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## The Poorly Financed Causes of Little People: How Can They Survive the Multitude of Regulations, 14 J. Marshall L. Rev. 319 (1981)

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# THE POORLY FINANCED CAUSES OF LITTLE PEOPLE: HOW CAN THEY SURVIVE THE MULTITUDE OF REGULATIONS?

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The Mental Health Association of Greater Chicago, an organization dedicated to improving the treatment of mental health patients, has for about twenty years conducted a "bell ringer" campaign in which volunteers go from house to house seeking donations. In recent years the area canvassed by the Mental Health Association has been greatly reduced by municipal ordinances<sup>1</sup> which regulate charitable solicitations. Nationwide, groups devoted to good work like the Mental Health

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1. Report of the Mental Health Association of Greater Chicago, June, 1979. Ordinances which have caused barriers in bell ringer campaigns in the greater Chicago area include:

<u>Suburb</u>	<u>Restrictions</u>	<u>Final Year of Solicitation</u>
Barrington	Permission denied	1975
Brookfield	Permission denied	1977
Elk Grove	Registration and fingerprinting of each marcher	1977
Franklin Park	Special badges	1977
Hoffman Estates	Special tags	1975
Homewood	Registration	1975
LaGrange	Permission denied	1973
River Grove	Special tags	1978
Rolling Meadows	Permission denied	1974
Schaumburg	Special day	1976
Schiller Park	Fingerprinting	1977
Wheeling	Permission denied	1976

In addition, the Mental Health Association has, due to ordinance restrictions (as well as economic conditions), lost many volunteer marchers in recent years. The Association had 20,510 marchers in 1975 and 7,742 in 1980.

Association have been affected by the increasing patchwork of municipal regulations.<sup>2</sup> Such regulations can cause organizations to lose support, deny citizens an opportunity to support their favorite causes, and ultimately stifle free speech.<sup>3</sup>

This article will first explain the background of the problem of municipal regulation of charitable solicitation, and will then summarize the history of door-to-door canvassing<sup>4</sup> to show its evolution, current vitality, and importance. The United States Supreme Court cases dealing with door-to-door canvassing will be analyzed with an eye toward the practical effects of the decisions. Finally, a model ordinance will be suggested. If uniformly followed, such an ordinance could overcome the constant skirmishing of case-by-case lawmaking.

#### BACKGROUND OF THE REGULATION PROBLEM

Door-to-door canvassing—talking to people at their homes and asking for financial support—is a time-honored<sup>5</sup> method of gaining support for political, religious, and charitable causes. It is especially useful for new or little known causes which have limited financial resources, but a great deal of energy and human capital.<sup>6</sup> As Justice Black observed: “Door to door dis-

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2. See *Amicus Curiae Brief for Coalition of Nat'l Voluntary Organizations at 6-10, Village of Schaumburg v. Citizens for a Better Env't*, 444 U.S. 620 (1980). See also *Murdock v. Pennsylvania*, 319 U.S. 105, 115 (1943) (the cumulative effect of an ordinance requiring door-to-door canvassers or solicitors of goods or merchandise of any kind to pay a daily license fee would “suppress . . . religious minorities”). Petitioners were Jehovah's Witnesses distributing literature and soliciting purchase of religious books and pamphlets. See generally *C. BAKAL, CHARITY U.S.A. 322* (1979) [hereinafter cited as *BAKAL*].

3. In *Village of Schaumburg v. Citizens for a Better Env't*, 444 U.S. 620 (1980) the Court struck down an ordinance because it interfered with protected speech.

4. The terms canvassing, soliciting, and peddling are used throughout this article. The following definitions are appropriate unless otherwise indicated. Canvassing is talking to people and requesting financial support for a not-for-profit organization. Soliciting refers only to asking for money for a not-for-profit organization. Peddling refers to selling items or seeking orders for a for-profit concern.

5. *Martin v. Struthers*, 319 U.S. 141, 145-46 nn.6-9 (1943) (noting the colportage activities of the American Tract Society and the American Bible Society); *Murdock v. Pennsylvania*, 319 U.S. 105, 108-09 nn.4-7 (1943) (hand distribution of religious tracts is an age-old and potent force); *Schneider v. State*, 308 U.S. 147, 164 (1939) (the Court compared ordinances which imposed censorship on the dissemination of information to people in their homes to those of a similar nature and effect in England which culminated in the doctrine of freedom of the press). See generally *M. KONVITZ, FUNDAMENTAL LIBERTIES OF A FREE PEOPLE 105* (1957) [hereinafter cited as *KONVITZ*]; *A.C. MARTS, PHILANTHROPY'S ROLE IN CIVILIZATION 96* (1953) [hereinafter cited as *MARTS*].

6. See, e.g., *Amicus Curiae Brief for Los Angeles Council of Nat'l Vol-*

tribution of circulars is essential to the poorly financed causes of little people."<sup>7</sup>

Despite its tradition and history,<sup>8</sup> door-to-door canvassing engenders hostility both in the suburbs<sup>9</sup> and in academia.<sup>10</sup> The United States Supreme Court has never enunciated a "right to canvass."<sup>11</sup> Rather, the Supreme Court has consistently recog-

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untary Health Agencies, *Village of Schaumburg v. Citizens for a Better Env't*, 444 U.S. 620 (1980) (discussing the effect of the municipality's 75% "charitable purpose" provision on new or unorthodox groups). For a more complete description of the Schaumburg ordinance, see text accompanying notes 85-91 *infra*.

Public interest organizations such as the Wisconsin Environmental Decade; groups devoted to broad organizing and lobbying such as the Illinois Public Action Council; and groups targeting specific issues such as the National Women's Political Caucus ERA campaign all raise funds by using canvassers who are devoted to the "cause" and will work for relatively low wages. After all, the first amendment freedoms are not limited "merely to those who can pay their own way." *Murdock v. Pennsylvania*, 319 U.S. 105, 111 (1943).

7. *Martin v. Struthers*, 319 U.S. 141, 146 (1943). See *Ex parte Jackson*, 96 U.S. 727, 733 (1877) (early dictum on how the liberty of circulating publications is essential to the freedom of the press).

8. See note 5 *supra* and text accompanying notes 24-42 *infra*.

9. The attitude of many municipal authorities is that they have the right to ban a particular organization from canvassing in their community. See *Citizens for a Better Env't v. Elm Grove*, 462 F. Supp. 820 (E.D. Wis. 1978). But see *Douglas v. Jeannette*, 319 U.S. 157, 174-75 (1943) (Jackson, J., concurring):

The stubborn persistence of the officials of smaller communities in their efforts to regulate this conduct indicates a strongly held conviction that the court's many decisions in this field are at odds with the realities of life in those communities where the householder himself drops whatever he may be doing to answer the summons to the door and is apt to have positive religious convictions of his own.

See generally KONVITZ, *supra* note 5, at 105.

10. CHAFEE, *FREE SPEECH IN THE UNITED STATES* (1941) [hereinafter cited as CHAFEE]. Professor Chafee set the tone: "House to house canvassing raises more serious problems. Of all the methods of spreading unpopular ideas, this seems the least entitled to protection. The possibilities of persuasion are slight compared with the certainties of annoyance." *Id.* at 406. The Supreme Court has cited this passage with approval in *Hynes v. Mayor of Oradell*, 425 U.S. 610, 619 (1976), and *Breard v. Alexandria*, 341 U.S. 622, 639 n.27 (1951). Professor Chafee, however, erred in his assessment of the persuasiveness of door-to-door canvassing. Scores of successful groups—Association of Community Organizations for Reform Now (ACORN) (which canvasses in six states), Ohio Public Interest Campaign, New York Public Interest Research Group, Citizens Action League of California, Indiana Citizens Action Coalition, Citizens Labor Energy Coalition, and Massachusetts Fair Share—successfully raise funds by talking to people door-to-door about their activities. See generally R.M. O'NEAL, *FREE SPEECH, RESPONSIBLE COMMUNICATION UNDER LAW* 54 (1972) [hereinafter cited as O'NEAL] (citing other academic attitudes regarding door-to-door canvassing); Stone, *Fora Americana: Speech in Public Places*, *FREE SPEECH AND ASSOCIATION* 378 (P. Kurland ed. 1975) [hereinafter cited as Stone].

11. "There is, of course, no absolute right under the Federal Constitution to enter on the private premises of another and knock on a door for any

nized the right of local governments to regulate the time, manner, and place of canvassing<sup>12</sup> for a variety of governmental purposes including the prevention of crimes such as burglary<sup>13</sup> or fraud,<sup>14</sup> the preservation of tranquility,<sup>15</sup> and the protection of the residents' right to privacy.<sup>16</sup>

This support for the right of a state or local government to regulate canvassing is tempered by the delicacy and primary importance of the first amendment rights involved.<sup>17</sup> Hence, the regulations must be drawn with "narrow specificity."<sup>18</sup> This rule, however, is not sufficient (or perhaps not specific enough) to guide the regulators, who tend to adopt ordinances which go as far as possible in upholding and furthering their governmental purposes.<sup>19</sup> Often the ordinances are so restrictive that a

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purpose, and the police power [of the state] permits reasonable regulation for public safety." *Hynes v. Mayor of Oradell*, 425 U.S. 610, 619 (1976). For a more restrictive view of canvassing rights, see the dissenting opinion of Justices Frankfurter and Reed in *Martin v. Struthers*, 319 U.S. 152, 154 (1943). Justice Reed asserted that the ordinance which created an absolute bar to canvassing was constitutional. "Changing conditions have begotten modification by law of many practices once deemed a part of the individual's liberty." *Id.* at 157. See *Village of Schaumburg v. Citizens for a Better Env't*, 444 U.S. 620, 644 (1980) (Rehnquist, J., dissenting) ("I believe that the Court overestimates the value, in a constitutional sense, of door-to-door solicitation for financial contributions. . . ."); *Douglas v. Jeannette*, 319 U.S. 157, 166 (1943) (Jackson, J., concurring).

12. "It is equally clear that a State may by general and non-discriminatory legislation regulate the times, the places, and the manner of soliciting upon its streets . . ." *Cantwell v. Connecticut*, 310 U.S. 296, 304 (1940).

13. *Martin v. Struthers*, 319 U.S. 141, 144 (1943). See also *Hynes v. Mayor of Oradell*, 425 U.S. 610, 618 (1976) (citing *Martin v. Struthers*).

14. *Village of Schaumburg v. Citizens for a Better Env't*, 444 U.S. 620, 626-27 (1980); *Cantwell v. Connecticut*, 310 U.S. 296, 306 (1940); *Schneider v. State*, 308 U.S. 147, 164 (1939).

15. *Hynes v. Mayor of Oradell*, 425 U.S. 610, 619 (1976); *Martin v. Struthers*, 319 U.S. 141, 144 (1943); *Cantwell v. Connecticut*, 310 U.S. 296, 307 (1940).

16. *Village of Schaumburg v. Citizens for a Better Env't*, 444 U.S. 620, 636 (1980) (fraud, crime, and undue annoyance are substantial interests); *Hynes v. Mayor of Oradell*, 425 U.S. 610, 616 (1976).

17. The rights are freedom of religion, press, and speech. See *Martin v. Struthers*, 319 U.S. 141, 142 (1943); *Murdock v. Pennsylvania*, 319 U.S. 105, 108 (1943). These first amendment rights, protected from congressional action, are also among the "fundamental personal rights and liberties which are protected by the Fourteenth Amendment from invasion by state action." *Lovell v. Griffin*, 303 U.S. 444, 450 (1938). See generally *Jones, Solicitations—Charitable and Religious*, 31 BAYLOR L. REV. 53 (1979) [hereinafter cited as *Jones*].

18. *Village of Schaumburg v. Citizens for a Better Env't*, 444 U.S. 620, 632 (1980); *Hynes v. Mayor of Oradell*, 425 U.S. 610, 617, 620 (1976); *NAACP v. Button*, 371 U.S. 415, 433 (1963); *Niemotko v. Maryland*, 340 U.S. 268, 271 (1951).

19. "Thus the community has an interest in taking advance steps to prevent the perpetration of fraud—for example, by requiring all solicitors either to register upon coming to town or to carry with them at all times some

group must either give up its attempt to canvass or sue.<sup>20</sup> Even if the canvassing group wins in court, it has no assurance that

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proof of identification of themselves and the legitimacy of their cause." O'NEAL, *supra* note 10, at 73. The question of who will determine the "legitimacy" of a cause and what criteria will be used remains. Certain political and religious causes such as The Holy Spirit Association for the Unification of World Christianity ("Moonies") create indignation and fear among municipal officials. As a result, the officials believe they must protect their constituencies through overly restrictive regulations. See KONVITZ, *supra* note 5, at 105 (describing this type of overreaction against early religious zealots).

In the Chicago area there are many examples of ordinances which are overly restrictive: BARRINGTON, ILL., CODE art. 5, div. 3, § 13-213 (1973) (requires fingerprints and photographs by the police and specific approval by the village board); BARTLETT, ILL., CODE ch. 15, art. XVI, § 15.1603 (1965) ("credentials and other evidence of the good moral character and identity of the applicant" as well as two photographs of each canvasser, fingerprinting and a \$500 bond); Elk Grove, Ill., Ordinance 1270, § 18.4703 (Jan. 23, 1979) (fingerprinting); Flossmoor, Ill., Ordinance FMC, amending ch. 21, art. III of Flossmoor Municipal Code § 21.304 (Jan. 4, 1980) (prior consent of occupant before soliciting is permitted); Hazel Crest, Ill., Ordinance 1-1974, § 11(e) (Jan. 8, 1974) (prohibits all paid solicitors); Kildeer, Ill., Ordinance 73-0-189 (Dec. 6, 1973) (prohibits all soliciting and peddling); LAKE FOREST, ILL., CODE ch. 9, § 29-34 (1971) (fingerprinting); Lake Zurich, Ill., Ordinance 737, § 2 (Jan. 17, 1972) (fingerprinting); LIBERTYVILLE, ILL., CODE ch. 25, § 25(c) (1979) (fingerprints and photographs by the police); LINDENHURST, ILL., CODE ch. 79, § 79.20 (1973) (banning all soliciting); Lisle, Ill., Ordinance 558, § 3 (Mar. 4, 1975) (fingerprinting); NORTHFIELD, ILL., CODE ch. 27, § 27-3 (1966) (fingerprinting); Oakbrook, Ill., Ordinance G-95 (Nov. 12, 1968) (§ 5 requires a \$100 bond and § 6 requires evidence of good character); Oakbrook Terrace, Ill., Ordinance 216, § 3 (Nov. 28, 1971) (fingerprinting); Palos Heights, Ill., Ordinance 0-21-71 (Mar. 16, 1971) (bans all soliciting except by charities recognized by the IRS); PROSPECT HEIGHTS, ILL., CODE ch. 2, § 2.12(c) (1962) (fingerprinting); STREAMWOOD, ILL., CODE ch. 21, § 21.034(c) (1970) (fingerprinting); WILLOWBROOK, ILL., CODE Title 3, ch. 19, § 3-19-10 (1959) (\$25 per day per solicitor fee); WOOD DALE, ILL., CODE ch. 13 amended § 13-461(c) (1976) (fingerprinting and photographs).

20. The Mental Health Association of Greater Chicago has ceased canvassing in a number of communities because it does not want to spend its resources on litigation. See note 1 *supra*. CBE of Chicago, on the other hand, has litigated canvassing ordinances continuously since 1973: Citizens for a Better Env't v. Cicero, No. 73-C-1908 (N.D. Ill. Sept. 23, 1973); Citizens for a Better Env't v. Waukegan, No. 75-C-1658 (N.D. Ill. Apr. 8, 1975), *rev'd sub nom.* Citizens for a Better Env't v. Park Ridge, 567 F.2d 689 (7th Cir. 1975); Citizens for a Better Env't v. Highland Park, No. 75-C-1349 (N.D. Ill. Oct. 22, 1975); Citizens for a Better Env't v. Lansing, No. 75-C-1787 (N.D. Ill. June 26, 1975); Citizens for a Better Env't v. Joliet, No. 75-C-1936 (N.D. Ill. Feb. 26, 1976); Citizens for a Better Env't v. Oak Lawn, No. 75-C-1640 (N.D. Ill. July 22, 1975); Citizens for a Better Env't v. Midlothian, No. 77-C-4138 (N.D. Ill. Jan. 22, 1975); Citizens for a Better Env't v. Justice, No. 76-C-470 (N.D. Ill. Feb. 25, 1977), *aff'd sub nom.* Citizens for a Better Env't v. Village of Schaumburg, 590 F.2d 220 (7th Cir. 1978), *aff'd*, 444 U.S. 620 (1980); Citizens for a Better Env't v. Chicago Heights, 480 F. Supp. 188 (1979); Citizens for a Better Env't v. Olympia Fields, No. 80-C-0756 (N.D. Ill. Dec. 18, 1980).

CBE has not lost any of the above cases, however, it still faces a number of ordinances in the Chicago area which it could litigate. See note 19 *supra*. CBE's dilemma, like that of other canvassing groups, is that instead of communicating with residents and gaining their support it becomes an opponent in court of the very people it wishes to win over.

newly drafted regulations in the same municipality<sup>21</sup> or unchallenged regulations in other municipalities will be less burdensome and prohibitive.<sup>22</sup> Canvassing groups can thus be faced with unending litigation. Despite its long and distinguished history,<sup>23</sup> the door-to-door canvass as a technique for reaching the public will not be able to survive the current array of ordinances with occasional court challenges.

### HISTORY

Going from house to house in America has been traced back to the early peddlers of the frontier.<sup>24</sup> The first door-to-door approach whose primary goal was not selling goods was probably made in the name of religion.<sup>25</sup> Soon thereafter, if not simulta-

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21. After a recent Supreme Court decision, *Town of Southampton v. Troyer*, 101 S. Ct. 522 (1980), which held that a town could not prohibit door-to-door fund raising, Southampton's town supervisor was quoted to the effect that his town would look into passing some other type of restrictive ordinance. *N.Y. Times*, Nov. 18, 1980, at 13, col. 5 (midwest ed.).

22. Professor Chafee predicted this problem. "The limitations they [the holdings in *Lovell v. Griffin*, 303 U.S. 444 (1938), and *Cantwell v. Connecticut*, 310 U.S. 296 (1940)] impose on governmental control of street distributions and solicitations look a bit fragile for a rough and tumble world. I wonder whether they can last, whether enforcement officials will not somehow or other circumvent them." CHAFEE, *supra* note 10, at 405-06.

There are several ways municipal officials can circumvent a court ruling. A new ordinance easily can be drafted which is different from previously litigated ordinances. By drafting a new ordinance, unless money damages are sought, the municipality has little to lose except attorneys' fees in a new suit. Since the Supreme Court has never upheld a door-to-door canvassing ordinance, other than for commercial peddlers as in *Breard v. Alexandria*, 341 U.S. 622 (1951), there is no certainty as to what kind of ordinance will prevail against a constitutional attack.

The licensing schemes are likely to run afoul of the prior restraint doctrine, and all forms of regulation are vulnerable to rules against vagueness, overbreadth and excessive delegation of discretion . . . . [I]t is not possible to say with certainty to what extent carefully drawn restrictions of this kind would be upheld, if at all, or on what theory they would be judged.

T.I. EMERSON, *THE SYSTEM OF FREEDOM OF EXPRESSION* 348 (1970).

Despite this problem, the Supreme Court will not invade the legislative chambers. "[I]t is not our business to require legislatures to extend the area of prohibition or regulation beyond the demands of revealed abuses. And the greatest leeway must be given to the legislative judgment of what those demands are." *Martin v. Struthers*, 319 U.S. 141, 153-54 (1943) (Frankfurter, J., dissenting); hence, the need for a model ordinance.

23. See text accompanying notes 24-42 *infra*.

24. R.L. WRIGHT, *HAWKERS AND WALKERS IN EARLY AMERICANA* 18, 25, 28 (1927) [hereinafter cited as WRIGHT]. It was perhaps at this time that door-to-door peddling gained its unsavory reputation as well. See S.M. CUTLIP, *FUNDRAISING IN THE UNITED STATES* 9 (1965) [hereinafter cited as CUTLIP].

25. T.E. BROCE, *FUNDRAISING* 10 (1979) [hereinafter cited as BROCE]; CUTLIP, *supra* note 24, at 6; MARTS, *supra* note 5, at 96; WRIGHT, *supra* note 24, at 149-54.

neously, some early colleges occasionally raised funds on a door-to-door basis.<sup>26</sup> In 1841 the American Tract Society<sup>27</sup> began its interdenominational sale of Bibles and other religious literature, which to this day is carried on by Jehovah's Witnesses. Save for a few notable failures,<sup>28</sup> it was not until the beginning of the twentieth century that systematic appeals were made at the door to support charitable, religious, or political causes.<sup>29</sup> The Young Men's Christian Association (YMCA) is credited with the first organized, highly visible, charitable door-to-door campaigns; and it was in the wake of these drives, especially when commissioned fund raisers were employed, that ethical questions were first raised.<sup>30</sup>

Political door-to-door campaigns, particularly by candidates running for office, predate the American Revolution.<sup>31</sup> Labor organizers recruited union members door-to-door in the nineteenth century.<sup>32</sup> The Civil War may have been the first time in America<sup>33</sup> that money was raised by door-to-door solicitations for a patriotic, political cause: the Union's war effort. World

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26. MARTS, *supra* note 5, at 96-97. One of the unpleasant tasks of early American college presidents was the solicitation of donations. Ben Franklin, nevertheless, was so good at soliciting fellow Philadelphians for college donations that churchmen sought and received his sound advice on fundraising; CUTLIP, *supra* note 24, at 10 describes how Mary Lyons raised nearly \$30,000 by personal house-to-house solicitations in the 1830s to help found Mt. Holyoke College. See also BAKAL, *supra* note 2, at 24-25; BROCE, *supra* note 25, at 10.

27. *Martin v. Struthers*, 319 U.S. 141, 145 n.6 (1943); *Murdock v. Pennsylvania*, 319 U.S. 105, 108 nn.4-6 (1943) (citing *Acts* 20:20 (New Testament); *Mark* 16:15 (New Testament) as indicative of the ancient origins of house-to-house activities).

28. One of the first known failures of a systematic house-to-house charitable campaign was Mathew Carey's federated fund drive in Philadelphia in 1829. CUTLIP, *supra* note 24, at 7-9.

29. "With the exception of Jay Cooke's spectacular sale of government bonds through exploitation of patriotic needs, most organized fundraising efforts in America's 19th Century were small-scale affairs designed to aid the church, the college, the relief of paupers at home, or the starving abroad." CUTLIP, *supra* note 24, at 12.

30. It was around the turn of the century that paid solicitors for charitable funds first appeared. They generated so many complaints that after World War I the National Investigation Bureau of War Charities banned door-to-door soliciting by commissioned fundraisers. CUTLIP, *supra* note 24, at 15, 16, 142-43. Professional fundraising evoked images of "a person who would do almost anything to wheedle or trick a few dollars out of the public for any so-called 'charity'." MARTS, *supra* note 5, at 112. As a result, after World War I, professional fundraisers came to be paid a fixed fee. The prohibition on commissioned salaries has lapsed over time.

31. See *Martin v. Struthers*, 319 U.S. 141, 146 n.9 (1943) (indicates that political door-to-door canvassing was a way of life in many states).

32. *Id.* at 141, 145-46.

33. CUTLIP, *supra* note 24, at 11-12. See note 29 *supra*.



Wars I and II gave door-to-door solicitation for political causes some of its finest hours.<sup>34</sup>

In the early 1950s the volume of door-to-door canvassing reached modern proportions in terms of frequency and dollar volume.<sup>35</sup> Today door-to-door canvassing causes range from traditional charities<sup>36</sup> (e.g., Cancer Society, March of Dimes, etc.) to candidates seeking support<sup>37</sup> to public interest groups<sup>38</sup> to new<sup>39</sup> and old<sup>40</sup> religions. That these varieties of not-for-profit canvassing are an important facet of American society is nearly beyond dispute.

Despite this apparent upsurge of door-to-door canvassing in the last three decades, there has also been an opposing trend. Rising crime rates, distrust of strangers, and municipal regulations have all combined to diminish the number of door-to-door campaigns.<sup>41</sup> The last mentioned cause—regulations—can be ascribed in part to the United States Supreme Court's decisions

34. The American Red Cross reorganized its fundraising efforts during World War I and raised millions of dollars. Although the Depression of the 1930s caused a significant reduction in donations, the federal government's bond-raising efforts during World War II were an overwhelming success. See *Martin v. Struthers*, 319 U.S. 141, 146 (1943).

35. In 1948 there were 1,750,000 door-to-door peddlers grossing \$3.5 billion. E. LIFSHEY, *DOOR TO DOOR SELLING* 5 (1948). By the 1950s most communities could expect one peddler or canvasser per month at each home. See F.E. ANDREWS, *PHILANTHROPIC GIVING* 134 (1950). At the same time, charities were raising \$15 billion per year—of which a large proportion came from door-to-door campaigns. See BROCE, *supra* note 25, at 13. See also *Amicus Curiae Brief for Coalition of Nat'l Voluntary Organizations, Village of Schaumburg v. Citizens for a Better Env't*, 444 U.S. 620 (1980).

36. Examples of traditional charities raising substantial amounts of money on a door-to-door basis include the Girl Scouts of America, the Kidney Foundation, American Heart Association, YMCA, Planned Parenthood Federation of America, and the Council for Financial Aid to Education. See *Amicus Curiae Brief for Coalition of Nat'l Voluntary Organizations, Village of Schaumburg v. Citizens for a Better Env't*, 444 U.S. 620 (1980).

37. Chicago Democrats employ one of the most successful canvasses, registering large numbers of voters and raising support for the organization. M. ROYKO, *BOSS* (1971).

38. See notes 6 and 10 *supra*. An interesting sidelight on public interest groups is their collection of funds relative to traditional charities. "[R]evenues of all the more than 150 national organizations in the environmental field do not exceed by much the approximately \$125 million or so taken in annually by the American Cancer Society." BAKAL, *supra* note 2, at 286. (emphasis in original).

39. E.g., The Holy Spirit Ass'n for the Unification of World Christianity ("Moonies").

40. *Amicus Curiae Brief for National Council of Churches of Christ in the United States of America, Baptist Joint Committee on Public Affairs, The Lutheran Council in the United States of America, Village of Schaumburg v. Citizens for a Better Env't*, 444 U.S. 620 (1980).

41. BAKAL, *supra* note 2, at 322. The Mental Health Association of Greater Chicago suffered greatly from this combination as well as from economic conditions which caused a decline in the number of volunteer canvassers. See notes 1 and 21 *supra*.

ascribed in part to the United States Supreme Court's decisions on door-to-door canvassing regulations.<sup>42</sup>

### Cases

An important early case dealing solely with distribution of literature on the streets is *Lovell v. Griffin*.<sup>43</sup> In *Lovell*, an ordinance required all persons who intended to distribute literature to obtain permission from the city manager, regardless of the method of distribution. The Supreme Court reasoned that because the ordinance covered distribution so broadly and because distribution was essential to publication, the ordinance was unconstitutional on its face. The Court was particularly concerned that this type of ordinance "would restore the system of license and censorship in its baldest form."<sup>44</sup> Except for obscene literature or literature which advocated unlawful conduct, the Court did not view such permit requirement systems as consistent with the first amendment. By analogy, permit systems for door-to-door distribution of literature appeared to be in jeopardy.

This apparent status of permit systems was altered by *Schneider v. State*.<sup>45</sup> In *Schneider* an elaborate<sup>46</sup> licensing system for door-to-door canvassers and solicitors was held unconstitutional as applied to the canvasser who had been arrested for handing out booklets and asking for contributions for a religious cause. Although the Court considered several aspects of the or-

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42. "By deciding that permit requirements are valid if they do not allow too much administrative discretion and are not applied in a discriminatory manner, the Supreme Court did not solve all possible problems." F.S. HAIMAN, FREEDOM OF SPEECH 63 (1976). See note 22 *supra*. See also *Village of Schaumburg v. Citizens for a Better Env't*, 444 U.S. 620, 639 (1980) (Rehnquist, J., dissenting) and *Hynes v. Mayor of Oradell*, 425 U.S. 610, 631 (1976) (Rehnquist, J., dissenting) (municipalities continue to face practical problems in light of Supreme Court decisions on the regulation of door-to-door canvassing).

43. 303 U.S. 444 (1938).

44. *Id.* at 452 (the liberty of circulation is as essential to freedom of the press as is the liberty of publication).

45. 308 U.S. 147 (1939). See also *Hague v. Committee for Indus. Organization*, 307 U.S. 496 (1939) (a pre-*Schneider* case holding a permit ordinance for a labor union assembly invalid).

46. Although four ordinances were before the Court, only the ordinance of Irvington, New Jersey applied to door-to-door canvassing. The others applied to the distribution of literature on the street. The Irvington ordinance required a written permit from the chief of police, or the officer in charge of police headquarters, before anyone could "canvass, solicit, distribute circulars or other matter, or call from house to house." 308 U.S. at 157. To obtain a permit the applicant had to supply personal information and be fingerprinted and photographed by the police. A permit would be denied if the police decided, among other things, that the canvasser was "not of good character." 308 U.S. at 164.

ordinance "burdensome and inquisitorial,"<sup>47</sup> none was singled out as unconstitutional on its own, nor did the Court expressly state that permit or licensing systems were unconstitutional.<sup>48</sup> Instead, the *Schneider* Court suggested that certain features<sup>49</sup> of canvassing, such as hours, could be regulated. By apparently giving regulators of canvassing more freedom than it forbade, the *Schneider* decision opened the door to a mass of permit schemes which prevail to this day.<sup>50</sup>

Soon after *Schneider* another permit system, this one applicable only to solicitors for money, came before the Court.<sup>51</sup> The regulation in *Cantwell v. Connecticut*<sup>52</sup> granted discretion to a governmental official to determine the bona fides of the organization. Without specific standards,<sup>53</sup> the potential to censor legitimate speech and possible abuse of discretion created by the

47. "The applicant must submit . . . evidence as to his good character and as to the absence of fraud in the 'project' he proposes to promote or the literature he intends to distribute, and must undergo a burdensome and inquisitorial examination, including photographing and fingerprinting." 308 U.S. at 163-64.

48. The Court implied that the freedom of expression should not "depend upon the exercise of the officer's discretion," and held the ordinance inapplicable and void without invalidating any particular portion of the permit system. 308 U.S. at 164-65.

49. *Id.* at 165.

50. See Arlington Heights, Ill., Ordinance 68-109, § 20-801 (Oct. 7, 1968); Batavia, Ill., Ordinance 71-115 (May 3, 1971); Bolingbrook, Ill., Ordinance 75-24 (Mar. 25, 1975); Buffalo Grove, Ill., Ordinance 70-27 (Aug. 17, 1970); CHICAGO RIDGE, ILL., CODE ch. 13, art. 54 (1965); DOWNERS GROVE, ILL., CODE ch. 15 (1969); GENEVA, ILL., CODE ch. 18, art. III (1962); Glen Ellyn, Ill., Ordinance 2197-rc, amending Title 3, ch. 3 (May 23, 1977); HOFFMAN ESTATES, ILL., CODE ch. 5, art. 66 (1971); KENILWORTH, ILL., CODE ch. 7 (1970); LAKE IN THE HILLS, ILL., CODE ch. 35 (1968); LOMBARD, ILL., CODE ch. 5.56 amended (1970); MORTON GROVE, ILL., CODE ch. 114 amended (1969); NILES, ILL., CODE ch. 23 amended (1965); NORTHFIELD, ILL., CODE ch. 27 (1966); Park Forest South, Ill., Ordinance 318 (Aug. 24, 1976); ROSELLE, ILL., CODE ch. 9, art. IV, div. 3 (1970); SKOKIE, ILL., CODE ch. 46 (1979).

Chicago does not have a permit scheme or regulations of any type for door-to-door soliciting or canvassing. See also note 19 *supra*.

51. *Cantwell v. Connecticut*, 310 U.S. 296, 301-02 (1940). At issue was a Connecticut statute which provided in part:

No person shall solicit . . . unless such cause shall have been approved by the secretary of the public welfare council. Upon application of any person in behalf of such cause, the secretary shall determine whether such cause is a religious one or is a bona fide object of charity or philanthropy and conforms to reasonable standards of efficiency and integrity and, if he shall so find, shall approve the same and issue . . . a certificate to that effect.

52. 310 U.S. 296 (1940).

53. The statute authorized the secretary of the public welfare council of the state to determine whether a particular cause is religious. If not, approval to canvass is denied. Thus the statute could be subject to the whims or prejudices of the state authority. 310 U.S. 296, 301-02 (1940). Cf. CHAFEE, *supra* note 10, at 407 (defending the discretion of trained officials "to weed out undesirables").

regulation was too great, and it was held unconstitutional. The Court did not go so far as to state that all permit systems amounted to prior restraint; rather, the Court approved of regulations of solicitation for funds as a way for the state to prevent fraud.<sup>54</sup> The Court even suggested an identification system.<sup>55</sup> Whether this right to regulate applied only to the state, and not to numerous municipal governments, was never specified.<sup>56</sup> Even so, *Cantwell* certainly gave both municipal and state regulators enough leeway to require permits of those who ask for money while speaking to people door-to-door. Except for specific types of permit systems recently ruled unconstitutional, this holds true today.<sup>57</sup>

Even though he preferred that the homeowner decide and indicate whether canvassers were welcome at the door (*e.g.*, with a sign),<sup>58</sup> the champion of the first amendment,<sup>59</sup> Justice

54. 310 U.S. 296, 306 (1940).

55. "Without doubt a state may protect its citizens from fraudulent solicitation by requiring a stranger in the community, before permitting him publicly to solicit funds for any purpose, to establish his identity and his authority to act for the cause which he purports to represent." *Id.* at 306. If the canvasser is a local girl scout rather than a "stranger" does the Court imply that such exceptions would be constitutional? Some municipalities have taken the Court's language literally. See BROOKFIELD, ILL., CODE ch. 7, § 7-24(c)(12) (amended 1966) (fee varies for local versus out of town solicitors); CHICAGO HEIGHTS, ILL., CODE ch. 32, § 32-2 (1972) (local exemption); CLARENDON HILLS, ILL., CODE ch. 34, § 34.07 (1977) (exempts local dairy companies from canvassing regulations); LEMONT, ILL., CODE art. 22, § 23.2205 (1963) (exempts municipal residents); Mundelein, Ill., Ordinance 78-4-10 (Apr. 24, 1978) (§ 5 exempts local merchants and farmers); WILLOW SPRINGS, ILL., CODE ch. 10, § 5-10 (1967) (exempts local not-for-profit organizations). This list is not exhaustive; other numerous Chicago area ordinances give city councils or village boards the power to exempt whomever they wish. The local exemption does of course raise fourteenth amendment equal protection questions.

56. *Cantwell v. Connecticut*, 310 U.S. 296, 306-07 (1940).

57. "Soliciting financial support is undoubtedly subject to reasonable regulation . . ." *Village of Schaumburg v. Citizens for a Better Env't*, 444 U.S. 620, 632 (1980). See also *Hynes v. Mayor of Oradell*, 425 U.S. 610, 619 (1976).

58. The National Institute of Municipal Law Officers has proposed a form of regulation to its member cities<sup>13</sup> which would make it an offense for any person to ring the bell of a householder who has appropriately indicated that he is unwilling to be disturbed. This or any similar regulation leaves the decision as to whether distributors of literature may lawfully call at a home where it belongs—with the homeowner himself.

*Martin v. Struthers*, 319 U.S. 141, 148 (1943) (citation omitted). In footnote 13 the Court stated, "We do not, by this reference, mean to express any opinion on the wisdom or validity of the particular proposals of the Institute." Perhaps if the Court had expressed an opinion there would have been much less litigation.

59. See Meiklejohn, *Public Speech in the Burger Court: The Influence of Mr. Justice Black*, 8 U. TOL. L. REV. 301 (1977). See also Justice Black's dissent in *Breard v. Alexandria*, 341 U.S. 622, 649 (1951), which upheld a ped-

Black, approved of registration systems for canvassers. In *Martin v. Struthers*,<sup>60</sup> which invalidated an ordinance making it unlawful to distribute literature door-to-door, Justice Black suggested that cities use "identification devices."<sup>61</sup> He did not specify what the devices should be, saying that cities should work the systems out for themselves.<sup>62</sup> Until *Hynes v. Mayor of Oradell*<sup>63</sup> in 1976, towns and cities did indeed work things out for themselves, because the Court gave them no more guidance for their permit systems and registration requirements than the vague dicta in *Schneider*, *Cantwell*, and *Martin*.

Prior to *Hynes*, there was a line of cases dealing with whether the first amendment protected "commercial speech"<sup>64</sup> on the streets and at the door. The distinction between commercial and noncommercial speech was in past cases crucial<sup>65</sup> for purposes of first amendment protection, and still is particularly relevant to door-to-door canvassing because many ordinances regulate the two separately, and often regulate commercial speech more restrictively.<sup>66</sup> An early case, *Valentine v.*

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dling ordinance applied against a magazine salesman: "[T]he freedom of the people of this Nation cannot survive even a little governmental hobbling of religious or political ideas, whether they be communicated orally or through the press." *Id.* at 650. Nonetheless, Justice Black did not believe that merchants selling pots door-to-door should enjoy first amendment protection. 341 U.S. at 650 n.\*.

60. 319 U.S. 141 (1943).

61. *Id.* at 148.

62. *Id.* at 148-49.

63. 425 U.S. 610 (1976).

64. "Commercial speech" has been defined as that which is not "communicating information and disseminating opinion" but is "purely commercial advertising," *Valentine v. Chrestensen*, 316 U.S. 52, 54 (1942); or "[I]nformation about the characteristics and costs of goods and services," *Village of Schaumburg v. Citizens for a Better Env't*, 444 U.S. 620, 632 (1980); or just plain "selling," *Breard v. Alexandria*, 341 U.S. 622, 642 (1951). See generally *Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council*, 425 U.S. 748 (1976); *Bigelow v. Virginia*, 421 U.S. 809 (1975).

65. *New York Times Co. v. Sullivan*, 376 U.S. 254, 266 (1964); *Breard v. Alexandria*, 341 U.S. 622 (1951); *Valentine v. Chrestensen*, 316 U.S. 52 (1942).

66. See, e.g., *BROOKFIELD, ILL.*, CODE ch. 7, § 7-24.13 (1966); *Carol Stream, Ill.*, Ordinance 267 (Sept. 14, 1971); *CRETE, ILL.*, CODE ch. 2, § 2.2.20 (1973); *GLENDAL HEIGHTS, ILL.*, CODE ch. 15 amended, § 15-2 (1977); *LA GRANGE, ILL.*, CODE ch. 117 amended, §§ 117-55, 117-60 (1962); *LA GRANGE PARK, ILL.*, CODE ch. 15, arts. I-III (1970); *LINCOLNSHIRE, ILL.*, CODE ch. 45, § 45-14 (1961); *NILES, ILL.*, CODE ch. 23 (1965); *Northbrook, Ill.*, Ordinance 70-35 (June 9, 1970); *Palos Heights, Ill.*, Ordinance 0-21-71 (Mar. 16, 1971); *Palos Hills, Ill.*, Ordinance 450 (Aug. 9, 1973); *PARK FOREST, ILL.*, CODE ch. 23 amended (1966); *RIVER GROVE, ILL.*, CODE ch. 32 (1958); *ROSELLE, ILL.*, CODE ch. 9, art. VI (1970); *St. Charles, Ill.*, Ordinance 1979-M amending ch. 25 (Mar. 5, 1979); *Tinley Park, Ill.*, Ordinance 74-0-029 (July 1, 1974); *WESTMONT, ILL.*, CODE ch. 16, art. III amended (1972); *WILLOW SPRINGS, ILL.*, CODE ch. 10 (1967).

One commentator, moreover, suggests that a further distinction among door-to-door canvassers be incorporated, *i.e.*, charitable solicitors should receive less protection than religious solicitors. See *Jones*, *supra* note 17.

*Chrestensen*,<sup>67</sup> although it did not deal with door-to-door canvassing,<sup>68</sup> did bolster the municipality's right to bar distribution of commercial literature, even with a noncommercial message appended.<sup>69</sup>

On the other hand, a distribution of religious literature which incorporates an appeal for money could not be prohibited, as in *Jamison v. Texas*.<sup>70</sup> Moreover, *Murdock v. Pennsylvania*<sup>71</sup> held that the sale of religious literature at the door would not subject itinerant preachers to commercial license fee requirements, nor would the preacher's earning a living from the sale of such literature bring him into the commercial category, as in *Follett v. McCormick*.<sup>72</sup> In *Murdock* the Court conceded that "drawing a line"<sup>73</sup> between commercial and noncommercial activity would be difficult. The only solution was for the Court to look at the entire transaction<sup>74</sup> to determine whether it was primarily commercial or noncommercial.

In *Breard v. Alexandria*,<sup>75</sup> the Court upheld a door-to-door magazine salesman's conviction for violating a nuisance ordinance that banned peddling despite his defense that such sales were protected by the first amendment guarantees of freedom of speech and press. In the Court's view, the primary object of the transaction, sale of the magazine, made it commercial. How-

67. 316 U.S. 52 (1942).

68. The respondent was distributing handbills on city streets.

69. On one side of the handbill was an advertisement about a submarine exhibition and on the other side was a protest of the City Dock Department's refusal of wharfage facilities for the vessel. 316 U.S. at 53.

70. 318 U.S. 413 (1943) (religious group distributed handbills which on one side included details of a forthcoming speech and on the other repeated the invitation but also offered two books for sale).

71. 319 U.S. 105 (1943). The Court also noted that the right to use the press for the expression of views is not the same as the distribution of commercial handbills. Furthermore, "it should be remembered that the pamphlets of Thomas Paine were not distributed free of charge." 319 U.S. at 111.

72. 321 U.S. 573 (1944) (license fee on minister selling religious books would amount to a tax on first amendment constitutional privilege of free exercise of religion).

73. "As we have said, the problem of drawing the line between a purely commercial activity and a religious one will at times be difficult." *Murdock v. Pennsylvania*, 319 U.S. 105, 111 (1943). See also *Village of Schaumburg v. Citizens for a Better Env't*, 444 U.S. 639, 642 (1980) (Rehnquist, J., dissenting).

74. See, e.g., *Breard v. Alexandria*, 341 U.S. 622, 642 (1951) ("We agree that the fact that periodicals are sold does not put them beyond the protection of the First Amendment. The selling, however, brings into the transaction a commercial feature."); *Follett v. McCormick*, 321 U.S. 573, 576-77 (1943) (determining that itinerant preachers who make their living from selling religious literature are not engaged in "commercial undertakings"); *Murdock v. Pennsylvania*, 319 U.S. 105, 111 (1943) (noting that the selling of religious literature is a part of a wholly religious activity).

75. 341 U.S. 622 (1951).

ever, since *Breard*, the line between unprotected commercial speech and constitutionally protected speech has blurred.<sup>76</sup> Now, an outright ban on commercial speech is no longer constitutionally permissible,<sup>77</sup> although the Court recognized the need for and permits greater regulation of commercial speech than noncommercial speech.<sup>78</sup> Whether the recent first amendment protection granted to commercial speech would require a different result in a *Breard* situation is unclear.<sup>79</sup>

Two recent cases, *Hynes v. Mayor of Oradell*<sup>80</sup> and *Schaumburg v. Citizens for a Better Environment*,<sup>81</sup> involved ordinances regulating door-to-door canvassing which attempted to follow the Court's dicta that identification and registration systems were permissible. The Court voided the ordinance in *Hynes* for several reasons. First, the ordinance made various exceptions to its permit scheme, notably for canvassers working for a "recognized charitable cause,"<sup>82</sup> without defining the phrase. In ad-

76. See, e.g., *Bates v. State Bar of Ariz.*, 433 U.S. 350 (1977) (advertisement of routine services by lawyers constitutionally protected); *Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748 (1976) (drug prices); *Bigelow v. Virginia*, 421 U.S. 809 (1975) (abortion advertisement).

77. "Last Term in *Bigelow v. Virginia* . . . the notion of unprotected 'commercial speech' all but passed from the scene." *Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 759 (1976). See generally Meiklejohn, *Commercial Speech and the First Amendment*, 13 CAL. W. L. REV. 430, 431, 444-45 (1977) (the distinction between commercial and noncommercial speech is purely artificial and thus both types should be fully protected by the first amendment).

78. *Friedman v. Rogers*, 440 U.S. 1, 10 (1979) (certain features of commercial speech differentiate it from other varieties of speech in ways that suggest a different degree of protection); *Ohralik v. Ohio Bar Ass'n*, 436 U.S. 447, 456 (1978) ("To require a parity of constitutional protection for commercial and non-commercial speech alike could invite dilution . . . of the force of the Amendment's guarantee with respect to the latter kind of speech."). See generally Comment, *Unsolicited Commercial Telephone Calls and the First Amendment: A Constitutional Hangup*, 11 PAC. L. J. 143, 160 (1979).

79. For example, in *Ohralik*, the first amendment would not protect a lawyer from a disciplinary action for improper in-person solicitation. The Court distinguished *Ohralik* from the constitutionally protected advertising by lawyers in *Bates v. State Bar of Ariz.*, 433 U.S. 350 (1977), on the ground that the in-person solicitation was an area of potential harm such that the state had a greater interest in protecting the public. Thus, the in-person aspect of door-to-door magazine sales may be enough to permit municipalities to ban it. On the other hand, the protection afforded magazines under the freedom of the press clause may be enough to extend it to the door-to-door sale of magazines. The latter position was taken by Mr. Justice Black in his dissent in *Breard v. Alexandria*, 341 U.S. 622, 649 (1951). The question is whether the in-person distinction will control in future commercial speech cases.

80. 425 U.S. 610 (1976).

81. 444 U.S. 620 (1980).

82. 425 U.S. at 621. The difficulty of defining whether a particular group is charitable, religious or commercial is particularly vexing for municipalities. See Jones, *supra* note 17, at 56.

dition, the ordinance did not specify the type of information and identification to be supplied to the police department prior to canvassing. Because of these ambiguities, the Court found the ordinance impermissibly vague. The Court expressly stated that it would not decide whether the ordinance would be constitutional if its vague provisions were made more specific.<sup>83</sup> Instead, the Court repeated the general rule that "the police power permits reasonable regulation for public safety."<sup>84</sup>

In *Village of Schaumburg*, the ordinance<sup>85</sup> required charitable organizations that solicit contributions to show that at least seventy-five percent of the proceeds collected were used for the "charitable purpose."<sup>86</sup> The ordinance's definition of "charitable purpose" excluded solicitors' wages and attorneys' fees, as well as other "administrative expenses." The Supreme Court agreed with the lower courts that the seventy-five percent rule was unconstitutionally overbroad because it would prohibit solicitation by legitimate organizations. Specifically, the Court pointed out that the Schaumburg ordinance would impede those groups whose primary activities included the dissemination of information by its paid solicitors and advocacy by its attorneys.<sup>87</sup> Furthermore, the Court noted that such paid solicitors were not engaged in commercial speech because their solicitations were not concerned with private economic decisions.<sup>88</sup>

The Village of Schaumburg argued that the ordinance only

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83. *Hynes v. Mayor of Oradell*, 425 U.S. 610, 622 (1976).

84. *Id.* at 619.

85. Article III of chapter 22 of the Schaumburg Village Code. The relevant sections of this ordinance appear in *Village of Schaumburg v. Citizens for a Better Env't*, 444 U.S. 620, 622-24 nn.1-4 (1980).

86. The case focuses on § 22-20(g), which set out the conditions necessary to satisfy the 75% requirement. The ordinance provides that the following items shall not be deemed to be used for the charitable purposes of the organization: "(1) Salaries or commissions paid to solicitors; (2) Administrative expenses of the organization, including, but not limited to, salaries, attorneys' fees, rents, telephone, advertising expenses, contributions to other organizations and persons, except as charitable contributions and related expenses incurred as administrative or overhead items." 444 U.S. at 624.

87. 444 U.S. at 635-36. By considering attorneys' fees not to be a charitable purpose, the Schaumburg ordinance in effect bans a particular form of speech—litigation—protected by the first amendment. See *NAACP v. Button*, 371 U.S. 415 (1963).

88. 444 U.S. at 632. See *Follett v. McCormick*, 321 U.S. 573 (1944).

During oral arguments for *Village of Schaumburg*, the Court was concerned about the distinction between commercial and noncommercial solicitation. For example, Mr. Justice White hypothesized a writer going door-to-door raising funds to publish his book and a college student selling magazines door-to-door to pay his way through college (from the author's personal notes of oral argument). Whether these activities would be protected by the first amendment depends in part on the viability of *Breard v. Alexandria*, 341 U.S. 622 (1951). See note 79 *supra*.



attempted to serve the legitimate municipal interests of preventing fraud and preserving privacy. The Court agreed that Schaumburg's goals were sound, but found the seventy-five percent provision not "narrow enough"<sup>89</sup> to serve these governmental interests. Nevertheless, as the Court has always done, it left the municipality's power to regulate door-to-door canvassing intact, suggesting that disclosure of the use of the funds collected may be the proper way to prevent fraud.<sup>90</sup> Hence the Court may some day decide the constitutionality of a disclosure ordinance, just as it has had to decide the constitutionality of an identification system (*Hynes*) and a fraud prevention device (*Village of Schaumburg*), both of which the Court had previously suggested.<sup>91</sup>

The current Supreme Court standards for door-to-door canvassing ordinances still allow municipalities to require the canvasser to establish his identity,<sup>92</sup> although this requirement must not be vague. Municipalities can also require disclosure of finances<sup>93</sup> and regulate the hours of canvassing.<sup>94</sup> These regulations cannot grant discretion to the administering agencies if that discretion carries any potential to determine what messages the residents will hear,<sup>95</sup> as did the regulation in *Cantwell*. The regulations must be narrowly drawn so that they serve a legitimate municipal interest, such as fraud prevention, without unnecessarily infringing upon canvassers' speech.<sup>96</sup>

Yet exactly what identification can be required, how much financial information can be requested, and what hours are reasonable are areas that are left open for creative municipalities to keep door-to-door canvassers out.<sup>97</sup> For canvassing organiza-

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89. *Village of Schaumburg*, 444 U.S. at 637.

90. *Id.*

91. *Martin v. Struthers*, 319 U.S. 141, 148 (1943) (identification system); *Cantwell v. Connecticut*, 310 U.S. 296, 306-07 (1940) (fraud prevention).

92. *Hynes v. Mayor of Oradell*, 425 U.S. 610, 618 (1976), citing Justice Black's "identification devices" from *Martin v. Struthers*, 319 U.S. at 148.

93. *Village of Schaumburg*, 444 U.S. at 637-38.

94. *Cantwell v. Connecticut*, 310 U.S. 296, 306-07 (1940); *Schneider v. State*, 308 U.S. 147, 165 (1939).

95. See *Hynes v. Mayor of Oradell*, 425 U.S. 610, 617 (1976).

96. *Village of Schaumburg*, 444 U.S. at 637. The Court found that the 75% provision which was intended to protect against fraud, crime and undue annoyances "only peripherally promoted" those goals, and that there were "measures less destructive of First Amendment interests" available.

97. Indeed, the hours limitation is a popular and effective way to stifle door-to-door canvassing. A 5 p.m. or 6 p.m. curfew prevents canvassers from reaching the vast bulk of working people, thereby rendering the canvass futile. See generally *Jones*, *supra* note 17, at 56. See, e.g., BARTLETT, ILL., CODE ch. 15, § 15.1612 (1965); Batavia, Ill., Ordinance 71-K, § 9 (Mar. 3, 1971); Burr Ridge, Ill., Ordinance 191, § 5 (Sept. 18, 1972); CLARENDON HILLS, ILL., CODE ch. 34, § 34.09 (1977); COUNTRYSIDE, ILL., CODE ch. 12, art. VI

tions this means the growth of the ever-increasing patchwork<sup>98</sup> of municipal ordinances will continue unabated, unless the Supreme Court bans such regulation altogether, or the municipalities adopt a constitutionally fair, uniform ordinance. Since the former solution is highly unlikely in light of the Court's consistent support for such regulations, the latter approach may be the only way<sup>99</sup> to balance<sup>100</sup> the canvassing organizations' first amendment rights with the municipalities' legitimate exercise of police power, and to avoid the endless stream of litigation.

#### MODEL ORDINANCE

Here are some suggested provisions for a "not-for-profit solicitors"<sup>101</sup> ordinance:

Section 1.<sup>102</sup> "Not-for-profit solicitor" means people or organiza-

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amended, § 12-6.05 (1970); DES PLAINES, ILL., CODE ch. 46 amended, § 5-46-9 (1963); HINSDALE, ILL., CODE ch. 21 amended, § 21-6A.05 (1965); LIBERTYVILLE, ILL., CODE ch. 25, § 25.8 (1979); NORTHFIELD, ILL., CODE ch. 27, § 27-9 (1966); NORTH RIVERSIDE, ILL., CODE art. 52, § 2-52-7 (1966); LAKE FOREST, ILL., CODE ch. 29, art. IV, § 29-44 (1971); Orland Park, Ill., Ordinance 539, § 11 (Apr. 9, 1973); RIVER GROVE, ILL., CODE ch. 29, art. IV, § 29-44 (1958).

98. In the Chicago area alone there are over 100 suburban municipalities, each with its own ordinances. They differ from each other in letter, spirit, or enforcement. Furthermore, each requires a separate registration application.

99. "Police power" encompasses the inherent right of state and local governments to enact legislation protecting the health, safety, morals or general welfare of the people within their jurisdictions. These are decisions of strategy and policy and are nonjudicial. *See generally* J. NOWAK, R. ROTUNDA & J. YOUNG, CONSTITUTIONAL LAW 389 (1977); O'NEAL, *supra* note 10, at 54. *See also* *Martin v. Struthers*, 319 U.S. 141, 152 (1943) (Frankfurter, J., dissenting) (as to whose responsibility it is to regulate door-to-door canvassers).

100. There is also the balance between the rights of the speaker, a willing listener, and the resident who wants to be left alone. *See* Stone, *supra* note 10, at 342, 371. On the other hand, the right of privacy should not be so protected that a blanket prohibition prevents access to all residents of a community regardless of their interests. *See* T.I. EMERSON, THE SYSTEM OF FREEDOM OF EXPRESSION 558 (1970).

101. This article does not intend to suggest a "for-profit" solicitors' ordinance, nor is it intended to design an identification ordinance for petitioners or other non-fundraising activities.

102. The Illinois Municipal League Information Services (May 6, 1970) has a model ordinance (League Model) pertaining to the regulation of solicitors which defines soliciting.

##### Section 1: Definitions:

That for the purpose of this Article, the following words as used herein shall be construed to have the meaning herein ascribed thereto, to-wit:

Soliciting: shall mean and include any one or more of the following activities:

Seeking to obtain orders for the purchase of goods, wares, merchandise, foodstuffs, services, of any kind, character or description whatever, for any kind of consideration whatever, or

tions

- a) seeking subscriptions to periodicals, books, or any other publication, or
- b) requesting gifts or contributions of money or other items of value, or
- c) selling or giving away candy, buttons, or other items in exchange for a donation of money or any item of value

for the benefit of any charitable or not-for-profit association, organization, corporation or project engaging in any benevolent, philanthropic, religious, patriotic, eleemosynary, educational, or public interest activity.<sup>103</sup>

Section 2.<sup>104</sup> All "not-for-profit solicitors" who desire to visit any residential building or structure in the community without the prior consent of the resident shall file a letter with the city clerk<sup>105</sup> at least five business days prior to the proposed solicitation.

Section 2 gives a municipality a reasonable time to make an investigation of the applying organization and its solicitors.

Section 3. The letter filed with the city clerk shall contain the following information:

- a) name, address, and phone number of the organization;
- b) name, address, and business phone number of the principal officers of the organization, including the direct supervisor of the solicitation;
- c) a summary breaking down the uses of the funds collected or a copy of the most recent financial statement prepared by an independent auditor;
- d) dates, times, and places of the proposed solicitation;
- e) name, address, phone number, and social security number of all persons who will solicit;

Seeking to obtain prospective customers for application or purchase of insurance of any type or character; or

Seeking to obtain subscriptions to books, magazines, periodicals, newspapers and every other type or kind of publication; or

Seeking to obtain gifts or contributions of money, clothing or any other valuable thing for the support or benefit of any charitable or non-profit association, organization, corporation or project.

Although the suggested definition in the text is based upon this definition, it eliminates "for-profit" types of activities. A large number of municipalities in the Chicago area have adopted the League Model either in whole or in substantial part.

103. This definition is based upon the definition set out in the model ordinance recommended by Bronson C. Lafollette, Attorney General of Wisconsin, dated April 14, 1978. Section 2(D) provides: "Charitable organization shall include any benevolent, philanthropic, patriotic or eleemosynary person, partnership, association or corporation; or one purporting to be such."

104. Section 2 of the League Model provides: "Every person desiring to engage in soliciting as herein defined from persons in residences within the municipality, is hereby required to make written application for a Certificate of Registration as hereinafter provided."

105. The League Model requires that applications be made to the police chief. This, however, seems to be an unnecessary task for the police and is better handled with less intimidation of the canvassers by civilian administrators, as long as the police are adequately informed of the canvass.

- f) names of any officer or solicitor who has been convicted of a felony under the laws of any state or under federal law.<sup>106</sup>

These requirements provide the municipality with enough information to protect its citizens without placing an undue burden on the canvassing organization.

Section 4. Permission to solicit shall be granted within five business days of receipt of the letter; failure to grant or deny permission within five business days shall be deemed a grant of permission.<sup>107</sup>

This provision is mandated by *A Quaker Action Group v. Morton*,<sup>108</sup> which required administrative action within twenty-four hours on demonstration-permit applications. Immediate action is necessitated by the priority of first amendment rights, since a delay in their enforcement can be equivalent to denial. From a practical standpoint, this provision also reduces the scheduling difficulties of canvassing organizations in large metropolitan areas.

Section 5. The city clerk can deny permission to solicit only on one or more of the following grounds:

- a) statements in the letter were untrue or incomplete;
- b) the organization or solicitors have engaged in documentable fraudulent transactions;
- c) the funds or other items collected will not be used for the charitable or not-for-profit association, organization, corporation, or project.<sup>109</sup>

An explicit, ministerial means of denying permission is the only constitutionally permissible method,<sup>110</sup> and any grant of discretion would be suspect.<sup>111</sup>

106. Section 3 of the League Model requires far more information, some of dubious utility, such as marital status. It also requires fingerprinting and allows the police chief to request any additional information deemed necessary. This fingerprinting requirement was held unconstitutional in *Citizens for a Better Env't v. Justice*, No. 76 C 470 (N.D. Ill., Feb. 25, 1977), citing with approval *Schneider v. State*, 308 U.S. 147 (1939). The "additional information" requirement seems to grant too much discretion to the police chief, particularly if he requests an unreasonable amount of information.

107. The League Model does not set a time limit on when the permit to solicit must be issued. For canvassing organizations this is especially troublesome because the administrative delays can be unending.

108. 516 F.2d 717, 735 (D.C. Cir. 1975). See also *Shuttlesworth v. Birmingham*, 394 U.S. 147, 163 (1969) (Harlan, J., concurring) (such permit applications "must be handled on an expedited basis").

109. Section 4 of the League Model denies a solicitation permit to persons convicted of a felony within five years of application.

110. See *Niemotko v. Maryland*, 340 U.S. 268, 271 (1951) (absence of a licensing ordinance does not give officials the right to prevent the public from engaging in first amendment activities).

111. Discretionary power vested in officials may operate as a prior restraint of first amendment rights. *Kunz v. New York*, 340 U.S. 290, 294 (1951). Reasonably clear guidelines are necessary to prevent official arbitrariness or discrimination in the enforcement of a statute. *Smith v.*

Section 6. Any denial of permission to canvass must be in writing with the reason(s) set forth. Within seven business days of receipt of the denial, an organization or individual applicant may appeal the denial to the city council. The city council must decide at its next meeting whether to uphold the denial or not. The organization or individual who appeals shall have an opportunity to make a short statement to the city council before it decides the appeal.<sup>112</sup>

This section provides minimal procedural rights<sup>113</sup> to an aggrieved applicant, with first amendment demands for prompt action in mind. It is particularly important that the city council hear and decide appeals immediately because it is so easy for a municipal system to delay a final decision.<sup>114</sup>

Section 7. When permitted, solicitation shall take place only between the hours of 9:00 a.m. and 9:00 p.m. on weekdays and 11 a.m. and 6 p.m. on Saturdays. No solicitation shall be allowed on Sundays or holidays.<sup>115</sup>

This provision grants the canvassing organization enough hours to reach a large portion of the working public<sup>116</sup> without infringing on the privacy of the residents of the community.<sup>117</sup>

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Goguen, 415 U.S. 566, 572-73 (1974); *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972).

112. Section 3 of the League Model only requires the police chief to keep an accurate record of all applications, information received, and denials of applications. He is not required to disclose his reasons for rejecting any application. This can frustrate canvassing organizations and lead to arbitrary decisionmaking.

113. The absence of a provision for administrative or judicial review of a denial or revocation may violate the constitutional requirement of strict procedural safeguards. *Freedman v. Maryland*, 380 U.S. 51 (1965); *International Soc'y for Krishna Consciousness, Inc. v. Rochford*, 585 F.2d 263, 271 (7th Cir. 1978); *International Soc'y for Krishna Consciousness of W. Pa, Inc. v. Griffin*, 437 F. Supp. 666, 671 (W.D. Pa. 1977).

114. CBE, for example, has heard every conceivable reason for delaying a grant of the canvassing permit—the application processor is on vacation for the next two weeks; the information sent is incomplete; the application was never received; the wrong forms were filled out; the village board must approve your application at the next meeting in two weeks; and the village board did not get to your application at the meeting.

115. Section 9 of the League Model provides:

It is hereby declared to be unlawful and shall constitute a nuisance for any person whether registered under this Ordinance or not, to go upon any premises and ring the door bell upon or near any door of a residence located thereon, or rap or knock upon any door, or create any sound in any other manner calculated to attract the attention of the occupant of such residence, for the purpose of securing an audience with the occupant thereof and engage in soliciting as herein defined, prior to 9:00 o'clock A.M. or after 9:00 o'clock P.M. of any week day, or at any time on a Sunday or on a State or National Holiday.

116. See *Jones, supra* note 17, at 57 ("The [hours] limitation cannot prohibit solicitations during those times of the day when the solicitor will have the best opportunity to contact people.")

117. Individuals can post "No Soliciting" signs or signs that read "Do Not Solicit After Hour of —." See *Martin v. Struthers*, 319 U.S. 141, 148 (1943); see

There are other provisions which may be included, such as a revocation provision (which would be similar to denial of permission), penalties for violation of the ordinance and for disobeying "no solicitors" signs, and addition of recent conviction of a felony to the grounds for denying permission.<sup>118</sup> A rule to bear in mind is that the regulations must be the least restrictive available means of accomplishing the governmental goals.<sup>119</sup> If municipalities will adopt the proposed provisions without making extraneous or complex revisions, perhaps legitimate and beneficial canvassing organizations can survive without being burdened unduly by a patchwork of differing, overly restrictive ordinances.

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*generally* Comment, *Unsolicited Commercial Telephone Calls and the First Amendment: A Constitutional Hangup*, 11 PAC. L.J. 143, 162 (1979).

118. The felony conviction provision was not included in the proposed ordinance because it discriminates against those who are rehabilitated. On the other hand, if there is a rational reason to exclude felons, then it may be permissible.

119. "Where First Amendment rights are involved, the courts have long held that government may not employ means more restrictive than absolutely necessary to the task at hand." O'NEAL, *supra* note 10, at 75. "The 'less restrictive method' individualizes the decision whether to receive the communication, thereby leaving open the channels of communication with willing listeners." Stone, *supra* note 10, at 375.

