlin Chiropractic Associates, Inc. v. McKesson Corp.*, 606 US 146 (2025)
  - Was the district court bound by the FCC's determination?
  - District court said yes, granting summary judgment against the plaintiff as to all putative class members who received an online fax, and decertifying the class
  - The Ninth Circuit affirmed, and the Supreme Court took up the appeal on Certiorari to determine whether the Hobbs Act did indeed divest jurisdiction from the district courts when confronted with FCC interpretations of the TCPA in civil litigation.

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## The Hobbs Act Does not Preclude District Court Jurisdiction over TCPA Regulations

- *McLaughlin Chiropractic Associates, Inc. v. McKesson Corp.*, 606 US 146 (2025)
  - The court emphatically answered no
  - bright-line distinction between pre-enforcement challenges and as-applied enforcement challenges
  - The court noted that the Hobbs Act was designed to ensure that pre-enforcement challenges were done "promptly and in a court of appeals" — but the court also noted the practical fact that most people do not have reason to challenge an agency order until it actually affects them
  - parties should be allowed to challenge the legality of a rule that is being applied against them, and it would be fundamentally unfair to hold today's businessperson to standards that may have been created before he or she even knew they existed, with no ability to challenge them.

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## Why are these cases important?

- These cases open courts to arguments many defense attorneys have been making for years – mainly, that the FCC has issued regulations that are inconsistent with the explicit statutory text of the TCPA
- That is, if the agency did not have the statutory authority from Congress to do what it did, its actions were *ultra vires* – without authority
- Agencies are creatures of statute, and possess only those powers conferred upon them by Congress – they cannot go outside of those boundaries.

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## Two Major TCPA Theories Today

- And both are implicated by these SCOTUS rulings
  - Violations of the ATDS and DNC provisions based on text messages
  - Violations of the so-called “quiet hours” provisions, restricting the time of day that “telephone solicitations” may be made
    - There have been hundreds of claims filed under this second theory by one attorney alone
  - Neither of these things appears in the statutory text

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## Case Against Text Messages

- TCPA passed in 1991
- Text messages did not exist in 1991
- Statute does not say the words “text message”
- Because text messages did not exist, and the statute does not address the term, then text messages are not covered by the statute

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## District Courts are Split on text messages

- At least three district courts have dismissed cases based on this theory
  - *Jones v. Blackstone Medical Services, LLC*, 792 F. Supp. 3d 894 (N.D. Ill. 2025)
  - *Davis v. CVS Pharmacy, Inc.*, 2025 WL 2491195 (N.D. Fla. Aug. 26, 2025)
  - *El Sayed v. Naturopathica Holistic Health, Inc.*, 2025 WL 2997759 (M.D. Fla. Oct. 24, 2025)
- Interesting analysis in *Dilanyan v. Hugo Boss Fashions, Inc.*, 2025 WL 3549868 (C.D. Cal. Dec. 3, 2025)
  - Ruled that the text of the statute’s definition of “telephone call” clearly excludes text messages, but denied motion to dismiss due to what it deemed to be controlling 9<sup>th</sup> Circuit authority from 2009 that found text messages to be calls

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## District Courts are Split on text messages

- Multiple district courts have gone the other way, though
  - *Wilson v. Skopos Financial, LLC*,
  - *Mujahid v. Newity, LLC*, 2025 WL 3140725 (N.D. Ill. Nov. 10, 2025)
  - Most recent, SDNY case *Wilson v. Better Mortgage*, 2025 WL 3493815 (Dec. 5, 2025) ruled that the definition of “telephone call” was broad enough to encompass the future technology of text messaging

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## “Quiet Hours”

- 47 C.F.R. § 1200(c)(1)
  - No person or entity shall initiate any telephone solicitation to:
    - (1) Any residential telephone subscriber before the hour of 8 a.m. or after 9 p.m. (local time at the called party's location)
- The definition of “telephone solicitation” is key
  - The term **telephone solicitation** means the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person, but such term does not include a call or message:
    - **(i)** To any person with that person's prior express invitation or permission;

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## “Quiet Hours”

- 47 C.F.R. § 1200(c)(1)
  - No person or entity shall initiate any telephone solicitation to: **(1)** Any residential telephone subscriber before the hour of 8 a.m. or after 9 p.m. (local time at the called party's location)
- Nothing related to the time of day appears in the statute
- Subject to similar arguments related to Mckesson and Loper Bright

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