Control of Solicitors and Peddlers

In 1933, in the case of *Green River v. Fuller Brush Co.,* 65 F.2d 112 (1933), the U. S. Court of Appeals for the Tenth Circuit upheld the validity of the following ordinance:

> "The practice of going in and upon private residences in the City [Town] of _____ by solicitors, peddlers, hawkers, itinerant merchants or transient vendors of merchandise not having been requested or invited to do so by the owner or owners, occupant or occupants of said private residence for the purpose of soliciting orders for the sale of goods, wares, and merchandise and/or disposing of and/or peddling or hawking the same is declared to be a nuisance and punishable as such nuisance as a misdemeanor."

The court held that the municipalities in Wyoming had the power to determine what activities constitute nuisances and to punish perpetrators.

Following this decision, many municipalities around the country, including here in Alabama, adopted Green River type ordinances to regulate solicitors within the municipal limits. Many of these ordinances tended to draw a distinction between commercial and noncommercial speech, though, based on court rulings that noncommercial solicitation generally involved the promotion of religious or political ideas and was therefore protected by the First Amendment to the U.S. Constitution. In some cases, all noncommercial solicitation was allowed, while commercial speech was prohibited.

Commercial speech carried with it the baggage of merely promoting a business objective as opposed to attempting to advance a political or religious purpose. Courts which analyzed commercial speech regulations generally refused to extend First Amendment protection. *See*, *e.g*., *Breard v. Alexandria*, 341 U.S. 622 (1951). Thus, municipalities enjoyed greater latitude when regulating purely commercial speech, including regulations placed on commercial solicitors.

In recent years, views on the First Amendment and commercial speech have changed, however. *See, e.g., Cincinnati v. Discovery Network Inc.*, 507 U.S. 410 (1993). For example, in *Central Hudson Gas & Electric v. Public Services Commission of New York*, 447 U.S. 557 (1980), the U.S. Supreme Court held that commercial speech is protected by the First Amendment if it concerns lawful activities and is not misleading. To regulate commercial speech, a government must assert a substantial governmental interest in the regulation and show that its regulation materially advances that interest. Some courts have gone even further and held that a municipality must use the least restrictive means of achieving the governmental objective.

But does this mean that solicitation cannot be regulated by a municipality? Transient solicitors often travel in groups under the guidance of a glib leader who is armed with a legal-looking document which says that they are not subject to local regulation. Often these documents quote Supreme Court cases in such a manner as to mislead and confuse the reader. In some cases, local officials are led to believe that they will be subject to civil liability for enforcing any ordinance designed to regulate such activity.

Attempts by solicitors to challenge the right of municipalities to regulate solicitation are misguided, however. All types of solicitation, whether commercial, religious or political, are subject to reasonable regulation by municipalities. *Larsen v. Valente,* 456 U.S. 228 (1982). It is fairly clear, though, that courts now consider any solicitation ordinance as a restriction on First Amendment rights. This means that any regulation must meet certain criteria in order to be valid.

This article examines a number of court decisions regarding solicitation and provides guidance on how to properly draft an ordinance regulating this activity. Recent developments in this area may require officials to re-examine their ordinances and consider amendments in order to bring them into compliance with constitutional requirements.

Legitimate Goals

Although courts have recognized substantial First Amendment protection for door-to-door solicitors, *Martin v. Struthers,* 319 U.S. 141 (1943), the U.S. Supreme Court has upheld the right of a local jurisdiction to regulate solicitation so long as

the regulation is in furtherance of a legitimate municipal objective. *See, e.g., Heffron v. International Society for Krishna Consciousness, Inc.*, 452 U.S. 640 (1981).

Municipal officials should be able to clearly articulate the objective behind the ordinance if it is questioned. Peddling, soliciting and door-to-door canvassing raise legitimate public protection concerns for municipal citizens and officials. In the interest of public protection, municipalities have the power to regulate persons engaged in these activities. To be valid, though, regulations must be substantially related to furthering some legitimate governmental objectives.

The two most frequently cited goals of solicitation ordinances are protecting the privacy of citizens, including the quiet enjoyment of their homes, *Carey v. Brown,* 447 U.S. 455, 471 (1980), and the prevention of crime, *Wisconsin Action Coalition v. Kenosha,* 767 F.2d. 1248 (7th Cir. 1985). In the right circumstances, courts have generally upheld solicitation ordinances on these grounds. While other legitimate municipal objectives, such as protecting citizens from fraud and other deceptive practices, may well exist, the two mentioned here are perhaps most frequently relied upon by municipal officials seeking to justify a properly drafted solicitation ordinance.

Courts have upheld ordinances requiring solicitors to register with the city, to obtain identification cards, and allowing citizens to forbid solicitation at their residences by posting a sign, at least where the ordinances leave ample alternative channels of communication for solicitors by allowing them to have contact with those residents who want to hear their message. When a city goes beyond this, though, by outlawing noncommercial solicitation altogether or by being overly restrictive in terms of the hours during which solicitation is allowed (e.g., 9 a.m. to 5 p.m.) some courts have invalidated the ordinances. Part of the rationale for overturning these ordinances is that the city has unnecessarily substituted its judgment for that of its citizens. *See*, *Citizens for a Better Environment v. Village of Olympia Fields,* 511 F.Supp. 104 (N.D. Ill. 1980).

Many of the challenges to municipal solicitation ordinances have come from religious groups claiming their right to freely exercise their religion has been taken away. The general rule is that regulation in this area "must be done, and the restriction applied, in such a manner as not to intrude upon the rights of free speech and free assembly." *Thomas v. Collins*, 323 U.S. 516, 540-541 (1945).

For instance, in *Heffron v. International Society for Krishna Consciousness*, 452 U.S. 640 (1981), the United States Supreme Court was presented with a state statute requiring all groups desiring to solicit or distribute materials at a state fair to do so only from a fixed location. Space at the fairgrounds was rented on a first-come, first-served nondiscriminatory basis. The Krishnas sought to have this ordinance struck down so they could mingle with the crowd at the fair and distribute their literature. The state argued that its interest was in safety and ensuring the orderly movement of patrons at the fair. The Court upheld this statute as a valid time, place and manner regulation because it did not discriminate against the Krishnas. In addition, the Court noted that the statute allowed members of groups to talk with patrons at the fair as long as no funds or literature changed hands.

When these ordinances have been struck down, they generally censored a group or allowed one person in the government absolute discretion to decide which groups received permits to solicit and which groups did not. *See, International Society for Krishna Consciousness of Houston, Inc. v. Houston*, 689 F.2d 541 (5th Cir. 1982). Even where funds are being solicited for a religious purpose, if the government has a compelling interest in the reasonable regulation of a protected First Amendment activity, a narrowly-drawn regulation that furthers that interest will be upheld. However, not all regulations will be upheld. For example, a resolution of an airport commission banning all First Amendment activities within the airport terminal was held facially unconstitutional in *Board of Airport Commissioners of Los Angeles v. Jews for Jesus, Inc.,* 482 U.S. 569 (1987). And, in *International Krishna Consciousness, Inc. v. Lee*, 505 U.S. 672 (1992), the U.S. Supreme Court held that a regulation banning repetitive solicitation of funds inside a terminal was reasonable.

The U.S. Supreme Court re-examined the issue of municipal regulation of solicitation in *Watchtower Bible & Tract Society of New York v. Stratton, Ohio*, 536 U.S. 150 (2002). In this case, the Court struck down a permit requirement for door-to-door solicitation and muddied the waters surrounding this already murky issue. The Court recognized that door-to-door solicitation is entitled to full First Amendment protection and that this type of solicitation is important for the dissemination of ideas, especially for those with little or no money. The Court found that to withstand a First Amendment challenge, a solicitation ordinance must find the appropriate balance between the affected speech and the governmental interests that the ordinance purports to serve. The Court held that the ordinance in this case did not further those interests. Here, the government sought to prevent crime and fraud. The Court found that this ordinance did not accomplish these goals, at least so far as noncommercial communication was concerned. The Court also found that the ordinance overly burdened noncommercial communication.

The impact of this case on local governments remains to be seen. Lower court cases since *Watchtower Bible* have found ways to distinguish this case.

For instance, in *Association of Community Organizations for Reform Now v. Town of East Greenwich*, 453 F. Supp. 2d 394 (D. R.I 2006), a federal district court in Rhode Island upheld a municipal ordinance requiring door-to-door solicitors to

obtain a permit and comply with a 7:00 p.m. curfew, arguing that the ordinance in this case was more narrowly drawn than the one in *Watchtower Bible* largely on the grounds that the regulation in question applied only to money solicitors. The court was also persuaded by other factors, including the fact that grant was automatic once the requested information was provided; the requirement that background of solicitors and their sponsoring group be provided furthered important municipal interest in protecting residents from fraud, as it helped uncover solicitors with criminal records; the ordinance discouraged prospective burglars posing as canvassers; and the regulation imposed delays in grant of permit that were not burdensome.

City's anti-panhandling ordinance, which prohibited oral requests for immediate payment of money, but permitted signs requesting money and oral requests to send money later, was content-neutral, and thus did not violate free speech rights. Ordinance did not regulate speech by pitch used, and it was indifferent to requester's stated reason for seeking money, or whether requester stated any reason at all. *Norton v. City of Springfield, Ill.,* 768 F.3d 713 (C.A.7 Ill.2014).

Likewise, a city's ordinances prohibiting "aggressive" panhandling including "obviously threatening behavior" and prohibiting the use of traffic islands and roadways for purposes other than crossing roads, entering or exiting vehicles, or "other lawful purposes" were content-neutral and targeting behavior and circumstances that the city may be concerned about even if the behavior was largely associated with certain sorts of messages. *Thayer v. City of Worcester*, --- F.3d ----, 2014 WL 2782178 (C.A.1 Mass. 2014).

And, in *Green v. City of Raleigh*, 523 F.3d 293 (4th Cir. 2008), the Fourth Circuit Court of Appeals upheld a city ordinance that required picketers to notify the city beforehand of their intent to picket.

While implying that local governments can place more extensive regulation on commercial communication than on communication that is made for political or religious purposes, the Court fell far short of endorsing this concept. In fact, other cases have struck down similar ordinances on First Amendment grounds.

In *Planet Aid v. City of St. Johns, MI,* 782 F.3d 318 (C.A.6 Mich.2015), the Sixth Circuit Court held that a city ordinance banning outdoor, unattended charitable donation bins was a content-based regulation of charitable speech, so that strict scrutiny applied to First Amendment challenge to ordinance. The ordinance did not ban or regulate all outdoor, unattended bins, but only those bins that were intended to accept donated goods which carried a message about charitable solicitation and giving. The ordinance did not stand up to strict scrutiny, and thus, violated the First Amendment right of free speech.

And, in *Watchtower Bible and Tract Society of New York, Inc. v. Municipality of San Juan*, 773 F.3d 1 (C.A.1 Puerto Rico 2014), the First Circuit Court upheld an injunction requiring some Puerto Rico municipalities to give Jehovah's Witnesses access to gated communities along public streets. The court held that Puerto Rico's Controlled Access Law (CAL), which allowed municipalities to authorize neighborhood associations to erect gates enclosing public streets, violated First Amendment rights of religious tract distributors who sought access to those streets for protected speech activities. The district court's remedial scheme, requiring that unmanned gated communities allow distributors access to public streets through issuance of access codes or keys, upon distributors' disclosure of their purpose and identities, was narrowly tailored to strike a balance between the distributors' significant interest in accessing public streets to carry out their ministry and the government's significant interest in the security of residents. Such scheme allowed distributors access to gated communities, the sharing of keys was not especially onerous to distributors, and scheme did not impose undue administrative burdens upon municipalities.

How far municipalities can go in regulating any door-to-door solicitation is still unclear. At what point does door-to-door activity rise to the level that would allow the municipality to require a permit? The League will continue to follow this area of law and update you as additional litigation occurs.

Time, Place and Manner Restrictions

Under the First Amendment, reasonable time, place and manner restrictions will be upheld as long as the restriction is narrowly tailored to serve a significant government interest and provide alternative channels of communication to exist. *Perry Education Association v. Perry Local Educator's Association*, 460 U.S. 37 (1983).

In order to be valid, a solicitation ordinance must limit itself to placing reasonable time, place and manner restrictions on solicitors. These restrictions must be:

1. content-neutral;
2. serve a legitimate governmental objective;
3. leave open ample alternative channels of communication; and
4. be narrowly tailored to serve the governmental objective.

See, *City of Watseka v. Illinois Public Action Council,* 796 F.2d 1547, 1552 (7th Cir. 1986), aff'd., 479 U.S. 1048 (1987).

Restrictions on Time

Municipalities often want to restrict the hours when solicitors may be active. Courts, though, disagree on what time restrictions are valid under the First Amendment. This makes drafting a valid ordinance difficult. The federal circuits are divided on even what standard of review to apply to these regulations. On one hand, the Third Circuit held that a town ordinance barring door-to-door canvassing after daylight hours was a reasonable time, place and manner restriction of speech that furthered the town's governmental interests in preventing crime and protecting the privacy of its residents, based on an "ample alternative channels of communication" standard. *See*, *Pennsylvania Alliance for Jobs & Energy v. Council of Munhall,* 743 F.2d 182 (3d Cir. 1984). In contrast, the Eighth Circuit has adopted a "less restrictive means" standard. *See*, *Association of Community Organization for Reform Now v. Frontenac,* 714 F.2d 813 (8th Cir. 1983). There is also the "least restrictive means" standard, which has been used by the Second Circuit. *See*, *New York City Unemployed & Welfare Council v. Brezenoff,* 677 F.2d 232 (2d Cir. 1982).

In *New Jersey Citizen Action v. Edison Township*, 797 F.2d 1250 (1986), the Third Circuit held that the defendant town's failure to show that ordinances barring door-to-door solicitation during evening hours were precisely tailored to serve the town's governmental interests in preventing crime, which precluded a finding that the solicitation ordinances in question were reasonable time, place and manner restrictions.

In *Wisconsin Action Coalition v. Kenosha,* cited above, the Seventh Circuit invalidated a city ordinance prohibiting charitable, religious and political solicitation between 8 p.m. and 8 a.m. While the court acknowledged the conflict among the circuits and expressed some preference for the "less restrictive means" standard, it decided that the impugned ordinance failed all of the review standards mentioned and it was not necessary to choose among them.

In *Watseka v. Illinois Public Action Council,* cited above, the U.S. Supreme Court affirmed without opinion a Seventh Circuit ruling which held that a city ordinance limiting door-to-door soliciting to the hours between 9 a.m. and 5 p.m., Monday through Saturday, violated the First Amendment. The Seventh Circuit held that the ordinance was not narrowly tailored to achieve a legitimate municipal interest in preventing fraud and protecting the privacy of residents. The court held that the municipality could prevent fraud by licensing solicitors and protect privacy by having homeowners post signs outside their homes stating that they did not wish to be disturbed. Also, the court ruled that the ban on solicitation during the hours from 5 p.m. and 9 p.m., which was the time period requested by the solicitors, was not sufficiently connected to the city's interest in preventing crime.

The court found that by being more restrictive than the legitimate privacy and quiet enjoyment concerns its citizens demanded, the municipality had suppressed the protected speech of the solicitors. Further, the court concluded that the city had subordinated the First Amendment rights of those residents who would be willing recipients of the solicitors' message during evening hours to the nuisance concerns of residents who did not wish to be disturbed during the same hours. In voiding the ordinance, the court noted that "[e]ven Girl Scouts will have a difficult time selling their cookies by 5 p.m." The court also reasoned that the city failed to offer evidence that its other legitimate objective, crime prevention could not have been satisfactorily served by enforcing laws against trespass, fraud, burglary, etc., or by merely enforcing the registration requirements for solicitors that the city had already adopted.

But, one court held that a city's ordinance prohibiting persons from remaining in a public square between the hours of 10:00 p.m. and 5:00 a.m. without a permit did not violate the First Amendment guarantee of free speech. The ordinance was content-neutral, since it applied to all persons regardless of their message or activities, advanced the significant government interests of protecting the safety of those wishing to use the square after hours and protecting the city's investment in that property, it was narrowly tailored, since it allowed unfettered and unrestricted access when the curfew was not in effect; and it left open alternative avenues of communication because it excluded adjacent streets, sidewalks, and bus shelters. *Cleveland v. McCardle*, --- N.E.3d ----, 2014 WL 2210652 (Ohio 2014).

Ordinances restricting the time solicitors can be active must be supported by compelling evidence that the time restrictions are needed to prevent criminal activity by persons claiming to be solicitors. Officials must be careful to make sure that the time restrictions they place on solicitors are valid under the circumstances. Courts have held that ordinances that fail to permit some evening activity by solicitors are not sufficiently tailored to serve the municipal interests. *Association of Community Organizations for Reform Now v. Frontenac, supra.*

Restrictions on Place

In addition to time restrictions, cities may also use their police power to decide where solicitors and peddlers may carry out their activities. Such regulations receive a higher degree of judicial scrutiny if they seek to restrict solicitation or peddling in a public forum than if they attempt to do so in a private forum. For example, a post office sidewalk, although set back from the street and parallel to a municipal sidewalk, is not a traditional public forum. Therefore, a United States Postal Service

regulation prohibiting all solicitation on postal premises did not violate the First Amendment when used to bar nondisruptive political solicitation on a post office sidewalk. *United States v. Kokinda,* 497 U.S. 720 (1990).

Thus, a question arises as to which areas are generally considered public forums and which are not. Some courts that have ruled in cases involving canvassers and solicitors have found nonpublic forums to include:

- the doorways to private homes, *Pennsylvania Alliance for Jobs & Energy v. Council of Munhall,* 743 F.2d 182 (3d Cir.1984),
- residential areas of university campuses, *Chapman v. Thomas,* 743 F.2d 1056 (4th Cir. 1984), *cert. denied*. 471 U.S. 1004 (1985), and
- even state-owned sports complexes, *International Soc. For Krishna Consciousness, Inc v. New Jersey Sports & Exposition Authority,* 691 F.2d 155 (3d Cir. 1982).
- Public forums, on the other hand, have been found in such places as:
- airports, *Fernandes v. Limmer,* 663 F.2d. 619 (5th Cir. 1981), *rehearing denied,* 669 F.2d. 729 (5th Cir. 1982), *and cert. denied,* 458 U.S. 1124 (1982), and
- the sidewalks or parking lots of hospitals, *Dallas Association of Community Organizations for Reform Now v. Dallas County Hospital Dist.,* 670 F. 2d 629 (5th Cir. 1982), *rehearing denied,* 680 F.2d 1391 (5th Cir. 1982). *and cert. denied,* 459 U.S. 1052 (1982).

Ordinances that regulate solicitation on streets, public thoroughfares and certain areas of town will be upheld if they are reasonable. *See e.g., Good Humor Corp. v. Mundelein*, 211 N.E.2d 269 (Ill. 1965). Government at various levels can also regulate solicitation on sidewalks, in front of businesses, in railroad stations, in airports and in other public places so long as such regulations do not unreasonably infringe on First Amendment rights. *See*, *Heffron v. International Society for Krishna Consciousness*, 452 U.S. 640 (1981); *International Society for Krishna Consciousness v. Griffin*, 437 F.Supp. 666 (W.D. Pa. 1977); *Slater v. El Paso*, 244 S.W.2d 927 (Tex. Civ. App. 1951); *Wade v. San Francisco*, 186 P.2d 181 (Cal. App. 1947). A municipal ordinance banning the sidewalk sale of all merchandise is a valid time, place and manner restriction that is not invalid under the First Amendment. *One World One Family Now v. Honolulu*, 76 F.3d 1009 (9th Cir. 1996). The Eleventh Circuit Court of Appeals has upheld a municipal ban against tables placed on sidewalks. *International Caucus of Labor Committees v. Montgomery*, Ala., 87 F.3d 1275 (11th Cir. 1996).

In *Heffron v. International Society for Krishna Consciousness*, the Supreme Court held that a State Fair rule restricting distribution and sale of written materials and solicitation of funds to booths rented on a nondiscriminatory first-come, first-served, basis constituted a permissible time, place and manner restriction on a religious group's First Amendment right to perform ritual distribution of literature and solicitation of contributions.

Solicitation may be restricted on the premises of schools and colleges, because there is no absolute right to use all parts of the school building or its immediate environs for an unlimited expressive purpose. *Grayned v. Rockford*, 408 U.S. 104 (1972); *Healy v. James*, 408 U.S. 169 (1972). Also, in a case upholding a ban imposed by a state university on commercial solicitation in dormitory rooms, the Supreme Court found that governmental restrictions upon commercial speech need not be the absolute least restrictive means available to achieve the desired end. *Board of Trustees of State University of New York v. Fox*, 492 U.S. 469 (1989). Rather, the restrictions require only a reasonable "fit" between the government's ends and the means chosen to accomplish those ends.

And, in *ISKCON Miami, Inc. v. Metropolitan Dade County*, 147 F.3d 1282 (11th Cir. 1998), the Eleventh Circuit Court of Appeals held that Miami regulations banning the sale of literature and solicitation of money inside and outside of its terminal facilities did not violate the First Amendment. The Eleventh Circuit Court of Appeals has also upheld a municipal ordinance banning tables from public sidewalks as a narrowly-tailored, content neutral regulation. *International Caucus of Labor Committees v. Montgomery, Ala.*, 111 F.3d 1548 (11th Cir. 1997).

Restrictions on the Manner of Soliciting and Licensing

Municipalities may also place some restrictions on the manner in which soliciting activities are conducted. This is frequently done through licensing requirements. A city's authority to require persons to register with the local police and obtain a permit or license before engaging in business activities within local jurisdiction can be applied to solicitors and peddlers. However, as with other licensing regulations, any ordinance adopted pursuant to that authority must be reasonable. *Collingswood v. Ringgold*, 331 A.2d 262 (N.J. 1975), *cert. denied*, 426 U.S. 901 (1976). Additionally, in the *Watchtower Bible* case noted above, the U.S. Supreme Court indicated that in some instances, these type restrictions may impermissibly infringe on protected First Amendment activities, especially where noncommercial solicitation is involved.

A solicitation ordinance that has been drafted so as to allow a city to use its licensing power to prohibit certain solicitors based upon the content of their message would violate the First Amendment. *Carey v. Brown*, 447 U.S. 455 (1980). However, a city may require persons representing organizations seeking charitable contributions to register with the city and provide certain membership and financial information if the city issues the licenses in a nondiscretionary fashion, and if the regulation is sufficiently narrowly drawn to further legitimate government interests. *International Society for Krishna Consciousness of Houston, Inc. v. Houston*, 689 F.2d 541 (5th Cir. 1982).

Ordinances cannot vest overly broad discretion in licensing officials to issue or deny a solicitation permit. *Schneider v. State*, 308 U.S. 147 (1939). An administrative official may not be empowered with unbridled discretion to determine, for example, the validity of a solicitor's message and use that determination as a basis for exercising prior restraint on the solicitation by arbitrarily denying a permit. *See generally, Largent v. Texas*, 318 U.S. 418; *Cantwell v. Connecticut*, 310 U.S. 296 (1940). But, an ordinance requiring the filing of a registration statement containing objective information that identifies groups or individuals and makes the issuance of a permit mandatory where the information is furnished is not facially invalid as a restraint on First Amendment freedoms. *Secretary of State of Maryland v. Munson*, 467 U.S. 947 (1984).

The issue of unguided direction is not the only relevant consideration for the drafter in putting together the licensing provisions of a solicitation ordinance. Other significant items to consider are:

1. **License Fees -** Local governments have been given broad discretion in imposing license fees on solicitors and peddlers. These fees, however, cannot be excessive. Fees charged cannot be prohibitive or confiscatory. Also, the fees cannot place an undue burden on interstate commerce. *See*, *Moyant v. Borough of Paramus*, 154 A.2d 9 (N.J. 1959); *Shapiro v. Newark*, 130 A.2d 907 (N.J. Super. 1957). A New York court has ruled that a municipal tax on transient retailers who operate at temporary business sites in the municipality improperly discriminates against interstate business in favor of local businesses. *Homier Distributing Co. v. Albany, NY*, 681 N.E.2d 390 (N.Y. 1997).
2. **Use of Funds** - Courts generally disfavor ordinances that specify the uses of solicited funds as a condition for granting a permit. In *Village of Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620 (1980), the Supreme Court struck down an ordinance requiring that at least 75 percent of the receipts from charitable solicitations be used only for charitable purposes. The Court held that less restrictive alternatives could be used to achieve the government's legitimate interest in preventing fraud and other deceptive practices.
3. **Bond requirements** - Some cities require commercial solicitors and peddlers to provide a bond to the city. Like any other provision in a solicitation ordinance, bonding requirements must be reasonable and comply with state law. *See*, *Citizens For a Better Environment v. City Chicago Heights*, 480 F.Supp. 188 (N.D. Ill. 1979); *Holy Spirit Assn. For the Unification of World Christianity v. Hodge*, 582 F. Supp. 592 (N.D. Tex. 1984). In a New Jersey case, for example, an ordinance requiring a surety bond in the amount of $1,000 was found to bear no reasonable relation to the amount of business done. *Moyant v. Borough of Paramus*. The court decided that the requirement was unduly oppressive and held that it was an unreasonable exercise of police power.
4. **Exemptions -** Finally, many ordinances contain provisions exempting certain types of solicitors from licensing requirements altogether. In some earlier rulings these exemptions survived constitutional scrutiny. For instance, in *Cancilla v. Gehlhar*, 27 P.2d 179 (Ore. 1933), the Oregon Supreme Court upheld an exemption that applied to farmers who sold products from their own farms. However, in later decisions various sorts of exemption clauses were found unconstitutional. The Washington Supreme Court, in *Larson v. Shelton*, 224 P.2d 1067 (Wash. 1950), struck down a licensing exemption for honorably discharged war veterans as a violation of the Equal Protection Clause of the Fourteenth Amendment. That court also viewed the exemption as a grant of special privileges and immunities. Every drafter of a solicitation ordinance should consider the possibility that selecting a particular type of solicitor for exemption, while perhaps allowable in an extremely limited number of instances, may subject the municipality to Equal Protection, First Amendment and other types of constitutional challenges. Uninvited door-to-door solicitation by one person invades the privacy and repose of the home just as much as by another. However, the *Watchtower Bible* case does seem to permit more restriction on commercial speech, at least if the entity can demonstrate how the restrictions further a legitimate governmental interest.

Regulating Commercial Solicitation

Although the Supreme Court now acknowledges that commercial speech enjoys First Amendment protection, it is protected to a lesser extent than noncommercial speech. This means that commercial speech is subject to greater regulation than is permissible in the noncommercial realm. *Ohralik v. Ohio State Bar Assn*., 436 U.S. 447, 448 (1978).

In *Central Hudson Gas & Electric Corp. v. Public Service Comm.,* 447 U.S. 557 (1980), the Supreme Court set out a

four-part test for sustaining a government restriction on commercial speech. Under the *Central Hudson* analysis, commercial speech is entitled to First Amendment protection only if it concerns lawful activity and is not misleading. Under this standard, a restriction will be upheld if it meets the following requirements: the governmental interest cited as the basis for the restriction is substantial; the regulation directly advances the governmental interest asserted; and the regulation is not more extensive than is necessary to serve that interest.

Making door-to-door sales through in-person solicitation, assuming the absence of unlawful activity or misleading information, has been found to include a sufficient element of commercial speech to qualify for First Amendment protection under the first part of the *Central Hudson* standard. *See*, *Project 80's Inc. v. City of Pocatello*, 876 F.2d 711 (9th Cir. 1988). Also, where local governments have asserted an interest in protecting the privacy of citizens, or crime prevention, as the reasons for enacting restrictions, the federal courts have had little difficulty in accepting these as substantial state interests, at least where evidence of a problem exists. *See*, *Frisby v. Schultz*, 487 U.S. 474 (1988); *Carey v. Brown*, 447 U.S. 455 (1980); *Watchtower Bible*. As a result, most municipal ordinances that regulate commercial solicitors could satisfy this second part, regardless of the specific wording of the ordinance.

The difficulties that commercial solicitation ordinances have encountered, particularly when they are too broadly worded, have occurred when the courts have applied the third part of the *Central Hudson* test. Ordinances that attempt to ban all uninvited peddling or solicitation in the name of privacy protection and crime prevention become particularly vulnerable when the courts begin to assess the extent to which these permissible governmental interests are directly advanced by such restrictions. A good example is the *Project 80's* case, where the Ninth Circuit noted that "privacy is an inherently individual matter" and it is therefore difficult to violate a person's privacy unless the person wishes to be left alone. The court went on to criticize the ordinances of Pocatello and Idaho Falls, Idaho, for seeking to make the choice for the resident regarding whether to receive uninvited solicitors by imposing a complete ban on uninvited peddling. The court ruled the ordinances did not protect privacy when applied to residences whose occupants welcome uninvited commercial solicitors. The court did, however, acknowledge at least a marginal relationship between the cities' interest in reducing crime and the act of prohibiting strangers from summoning residents to their doors.

Some solicitation ordinances that cleared this third hurdle by convincing the court that privacy and crime prevention were directly served by the ordinance's restrictions, were nonetheless declared invalid because the restrictions went further than necessary to accomplish those ends. The so-called "least restrictive alternative" requirement, the last part of the *Central Hudson* test, has also been used to strike down ordinances that prohibit all uninvited solicitation. In *Project 80's*, the court noted that residents who want privacy can post a notice to that effect and that crime can be prevented by requiring solicitors to register with the city. The court concluded that less restrictive means were clearly available to the cities and that both cities' ordinances had swept too broadly in attempting to protect privacy for either one to satisfy the fourth requirement under *Central Hudson*.

The U.S. Supreme Court made a similar point in *Watchtower Bible*, noting the governmental interest in privacy could just as easily have been served by less restrictive means such as requiring citizens not wishing to be disturbed to post "no soliciting" signs on their front doors.

In *FF Cosmetics FL, Inc. v. City of Miami Beach*, 866 F.3d 1290 (C.A.11 (Fla.), 2017) the court held that cosmetics retailers demonstrated likelihood of success on merits of First Amendment challenge to city's anti-solicitation ordinance regulating commercial speech, as required for preliminary injunction against enforcement of ordinance against retailers' use of greeters to solicit in front of stores in city's pedestrians-only historic district because the ordinance was likely not narrowly tailored to address city's substantial interest in preventing annoyance and aesthetic harm in historic district, as evidence showed city had numerous and obvious less-burdensome alternatives, such as restrictions it used for charitable solicitations and artists' solicitations, which city did not even consider.

Further, the cosmetics retailers established a likelihood of success on merits of their First Amendment facial overbreadth challenge to city's ordinance prohibiting commercial handbilling in public right-of-ways in pedestrian-only historic district where retailers' stores were located, as required for preliminary injunction against enforcement of ordinance because the ordinance prohibited "commercial handbills" in quintessential public forum and employed very broad definition of such handbills, prohibiting any expression by handbills which conveyed "any information about any good or service provided by a business," so that it extended to noncommercial speech. *FF Cosmetics FL, Inc. v. City of Miami Beach*, 866 F.3d 1290 (C.A.11 (Fla.), 2017)

Green River Ordinances

This analysis brings us back to the Green River ordinances. Green River ordinances typically declare uninvited door-to-door canvassing to be a nuisance punishable by fine or imprisonment. The Supreme Court upheld this type of ordinance

in *Beard v. Alexandria*, 341 U.S. 622 (1951), finding that a municipality's police power permits reasonable regulation of door-to-door solicitation for purposes of public safety.

Despite the *Beard* ruling, some state courts have invalidated Green River ordinances on state constitutional grounds. For instance, in *Hillsboro v. Purcell*, 761 P.2d 510 (1988), the Oregon Supreme Court struck down on state constitutional grounds an ordinance banning uninvited residential door-to-door solicitation by merchandise peddlers. Also, the Ninth Circuit struck down the two Idaho ordinances mentioned above which banned uninvited solicitation at residences by merchandise peddlers, on the grounds that the ordinances were neither the least restrictive alternative available to further governmental interests in protecting residential privacy and preventing crime nor were they valid time, place and manner restrictions. It is worth noting, however, that this judgment was vacated and remanded without opinion by the Supreme Court. *Idaho Falls v. Project 80's Inc*., 493 U.S. 1013 (1990). Additionally, some courts have held that the least restrictive alternative standard applies only where there is a content based attempt to regulate solicitation. *Pennsylvania Alliance for Jobs & Energy v. Council of Munhall, supra.* The *Munhall* case required that there be ample means of communication available to solicitors.

Green River ordinances have come under increasing attack. Therefore, a solicitation ordinance drafter should exercise a degree of caution when including a Green River provision in a solicitation ordinance. It is important to remember that commercial door-to-door solicitation or peddling is a lawful business rather than an inherent nuisance. Like any other business that is not considered a nuisance under state law, solicitation does not become a public nuisance merely because the municipality declares it to be so and acts to restrict it accordingly. *McQuillian Mun. Corp*., Section 24.378 (3rd Ed. Revised 1997).

Roadway Solicitation

Solicitation along a roadway or highway is prohibited by state law unless the municipality or county with jurisdiction over the roadway or highway grants a permit allowing the solicitation in question. AGO 1995-308. Section 32-5A-216(b), Code of Alabama 1975, as amended, states that no person shall stand on a highway to solicit employment, business or contributions from the occupant of any vehicle, nor for the purpose of distributing any article, unless otherwise authorized by official permit of the governing body of the city or county having jurisdiction over the highway.

The Attorney General advised Hon. Al Shumaker on July 6, 1983, that this statute does not give a municipal governing body the authority to allow charitable solicitation on state highways. Many municipalities have adopted ordinances prohibiting charitable solicitation on all streets and roads within the municipality. Obstructions of public highways in order to solicit donations from motorists are prohibited by Section 32-5A-216 of the Code, unless a permit for such solicitation is granted by the local governing body. AGO 1981-216 (to Mayor Jerry C. Pow, February 3, 1981).

At least one court, the Ninth Circuit in *ACORN v. Pheonix*, 798 F.2d 1260 (9th Cir. 1986), has upheld a municipal ordinance prohibiting persons from standing on the street to solicit contributions from occupants of motor vehicles. The Ninth Circuit has also held that an ordinance banning day laborers from soliciting employment from passing motorists does not violate the First Amendment's Free Speech Clause. *Comite de Jornaleros de Redondo Beach v. City Of Redondo Beach*, --- F.3d ----, 2010 WL 2293200 (9th Cir.2010).

Loitering

In 2023, the Alabama Legislature crafted two optional procedures for law enforcement officers to follow when dealing with loiters on public roadways or rights-of-way maintained by the state. According to Act 2023-245 (codified in Ala. Code Section 13A-11-9), prior to making an arrest for a loitering violation, law enforcement may instruct any suspected loiterer to immediately peaceably exit the public roadway or public right-of-way maintained by the state. An additional option is for the law enforcement officer to offer to transport the suspected loiterer to a location in the jurisdiction that offers emergency housing. According to the new law, law enforcement officer acting pursuant to this section is entitled sovereign immunity under Ala. Code Section 36-1-12.

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