

The Supreme Court - July 6, 2020

Today, the Supreme Court of the United States issued the following three opinions:

Barr v. American Assn. of Political Consultants, Inc., No. 19-631: The Telephone Consumer Protection Act of 1991 (“TCPA”) generally prohibits robocalls to cell phones and home phones, but was amended in 2015 to permit robocalls to collect debts owed to or guaranteed by the Federal Government. 47 U.S.C. §227(b)(1)(A)(iii). The American Association of Political Consultants and other organizations that wanted to make political robocalls to cell phones filed a declaratory judgment suit claiming that the robocall restriction violated the First Amendment. The District Court found the provision at issue, with the government-debt exception, was a content-based restriction, but determined it withstood strict scrutiny due to the Federal Government’s compelling interest in collecting debt. The Fourth Circuit vacated the judgment, holding that the content-based restriction could not withstand strict scrutiny. The Court today, in a number of fractured opinions, affirmed. Six Justices found that Congress has impermissibly favored debt-collection speech over political and other speech, in violation of the First Amendment. (Justice Kavanaugh, joined by Chief Justice Roberts, Justice Thomas, and Justice Alito; Justice Sotomayor, concurring in the judgment; Justice Gorsuch, concurring in part and dissenting in part). In light of that conclusion, seven Justices concluded that the entire robocall restriction should not be invalidated, but that only the 2015 government-debt exception must be invalidated and severed from the rest of the statute. (Justice Kavanaugh, joined by Chief Justice Roberts and Justice Alito; Justice Sotomayor, concurring in the judgment; Justice Breyer, concurring in the judgment with respect to severability and dissenting in part, joined by Justices Ginsburg and Kagan).

The Court's decision is available [here](#).

Chiafalo v. Washington, No. 19-465: States have devised various mechanisms to ensure that the electors appointed to vote as members of the Electoral College vote for the presidential candidate the citizens of the State have preferred in the popular vote returns. Decades ago, the Court upheld a pledge requirement now imposed by most

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States, compelling electors to pledge in advance to support the nominee of that party. The Court in that case rejected the argument that the Constitution “demands absolute freedom for the elector to vote his own choice.” *Ray v. Blair*, 343 U.S. 214, 228 (1952). Here, the State of Washington not only required a pledge; it imposed a monetary fine of \$1,000 on three electors for that State who violated their pledges to support Hillary Clinton in the 2016 presidential election. The Washington Superior Court rejected the electors’ challenge to the fines, and the Washington Supreme Court affirmed, relying on *Ray*. Today, the Court affirmed, holding that a State may enforce an elector’s pledge to support his party’s nominee—and the state voters’ choice—for President. Justice Kagan issued the Court’s opinion, joined by Chief Justice Roberts, and Justices Ginsburg, Breyer, Alito, Sotomayor, Gorsuch, and Kavanaugh. Justice Thomas concurred in the judgment, joined in part by Justice Gorsuch.

The Court's decision is available [here](#).

Colorado Dept. of State v. Baca, No. 19-518: Colorado requires electors to the Electoral College to cast their vote in accord with the will of the popular vote. When the State enforced this requirement by removing an elector who cast his vote differently in the 2016 presidential election and discarding his vote, electors brought a suit against the Colorado Department of State. The District Court dismissed the suit. The Tenth Circuit reversed and remanded, holding that the State’s removal of the elector and nullification of his vote were unconstitutional. The Court today, in a one-page *per curiam* opinion, reversed for the reasons stated in *Chiafalo v. Washington*. Justice Sotomayor took no part in the decision.

The Court's decision is available [here](#).