

Wyoming Robocall Ban Ruled Unconstitutional

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On August 6, 2018, federal Judge Alan Johnson ruled that a Wyoming state law banning the use of automated phone calls, or robocalls, by political operatives was unconstitutional. In his decision, Judge Johnson found that the state's complete ban on robocalling was "over inclusive" because it "completely prohibits political speech through robocalls while allowing commercial speech under certain circumstances."

The initial challenge, filed by Michigan-based polling firm Victory Processing LLC, argued that the ban violated its rights under the First and Fourteenth Amendments, especially in light of the ban's impact on political speech. Wyoming Attorney General Peter Michael argued that the law's repeal would violate residents' privacy.

Judge Johnson found that Wyoming's ban targeted political, campaign-related speech and thus was not content-neutral. While the decision acknowledged the importance of state citizens' right to personal privacy, Judge Johnson concluded that privacy was a "substantial interest," rather than a "compelling interest." As such, Wyoming's ban was a content-based restriction with only a "substantial interest" of privacy. Accordingly, the ban did not pass strict scrutiny standards.

Judge Johnson concluded that even if privacy was viewed as a "compelling interest," the construction of Wyoming's law was still overly restrictive. Judge Johnson noted the ban specifically placed political speech at a disadvantage vis-à-vis commercial calls. For example, in Wyoming, commercial sales calls are permitted provided the recipient initiated the call, the number is not on the national Do-Not-Call list, or the caller has an established relationship with the recipient. These exceptions were not present for political-related calls. Judge Johnson reasoned that the Wyoming law was thus squarely

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unconstitutional for imposing a content-based restriction on political speech that both did not advance a compelling state interest and was not narrowly tailored to serve such an interest.

Judge Johnson distinguished a Montana case in which a robocall ban was recently upheld as constitutional. In that case, a federal district court judge in Montana held that the law's repeal would be a violation of residents' privacy. That judge reasoned that the ban did not violate private companies' First Amendment rights because calls could still be made if introduced by a human operator, and thus the law was not an outright ban on political speech. Judge Johnson distinguished the Montana decision on this ground, noting that the Wyoming law did not "allow for any type of politically related robocall."

This decision underscores the conflicting outcomes reached in cases involving robocall laws, especially as such cases become more frequent across the country. Indeed, this Wyoming decision was appealed on September 6, and it remains to be seen how the decision will hold up in subsequent legal proceedings. A complicated, continuously shifting web of state and federal regulations surrounds the practice of robocalling – the disentangling of which requires legal expertise and experience.