

No. 20-02371

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

ELIZABETH PANZARELLA; JOSHUA PANZARELLA,
INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY
SITUATED

Plaintiff-Appellants,

v.

NAVIENT SOLUTIONS, LLC,

Defendant-Appellee.

On Appeal from the United States District Court
for the Eastern District of Pennsylvania

No. 2:18-cv-03735

The Honorable Petrese B. Tucker

**MOTION OF ELECTRONIC PRIVACY INFORMATION CENTER
AND NATIONAL CONSUMER LAW CENTER FOR LEAVE TO
FILE LETTER BRIEF AS *AMICI CURIAE* IN SUPPORT OF
PLAINTIFFS-APPELLANTS**

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February 2, 2022

CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1, *amici curiae* the Electronic Privacy Information Center and the National Consumer Law Center state that they have no parent corporation and that no publicly held corporation owns 10% or more of their stock.

MOTION FOR LEAVE TO FILE LETTER BRIEF AS *AMICI CURIAE*

The Electronic Privacy Information Center (“EPIC”) and the National Consumer Law Center (“NCLC”) move for leave to file a letter brief as *amici curiae* in support of Plaintiffs-Appellants in response to the panel’s January 20 letter seeking supplementary briefing on *Facebook, Inc. v. Duguid*, 141 S. Ct. 1163 (2021). A proposed letter brief is attached to this motion. The letter brief is 3.5 pages, which is half the 7 pages that were allotted to the parties. Clerk’s Letter at 2 (ECF 43).

Proposed *amici* EPIC and NCLC appreciate that this Court intended to limit supplemental briefing in this case to whether *Duguid* resolved the “capacity” issue. However, the Court’s order for supplemental briefing characterized *Duguid*’s holding in part as “whether, in light of *Facebook, Inc. v. Duguid*, 141 S. Ct. 1163 (2021), [an ATDS] must *actually generate* random or sequential numbers and dial such numbers to qualify as an ATDS.” Clerk’s Letter at 1 (ECF 43). Defendant-Appellee also argued in its letter brief that *Duguid* decided “whether the definition of ATDS was broad (so as to encompass stored lists of phone numbers) or narrow (encompassing only equipment that

actually and presently generates random or sequential numbers and then dials them).” Def.-Appellee’s Letter Brief at 1 (ECF 45). Both overstate *Duguid*’s holding.

Proposed *amici* seek to clarify the Supreme Court’s holding in *Duguid* and to urge the Court to explicitly reserve a question of law that was not raised in *Duguid* and has not been raised in this case: whether a “random or sequential number generator” must generate telephone numbers or whether the number generator may generate any type of number.

EPIC and NCLC are two of the leading non-profit advocates for consumer robocall protections. Since the Supreme Court’s decision in *Duguid*, EPIC and NCLC have educated attorneys and other stakeholders on how to protect consumers from harms caused by autodialers.

EPIC is a public interest research center in Washington, D.C., that focuses public attention on emerging privacy and civil liberties issues. EPIC has filed an *amicus* brief in an ATDS case in the Ninth Circuit explaining the meaning of “random or sequential number generator.” Br. for EPIC as *Amicus Curiae* Supporting Petitioner,

Borden v. eFinancial, LLC, No. 21-35746 (9th Cir. filed Dec. 10, 2021). EPIC routinely files *amicus* briefs in Telephone Consumer Protection Act cases. Br. for EPIC & NCLC as *Amici Curiae* Supporting Plaintiffs-Appellants, *McCurley v. Royal Seas Cruises, Inc.*, No. 21-55099 (9th Cir. filed Aug. 9, 2021); Br. for NCLC & EPIC as *Amici Curiae* Supporting Appellant, *Lindenbaum v. Realgy, LLC*, 13 F.4th 524 (6th Cir. 2021), *petition for cert. docketed*, 21-866 (Dec. 10, 2021); Br. for EPIC et al. as *Amici Curiae* Supporting Respondent, *Facebook, Inc., v. Duguid*, 141 S. Ct. 1163 (2020) (No. 19-511); Br. for EPIC et al. as *Amici Curiae* Supporting Petitioner, *Barr v. Am. Ass'n of Political Consultants, Inc.*, 140 S. Ct. 2335 (2020) (No. 19-631); Br. for EPIC & NCLC as *Amici Curiae* Supporting Appellant, *Gadelhak v. AT&T Servs., Inc.*, 950 F.3d 458 (7th Cir. 2020) (No. 19-1738); Br. for EPIC as *Amicus Curiae* Supporting Appellee, *Gallion v. United States*, 772 Fed. App'x 604 (9th Cir. 2019) (No. 18-55667); Br. for EPIC et al. as *Amici Curiae* in Support of Respondents, *ACA Int'l v. FCC*, 885 F.3d 687 (D.C. Cir. 2018) (No. 15-1221).

NCLC is a national research and advocacy organization focusing on justice in consumer financial transactions, especially for low-income

and elderly consumers. Attorneys for NCLC have advocated extensively on behalf of consumers to protect their interests related to robocalls before the United States Congress, the Federal Communications Commission (FCC), and the federal courts. These activities have included testifying in numerous hearings before various congressional committees regarding how to control invasive and persistent robocalls, many filings and appearances before the FCC urging strong interpretations of the Telephone Consumer Protection Act (TCPA), and the filing of a number of *amicus* briefs before the federal courts of appeals and the Supreme Court representing the interests of consumers regarding the TCPA, as well as publishing and regularly updating a comprehensive analysis on the laws governing robocalls in National Consumer Law Center, *Federal Deception Law*, Chapter 6 (3d ed. 2017), updated at www.nclc.org/library.

CONCLUSION

Proposed *amici* respectfully request that the Court grant this motion for leave to file a letter brief as *amici curiae*.

Date: February 2, 2022 /s/ Alan Butler
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CERTIFICATE OF BAR MEMBERSHIP

I certify that I, Alan Butler, am a member in good standing of the
Bar of this Court.

/s/ Alan Butler
Alan Butler

CERTIFICATE OF WORD COUNT

1. This motion complies with the limitations of Fed. R. App. 27(d)(2)(A) because this motion contains 732 words.
2. This motion complies with the typeface requirements of Federal Rule 32(a)(5) and 32(a)(6). It has been prepared in a proportionally-spaced typeface using Microsoft Office Word 2016 in 14-point Century Schoolbook font.
3. I also certify, pursuant to Local Rule 31.1(c), that the most recent version of a commercial virus scanning program, Kaspersky Threat Intelligence Portal, Release 11.02.2020, has been run on the electronic files containing this motion and accompanying brief and no virus has been detected.

Date: February 2, 2022 /s/ Alan Butler
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CERTIFICATE OF SERVICE

I certify that on February 2, 2022, a true and correct copy of this motion and proposed letter brief was served on all parties to this appeal, via CM/ECF, pursuant to Local Rule 25.1(b), because counsel for all parties are registered CM/ECF users.

Date: February 2, 2022 /s/ Alan Butler
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