

Seventh Circuit Tees Up Constitutionality of Indiana's Robocall Law

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Reversing a trial court decision, the U.S. Court of Appeals for the Seventh Circuit in December 2013 ordered the lower court to squarely address whether Indiana's ban on automated telephone calls violates the First Amendment. Subject to narrow exceptions, Indiana prohibits calls made from "automatic dialing-announcing device[s]" unless the call's recipient has consented. Patriotic Veterans, Inc.—a group that communicates with voters about policy issues of interest to veterans—sued to invalidate the law. In the view of Patriotic Veterans, the law is overbroad and violates the First Amendment as applied to political speech. The trial court ruled in Patriotic Veterans' favor on an alternative, narrower ground, holding the Indiana law preempted by the federal Telephone Consumer Protection Act (TCPA) to the extent it applies to the interstate use of autodialers.

The Seventh Circuit reversed. Noting that "the states historically have held the power to police harassing telephone calls," the court harnessed the strong presumption against preemption and held that Congress had not intended to preempt Indiana's robocall law. In the Seventh Circuit's view, the trial court had inverted the correct analysis; because the TCPA did not expressly *preserve* state laws like Indiana's against federal preemption, the trial court "assum[ed] that the law was pre-empted and thus enjoined." But "the district court erred by presuming that laws that were not explicitly saved were preempted," the Seventh Circuit reasoned.

Having disposed of the preliminary preemption question, the sole remaining issue is whether the Indiana law violates the U.S. Constitution. The Seventh Circuit thus remanded to the district court "for an evaluation of whether Indiana's statute violates the free speech rights protected by the First Amendment" The matter

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remains pending in the Southern District of Indiana.