
Federal Judge: Arkansas Law Prohibiting Political Robocalls is Unconstitutional

By David M. Powers / Aug 01, 2016

A federal judge in the U.S. District for the Eastern District of Arkansas recently held that an Arkansas state law prohibiting political robocalls is unconstitutional.

Under the Arkansas Code,

It is unlawful for any person to use a telephone for the purpose of offering any goods or services for sale, or for conveying information regarding any goods or services for the purpose of soliciting the sale or purchase of the goods or services, or for soliciting information, gathering data, or for any other purpose in connection with a political campaign when the use involves an automated system for the selection and dialing of telephone numbers and the playing of recorded messages when a message is completed to the call number.

Ark. Code Ann. § 5-63-204(a)(1).

The Arkansas prohibition has been suspect for some time. In 2011, the then-Arkansas Attorney General Dustin McDaniel issued an advisory opinion stating that "[g]iven that the Arkansas statute expressly prohibits all speech related to political campaigns via a particular medium, I must conclude that the prohibition on political robocalls . . . is highly constitutionally suspect."

In this case, Victor Gresham and Conquest Communications Group, LLC (the "Plaintiffs") sued Arkansas Attorney General, Leslie Rutledge, in her official capacity, alleging that the statute violated the First Amendment. The Plaintiffs sought "to conduct automated telephone calls in [Arkansas], including surveys, messages concerning voting, express advocacy calls, and a variety of other calls made in connection with political campaigns," and claimed "that they have been chilled and restrained from performing services for political clients in Arkansas" because of the statute prohibiting robocalls.

The Attorney General argued that the statute advanced three interests: (1) protection of recipients from unwanted and intrusive speech in the home; (2) protection of recipients "from repeated, unwanted intrusions;" and (3) "preventing the seizure of phone lines, which could interfere with emergency calls being placed or received." The Court, relying on Eighth Circuit precedent, found that the interests put forth by the Attorney General were "substantial," but not "compelling." Moreover, the Court held that even if the interests were compelling, the statute is not narrowly tailored to advance those interests. As a result, the Court struck down the statute, as it applied to political robocalls, and enjoined the Attorney General from enforcing the law.[1]

For further information regarding the myriad of federal and state robocall regulations, you may contact David Powers at dpowers@clarkhill.com | (202) 552-2367 or another member of Clark Hill's Political Law team.

[1] The Court noted that the ruling only applied to the portion of the law relating to political campaigns, and does not affect the part of the statute relating to goods and services.