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When pols won't hang up : THE MORALIST  
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As a resident of Pennsylvania, I was exceedingly popular last week. My phone rang off the hook. I got calls from Bill, Hillary and Chelsea Clinton; Barack and Michelle Obama, and Gov. Ed Rendell.

Philadelphia Mayor Michael Nutter also called, as did obscure state representatives whose names I forget. They called because the Pennsylvania primary was the next big one. Barack Obama, who ultimately lost by 10 percentage points, was threatening to win a race Hillary Clinton could not afford to lose.

For a day or two, the barrage of pre-recorded telephone messages made me proud to be a participant in an institution of democratic self-government. And the black-man-vs.-white-woman thing was interesting. But the novelty wore off, and pride turned into annoyance. There were simply too many phone calls, and I got them at work as well as at home. No doubt Republican campaigners would have been equally thoughtless if, say, Condoleezza Rice had posed a historic challenge to John McCain. My gripe is nonpartisan.

Whatever happened to respect for privacy?

Even worse than the calls to my home from famous people at inconvenient times were the calls from volunteers presuming familiarity. "Hi, this is Bob, may I speak to Anita?" they would ask, as if they were an old high school friend or a distant cousin whose voice you wouldn't expect to quite recognize.

When I admitted that I was indeed "Anita," the callers identified themselves as supporters of Hillary or Barack. Sometimes they would ask if their candidate could count on my support. Typically they just asked if I were planning to vote in the primary and whether I knew the location of my polling station. I almost said "no" once just to see if I would be offered a map and bus fare to the church down the block where I have voted for a decade.

The calls continued through the primary election day. My mild-mannered husband had an intense encounter with a young Obama supporter who called our home after he had already voted. When he told her he regarded her "Have-you-voted yet?" call as a privacy invasion, she stood on her rights: "Well, you are a registered voter, and your home phone number is a public record. I make calls like this all day, sir, its just the way politics are done, for your information." He handed her back the perfect one-liner: "I thought the Obama campaign was about change."

No one at my house likes unsolicited calls. To decrease the number of unsolicited phone calls, my family registered our home phone number on the popular "National Do Not Call Registry" maintained by the Federal Trade Commission. Since the registry went into effect in 2003, most commercial telemarketers have heeded the prohibition against calling phone numbers on the FTC's Do Not Call list.

The registry was a great idea. It immediately improved the quality of the distressingly little time many Americans have to relax at home. It also shielded naive consumers and the elderly from shady businesses and aggressive scam artists. Only bona fide businesses with an established relationship to a residential phone customer are permitted to place unsolicited marketing calls to numbers on the registry.

But perhaps the program doesn't go far enough. That's because politicians seeking votes, researchers and charities are still allowed make unsolicited calls. The charities that call me tend to call only once a year, and the callers are polite. In my experience, charities and researchers are not much of a problem, although some states, like Indiana, limit their right to call too.

But political campaigners are a big problem. The limited value of having one's home phone number on the national Do Not Call list in an election season was driven home this month by the tsunami of calls from the Democrats. Being on the list did nothing to protect solitude or intimacy.

No one wants to be gagged, even in the name of privacy. As soon as plans for the Do Not Call Registry were announced, commercial telemarketers filed suit. They alleged the Do Not Call List violated their rights of free speech and equal protection of laws. Mainstream Marketing Services Inc. and two other firms attacked the registry on these constitutional grounds in federal court in Colorado. They argued that the FTC was guilty of unconstitutional "content discrimination" because it singled out commercial telemarketers, excepting politicians and charities from the registry restrictions.

The 10th Circuit Court of Appeals upheld the constitutionality of the Do Not Call Registry, emphasizing the constitutional importance of the privacy of the home. The First Amendment does not give commercial entities the right to impose their messages on captive audiences of unwilling listeners. On the contrary, the FTC can be asked to halt the delivery of unwanted phone calls, just like the postal service can be asked to stop the delivery of offensive junk mail. As for a supposed Fourteenth Amendment problem with banning some unwanted calls (commercial ones) but not others (political and charitable ones), citing evidence of egregious abuse by commercial telemarketers, the court reiterated a long-held doctrine that the federal government is free to fix part of a problem by singling out those it reasonably believes are the worst offenders.

The telemarketing industry lost its bid to have the Do Not Call list declared unconstitutional. But it made one good point: Cold-calling commercial telemarketers disturb privacy, and so do politicians.

I would expect a proposal to ban home phone calls by politicians would go nowhere fast. Political speech gets nearly absolute protection from the courts under the First Amendment. This means voters are stuck trying to persuade vote-seeking politicians to carefully mind the ethics of interrupting our lives with waves of repetitive, uninformative, unsolicited home telephone calls.

With unwanted phone calls, e-mail and junk mail, we live under communicative assault. The attack comes daily and eats up time and mental energy. Viewed in isolation, no single call is all that invasive; but no one gets just a single call. The aggregation of dozens of unwelcome communications adds up to serious interference.

In its courtroom opposition to the Do Not Call Registry, the telemarketing industry tried to minimize the seriousness of the disturbances caused by their calls to private homes. The industry argued that people did not have to answer the phone, could turn their phones off, or could use caller I.D. Call recipients could also request that individual callers not call back, and report those who ignored such requests to federal authorities for prosecution under telecommunications laws. But clearly, without a national Do Not Call list, the self-help remedies to fight telemarketers were inadequate. The procedures for blocking and screening calls were inconvenient, impractical and expensive. And no one had the time to pursue legal action against offensive telemarketers.

Self-help measures lack promise when it comes to rebuffing political calls, too. For this reason, I would propose that political campaigns voluntarily cut back on the number of phone calls they place to voters, starting with the cloying computer-dialed pre-recorded calls. These automated messages rarely tell us anything we do not already know.

Infobox: Having one's home phone number on the Do Not Call list has limited value during election season.

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