

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

RICKY R. FRANKLIN, :  
 :  
 Plaintiff, :  
 :  
 v. : Civil Action No. 17-1640-RGA  
 :  
 NAVIENT CORPORATION, et al., :  
 :  
 Defendants. :

**MEMORANDUM ORDER**

At Wilmington this 1<sup>st</sup> day of April, 2020, having considered Defendants' motion to stay (D.I. 59), which is opposed by Plaintiff;

IT IS HEREBY ORDERED that the motion (D.I. 59) is **GRANTED** and the case is **STAYED** pending a decision by the United States Supreme Court in *Barr v. American Ass'n of Political Consultants, Inc.*, No. 19-631, for the following reasons:

1. On September 5, 2019, the Court granted Defendants' motion for summary judgment as to Count I, the Fair Debt Collection Practice Act claim, and, as to Counts II and III, the Telephone Consumer Protection Act claims, on all telephone calls that took place after November 2, 2015 because Plaintiff's debts were guaranteed by the United States and, following the November 2015 Budget Act Amendments, the plain language of the TCPA is unambiguous that calls made solely to collect U.S.-guaranteed debts are exempt from its coverage. (D.I. 40, 41). The Court denied summary judgment on the TCPA claims in Counts II and III that relate to telephone calls that took place January through March 2015. (*Id.*).

2. On September 25, 2019, Plaintiff filed a motion to alter or amend judgment pursuant to Fed. R. Civ. P. 59(e). (D.I. 43, 44). In his supporting brief, Plaintiff makes several arguments to support his position, including that the Court's rulings on the motion for summary judgment were contrary to decisions from the United States Court of Appeals for the Fourth and Ninth Circuits that declared the debt-collection exception flawed, severed it from the TCPA as unconstitutional, and left intact the remainder of the TCPA. (See D.I. 44 at 8). The cases are *American Association of Political Consultants, Inc. v. FCC*, 923 F.3d 159 (4<sup>th</sup> Cir. 2019) and *Duguid v. Facebook, Inc.*, 926 F.3d 1146 (9<sup>th</sup> Cir. 2019).

3. On January 28, 2020, Defendants filed a motion to stay, following the United State Supreme Court's grant of a writ of certiorari in *Barr v. American Ass'n of Political Consultants, Inc.*, 140 S.Ct. 812, No. 19-631 (Jan. 10, 2020), to review the Fourth Circuit's decision in *American Association of Political Consultants, Inc. v. FCC*. (D.I. 59). While Defendants contend that the Court need not reach the constitutionality of the Budget Act Amendments in ruling on Plaintiff's motion to alter or amend judgment, they request a stay should the Court consider the issue. Plaintiff opposes a stay and argues that the issue before the Supreme Court is a narrow one, and one which has no impact on this case. A pretrial conference is scheduled in the instant case for April 29, 2020, and trial is scheduled for May 27, 2020. (See D.I. 56, 58).

4. Based on the Supreme Court docket, including the petition for a writ of certiorari, I conclude that a stay is warranted. In his Rule 59(e) motion, Plaintiff raises the issue of the constitutionality of the government debt collection exemption of the

TCPA, one of the issues that is now before the United States Supreme Court. The Supreme Court's decision may have an impact on future rulings in this case.

Therefore, the Court will grant the motion to stay.

IT IS FURTHER ORDERED that:

Plaintiff's motion to alter or amend judgment (D.I. 43) and motion for leave to file new evidence in support of motion for reconsideration (D.I. 62) are **DISMISSED** without prejudice to renew upon lifting of the stay.

/s/ Richard G. Andrews  
UNITED STATES DISTRICT JUDGE