

No-call list quiets ring of freedom

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Well, well, well. Looks like the same constitutional amendment used to protect Nazis, pornographers and shameless blasphemers is now shielding those pesky telemarketers.

It's their constitutional right to bug you at home, a federal judge ruled Thursday, whether it's about travel clubs, investment schemes, or a half-million other things you could not possibly need.

So take that, all you 51 million households who signed up for the federal no-call list. You - all snug in your suddenly quieter homes - are violating some poor telemarketer's constitutional rights.

Specifically, Edward Nottingham, judge of the U.S. District Court in Denver, struck down your list because it violates First Amendment rights to free speech.

His highly unpopular decision will be dragged all the way to the U.S. Supreme Court.

It seems the telemarketing industry, which generates \$275 billion in sales each year and employs 5.4 million people, isn't exactly going to disappear over a gaggle of vote-seeking politicians and their petty rules.

Never mind that half the states have no-call lists. It would be against telemarketers' natures to go away quietly because they have no qualms about bugging people, even in their homes.

Supporters of Colorado's no-call list, which is not directly affected by Nottingham's decision, are vowing to fight back.

"This is a case about residential privacy, not about the First Amendment," said Colorado Attorney General Ken Salazar. "Commercial telemarketers do not have a constitutional right to call consumers who do not want to be called."

Interestingly, another federal district court judge, Robert Blackburn, agrees.

Blackburn earlier denied a First Amendment challenge to Colorado's no-call law. Of course, he also sent three nuns to prison on civil disobedience convictions, so it's not surprising he would disrespect the scourges of supertime.

Free-speech protection, however, always has been applied in varying degrees.

Commercial speech is limited by consumer protection laws - i.e. you can't advertise

that cigarettes are good for you. Political speech is not limited - i.e. "Big Tobacco is good." Speech from charitable organizations also is not checked - i.e. The American Cancer Society's "Help fight cancer."

"It's hard to look at this if you are in the telemarketing business," said Rutt Bridges, CEO of the Bighorn Center for Public Policy, which lobbied for Colorado's no-call law. "But there's a difference between calling someone to further a charity and calling someone to sell them vinyl siding."

Nottingham, however, is not without his rationale.

He cites case law showing that commercial speech limits generally protect consumers against false claims or dangerous products.

He says there's no evidence that telemarketers make false claims or sell dangerous products. For this reason, Nottingham ruled that if there is a no-call law, it should apply to everyone.

Getting politicians and charities to give up their rights to solicit donations over the phone is unfeasible. And in the end, maybe we should concede the telemarketers' point.

If Nazis, pornographers and blasphemers get First Amendment protection, perhaps telemarketers are entitled, too.

Telemarketing works because a small percentage of the people it targets fall for it. The First Amendment needn't be compromised to protect those who are too stupid to hang up.

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