Mainstream v. FTC Brief

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* **Issue**: Is it legal for the FTC and the FCC to implement a do-not-call registry?
* **Procedural History**
  + **Parties**:
    - **Plaintiff**: Telemarketing companies: Mainstream Marketing, TMG Marketing, and American Teleservices Association
    - **Defendants**: FTC and related officers
  + **Procedural Posture**: 4 previous cases on First Amendment issues regarding the overall system and its fees, arbitrary and capricious issues regarding the established business relationship standard, and the FTC’s ability to act
* **Facts**:
  + Congress passed the Telephone Consumer Protection Act of 1991
  + Courts have previously found limits on First Amendment speech for commercial purposes
  + Courts have found that consumers have the ability to control what speech they receive inside their homes
  + Courts have found that regulations which make incremental progress towards resolving the situation are not necessarily invalid
  + Courts have found that opt-in is more valid than a blanket ban
* **Holding:** The do-not-call registry stands in its entirety.
* **Reasoning**
  + **Commercial speech**: Courts can apply some limits to commercial speech without violating the First Amendment. The Government has a reasonable interest, and the regulations are narrowly targeted.
  + **Privacy of the Home:** Courts have found that consumers have the ability to control what speech they receive inside their homes
  + **Incremental progress:** Courts have found that regulations which make incremental progress towards resolving the situation are not necessarily invalid
  + **Opt-in allowed:** Courts have found that opt-in is more valid than a blanket ban
  + **Reasonable fees allowed:** To cover the cost of enforcing the regulations
  + **Established business relationships**: Allowing contact from established business relationships is in the public interest, but allowing it from other companies, including upstart telecommunications companies would not be.