No. 21-10199

In The United States Court Of Appeals For The Eleventh Circuit

JUAN ENRIQUE PINTO,
Objector – Appellant,

v.

SUSAN DRAZEN, et al.,
Plaintiffs – Appellees,

v.

GODADDY.COM, LLC,
Defendant -Appellee.

On appeal from the United States District Court, for the Southern District of Alabama (Case No. 1:19-00563-KD-B)

MOTION FOR LEAVE OF ACA INTERNATIONAL TO FILE EN BANC BRIEF AS *AMICUS CURIAE* IN SUPPORT OF DEFENDANT-APPELLEE

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Pursuant to Federal Rule of Appellate Procedure 26.1 and Eleventh Circuit Local Rule 26.1-1, *Amicus* ACA International, states that in addition to the persons listed in Appellant Pinto's principal panel brief, C.A. Doc. 32 (Aug. 20, 2021); Plaintiff-Appellee's principal panel brief, C.A. Doc. 40 (Nov. 3, 2021); Defendant-Appellee GoDaddy.com, LLC's principal panel brief, C.A. Doc. 41 (Nov. 3, 2021); Appellant Pinto's panel reply brief, C.A. Doc. 51 (Jan. 26, 2022); Appellant Pinto's en banc brief, C.A. Doc. 91 (Apr. 14, 2023), and the Florida Justice Reform Institute's motion to participate as *amicus*, C.A. Doc. 93 (May 1, 2023), the following persons and entities have an interest in the outcome of this case:

1. ACA International, *Amicus Curiae*;
2. Brown, Angela Laughlin, *Counsel for Amicus ACA International;*
3. Gray Reed & McGraw, LLP, *Counsel for Prospective Amicus ACA International;*
4. Moseley, Jim, *Counsel for Amicus ACA International;*
5. White, S. Greg, *Counsel for Amicus ACA International.*

Amicus ACA International certifies that it is a not-for-profit corporation that has no parent company and no publicly-held corporation owns 10 percent or more of its stock.

May 15, 2023

/s/ Greg White
S. Greg White

Counsel for Amicus Curiae ACA International

MOTION FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE*

ACA International, the Association of Credit and Collection Professionals (ACA), respectfully files this motion for leave to file the attached brief as *amicus curiae* in support of Defendant-Appellee GoDaddy.com, LLC.

Pursuant to Federal Rule of Appellate Procedure 29(a), a motion for leave to file a brief as *amicus curiae* must state "the movant's interest," Fed. R. App. P. 29(a)(3)(A), and "the reason why an *amicus* brief is desirable and why the matters asserted are relevant to the disposition of the case," Fed. R. App. P. 29(a)(3)(B).

Defendant-Appellee GoDaddy.com, LLC does not object to the filing of this motion.

Movant's interest. ACA is the leading association in the accounts receivable management (ARM) industry. ACA represents nearly 1,800 members, including credit grantors, third-party collection agencies, asset buyers, attorneys, and vendor affiliates in an industry that employs more than 133,000 people worldwide.

ACA provides courts with ARM-industry perspectives on important legal issues impacting its members and highlights the potential industry-wide consequences of pending cases.

ACA and its members have a significant interest in the outcome of this case. Many of ACA members communicate with their customers by text message. Consumers value and affirmatively seek out those communications. But ACA members have increasingly found themselves the targets of abusive TCPA litigation, much of it brought by professional plaintiffs and counsel who have advocated for and exploited an expansive interpretation of the TCPA.

Why an amicus brief is desirable and relevant. *Amicus* briefs can be important, sometimes crucial, in the appeals process by bringing relevant facts and arguments to the court's attention that the parties involved, or their attorneys have not already addressed. Here, *amicus* participation is of particular importance because it is not clear if any party to the case with defend the panel's view that receipt of a single text message is not an Article III injury.

The resolution of this issue has great implications for the ARM-industry. This case will directly impact the volume and nature of TCPA

litigation faced by ACA's members. It is critical that the en banc Court uphold the panel decision, the decision in *Salcedo v. Hanna*, 936 F.3d 1162 (11th Cir. 2019), and further clarify that, when evaluating a class for certification under Rule 23, the lower court must take care to respect the requirement of Article III and ensure that class definitions to not run afoul of Article III requirements.

CONCLUSION

The motion for leave to file a brief as *amicus curiae* in support of Defendant-Appellee should be granted.

May 15, 2023

Respectfully submitted,

/s/ Greg White

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CERTIFICATE OF COMPLIANCE

This motion complies with the requirements of Federal Rule of Appellate Procedure 27 and the font and type-style requirements of Federal Rule of Appellate Procedure 32(a)(6), because this document has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Century font. This document complies with the word limit of Federal Rule of Appellate Procedure 27(d)(2)(A) because, excluding parts of the documents that are exempted by Federal Rule of Appellate Procedure 32(f), this document contains 421 words.

/s/ Greg White
S. Greg White

Counsel for Amicus Curiae ACA International

CERTIFICATE OF SERVICE

I hereby certify that on May 15, 2023, I electronically filed the foregoing document with the Clerk of Court for the United States Court of Appeals for the Eleventh Circuit using the CM/ECF system, which will cause it to be served on all parties and counsel of record.

/s/ Greg White
Greg White

Counsel for Amicus Curiae ACA International

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CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

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May 15, 2023

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IDENTITY AND INTEREST OF AMICUS CURIAE[1]

ACA International, the Association of Credit and Collection Professionals (ACA), is the leading association in the accounts receivable management (ARM) industry. ACA represents nearly 1,800 members, including credit grantors, third-party collection agencies, asset buyers, attorneys, and vendor affiliates in an industry that employs more than 133,000 people worldwide. Most ACA member debt-collection companies, however, are small businesses. The debt collection workforce is ethnically diverse, and 70% of employees are women.

ACA members play a critical role in protecting consumers while providing liquidity to lenders.[2] ACA members work with consumers to resolve their debts, which in turn saves every American household, on average, more than $700, year after year. The ARM industry is instrumental in keeping America's credit-based economy functioning

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[1] No party's counsel authored this brief in whole or part, and no party or party's counsel made a monetary contribution to fund preparation or submission of this brief. No person or entity other than *Amicus* made a monetary contribution to the preparation or submission of this brief.

[2] To develop a deeper understanding of trends in the ARM industry, ACA commissioned the Kaulkin Ginsberg Company to compose a report on the operations, characteristics, and economic impact of ARM companies. *See* Kaulkin Ginsberg 2020 State of the Industry Report, (April 2020), *available at* https://www.acainternational.org/assets/kaulkin-ginsberg/2020-kg-full-report.pdf. The Report relies upon 2018 data, the most up-to-date publicly available information.

with access to credit at the lowest possible cost. For example, in 2018, the ARM industry returned over $102.6 billion to creditors for goods and services they had provided to their customers. And in turn, the ARM industry's collections benefit all consumers by lowering the costs of goods and services—especially when rising prices impact consumer's quality of life throughout the country.

ACA members follow comprehensive compliance policies and high ethical standards to ensure consumers are treated with dignity and respect. ACA contributes to this end goal by providing timely industry-sponsored education as well as compliance certifications. In short, ACA members are committed to assisting consumers as they work together to resolve their financial obligations.

ACA provides courts with ARM-industry perspectives on important legal issues impacting its members and highlights the potential industry-wide consequences of pending cases. Since 2012, there has been an explosion of TCPA litigation seeking statutory damages for calls to mobile phone numbers and text messages. In recent years, there has been a flood of putative class action TCPA suits over ostensibly unsolicited text messages. In the words of one FCC Commissioner, "… it's no surprise

that the TCPA has become a poster child for lawsuit abuse, with the number of TCPA cases filed each year skyrocketing from 14 in 2008 to 1,908 in the first nine months of 2014."[3] And the pace of litigation has only increased in the succeeding years. Through August 30, 2019, there were 2,300 new TCPA putative class actions filed in U.S. courts in 2019.[4] The threat of frivolous lawsuits is a genuine concern for ACA members.

ACA and its members have a significant interest in the outcome of this case. Many ACA members communicate with their customers by text message. Consumers value and affirmatively seek out those communications. But ACA members have increasingly found themselves the targets of abusive TCPA litigation, much of it brought by professional plaintiffs and counsel who have advocated for and exploited an expansive interpretation of the TCPA.

This case will directly impact the volume and nature of TCPA litigation faced by ACA's members. It is critical that the Court clarify that, when evaluating a class for certification under Rule 23, the lower

[3] Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991, FCC-15-72, 30 FCC Rcd. 7961, 8073 (July 10, 2015) (Pai, Comm'r, dissenting) ("FCC 2015 Declaratory Rule & Order").

[4] *See WebRecon Stats for Aug. 2019: They don't call it "Fall" for nuthin' …*, https://webrecon.com/webrecon-stats-for-aug-2019-they-dont-call-it-fall-for-nuthin/.

court must respect the requirement of Article III standing as to each class member and ensure that class definitions do not run afoul of Article III requirements.

STATEMENT OF ISSUES

Does the receipt of a single unwanted text message constitute a concrete injury sufficient to confer Article III standing under the TCPA?

SUMMARY OF ARGUMENT

No. There are at least two reasons why the receipt of a single unwanted text message does not constitute a concrete injury sufficient to confer Article III standing under the TCPA. First, the receipt of a single—or even multiple—unsolicited text message does not constitute the kind of invasion of privacy historically regarded as an "intrusion upon seclusion." And while "Congress may 'elevate' harms that 'exist' in the real world before Congress recognized them to actionable legal statute, it may not simply enact an injury into existence, using its lawmaking power to transform something that is not remotely harmful into something that is." *TransUnion v. Ramirez*, 141 S. Ct. 2190, 2205 (2021) (cleaned up). In that vein, as the Supreme Court emphasized in *Spokeo, Inc. v Robins*, 578 U.S. 330, 339-40 (2016) and *TransUnion*, "Article III standing

requires a concrete injury even in the context of a statutory violation." No concrete injury means no action in federal court.

Second, most courts have assumed that text messages fall within the ambit of the TCPA without taking a hard look at the FCC's regulatory authority in that regard. This Court should seize the opportunity to examine with fresh eyes the FCC's interpretation (and regulatory authority) to simply "declare" text messages as TCPA calls. The simple fact remains that the word "text" appears nowhere in the statute. Given the complexity and breadth of the statutory framework at issue, lower courts need clear guidance on the limitations of the FCC's interpretative authority.

ARGUMENT

1. *Trans Union* reiterated the Court's reminder in *Spokeo* that Article III requires plaintiffs to identify "a close historical or common-law analogue for their asserted injuries.

Article III of the Constitution requires that a plaintiff must suffer an "injury in fact." That injury in fact must be "concrete" – "real, and not abstract." That constitutional requirement does not include conduct that is just frustrating or annoying. Federal courts are not authorized to find injury based on evolving beliefs about what kind of suits should be heard in federal courts. Instead, courts should assess whether the alleged injury – here a single unwanted text message – bears a close relationship to a harm traditionally recognized as providing a basis for a lawsuit in American courts. *TransUnion*, 141 S. Ct. at 2204.

A plaintiff cannot satisfy the injury-in-fact requirement simply by alleging a violation of a statutory right. There must be a concrete injury "…even in the context of a statutory violation." *Id.* at 2205. Like the Sixth Circuit, this Court has rejected the "anything-hurts-so-long-as-Congress-says-it-hurts theory of Article III injury." *Hagy v. Demers & Adams,* 882 F.3d 616, 622 (6th Cir. 2018). Put another way, federal courts may not "treat an injury as 'concrete' for Article III purposes based only on

Congress's say-so." *Trichell v. Midland Credit Mgmt.*, 964 F.3d 990, 999 n.2 (11th Cir. 2020). A federal court's fealty to Article III's injury-in-fact requirement is essential to the Constitution's separation of powers. Without a concrete injury requirement, Congress could authorize unharmed plaintiffs to sue, and put enforcement of the law in the hands of private parties who are not accountable to the people.

Determining whether a plaintiff has suffered concrete harm can be challenging, but courts must assess whether a plaintiff can identify a close historical or common-law analogue for the asserted injury. *Spokeo,* 578 U.S. at 340-41. Here, it is tempting to point at torts related to invasion of privacy as appropriate analogues to the statutory claims under the TCPA. However, those tort claims are not close.

Invasion of privacy traditionally has involved four types of conduct: 1) intrusion on physical solitude, 2) intrusion on seclusion, 3) putting the plaintiff in a false, but not defamatory, light, and 4) appropriation of likeness or personality for commercial use. W. Prosser & J. Keeton, *Prosser and Keeton on Torts* § 117 (Supp. 1988). Although these claims are tied together as a group of invasions of privacy, they have almost nothing in common – other than the plaintiff's right to be let alone. Here,

the unwanted communication may sound like an intrusion on seclusion but the single text message fails to mate with the common law tort in critical ways.

Under the applicable state law for this case, an intrusion on seclusion is "the wrongful intrusion into one's private activities in such manner as to outrage or cause mental suffering, shame, or humiliation to a person of ordinary sensibilities." *Phillips v. Smalley Maint. Servs. Inc.,* 435 So.2d 705, 708 (Ala. 1983); *Restatement (Second) of Torts* § 652B (1977). The examples cited by the *Restatement* are "opening private and personal mail, searching a safe or wallet, or examining a private bank account. *See* § 652B cmt. B. The emotional harm that is offensive and concerns a person's private affairs is the key to the tort. The conduct actionable as an intrusion upon seclusion "involves a prying or intrusion, which would be offensive or objectionable to a reasonable person, into a private person's concerns." *Benedict v. State Farm Bank, FSB*, 309 Ga. App. 133, 136 (2011). The intrusion must be conducted in a manner that causes outrage or mental suffering, shame or humiliation to a person of ordinary sensibilities. *Zacchini v. Scripps-Howard Broad. Co.,* 433 U.S. 562, 569 n.4 (1977).

Benedict provides important instructions on the tort because it involves phone calls. The plaintiff claimed the bank called him over 100 times to collect a credit card debt. In dismissing the claim, the court found no authority for the proposition that merely annoying someone or disturbing their peace and tranquility, without more, is an invasion of privacy. *Benedict*, 309 Ga. App. at 137.

Courts that have compared text messages to intrusion on seclusion have typically called the comparison "close enough." These courts acknowledge that an unwelcome text can be inconvenient, annoying, or frustrating.

This Court's analysis is more in line with Supreme Court authority. An "exact duplicate" of a traditionally recognized harm is not required, but a tort analogue cannot be missing an element "essential to liability" under the comparator tort. *Hunstein v. Preferred Collection & Mgmt. Servs.*, 48 F.4th 1236, 1242 (11th Cir. 2022) (quoting *TransUnion*, 141 S. Ct. at 2209). Sending a single unwelcome text message lacks a critical element in the tort of intrusion on seclusion. It lacks the requirement that the conduct causes shame or humiliation to the reasonable person. Intrusion on seclusion is not designed to redress that common human

circumstance. The idea that the law would compensate people for simple frustration directly opposes the Article III command that injury must be concrete. The tort could not be consistently applied without the requirement that the intrusion cause shame or humiliation to the reasonable person. Otherwise, the tort permits private parties to sue for every eccentric offense they choose.

This Court's case law concluding that a single text message or communication cannot be an Article III injury in fact is correct. *Salcedo v. Hanna,* 936 F.3d. 1162, 1167-68 (11th Cir. 2019); *Hunstein v. Preferred Collection & Mgmt. Servs., Inc.*, 48 F.4th 1236, 1247-48 (11th Cir. 2022). Cases that conclude that the comparison is "close enough" disserve the principle of limited jurisdiction and separation of powers.

2. Most courts have assumed that text messages fall within the ambit of the TCPA without taking a hard look at the FCC's regulatory authority in that regard.

The TCPA places "restrictions on unsolicited automated telephone calls to the home," and limits "certain uses of facsimile (fax) machines and automatic dialers."[5] In enacting the TCPA, Congress expressed concern about "the increasing number of telemarketing firms in the business of placing telephone calls, and the advance of technology which makes automated phone calls more cost-effective.[6] The statute and legislative history focus largely on unsolicited telemarketing and bulk communications.[7]

The FCC has construed the TCPA to apply to text messages[8], which did not even exist at the time of the TCPA's enactment in 1991. Subsequently, six circuits, including this Court, have held that a text message is considered a *call* within the meaning of the TCPA.[9]

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[5] S. Rep. 102-178, at 1 (1991), *reprinted in* 1991 U.S.C.C.A.N. 1968.

[6] *Id.* at 2.

[7] *See* In the Matter of Rules and Regulations Implementing the Tel. Consumer Prot. Act of 1991, 18 FCC Rcd. 14014, 14115 (June 26, 2003).

[8] *Id.*

[9] *See, e.g.*, *Murphy v. DCI Biologicals Orlando, LLC*, 797 F.3d 1302, (11th Cir. 2015) ("The prohibition against auto dialed calls applies to text message calls as well as voice calls.") (citing In re Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991, 18 FCC Rcd. 14014, 14115 (affirming that the prohibition against

Although courts have fallen in line with the FCC's declaratory ruling, few have questioned whether the FCC's interpretation falls within the ambit of the agency's rulemaking authority given the technological and practical differences between telephone calls and text messages. Courts should not blindly defer to agency regulations or interpretations without clear statutory authority.[10] This Court should seize the opportunity to examine with fresh eyes the FCC's interpretation (and regulatory authority) to simply "declare" text messages to be TCPA calls. The simple fact remains that the word "text" appears nowhere in the statute.

. . . .

automatic telephone dialing in § 227(b)(1) "encompasses both voice calls and text calls to wireless numbers including, for example, short message service (SMS) calls")); *Duran v. La Boom Disco, Inc.*, 955 F.3d 279, 280 n.4 (2d Cir. 2020) *vacated and remanded*, 141 S. Ct. 2509 (2021); *Allan v. Penn. Higher Education Assis. Agency*, 968 F.3d 567, 569 n.1 (3d Cir. 2020) *vacated* 141 S. Ct 2509 (2021); *Warciak v. Subway Restaurants, Inc.*, 949 F.3d 354, 356 (7th Cir. 2020); *Breda v. Cellco P'ship*, 934 F.3d 1, 4 n.1 (1st Cir. 2019); *Satterfield v. Simon & Schuster, Inc.*, 569 F.3d 946, 949 (9th Cir. 2009).

[10] The assumption that FCC determinations apply in civil litigation was called into questions by dicta in a 2019 Supreme Court opinion, where the Court declined to resolve the question of whether and to what extent district court must defer to FCC. *See PDR Network, LLC v. Carlton & Harris Chiropractic, Inc.*, 139 S. Ct. 2051 (2019) (remanding the case to determine, without addressing, whether district courts are bound by the Hobbs Act to defer to particular FCC determinations in construing the TCPA).

A careful review of the caselaw shows that whether the FCC's interpretation stands muster is an open question. The Supreme Court has *assumed* but never *opined* on whether a text is a TCPA call. *See, e.g., Campbell-Ewald Co. v. Gomez*, 136 S. Ct. 667 (2016) ("A text message to a cellular telephone, it is undisputed, qualifies as a 'call' within the compass of § 227(b)(1)(A)(iii)."). In *Campell-Ewald* the parties did not challenge this assumption—which has led lower courts to accept the legal issue as settled without examining the validity of the position. In fact, only two issues were disputed in *Campell-Ewald*: first, whether the plaintiff's TCPA lawsuit was rendered moot by an unaccepted offer of judgment; second, whether the defendant, a federal contractor, could invoke sovereign immunity. *Campbell-Ewald* did not rule on what counts as a "call" under the TCPA; it merely notes that no party had elected to contest the matter.[11] And it was only in teeing up the parties' disputes did the Court speak on the issue.

Similarly in *Facebook, Inc. v. Duguid*, 141 S. Ct. 1163 (2021), the Court assumed a text message qualified as a TCPA call "without

[11] To add insult to injury, when courts do not cite to *Campell-Ewald* or the FCC Order, they cite cases that in turn cite one or both of those authorities.

considering or resolving the issue." *Id.* at 1168 n.2. In *Duguid*, the Court considered whether Facebook violated the TCPA by sending automated text messages to numbers associated with Facebook accounts any time those accounts were accessed by an unrecognized number. *Id.* at 1168.[12]

During argument on *Duguid*, some of the Justices appeared to agree that the TCPA had been artificially expanded to adapt to recent technology.[13] Justice Clarence Thomas inquired from counsel for Facebook—"… I am interested in why a text message is considered a call under the TCPA."[14] Counsel for Facebook responded that the logic underlying the Justice's question could provide an alternative path toward ruling in Facebook's favor. *Id.* Further, Justice Samuel Alito implied that if SCOTUS could declare statutes obsolete, the TCPA might be a good candidate.[15] Similarly, Justice Thomas declared that it was odd

[12] Importantly, Facebook merely stored numbers associated with the accounts—it did not store or produce the numbers using a random or sequential number generator. *Id.*

[13] *See also* Br. by Wash. Legal Found. as *Amicus Curiae* in Support of Pet., *Duguid*, 141 S. Ct. 1163, 2020 WL 5549467, at *3 (Sept. 10, 2020).

[14] Tr. of Oral Arg. ("Oral Arg."), *Duguid*, 141 S. Ct. 1163, 2020 WL 7229730, at *7 (Dec. 8, 2020).

[15] *Id.*, at *60-61 (Justice Alito) ("Guido Calabresi has argued that courts should have the power to declare statutes obsolescent and obsolete. And if -- if we had that power, this statute might be a good candidate.").

that the Court was attempting to apply an "almost anachronistic" statute, such as the TPCA, to text messages.[16]

. . . .

It is not disputed that text messaging did not exist when the TCPA was passed, nor that Congress has not expressly added text messaging to the TCPA. Courts repeatedly lament that the TCPA has not kept pace with technology—but that is no reason justifying judicial amendments to the statute.[17]

Nor should the Court give deference to the FCC's arbitrary ruling in 2003 that text messages are "calls" under the TCPA.[18] The FCC order does little more than cite the purpose of the TCPA-the protection of privacy-and then rename text messages "text calls."

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[16] *Id.*, at *55 (Justice Thomas) ("So technology has changed and moved along very rapidly. And don't you think it's rather odd that we are applying a statute thats almost anachronistic, if not vestigial and -- to a -- to -- to modern technology like Facebook and instant messaging, et cetera? Don't you think that at some point there's a – there's at least a sense of futility?").

[17] Waller, Spencer, et al., *The Telephone Consumer Prot. Act of 1991: Adapting Consumer Protection to Changing Technology*, 26 Loyola Consumer L. Rev. 343, 366 (2014)

[18] Even the Commission does not use "call" to substitute for "text message". *See, e.g.*, FCC 2015 Declaratory Rule & Order at 7964: The TCPA "empower[s] consumers to decide which robocalls ***and*** text messages they receive….") ("In this Declaratory Ruling and Order, we refer to calls that require consumer consent … 'robocalls,' 'covered calls ***and*** texts,' or 'voice calls ***and*** texts.'" *(emphasis added) (internal citations omitted).*

Deference to the agency's off-hand remark would be particularly inappropriate here because the agency's construction dramatically expands its own jurisdiction. As the Supreme Court observed in *Adams Fruit Co. v. Barrett*, 494 U.S. 638 (1990), "[a]lthough agency determinations with the scope of delegated authority are entitled to deference, it is fundamental 'that an agency may not bootstrap itself into an area in which it has no jurisdiction.'" *Id.* at 650 (citations omitted).

. . . .

Sending a text message does not constitute "making a call" within the meaning of the TCPA. The specific characteristics of text messages distinguish them from voice calls in several important respects.[19] Nor do text messages pose the same problems inherent in automated calls that prompted Congress to enact the TCPA. The legislative history reveals that 47 U.S.C. § 227(b)(1)(A) was designed to address a specific type of automated telephone call that created the following problems:

[19] SMS, for example, "provides the ability for users to send and receive text messages to and from mobile handsets with maximum message length ranging from 120 to 500 characters." Section 6002(B) of the Omnibus Budget Reconciliation Act of 1993, 17 FCC Rcd 12985, 13051 (2002). See also

• "the automated calls fill the entire tape of an answering machine, preventing other callers from leaving messages";

• "the automated calls will not disconnect the line for a long time after the called party hangs up the phone, thereby preventing the called party from placing his or her own calls";

• "automated calls do not respond to human voice commands to disconnect the phone, especially in times of emergency"; and

• "some automatic dialers will dial numbers in sequence, thereby tying up all the lines of a business and preventing any outgoing calls."[20]

A text message implicates none of these concerns. For example, a text message does not ring like a voice communication, which continues to alert the recipient until the voice communication is connected or the recipient's answering machine or voice-message system takes over. Rather, a text message is complete upon sending and stored on the device for retrieval at recipient's convenience. Sending a text message does not, and cannot, "tie up" the "call" or telephone function of the device. Instead, the recipient can continue to use their mobile device for placing and

[20] S. Rep. No. 102-178 at 2, *reprinted in* 1991 U.S.C.C.A.N. 1968, 1969.

receiving voice communications at the same time that the user is receiving text messages.

. . . .

Undoubtedly, Congress was concerned that telemarketing calls are sometimes a nuisance or an invasion of privacy. But it does not follow that Congress elevated every mobile device communication that could possibly cause nuisance or invade privacy into concrete harm. Congress limited the statute to "calls." Likewise, because texts are not "calls," the TCPA did not transform the receipt of a single text message into a concrete injury.

CONCLUSION

Although ACA members are engaged in a legitimate effort to collect legally enforceable obligations, they are more recently, subjected to legal action that uses the TCPA as a money-maker for consumers and the lawyers that represent them. For the reasons stated herein, ACA respectfully urges the Court to reaffirm *Salcedo v. Hanna,* 936 F.3d. 1162, 1167-68 (11th Cir. 2019) and *Hunstein v. Preferred Collection & Mgmt. Servs., Inc.*, 48 F.4th 1236, 1247-48 (11th Cir. 2022).

May 15, 2023

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

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/s/ Greg White

S. Greg White

CERTIFICATE OF SERVICE

I hereby certify that on May 15, 2023, I electronically filed the foregoing document with the Clerk of Court for the United States Court of Appeals for the Eleventh Circuit using the CM/ECF system, which will cause it to be served on all parties and counsel of record.

/s/ Greg White
S. Greg White
Counsel for Amicus Curiae