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## A Survey of Constitutional Challenges to Municipal Regulation of Religious Solicitation and a Suggested Legislative Compromise

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# COMMENTS

## A SURVEY OF CONSTITUTIONAL CHALLENGES TO MUNICIPAL REGULATION OF RELIGIOUS SOLICITATION AND A SUGGESTED LEGISLATIVE COMPROMISE

### I. Introduction

Solicitations may be commercial, charitable, religious, political, or educational in nature. Solicitation is often undertaken to provide information to the public.<sup>1</sup> Yet, overly zealous solicitors may create an annoyance to the general public.<sup>2</sup> Thus, municipalities have passed a variety of ordinances to regulate solicitations. The most common ordinances are those which require written permission to solicit and distribute literature,<sup>3</sup> and those which impose an area limitation.<sup>4</sup>

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1. Jones, *Solicitation—Charitable and Religious*, 31 BAYLOR L. REV. 53 (1979) (discussing distinction between religious and charitable solicitations). This Comment deals primarily with religious solicitation.

2. This observation was made by the court in *International Soc'y for Krishna Consciousness (ISKCON) of Houston, Inc. v. City of Houston*, 689 F.2d 541, 543 (5th Cir. 1982).

3. See *Fernandes v. Limmer*, 663 F.2d 619 (5th Cir. 1981) (statute prohibiting charitable organization from soliciting funds on airport premises without first applying for and obtaining permit found unconstitutional), *cert. dismissed*, 103 S. Ct. 5 (1982); *Conlon v. City of N. Kansas City, Mo.*, 530 F. Supp. 985 (W.D. Mo. 1981) (regulation prohibiting solicitation within city without permit or certificate of registration from city clerk found unconstitutional); *McMurdie v. Doult*, 468 F. Supp. 766 (N.D. Ohio 1979) (ordinance requiring solicitors to procure license from mayor before soliciting in city found unconstitutional); *ISKCON, Inc. v. Lentini*, 461 F. Supp. 49 (E.D. La. 1978) (city ordinance requiring that solicitor obtain permit and be licensed to solicit in the city found unconstitutional); *ISKCON of Berkeley, Inc. v. Kearnes*, 454 F. Supp. 116 (E.D. Cal. 1978) (ordinances requiring solicitors to obtain permits before soliciting in city or county found unconstitutional); *Smith v. City of Manchester*, 460 F. Supp. 30 (E.D. Tenn. 1978) (municipal code absolutely prohibiting solicitation of funds for religious purposes unless solicitor obtained permit from city recorder found unconstitutional); *ISKCON, Inc. v. Wolke*, 453 F. Supp. 869 (E.D. Wis. 1978) (county ordinance requiring solicitors to first obtain written permission from airport director found unconstitutional); *ISKCON, Inc. v. Hays*, 438 F. Supp. 1077 (S.D. Fla. 1977) (regulation prohibiting solicitation on turnpike system without written permission of Department of Transportation found unconstitutional); *ISKCON, Inc. v. Engelhardt*, 425 F. Supp. 176 (W.D. Mo. 1977) (ordinances requiring issuance of airport director's written permission for solicitation found unconstitutional).

4. *Heffron v. ISKCON, Inc.*, 452 U.S. 640 (1981) (rule limiting sale, exhibition, or distribution of materials during state fair to fixed locations on fairgrounds found constitutional); *Hynes v. Metropolitan Gov't*, 667 F.2d 549 (6th Cir. 1982) (per

Recently, these ordinances have given rise to massive litigation,<sup>5</sup> involving challenges under the first and fourteenth amendments.

Solicitation encompasses various forms of speech interests, and enjoys the protection of the first amendment.<sup>6</sup> However, solicitation does not enjoy unlimited constitutional protection. Reasonable regulations to safeguard governmental interests in protecting citizens from abusive practices in the solicitation of funds are permitted.<sup>7</sup> Thus, the courts must balance governmental interests against the first amendment rights of religious solicitors. Different types of solicitation, however, are not afforded the same constitutional protection.<sup>8</sup> Religious

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curiam) (state fair rule prohibiting literature distribution and solicitation of funds on fairgrounds except in booths found constitutional); *Edwards v. Maryland State Fair & Agricultural Soc'y, Inc.*, 628 F.2d 282 (4th Cir. 1980) (rule requiring those wishing to solicit contributions at state fair to do so from booth found unconstitutional); *ISKCON, Inc. v. Bowen*, 600 F.2d 667 (7th Cir.) (defendant fair officials enjoined from restricting ISKCON members' practice of Sankirtan to booths), *cert. denied*, 444 U.S. 963 (1979); *ISKCON v. State Fair of Tex.*, 480 F. Supp. 67 (N.D. Tex. 1979) (regulations attempting to geographically restrict plaintiffs' free circulation through state fair found unconstitutional); *ISKCON, Inc. v. Evans*, 440 F. Supp. 414 (S.D. Ohio 1977) (regulations requiring that solicitations be made from within booth or display found constitutional).

5. Primarily, this Comment will focus on the religious solicitation of two currently controversial religious groups: the International Society for Krishna Consciousness, Inc. (ISKCON) and the Holy Spirit Association for the Unification of World Christianity (the Unification Church). The vast majority of cases challenging the regulation of religious solicitation have been brought by ISKCON. "In the last decade [ISKCON] has started about 100 court cases to gain access to airports, fairgrounds, zoos and Federal buildings . . ." Press, *Hare Krishnas in the Dock*, NEWSWEEK, Sept. 29, 1980, at 83. Key in understanding what appears to be a love of litigation on ISKCON's part is its requirement that devotees perform Sankirtan, a religious ritual meant to "spread the religion's truths through solicitation of contributions, dissemination of religious tracts, and sale of religious materials." *ISKCON, Inc. v. Rochford*, 425 F. Supp. 734, 736 (N.D. Ill. 1977), *aff'd in part, rev'd in part*, 585 F.2d 263 (7th Cir. 1978). Areas with high concentrations of people are thus prime targets for the practice of Sankirtan.

Similarly, "the [Unification] Church's activities include public-place and door-to-door proselytizing of its tenets and principles, and the distribution of religious literature, frequently accompanied by the solicitation of funds from the public for the support of the church." *Conlon v. City of N. Kansas City, Mo.*, 530 F. Supp. 985, 986 (W.D. Mo. 1981).

6. See *Village of Schaumburg v. Citizens for a Better Env't*, 444 U.S. 620, 639 (1980) (solicitation constitutes protected speech); *Cantwell v. Connecticut*, 310 U.S. 296 (1940) (first amendment guarantees freedom to act on religious beliefs).

7. *Larson v. Valente*, 102 S. Ct. 1673, 1685 (1982) (statute imposing percentage requirements on religious solicitation found unconstitutional).

8. See *Weissman v. City of Alamogordo*, 472 F. Supp. 425 (D.N.M. 1979). The municipal ordinances at issue in the case prohibited door to door solicitation without distinguishing between commercial and non-commercial solicitation. The court found that such a distinction was necessary in light of the Supreme Court's repeated holding that religious or non-commercial door-to-door solicitation cannot be prohib-

solicitation enjoys the additional protection of the establishment and free exercise clauses of the first amendment.<sup>9</sup> By contrast, commercial solicitation may be regulated more extensively.<sup>10</sup>

There are certain well-defined boundaries which the courts have placed on religious solicitation. For example, with the exception of door-to-door solicitation, soliciting on private property may be strictly prohibited.<sup>11</sup> Reasonable time, place or manner restrictions also may be imposed.<sup>12</sup> Considerable controversy has arisen concerning what constitutes private property<sup>13</sup> and what restrictions are reasonable.<sup>14</sup> As a result, the differing interpretations of the permissible limitations upon religious solicitation which courts have offered may give rise to discrimination.

The usual presumption of legislative validity does not apply to governmental regulation of religious fundraising in public places. The government must establish the validity of its ordinance.<sup>15</sup> Most plain-

ited constitutionally by a Green River ordinance. *Id.* at 428. For a definition and detailed discussion of Green River ordinances, see Reynolds, "Green River Ordinances": *Where Does the Burden Belong?*, 11 *FORDHAM URB. L.J.* 427 (1983).

9. *Larson v. Valente*, 102 S. Ct. 1673, 1689 (1982); *Cantwell v. Connecticut*, 310 U.S. 296 (1940).

10. See *United States v. Silberman*, 464 F. Supp. 866 (M.D. Fla. 1979). "On the one hand, despite the fact that it may include distribution, sales, and solicitations, the exercise and practice of religious belief is a freedom guaranteed by the First Amendment. On the other hand, purely commercial activity does not enjoy the same kind of protection." *Id.* at 871. An additional comparison may be made between charitable and religious solicitation. According to this distinction, the first amendment's added protection of religious solicitation might not extend to charitable solicitation. While "an ordinance designed to regulate charitable solicitations carries a presumption of reasonableness and constitutionality, . . . a regulation imposed upon religious solicitations must overcome a presumption against such legislation." *Jones, supra* note 1, at 60.

11. *Hynes v. Mayor of Oradell*, 425 U.S. 610, 619 (1976) (no absolute right to enter on private premises for any purpose); *Hudgens v. NLRB*, 424 U.S. 507 (1976) (employees had no first amendment right to picket private shopping center); *Lloyd Corp. v. Tanner*, 407 U.S. 551 (1972) (Court refused to extend first amendment protection to plaintiffs where private shopping mall was surrounded by public streets, speech was unrelated to purposes of mall, and mall prohibited all handbilling); *ISKCON v. Reber*, 454 F. Supp. 1385 (C.D. Cal. 1978) (solicitation and proselytizing could be prohibited on street which appeared to be public but was actually privately owned).

12. *Heffron v. ISKCON, Inc.*, 452 U.S. 640, 647 (1981) (restrictions permissible if they serve substantial state interest); *Lovell v. City of Griffin*, 303 U.S. 444, 451 (1937) (restrictions permissible if limited in scope).

13. See notes 151-53 *infra* and accompanying text.

14. See notes 209-11 *infra* and accompanying text.

15. See *ISKCON, Inc. v. Rochford*, 585 F.2d 263, 270 (7th Cir. 1978) ("a regulation which restricts the exercise of First Amendment freedoms bears a heavy presumption against its validity. . . ."). See also B. SCHWARTZ, *CONSTITUTIONAL LAW* 312-13 (2d ed. 1979) (burden on government, not on individual attacking restriction).

tiffs challenge ordinances regulating religious solicitation on fourteenth amendment due process grounds.<sup>16</sup> Ordinances commonly are attacked for being overly broad or vague.<sup>17</sup> Ordinances also may be attacked under the equal protection clause of the fourteenth amendment.<sup>18</sup> In such cases, it is incumbent upon the state to justify its ordinance by demonstrating a compelling interest which necessitates the particular form of regulation imposed.<sup>19</sup>

The recent increase in challenges to municipal regulation of religious solicitation indicates a need for legislation which will survive judicial scrutiny. Such legislation must protect both governmental interests and the first amendment rights of religious solicitors.

This Comment will discuss the historical framework in which religious solicitation cases have arisen. Next, the recent trend in lower courts' interpretations of the permissible scope of municipal regulation of religious solicitation will be examined. Finally, this Comment concludes by setting forth a model ordinance by which municipalities can regulate religious solicitation to afford maximum protection to their citizens and to the constitutional rights of religious solicitors.

## II. Historical Background: Supreme Court Interpretations

### A. Public Distribution of Literature

The first legal battles against municipal regulation of religious solicitation were fought by Jehovah's Witnesses in the Supreme Court over forty years ago.<sup>20</sup> The first of these cases, *Lovell v. City of Griffin*,<sup>21</sup> involved a municipal ordinance that prohibited the distribution of literature without prior permission from a city official.<sup>22</sup> The Court

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16. Jones, *supra* note 1, at 53. The due process clause prohibits the states from depriving "any person of life, liberty, or property, without due process of law. . . ." U.S. CONST. amend. XIV, § 1.

17. See notes 68-79 *infra* and accompanying text. Plaintiffs generally allege that an overly broad or vague ordinance vests too much discretion in the governmental authority who is interpreting the ordinance. See notes 80-88 *infra* and accompanying text.

18. "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws," U.S. CONST. amend. XIV, § 1.

19. *Larson v. Valente*, 102 S. Ct. 1673, 1684-85 (1982).

20. One writer has referred to ISKCON devotees as "the legal heirs to the battles won by the Jehovah's Witnesses 40 years ago." Press, *supra* note 5, at 83.

21. 303 U.S. 444 (1938).

22. *Id.* at 447-48. The ordinance provided:

§ 1. That the practice of distributing, either by hand or otherwise, circulars, handbooks, advertising, or literature of any kind, whether said articles are being delivered free, or whether same are being sold, within the limits of the city of Griffin, without first obtaining written

invalidated the ordinance, finding it to be the antithesis of a reasonable time, place and manner restriction.<sup>23</sup> The Court emphasized that the ordinance would effectively amount to censorship.<sup>24</sup>

Four municipal ordinances at issue in *Schneider v. State*<sup>25</sup> were also found to be unreasonable restrictions upon public distribution of literature.<sup>26</sup> Three of the ordinances absolutely prohibited distribution on public streets.<sup>27</sup> The Court found that the purpose of the prohibition, to keep the streets clean and attractive, was an insufficient justification.<sup>28</sup> The fourth ordinance required a license for door-to-door solicitation and permitted a police officer to determine the extent of the distribution.<sup>29</sup> This "censorship through license" was held unconstitutional.<sup>30</sup> Moreover, the Court stated that it was inappropriate to attempt to combat fraudulent solicitation through the use of police discretion.<sup>31</sup>

### B. Administrative Discretion, Licensing Fees and Denial of a Public Forum

A similar overly generous grant of governmental discretion prompted the Court's objection in *Cantwell v. Connecticut*.<sup>32</sup> In

permission from the City Manager of the City of Griffin, such practice shall be deemed a nuisance, and punishable as an offense against the City of Griffin.

§ 2. The Chief of Police . . . and the police force of the City . . . are hereby required and directed to suppress the same and to abate any nuisance as is described in the first section of this ordinance.

*Id.*

23. *Id.* at 451. "The ordinance prohibits the distribution of literature of any kind at any time, at any place, and in any manner. . . ." *Id.*

24. The Court feared that legislation of this kind would restore the system of licensing and censorship with which English authors had to contend until 1694. *Id.* at 451-52. See generally J. NOWAK, R. ROTUNDA, & J. YOUNG, HANDBOOK ON CONSTITUTIONAL LAW 713-14 (1978).

25. 308 U.S. 147 (1939).

26. *Id.* at 162-63.

27. *Id.* at 162.

28. *Id.* The Court suggested that the cities could prevent littering by punishing those who actually dropped the papers. *Id.*

29. *Id.* at 163. The applicant had to provide the police officer with evidence as to his good character and the absence of fraud in his intended activity, "a burdensome and inquisitorial examination" which made the applicant's door-to-door solicitation dependent on the officer's discretion. *Id.* at 163-64.

30. *Id.* at 164.

31. *Id.* The Court suggested that frauds and trespasses could be legally punished. *Id.*

32. 310 U.S. 296 (1940). The statute provided in part:

No person shall solicit money, services, subscriptions or any valuable thing for any alleged religious, charitable or philanthropic cause, . . . unless

*Cantwell*, a state law conditioned religious solicitation upon the issuance of a license, authorized by a city official, based on a personal determination of whether the cause was religious.<sup>33</sup> The Court found that the ordinance served to censor religion, contravening the fourteenth amendment's due process guarantee.<sup>34</sup>

The Court continued its condemnation of unbridled administrative discretion in *Largent v. Texas*.<sup>35</sup> *Largent* involved an ordinance which made it unlawful to solicit orders or sell books, wares or merchandise in the residential area of the city without filing an application and obtaining a permit.<sup>36</sup> The Court found that the mayor could issue a permit if he considered it "proper or advisable" to do so.<sup>37</sup> His role as administrative censor allowed the mayor to condition the flow of ideas upon his own approval of the speaker. The Court found that this level of discretion abridged the appellant's freedoms of speech and religion, and freedom of the press.<sup>38</sup>

The Court also has invalidated licensing taxes which may encroach upon an individual's first amendment rights. In *Murdock v. Pennsylvania*,<sup>39</sup> an ordinance required that a fee be paid before a license to solicit could be procured.<sup>40</sup> "Those who can tax the exercise of this

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 . . . and, if he shall so find, shall approve the same and issue to the authority in charge a certificate to that effect. Such certificate may be revoked at any time.

*Id.* at 301-02.

33. *Id.* at 306. See *Kunz v. New York*, 340 U.S. 290 (1951) (control over right to speak on religious subjects cannot be vested in administrative official who has no appropriate standards for guidance); *Niemotko v. Maryland*, 340 U.S. 268, 271-72 (1951) ("amorphous 'practice,' " with all authority to grant permits resting with the City Commissioner and the City Council, was unconstitutional).

34. 310 U.S. at 303. In the Court's opinion, the statute's licensing system was one of prior restraint, which could not be remedied by the availability of judicial review to examine the system's abuses. *Id.* at 306. However, the Court indicated that states could require strangers in the community to establish their identity and authority before being permitted to solicit. *Id.*

35. 318 U.S. 418 (1943).

36. *Id.* The appellant, a member of the Jehovah's Witnesses, was convicted for violating the ordinance, because she attempted to sell books without a tag. *Id.* at 419. See *Jamison v. Texas*, 318 U.S. 413 (1943) (ordinance could not prohibit written dissemination of information, and Court unwilling to prohibit distribution of religious literature merely because handbills invited reader to purchase books and raise funds).

37. 318 U.S. at 422.

38. *Id.*

39. 319 U.S. 105 (1943).

40. *Id.* at 106. The ordinance, which was over 40 years old, required all solicitors to procure a license, for which they had to pay the Treasurer \$1.50 per day, \$7.00 per week, \$12 for two weeks, and \$20 for three weeks. *Id.* The Court indicated that a

religious practice," the Court stated, "can make its exercise so costly as to deprive it of the resources necessary for its maintenance."<sup>41</sup> The Court added, however, that the payment of a nominal fee to assist in defraying the cost of policing solicitation activities would be permissible.<sup>42</sup>

The denial of the use of a public forum was at issue in *Niemotko v. Maryland*.<sup>43</sup> The case involved a custom which required those who wished to use a public park to obtain permits from the park commissioner.<sup>44</sup> However, the commissioner refused to grant a group of Jehovah's Witnesses permission to conduct Sunday Bible talks in the park.<sup>45</sup> When the appellants defied the custom and held their meeting, two of them were arrested and convicted of disorderly conduct.<sup>46</sup> The Court overturned the convictions, finding the permit procedure unconstitutional.<sup>47</sup> The park commissioner and the city council could not have exclusive authority to grant permits for the use of the park, the Court stressed, without any justifiable standards, limitations, or community interests to be served.<sup>48</sup>

### C. Percentage Requirements

The Court examined the use of percentage requirements in *Village of Schaumburg v. Citizens for a Better Environment*.<sup>49</sup> The ordinance

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registration ordinance to identify solicitors who were strangers in the community would be permissible. *Id.* at 116.

41. *Id.* at 112.

42. *Id.* at 113-14.

43. 340 U.S. 268 (1951).

44. *Id.* at 269. No ordinance was involved in the case. It was the custom for individuals and groups to obtain permits to use the park. *Id.*

45. *Id.* at 269-70. According to the custom, the commissioner's actions were appealable to the city council, but the written request which the Jehovah's Witnesses filed with the council was also denied. *Id.* at 270.

46. *Id.* The Court noted that the jury's finding must have been based on appellant's use of the park without a permit, even though no statute or ordinance required such a permit. *Id.* at 271.

47. *Id.* at 273. The Court examined similar criteria in *Grayned v. City of Rockford*, 408 U.S. 104 (1972). For demonstrating in front of a high school, the appellant was convicted of violating the city's antipicketing and antinoise ordinances. *Id.* at 105-06. The antinoise ordinance was not unconstitutionally vague and was limited in time and place. *Id.* at 110-11. In addition, it did not permit the exercise of governmental discretion, nor did it permit the proponent of an unpopular view to be punished. *Id.* at 113. Thus, the antinoise ordinance was found constitutional. *Id.* at 106. However, the antipicketing ordinance was declared unconstitutional, because it violated the equal protection clause. *Id.* at 107. The Court added that "[t]he right to use a public place for expressive activity may be restricted only for weighty reasons." *Id.* at 115.

48. *Niemotko*, 340 U.S. at 272.

49. 444 U.S. 620 (1980).



at issue prohibited charitable organizations that did not use at least seventy-five percent of their funds for "charitable purposes" from soliciting.<sup>50</sup> According to the Court, the ordinance was an interference with protected speech, not justified by the municipality's interests " 'in protecting the public from fraud, crime, and undue annoyance.' "<sup>51</sup> These interests, the Court stated, "are only peripherally promoted by the 75-percent requirement and could be sufficiently served by measures less destructive of First Amendment interests."<sup>52</sup>

The use of percentage requirements in religious solicitation cases was examined by the Court in *Larson v. Valente*.<sup>53</sup> The Court invalidated the statute, rejecting the governmental interests asserted to justify a regulation.<sup>54</sup> Under the statute, religious organizations soliciting more than fifty percent of their funds from non-members had to fulfill registration and reporting requirements which were not imposed on other religious organizations.<sup>55</sup> The statute was being applied, according to the Court, to grant certain religious denominations preference over others, in derogation of the establishment clause of the first amendment.<sup>56</sup>

#### D. The Booth Solicitation Rule

The Court applied the reasonable time, place and manner test, first used in *Lovell*,<sup>57</sup> to evaluate the validity of a booth solicitation rule in

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50. *Id.* at 622. The definition of "charitable purposes" excluded solicitation expenses, salaries, overhead, and other administrative expenses. *Id.*

51. *Id.* at 636.

52. *Id.* The Court's suggestions of less restrictive measures included the utilization of penal laws, and efforts to prompt charitable organizations to disclose their finances. *Id.* at 637-38. The advantage of the latter measure is that it "may help make contribution decisions more informed, while leaving to individual choice the decision whether to contribute to organizations that spend large amounts on salaries and administrative expenses." *Id.* at 638.

53. 102 S. Ct. 1673 (1982).

54. *Id.* at 1689. According to the Court, the state did not provide any support for the three premises of its statute: (1) that when a religious organization's membership contributes over 50% of the organization's funds, the membership itself can control solicitation; (2) that membership control is a safeguard by which to protect the public from abusive solicitation; (3) that the percentage of non-member contributions and the necessity for public disclosure are in direct correlation. *Id.* at 1685-86.

55. *Id.* at 1676-77.

56. *Id.* at 1689. "The fifty per cent rule . . . effects the *selective* legislative imposition of burdens and advantages upon particular denominations. The 'risk of politicizing religion' . . . is obvious. . . ." *Id.* at 1688. The Court qualified this statement, however, by noting that if the statute had been imposed "evenhandedly," it might have been constitutional. *Id.*

57. 303 U.S. 444 (1938). For a discussion of *Lovell*, see notes 21-24 *supra* and accompanying text.

*Heffron v. ISKCON, Inc.*<sup>58</sup> The rule provided that both the sale and distribution of merchandise, including written literature and fund solicitation, had to be conducted from within a rented booth.<sup>59</sup> The Court upheld the validity of the rule, finding the state's interest in crowd control at a state fair to be a reasonable justification.<sup>60</sup> The Court explained that less restrictive means, such as imposing a penal sanction for disorder or limiting the number of solicitors, would not be adequate.<sup>61</sup>

Moreover, the Court applied an "alternative forum" theory.<sup>62</sup> Under this approach, the availability of alternative forums for the expression of protected speech may help to justify the restrictions imposed by the rule.<sup>63</sup> Finding the fair to be a "limited public forum," the Court emphasized that the rule did not prevent ISKCON from proselytizing outside the fairgrounds, nor did the rule deny ISKCON members the opportunity to mingle with the fair patrons.<sup>64</sup>

*Heffron* may represent a movement toward a more expansive view of the scope of permissible regulation of religious solicitation.<sup>65</sup> Al-

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58. 452 U.S. 640 (1981).

59. *Id.* at 643-44. Minnesota State Fair Rule 6.05 provides, in part: "[s]ale or distribution of any merchandise including printed or written material except under license issued [by] the [Minnesota Agricultural] Society and/or from a duly-licensed location shall be a misdemeanor." The Society interprets the rule to mean that all sales, exhibitions, and distribution of materials is limited to fixed locations at the fair. *Id.* at 643.

60. *Id.* at 653-54. The Court found that the state's substantial interest in avoiding congestion and maintaining crowd control could be achieved by confining solicitation to booths. *Id.*

61. *Id.* at 654. According to the Court, affirming the lower court's decision would result in an even larger number of solicitors at the fair. *Id.*

62. *Id.*

63. See note 66 *infra* and accompanying text.

64. *Heffron*, 452 U.S. at 655. In view of the fair's limited function and area, the Court concluded that the rule was equitable. *Id.*

65. *Heffron* has been widely criticized for limiting religious solicitation. See Casenote, *Heffron v. ISKCON, Inc.: A Restrictive Constitutional View of the Proselytizing Rights of Religious Organizations*, 9 PEPPERDINE L. REV. 519 (1982) [hereinafter cited as Casenote, *Restrictive View*]; Note, *Time, Place, and Manner Regulations of Expressive Activities in the Public Forum*, 61 NEB. L. REV. 167 (1982).

Since the Supreme Court noted the somewhat unique characteristics of the state fair, other writers have apparently felt equally free to do so, pointing out, for example, that the relaxation of the booth rule could not increase the confusion and disorder inherent in the nature of a state fair. Casenote, *Restrictive View, supra*, at 537. Perhaps more importantly, it has been noted that *Heffron* "represents the Court's first approval of a ban on handbilling and solicitation of contributions in a public forum suitable for such activity." Note, *supra*, at 181.

Both of these articles view the Court's distinction between the actions taken by fairgoers who merely stop to listen and those who stop to donate or to receive literature as arbitrary and lacking a clear purpose. Casenote, *Restrictive View, supra*, at 537-38; Note, *supra*, at 183.

though the *Heffron* Court used the reasonable time, place, and manner test first announced in *Lovell*, the addition of the "alternative forum analysis"<sup>66</sup> may indicate a judicial reluctance to further expand first amendment rights of religious solicitors.

### III. Establishing Criteria: Lower Courts' Interpretations

During the 1970's and 1980's, lower courts have relied upon the guidelines established by Supreme Court cases to evaluate the regulation of religious solicitation. Although the lower courts have articulated certain clearly defined principles, there is still a need for a more definitive approach by which to evaluate constitutionally suspect legislation.

#### A. Absolute Prohibitions and Overbreadth

Ordinances which absolutely prohibit religious solicitation have been held to be blatant infringements of first amendment rights.<sup>67</sup>

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A third article propounded the view that the Court should have separately analyzed the three different activities which the rule restricted: sales, solicitation, and distribution of literature. Casenote, *Heffron v. ISKCON, Inc.: Reasonable Time, Place and Manner Restrictions*, 15 J. MAR. L. REV. 543, 553 (1982). The author felt that crowd flow and movement were restricted by sales and solicitation, but like the other two writers, he could not distinguish the distribution of literature from proselytism itself, which the Court allowed to go unregulated. *Id.* at 552.

Writers have agreed that the Court did not give enough consideration to the possibility of less restrictive regulation. Casenote, *Restrictive View, supra*, at 539; Note, *supra*, at 182. One reasonable alternative would have been to limit the number of people who could come to the fair to distribute or sell literature or to solicit donations. Casenote, *Restrictive View, supra*, at 539. It has also been suggested that the Court's decision may have been influenced by the controversial nature of ISKCON itself. *Id.* at 546; Note, *supra*, at 185.

66. It has been asserted that *Heffron* introduced the "ample alternative forum inquiry," which could make the availability of ample alternative forums a decisive criterion of courts' opinions in the future. Note, *supra* note 65, at 184-85. See also L. TRIBE, *AMERICAN CONSTITUTIONAL LAW* 603 (1978) (governmental regulation which excludes first amendment activity from a public forum cannot be justified by the availability of alternative forums); *United States v. Silberman*, 464 F. Supp. 866, 874 (M.D. Fla. 1979) ("[I]t is no redeeming justification that . . . there are alternative public forums available in different places."). But see *ISKCON, Inc. v. City of New York*, 501 F. Supp. 684, 692 (S.D.N.Y. 1980) ("There are easily accessible alternative channels for communication of ISKCON's ideas.").

67. See *McMurdie v. Douth*, 468 F. Supp. 766 (N.D. Ohio 1979) (unlawful for mayor to completely cut off Unification Church's first amendment right to secure permits); *ISKCON, Inc. v. Conlisk*, 374 F. Supp. 1010 (N.D. Ill. 1973) (arbitrary infringement on exercise of first amendment rights to limit solicitation to one day per year). See also note 206 *infra* and accompanying text.

Closely related to absolute prohibitions are ordinances which are overly broad in their scope.<sup>68</sup> A court will find an ordinance overly broad if it does not regulate religious solicitation in the least restrictive manner.<sup>69</sup> Moreover, if an ordinance punishes the exercise of first amendment rights regardless of whether the exercise results in actual or potential disruption, courts will hold the ordinance void for overbreadth.<sup>70</sup>

For example, in *Westfall v. Board of Commissioners*,<sup>71</sup> an ordinance limited the hours of solicitation, the number of solicitors in an organization, and required solicitors to carry a detailed identification card.<sup>72</sup> The court called this limitation a "blanket prohibition" and a "complete abridgement" of the plaintiff's right to engage in religious solicitation in any public forum, under any circumstances.<sup>73</sup> The court found that the ordinance was overly broad, and recommended that the county narrow the areas to which the time restriction would apply.<sup>74</sup>

Courts seem to fear that, if overly broad regulations are not controlled, they will be enforced at the discretion of the administrator in

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68. See *Westfall v. Board of Comm'rs*, 477 F. Supp. 862 (N.D. Ga. 1979) (blanket prohibitions on use of public streets, areas, and parks for solicitation between 6:00 p.m. and 9:00 a.m. was overbroad); *ISKCON of W. Pa., Inc. v. Griffin*, 437 F. Supp. 666, 670, 672-73 (W.D. Pa. 1977) (ordinance prohibited solicitation on 48 days of the year and during rush hours on Sunday, Monday, and Friday, limited plaintiffs' solicitations to designated solicitation booths, and restricted the number of solicitors at the airport to two per day); *Smith v. City of Manchester*, 460 F. Supp. 30 (E.D. Tenn. 1978) (Manchester Municipal Code provisions constituted overly broad licensing device).

69. See *Westfall v. Board of Comm'rs*, 477 F. Supp. 862, 871 (N.D. Ga. 1979) (defendants failed to show that interest in protecting citizens from crime and undue annoyance could not be accomplished by less restrictive means); *ISKCON of Western Pa., Inc. v. Griffin*, 437 F. Supp. 666, 672 (W.D. Pa. 1977) (airport sought to prohibit religious solicitation at the precise times when it was likely to be most effective). *But see* *ISKCON, Inc. v. Evans*, 440 F. Supp. 414, 425 (S.D. Ohio 1977) (fair required some form of regulation, and regulations at issue were best available means of accommodating conflicting interests).

70. See *Westfall v. Board of Comm'rs*, 477 F. Supp. 862, 871 (N.D. Ga. 1979) (ordinance which punished exercises of expression occurring between 6:00 p.m. and 9:00 a.m. without regard to their possible or actual consequences was overly broad).

71. 477 F. Supp. 862 (N.D. Ga. 1979).

72. *Id.* at 864. Solicitation within the county was restricted to the hours of 9:00 a.m. to 6:00 p.m. The regulation limited the number of solicitors for any single organization to 25 and required an elaborate identification procedure. Solicitors had to present their identification cards, information as to the nature and purpose of the solicitation, the name and home or national office or headquarters of the organization, and any minimum donation required for the acceptance of any merchandise. *Id.* at 864-65.

73. *Id.* at 871.

74. *Id.* at 871-72.

charge.<sup>75</sup> For example, an overly broad statute is likely to be administered discretionally where religious solicitation is conditioned expressly on obtaining a permit from an administrative official, and no further guidelines are established.<sup>76</sup>

## B. Vagueness

A vague ordinance or statute creates great risk of abuse and constitutional violation. Caused by lack of clarity or deficiency in an ordinance's explanation of its coverage,<sup>77</sup> vagueness is sometimes viewed as a double threat by the courts. Vagueness may prevent applicants from being fairly notified of the ordinance's requirements,<sup>78</sup> and may permit administrative officials to exercise personal discretion in applying the ordinance.<sup>79</sup>

An example of how too much administrative discretion may result from a vague ordinance may be found in *ISKCON, Inc. v. Roch-*

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75. See, e.g., *Smith v. City of Manchester*, 460 F. Supp. 30 (E.D. Tenn. 1978). The regulation prohibited religious solicitation without a permit from the city recorder, who could institute a "reasonable investigation" to determine whether a permit should be granted. *Id.* at 35. The court would not tolerate "[s]uch a sweeping and improper administrative application. . . ." *Id.*

76. See notes 87-93 *infra* and accompanying text.

77. See *ISKCON of Atlanta v. Eaves*, 601 F.2d 809, 832 (5th Cir. 1979) (section of ordinance precluding hampering or impeding authorized business held unconstitutionally vague, because unclear what actions the section was intended to proscribe); *ISKCON, Inc. v. Rochford*, 585 F.2d 263, 268 (7th Cir. 1978) (regulations deficient in not explaining who was "authorized by law" to distribute literature and solicit contributions). See also L. TRIBE, *supra* note 66, at 718. Professor Tribe considers two findings necessary to a determination of vagueness: "that the individual challenging the statute is indeed one of the entrapped innocent, and that it would have been practical for the legislature to draft more precisely." *Id.* at 719.

78. See *ISKCON of Atlanta v. Eaves*, 601 F.2d 809, 832 (5th Cir. 1979) (people in appellants' position cannot know what construction to expect); *Walker v. Wegner*, 477 F. Supp. 648, 651 (D.S.D. 1979) (vague statute may fail to give applicant fair notice). See also L. TRIBE, *supra* note 66, at 718 (In vague regulation, "the line between innocent and condemned conduct becomes a matter of guesswork.").

79. See *ISKCON, Inc. v. Rochford*, 585 F.2d 263, 270 (7th Cir. 1978) (provisions not sufficiently precise to avoid improper administrative application); *Walker v. Wegner*, 477 F. Supp. 648, 653 (D.S.D. 1979) (administrator had discretion to decide meaning of vague terms).

Moreover, in deciding whether to declare an ordinance void for vagueness, it is unclear whether courts should consider the purpose of the regulation which the municipality sets forth. Compare *ISKCON of Atlanta v. Eaves*, 601 F.2d 809, 830 (5th Cir. 1979) (benefits of provisions which make substantial contribution to important goal outweigh burdens placed on religious solicitation, so provisions are constitutional) with *ISKCON, Inc. v. Rochford*, 425 F. Supp. 734, 740 (N.D. Ill. 1977) (stating regulation's salutary purpose will not cure its vagueness), *aff'd in part, rev'd in part*, 585 F.2d 263 (7th Cir. 1978).

*ford*.<sup>80</sup> The court noted that the airport's primary purpose was to handle heavy traffic flow.<sup>81</sup> However, while the regulation permitted only those "authorized by law" to distribute literature and solicit contributions,<sup>82</sup> the regulation's explanation of legal authority was deficient.<sup>83</sup> Thus, the court voided several parts of the regulation for vagueness.<sup>84</sup> The regulation's deficiency, according to the court, was more critical than vagueness alone, because when viewed in conjunction with the regulation's other requirements, airport officials could grant or deny permit applications based on a personal interpretation of who was "authorized by law."<sup>85</sup> The court concluded that the uncertainty of these vague subsections could permit airport officials to decide which of the possible meanings should be applied.<sup>86</sup> Thus, a vague regulation, like an overly broad regulation, may suffer from an additional infirmity—too much administrative discretion.

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80. 425 F. Supp. 734 (N.D. Ill. 1977), *aff'd in part, rev'd in part*, 585 F.2d 263 (7th Cir. 1978).

81. 585 F.2d at 271. The district court had refused to be influenced by the goals which the city of Chicago hoped to achieve through regulation of its airports. According to the city, the regulation was meant to (1) assure fair use of the airport facilities; (2) prevent interference with free access to and passage among airport facilities; (3) discourage interference with people waiting in lines; (4) prevent interference with airport security; (5) provide equal access for the publication of views. 425 F. Supp. at 737.

82. 425 F. Supp. at 737.

83. 585 F.2d at 268.

84. *Id.* at 270. The district court cited the following as examples of vagueness: (1) unclear whether prohibition against selling "anything for commercial purposes" included sale of religious tracts and materials; (2) unclear whether prohibition against "'noise . . . [or] other disturbance . . .'" included speech; (3) unclear whether prohibition against "more than one person at a time" soliciting any individual was meant to apply to the time during which the individual was within the airport or the time during which he was being solicited; (4) unclear whether prohibition against erecting any structure applied solely to lessees; (5) unclear how weather, extremely heavy traffic, "or other causes" could warrant suppressing all first amendment rights at the airports. 425 F. Supp. at 741-42. In reviewing the lower court's decision, the court of appeals agreed that the first two subsections described were vague, but found that the prohibition against erecting any structure did not restrict first amendment rights, and that the final subsection criticized by the district court was meant to deal solely with unusual congestion or emergency security situations and was sufficiently narrow and definite. 585 F.2d at 270. The prohibition against solicitation by more than one person at a time was not vague, but was unconstitutional as an invalid restraint upon first amendment rights. *Id.*

85. 585 F.2d at 268.

86. *Id.* at 270. According to the district court, these subsections "are utterly lacking in standards that can guide airport officials in making decisions which may manifest the censor's heavy hand on the freedom of religion, of thought, speech and the press." 425 F. Supp. at 742.

### C. Administrative Discretion

Regardless of whether ordinances are deemed overly broad or vague, if they vest excessive discretion in administrative officials, the ordinances may be invalidated. Courts fear that once administrative discretion is permitted and exercised, it inevitably will result in discriminatory application.<sup>87</sup> To guard against religious discrimination, courts have invalidated a number of ordinances which grant excessive administrative discretion.<sup>88</sup> In fact, courts have not required that discretion actually be exercised before the ordinance will be held to be unconstitutional.

Similarly, uniformity in application will not necessarily insure that an ordinance will be upheld. For example, an ordinance which granted an airport director the discretion to allow or prevent distribution of literature and solicitation of contributions on airport grounds has been declared unconstitutional despite its uniform application.<sup>89</sup> In *ISKCON, Inc. v. Engelhardt*,<sup>90</sup> no personal solicitation had been permitted since the construction of the airport.<sup>91</sup> The ordinance, how-

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87. In *Smith v. City of Manchester*, 460 F. Supp. 30 (E.D. Tenn. 1978), the city recorder was vested with discretion in administering the Manchester Municipal Code's licensing device, since the recorder was to conduct "a reasonable investigation . . ." to determine whether the permit should be issued. *Id.* at 35. She testified that her reasons for denying plaintiffs' permit were that they did not represent a local or established church, and that the chief of police had advised her of past problems with the plaintiffs and of his personal belief that it would be in the community's best interest to deny the permit. *Id.* The court concluded that this administrative interpretation would prevent non-local organizations and groups from ever being permitted to engage in religious solicitation in Manchester. *Id.*

88. See *Fernandes v. Limmer*, 663 F.2d 619, 629 (5th Cir. 1981) (Board's unguided opinion as to legitimacy of applicant's organization should not be basis upon which permits are granted or denied), *cert. dismissed*, 103 S. Ct. 5 (1982); *Conlon v. City of N. Kansas City, Mo.*, 530 F. Supp. 985, 988 (W.D. Mo. 1981) (ordinance may not effectively vest discretion to grant or deny solicitation certificates in city officials); *Sylte v. Metropolitan Gov't*, 493 F. Supp. 313, 319 (M.D. Tenn. 1980) (*per curiam*) (court objected to "a subjective thicket without objective criteria"); *Weissman v. City of Alamogordo*, 472 F. Supp. 425, 430 (D.N.M. 1979) (state authority should not be empowered to determine what is a "religious cause"); *McMurdie v. Douth*, 468 F. Supp. 766, 772 (N.D. Ohio 1979) (ordinance authorized mayor's exercise of "unbridled discretion"); *ISKCON, Inc. v. Lentini*, 461 F. Supp. 49, 51 (E.D. La. 1978) (no standards to guide discretion which regulation vested in Director of Aviation); *Swearson v. Meyers*, 455 F. Supp. 88, 92 (D. Kan. 1978) (ordinance called upon city officials to exercise discretion); *ISKCON of Berkeley, Inc. v. Kearnes*, 454 F. Supp. 116, 120 (E.D. Cal. 1978) (strict limitations upon criteria for obtaining permit required to protect against administrative officials' arbitrary denial).

89. *ISKCON v. Engelhardt*, 425 F. Supp. 176, 180 (W.D. Mo. 1977).

90. 425 F. Supp. 176 (W.D. Mo. 1977).

91. *Id.* at 179.

ever, was invalidated because it offered no standards for granting permits<sup>92</sup> or for limiting the licensing authority's discretion.<sup>93</sup> Thus, courts will look to whether a statute has the inherent potential to provide too much discretion, rather than to the practical effects of the statute.

#### D. Equal Protection

Discriminatory or inconsistent enforcement of ordinances which regulate religious solicitation may constitute an infringement of the equal protection of the laws guaranteed by the fourteenth amendment.<sup>94</sup> In *Troyer v. Town of Babylon*,<sup>95</sup> an ordinance prohibited door-to-door distribution of religious literature and solicitation of funds without an occupant's prior consent.<sup>96</sup> However, solicitors residing or maintaining a place of business in the town for at least six months were exempted from the ordinance.<sup>97</sup> According to the court, the ordinance's application prevented those with unrepresented views from using a forum available to residents.<sup>98</sup> This distinction between residents and nonresidents subjected the regulation to strict scrutiny under the equal protection clause.<sup>99</sup> The court, finding that the town's interests in the ordinance were not sufficient to justify the burdens which it imposed, declared the ordinance unconstitutional.<sup>100</sup>

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92. *Id.* at 180.

93. *Id.* See also *United States v. Silberman*, 464 F. Supp. 866, 873-74 (M.D. Fla. 1979) (regulation of first amendment rights must contain narrow, definitive, and objective criteria, and "it is no redeeming justification that a complete prohibition is uniform and across the board, without discrimination. . . ."). But see *ISKCON, Inc. v. City of New York*, 501 F. Supp. 684 (S.D.N.Y. 1980). The court noted that the New York City Police Department's policy of maintaining a "buffer zone" near the United Nations could lead to police officers' making discretionary decisions, but it upheld the policy's constitutionality, apparently impressed by the uniform manner in which the policy had been applied. *Id.* at 694-95. It is interesting to note that the court based its conclusion not on positive evidence, but rather on a lack of negative evidence—the fact that nothing in the record showed that the policy had ever been exercised with bias. *Id.* at 692. For a similar rationale, see *City of Manchester v. Leiby*, 117 F.2d 661 (1st Cir. 1941).

94. "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. amend. XIV, § 1.

95. 483 F. Supp. 1135 (E.D.N.Y.), *aff'd*, 628 F.2d 1346 (2d Cir.), *aff'd sub nom.* *Town of Southampton v. Troyer*, 449 U.S. 988 (1980).

96. 483 F. Supp. at 1136.

97. *Id.* at 1136-37.

98. *Id.* at 1139.

99. *Id.* at 1140. For a similar distinction between residents and nonresidents, see *Smith v. City of Manchester*, 460 F. Supp. 30 (E.D. Tenn. 1978).

100. 483 F. Supp. at 1142. The town's interests were in reducing litter and maintaining privacy and property values. *Id.*



### E. Percentage Requirements

An ordinance also may be discriminatory if it imposes percentage requirements. For example, some ordinances regulate more strictly the solicitation of those groups whose expenses surpass a certain percentage of the total funds collected.<sup>101</sup> Ordinances which impose percentage requirements have been invalidated for being insufficiently tailored to serve asserted interests<sup>102</sup> and for vesting discretion in administrative officials.<sup>103</sup> Primarily, however, courts invalidate ordinances which impose percentage requirements because of their discriminatory application.<sup>104</sup>

The ordinance in *Carolina Action v. Pickard*<sup>105</sup> required denial of permit applications indicating that fund raising activities would cost more than twenty-five percent of what the organization would raise.<sup>106</sup> By making solicitation dependent on a showing that the plaintiffs' ideas would be sufficiently popular to obtain a specified percentage of the amount solicited, the court stated that the ordinance posed the greatest threat to controversial organizations.<sup>107</sup> According

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101. See *Fernandes v. Limmer*, 663 F.2d 619, 629-30 (5th Cir. 1981) (airport asserted interest in preventing fraud; permit could be refused if expected cost of solicitation would be excessive in relationship to total amount collected, and cost of solicitation in excess of 25% of total collected gave rise to rebuttable presumption of excessiveness), *cert. dismissed*, 103 S. Ct. 5 (1982); *Sylte v. Metropolitan Gov't*, 493 F. Supp. 313, 317, 319 (M.D. Tenn. 1980) (per curiam) (county's interest was in public welfare; tax exempt organizations could be exempted from the ordinance by providing sworn statement that no more than 25% of the organization's financial support was solicited from outside sources); *Carolina Action v. Pickard*, 465 F. Supp. 576, 579-80 (W.D.N.C. 1979) (city enacted ordinance to protect against fraud and misrepresentation; groups whose solicitation expenses might constitute more than 25% of their revenues were absolutely prohibited from soliciting).

102. See *Fernandes v. Limmer*, 663 F.2d 619, 629 (5th Cir. 1981) (airport's interests were in protecting against fraudulent or annoying solicitation), *cert. dismissed*, 103 S. Ct. 5 (1982); *Carolina Action v. Pickard*, 465 F. Supp. 576, 581 (W.D.N.C. 1979) (unrelieved limitation on cost of solicitation makes right to canvass dependent upon content of message rather than upon community's legitimate interest in canvassers' character).

103. See *Sylte v. Metropolitan Gov't*, 493 F. Supp. 313, 319 (M.D. Tenn. 1980) (per curiam) (unclear what information ordinance really required); *Carolina Action v. Pickard*, 465 F. Supp. 576, 579 (W.D.N.C. 1979) (ordinance's ambiguous wording resulted in inconsistent administration).

104. *Carolina Action v. Pickard*, 465 F. Supp. 576, 581 (W.D.N.C. 1979) (court noted that ordinance was to the disadvantage of unpopular groups).

105. *Id.* at 582-85.

106. *Id.* at 578-79.

107. *Id.* at 581. Controversial organizations were most likely to be adversely affected by several other aspects of the ordinance as well: it was both overbroad and vague, vested the city commission with complete discretion in determining whether to believe an organization's financial projections, and required the commission to find that the solicited funds would be placed in "responsible and reliable" hands. *Id.* at 580-82.

to the court, these organizations are most in need of protection for their first amendment rights.<sup>108</sup>

#### F. Fees

Like ordinances which contain percentage requirements, ordinances which condition solicitation on payment of a fee may have the greatest impact on those organizations with the least funds to support their solicitation activity. Solicitation fees have been condemned because they imply that an individual may be charged for the use of first amendment rights.<sup>109</sup> Thus, fees are permissible only if they are nominal<sup>110</sup> and are used to defray costs which can be shown to be related to the solicitation activity.<sup>111</sup> Furthermore, the government must show a relationship between the fee and the costs of licensing.<sup>112</sup>

The local ordinance in *Fernandes v. Limmer*<sup>113</sup> charged a \$6.00 per day fee, which was to be collected in advance to defray the costs of investigating solicitors, preparing permits, and supervising solicitation activities.<sup>114</sup> This licensing fee was held to be impermissible.<sup>115</sup> The fee was moderate, but was not shown to be necessary and related to the costs of the licensing process.<sup>116</sup> Under these circumstances, the court was unwilling to condition the exercise of first amendment rights "on a colporteur's willingness and ability to pay. . . ."<sup>117</sup> However, a fee charged for the rental of solicitation booths at a state fair was found

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108. *Id.* at 581.

109. *See* *Fernandes v. Limmer*, 663 F.2d 619 (5th Cir. 1981) (exaction of fees for privilege of using first amendment rights condemned), *cert. dismissed*, 103 S. Ct. 5 (1982). *See also* *Troyer v. Town of Babylon*, 483 F. Supp. 1135 (E.D.N.Y.) (requiring householders' prior consent constitutes unconstitutional imposition of licensing fee by generating costs which burden the exercise of first amendment rights), *aff'd*, 628 F.2d 1346 (2d Cir.), *aff'd sub nom.*, *Town of Southhampton v. Troyer*, 449 U.S. 988 (1980).

110. *See* *ISKCON of W. Pa., Inc. v. Griffin*, 437 F. Supp. 666, 670-71 (W.D. Pa. 1977) (\$10 per day permit fee excessive).

111. *See* *ISKCON, Inc. v. Evans*, 440 F. Supp. 415, 422 (S.D. Ohio 1977) (fee charged for rental of booth space not constitutionally improper, because purpose to defray expenses from exhibitors' activities).

112. *See* *Fernandes v. Limmer*, 663 F.2d 619, 633 (5th Cir. 1981) (ordinance should not impose even moderate exaction on privilege of using public forum for protected purpose, unless governmental body demonstrates link between fee and costs of licensing), *cert. dismissed*, 103 S. Ct. 5 (1982).

113. 663 F.2d 619 (5th Cir. 1981), *cert. dismissed*, 103 S. Ct. 5 (1982).

114. *Id.* at 639.

115. *Id.* at 633.

116. *Id.*

117. *Id.*

constitutional, because it was meant to defray the expenses of the exhibitors' activities.<sup>118</sup>

### G. Insufficient Government Interests

Despite the particular ground on which a plaintiff may challenge an ordinance, the government has the burden of showing that the state interest asserted necessitates the regulation of religious solicitation.<sup>119</sup> In measuring this burden, the courts have been unable to reach a consensus on the nature of the interest which a governmental entity must assert to justify its solicitation regulation. Most courts, however, find that an interest in the prevention of fraud is an insufficient justification.<sup>120</sup>

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118. *ISKCON, Inc. v. Evans*, 440 F. Supp. 414, 424 (S.D. Ohio 1977).

119. For the necessity of demonstrating a compelling state interest, see *Larson v. Valente*, 102 S. Ct. 1673, 1685 (1982) (state statute imposing registration and reporting requirements on certain religious organizations invalidated); *ISKCON, Inc. v. Barber*, 650 F.2d 430, 445 (2d Cir. 1981) (state failed to demonstrate that booth solicitation rule was least intrusive means of regulation); *Edwards v. Maryland State Fair & Agricultural Soc'y, Inc.*, 628 F.2d 282, 286 (4th Cir. 1980) (enforcement of booth solicitation rule at state fair denied ISKCON's first amendment rights); *United States v. Silberman*, 464 F. Supp. 866, 872 (M.D. Fla. 1979) (regulation which prohibited business solicitation in park areas without permit not violated by defendant's religious solicitation); *ISKCON, Inc. v. Hays*, 438 F. Supp. 1077, 1081 (S.D. Fla. 1977) (regulation prohibiting solicitation without written permission invalidated). For an example of the necessity of demonstrating a paramount interest, see *Westfall v. Board of Comm'rs*, 477 F. Supp. 862, 867 (N.D. Ga. 1979) (ordinance's identification requirements overly burdensome). For an example of the necessity of demonstrating a substantial interest, see *Heffron v. ISKCON, Inc.*, 452 U.S. 640, 654 (1981) (state fair's booth solicitation rule valid time, place, and manner restriction on religious solicitation); *Niemotko v. Maryland*, 340 U.S. 268, 271-72 (1951) (park's availability for first amendment activity cannot be determined by "amorphous" custom). For an example of the necessity of demonstrating a significant interest, see *Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 771 (1976) (first amendment protection extends to commercial speech). For an example of the necessity of demonstrating a legitimate interest, see *Lieberman v. Schesventer*, 447 F. Supp. 1355, 1361 (M.D. Fla. 1978) (regulation governing sale and distribution of literature in national parks constitutional means of accommodating conflicting interests). See also *ISKCON, Inc. v. New Jersey Sports & Exposition Auth.*, 532 F. Supp. 1088, 1102 (D.N.J. 1981) (significance of governmental interest to be assessed in light of facility's characteristics, nature and functions; Authority permitted to forbid solicitation), *aff'd mem.*, 691 F.2d 155 (1982).

120. See *Village of Schaumburg v. Citizens for a Better Env't*, 444 U.S. 620, 637 (1980) ("Fraudulent misrepresentations can be prohibited and the penal laws used to punish such conduct directly."); *Fernandes v. Limmer*, 663 F.2d 619, 629 (5th Cir. 1981) ("There are other means, such as penal laws, to prevent and punish frauds without intruding on First Amendment freedoms. . . ."), *cert. dismissed*, 103 S. Ct. 5 (1982); *Edwards v. Maryland State Fair & Agricultural Soc'y, Inc.*, 628 F.2d 282, 286 (4th Cir. 1980) ("[T]he penal laws available to prevent fraud are clearly less

One case which provides some additional guidelines is *Troyer v. Town of Babylon*.<sup>121</sup> Through its ordinance, the defendant town sought to reduce litter from distributed printed material and protect its residents' privacy against solicitor victimization. Since many of the towns' homes are occupied only during the summer months, and printed material left by solicitors could therefore turn unoccupied homes into targets for burglars, the town felt that it was especially justified in regulating solicitation.<sup>122</sup> However, the court did not agree.<sup>123</sup> Interests in protecting residents' privacy, reducing litter and maintaining property values were deemed insufficient justification for the burdens the ordinance imposed on the plaintiff's constitutional rights.<sup>124</sup>

#### H. Identification Procedures

Solicitors' rights may be infringed upon by excessive identification procedures. The state's right to require solicitors to establish their identity is longstanding.<sup>125</sup> However, the nature of permissible enforcement is unclear. For example, a requirement that solicitors wear

restrictive of expression than the 'booth rule.' "); *ISKCON, Inc. v. Bowen*, 600 F.2d 667, 669 (7th Cir.) ("The interest in combating fraud is served by the use of penal laws to punish this conduct."), *cert. denied*, 444 U.S. 963 (1979); *ISKCON v. State Fair of Tex.*, 480 F. Supp. 67, 68 n.2 (N.D. Tex. 1979) ("Fraud can be adequately prevented by enforcement of Texas criminal law by the use of plainclothes policemen or by other means."); *Weissman v. City of Alamogordo*, 472 F. Supp. 425, 431 (D.N.M. 1979) ("[F]rauds may be denounced as offenses punished by law; and trespasses may similarly be forbidden, but not in a manner treading on First Amendment rights.").

For the contention that keeping the streets clean and attractive is insufficient justification for regulation, see *Schneider v. State*, 308 U.S. 147 (1939); *ISKCON, Inc. v. Bowen*, 600 F.2d 667, 670 (7th Cir.) ("The generation of litter as a result of the otherwise lawful distribution of literature does not justify the restrictions sought by the defendants. . . ."), *cert. denied*, 444 U.S. 963 (1979).

121. 483 F. Supp. 1135 (E.D.N.Y.), *aff'd*, 628 F.2d 1346 (2d Cir.), *aff'd sub nom.* *Town of Southhampton v. Troyer*, 449 U.S. 988 (1980).

122. 483 F. Supp. at 1136.

123. *Id.* at 1139. If the town was going to supplement state law, the court said, the town would have to do so without burdening the exercise of first amendment rights. *Id.* New York statutes "permit the householder or the consumer to take affirmative action by posting to prevent solicitation and by punishing illegal conduct. . . ." *Id.* at 1138. The court stated that the town's concern for its residents' privacy could be abated by advising residents that they could warn away unwanted solicitors by posting signs. *Id.* at 1142.

124. *Id.* When measured against these burdens, evidence that property values might be reduced by posted signs was unpersuasive. *Id.*

125. See *Cantwell v. Connecticut*, 310 U.S. 296, 306 (1940) (state may require stranger to establish identification and authority to solicit). See also *Murdock v. Pennsylvania*, 319 U.S. 105, 116 (1943) (dictum indicating that ordinances may require solicitors to identify themselves).

identification cards has been upheld by some courts<sup>126</sup> and invalidated by others.<sup>127</sup>

*Westfall v. Board of Commissioners*<sup>128</sup> provides an example of overly burdensome identification requirements. The county's ordinance provided that, immediately prior to solicitation, solicitors must present their identification cards and request that the cards be read. The solicitor then had to inform those solicited of: (1) the nature and purpose of the solicitation, (2) the name and headquarters of the organization and (3) any minimum donation required for the acceptance of any items.<sup>129</sup> The court found that these identification requirements went "too far" and were overly burdensome.<sup>130</sup> The court stated that the identification procedures could not be considered necessary to achieve the county's goal of protecting citizens from crime and undue annoyance.<sup>131</sup> The court suggested that the county could devise a less burdensome method of identification.<sup>132</sup>

## I. Prior Restraint

Just as an ordinance may not overly burden the exercise of first amendment rights, it may not restrain those rights in advance of their

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126. See *Edwards v. Maryland State Fair & Agricultural Soc'y, Inc.*, 628 F.2d 282, 285 n.2 (4th Cir. 1980) (plaintiffs' injunction pending appeal was subject to condition that solicitors would be required to wear identification cards); *ISKCON, Inc. v. Bowen*, 600 F.2d 667, 670 (7th Cir.) (injunction required ISKCON devotees to wear identification cards at state fair), *cert. denied*, 444 U.S. 963 (1979). See also *ISKCON, Inc. v. Rochford*, 425 F. Supp. 734, 742 (N.D. Ill. 1977) (neither district nor circuit court objected to requirement that solicitors wear badges), *aff'd in part, rev'd in part*, 585 F.2d 263, 273 (7th Cir. 1978).

127. See *ISKCON, Inc. v. Lentini*, 461 F. Supp. 49 (E.D. La. 1978). As support for the contention that solicitors cannot be required to wear identifying badges, the court cited *Wulp v. Corcoran*, 454 F.2d 826 (1st Cir. 1972), in which an ordinance requiring newspaper vendors to wear official badges was invalidated. *Id.* at 53. The court also cited *Strasser v. Doorley*, 432 F.2d 567 (1st Cir. 1970), in which it was found unconstitutional to require bootblacks and newsboys to wear numbered metal badges. *Id.* In *ISKCON of Houston, Inc. v. City of Houston*, 482 F. Supp. 852 (S.D. Tex. 1979), the district court also cited these two cases as support for its holding that ISKCON devotees could not be required to wear badges. *Id.* at 865. However, the district court was overruled by the court of appeals. 689 F.2d 541, 556 (5th Cir. 1982).

128. 477 F. Supp. 862 (N.D. Ga. 1979).

129. *Id.* at 864-65. Further limitations imposed by the ordinance were that solicitation could only occur between 9:00 a.m. and 6:00 p.m. and that the number of solicitors per organization could not exceed 25. *Id.* at 864.

130. *Id.* at 867. In attempting to insure that its residents received certain information, the county's ordinance could not require "that a double dose of that information be administered." *Id.* In view of the fact that regulation of first amendment rights must be carefully limited, the court particularly objected to the requirement that the organization's headquarters be disclosed prior to each solicitation. *Id.* at 867 n.2.

131. *Id.* at 867.

132. *Id.*

exercise.<sup>133</sup> A state may have salutary reasons for attempting to restrict certain individuals from soliciting. Nevertheless, to determine who should be restricted, the state first must determine who would be likely to engage in the prohibited conduct.<sup>134</sup> This primary determination faces the danger inherent in any prediction—that it will be incorrect.<sup>135</sup> With first amendment rights at stake, an incorrect prediction effectively results in censorship. Therefore, to support its use of a prior restraint, a governmental entity is required to demonstrate at least a high probability that proscribed speech is imminent.<sup>136</sup>

Sacramento, California was unable to comply with this requirement in *ISKCON of Berkeley, Inc. v. Kearnes*.<sup>137</sup> The city's ordinances were adopted as a means of combating fraudulent solicitation.<sup>138</sup> The ordinances instructed a municipal charitable solicitations committee to consider ten criteria, aimed at revealing fraudulent intent, in deciding whether to grant a solicitation permit.<sup>139</sup> Rather

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133. See *Southeastern Promotions, Ltd. v. Conrad*, 420 U.S. 546, 552-53 (1975) (public officials may not be given power to deny use of forum in advance of expression).

134. See *ISKCON of Berkeley, Inc. v. Kearnes*, 454 F. Supp. 116, 119 (E.D. Cal. 1978) (permits denied those "likely" to perpetrate frauds). See also *ISKCON of Atlanta v. Eaves*, 601 F.2d 809, 832 (5th Cir. 1979) (permit automatically revoked for violating ordinance, and all permits issued to organization revoked if three or more people representing the same organization were convicted within six months).

135. See *ISKCON of Berkeley, Inc. v. Kearnes*, 454 F. Supp. 116, 122 (E.D. Cal. 1978) (problem of prediction is key to doctrine of prior restraint).

136. *Id.* at 123.

137. 454 F. Supp. 116 (E.D. Cal. 1978).

138. *Id.* at 118.

139. *Id.* at 118-19. The ten criteria were:

- (a) That all of the statements made in the application are true;
- (b) That the applicant, and every director, officer, manager, promoter, consultant, and other agent of the applicant, has a good reputation for integrity and responsibility;
- (c) That the applicant, and the persons who are to control, supervise and promote the solicitation on behalf of the applicant, have not knowingly violated the provisions of this chapter in the conduct of any prior solicitation;
- (d) That the applicant has not engaged in any fraudulent transactions or enterprises which the committee deems relevant to the application;
- (e) That the solicitation will not be a fraud on the public;
- (f) That the solicitation is prompted solely by the desire to finance the charitable cause described in the application, and will not be conducted for private profit;
- (g) That the cost of raising funds will be reasonable;
- (h) That, if a promoter or promoters will conduct all or any part of the solicitation, the provisions of Section 5.64.180 hereof have been complied with;
- (i) That the proposed method or methods of soliciting will not be contrary to the provisions of this chapter; and
- (j) That the applicant is maintaining an adequate system of record keeping and accounting, and has agreed to make such available to the committee or its designees for inspection.

*Id.* at 123-24.

than placing reasonable time, place and manner restrictions on solicitation, these ordinances denied solicitation permits to those who would " 'likely' " or " 'probably' " engage in fraudulent solicitation.<sup>140</sup> A reasonable suspicion of fraudulent intent might have been raised, according to the court, if the ordinances had required the combined presence of all ten criteria, rather than of any one alone.<sup>141</sup> However, as the ordinances stood, Sacramento could not justify the prior restraint which the ordinances imposed by showing a high probability that those who were denied permits were about to engage in proscribed speech.<sup>142</sup>

### J. Procedural Safeguards

In addition to surviving judicial scrutiny under the various methods of evaluation which have been described thus far, an ordinance which may possibly infringe upon first amendment rights may have to provide the procedural due process safeguards set forth in *Freedman v. Maryland*.<sup>143</sup> *Freedman* involved a constitutional challenge of a motion picture censorship statute;<sup>144</sup> however, the holding of the case has been applied widely to challenges of ordinances which regulate religious solicitation.<sup>145</sup> *Freedman* mandates that: (1) the burden of proving that the regulated activity is an unprotected activity must rest on the promulgator, (2) there must be no effect of finality lent to the determination of whether or not the activity constitutes a protected exercise, (3) the procedure must require a judicial determination; and (4) the procedure must assure that the final judicial decision will be prompt.<sup>146</sup>

In evaluating the constitutionality of an ordinance which regulates religious solicitation, courts consider all of these criteria.<sup>147</sup> While the

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140. *Id.* at 119.

141. *Id.* at 124. Even under those circumstances, the court would not have been certain that all of the criteria were relevant and constitutional. *Id.*

142. *Id.* at 123.

143. 380 U.S. 51 (1965).

144. The statute required the prior submission of motion pictures to the State Board of Censors. *Id.* at 52. According to the Court, the statute lacked "sufficient safeguards for confining the censor's action to judicially determined constitutional limits. . . ." *Id.* at 57.

145. See *Fernandes v. Limmer*, 663 F.2d 619, 628 (5th Cir. 1981), *cert. dismissed*, 103 S. Ct. 5 (1982); *Conlon v. City of N. Kansas City, Mo.*, 530 F. Supp. 985, 990 (W.D. Mo. 1981); *United States v. Silberman*, 464 F. Supp. 866, 873-74 (M.D. Fla. 1979); *ISKCON of Berkeley, Inc. v. Kearnes*, 454 F. Supp. 116, 120 (E.D. Cal. 1978); *ISKCON of W. Pa., Inc. v. Griffin*, 437 F. Supp. 666, 670 (W.D. Pa. 1977).

146. 380 U.S. 51, 58-59 (1965).

147. See note 145 *supra* and accompanying text.

emphasis is on the ordinance, courts also take notice of the nature of the forum in determining whether the ordinance is constitutional.

#### IV. Limitations on Public Forums

The right to engage in religious solicitation does not mandate access to all public and private forums.<sup>148</sup> Even when property is publicly owned, it will not necessarily be available for solicitation or distribution.<sup>149</sup> However, the vast majority of publicly owned buildings are held to be public forums, where first amendment rights may be freely exercised.<sup>150</sup>

In determining the constitutionality of regulations, courts have recently begun to consider a forum's "special attributes."<sup>151</sup> When first amendment rights are at issue, it has been suggested that courts ask whether "the character of the place, the pattern of usual activity, the nature of its essential purpose and the population who take advantage of the general invitation extended make it an appropriate place for communication of views on issues of political and social significance."<sup>152</sup> If these criteria are not satisfied, courts may be willing to limit the accessibility of the forum, resulting in a limited public forum.<sup>153</sup>

##### A. Airports

Ordinances which regulate religious solicitation at airports have been invalidated when the airport is considered to be a public fo-

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148. See note 11 *supra* and accompanying text.

149. See *ISKCON, Inc. v. Wolke*, 453 F. Supp. 869, 873 (E.D. Wis. 1978) ("Prisons, hospitals, office buildings, and other public facilities frequently require regulations to ensure that free speech activities do not unreasonably interfere with their functions.").

150. See, e.g., *Fernandes v. Limmer*, 663 F.2d 619, 626 (5th Cir. 1981) (references to airport as public forum and public place), *cert. dismissed*, 103 S. Ct. 5 (1982); *ISKCON, Inc. v. Wolke*, 453 F. Supp. 869, 873 (E.D. Wis. 1978) (courts consistently hold public buildings available for first amendment activity).

151. See *Heffron v. ISKCON, Inc.*, 452 U.S. 640, 650-51 (1981) ("[C]onsideration of a forum's special attributes is relevant to the constitutionality of a regulation since the significance of the governmental interest must be assessed in light of the characteristic nature and function of the particular forum involved."). See also *Fernandes v. Limmer*, 663 F.2d 619, 627 (5th Cir. 1981) (Lack of restrictions on entry and street-like character of airport terminal buildings led court to conclude that they "must be treated as public forums."), *cert. dismissed*, 103 S. Ct. 5 (1982).

152. *Wolin v. Port of New York Auth.*, 392 F.2d 83, 89 (2d Cir.), *cert. denied*, 393 U.S. 940 (1968).

153. See *Heffron v. ISKCON, Inc.*, 452 U.S. 640, 655 (1981) (state fair designated a "limited public forum").



rum<sup>154</sup> and upheld when the airport is found to be a limited public forum.<sup>155</sup> Reasonable time, place and manner restrictions on the exercise of first amendment activities at a public forum are permissible.<sup>156</sup> Accordingly, courts invalidate ordinances which unreasonably regulate religious solicitation at "public forum" airports. Many of the invalidated ordinances have been struck down because they vest administrative officials with excessive discretion.<sup>157</sup>

A court may be willing to limit the public forum areas of an airport in light of the airport's need to maintain crowd control and monitor security. In *ISKCON, Inc. v. Rochford*,<sup>158</sup> the court permitted the airport regulations to proscribe solicitation in those public areas in which airport officials are concerned about security problems,<sup>159</sup> captive audience problems<sup>160</sup> or space limitations.<sup>161</sup> The court asserted that the city's concerns in facilitating the processing of travelers, the flow of traffic and routine airport activities were valid, and that exclusion of first amendment activities from these areas was proper.<sup>162</sup>

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154. See *Fernandes v. Limmer*, 663 F.2d 619, 626 (5th Cir. 1981) (refers to airport as public place and public forum), *cert. dismissed*, 103 S. Ct. 5 (1982); *ISKCON, Inc. v. Wolke*, 453 F. Supp. 869, 872 (E.D. Wis. 1978); *ISKCON, Inc. v. Engelhardt*, 425 F. Supp. 176, 180 (D. Kan. 1977).

According to the court in *Wolke*, areas of an airport terminal which are generally open to the public are a public forum. 453 F. Supp. at 872. The airport's crowded conditions were insufficient support for the prohibition of free speech which would have resulted if the court had found that the airport was not a public forum. *Id.* at 874.

Similarly, in *Engelhardt*, the court found that those portions of the airport which are open to the general public are a protected first amendment forum, despite the fact that the city holds the airport in a proprietary capacity. 425 F. Supp. at 180. The court rejected the defendant's contention that the airport's unusual characteristics made it less of a public forum. *Id.* at 180 n.5.

155. See *ISKCON of Atlanta v. Eaves*, 601 F.2d 809, 828 (5th Cir. 1979) (ordinance could limit solicitation to five areas of airport and could limit the transfer of money to booths, since it substantially contributed to goal of reduced disruption); *ISKCON, Inc. v. Rochford*, 585 F.2d 263, 268 (7th Cir. 1978) (certain public areas proscribed because of airport officials' concern with security, travelers and space limitations).

156. See note 12 *supra* and accompanying text.

157. See *Fernandes v. Limmer*, 663 F.2d 619, 629 (5th Cir. 1981) (board had unguided power to grant or deny applicant permit based on its opinion as to organization's legitimacy), *cert. dismissed*, 103 S. Ct. 5 (1982); *ISKCON, Inc. v. Wolke*, 453 F. Supp. 869, 874 (E.D. Wis. 1978) (no standards for decision-making); *ISKCON, Inc. v. Engelhardt*, 425 F. Supp. 176, 180 (D. Kan. 1977) (ordinance prescribed no standards to limit licensing authority's discretion).

158. 585 F.2d 263 (7th Cir. 1978).

159. *Id.* at 268 (airport security must be most tightly controlled in hijack, search and security areas).

160. *Id.* (captive audience problems arise when people are waiting in line).

161. *Id.* (space limited in doorways and on escalators).

162. *Id.* at 268-69. According to the court, the city's valid concerns were "to expedite the processing of travelers, to maintain a free and orderly flow of traffic,

Similarly, the ordinance in *ISKCON of Atlanta v. Eaves*,<sup>163</sup> which imposed substantial limitations on solicitors' use of the airport as a public forum, also was upheld. Solicitation was restricted to five areas of the airport, and money had to be exchanged from within solicitation booths.<sup>164</sup> According to the court, the limitations imposed by the ordinance were not overly burdensome<sup>165</sup> and were justified by their "substantial contribution to . . . fairness, ease of enforcement, and reduced disruption" at the airport.<sup>166</sup>

## B. State Fairs

Regulations which restrict solicitation activity to booths have come to be known as booth solicitation rules. While a few airports have booth solicitation rules, these rules generally are used to regulate solicitation at state fairs.<sup>167</sup> Booth solicitation rules are of two types: those which confine all activities of the solicitor to a booth,<sup>168</sup> and those which require that only the solicitation activity be conducted from within the booth.<sup>169</sup> It is arguable that the two types of booth

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and to avoid disruption of normal airport activities." *Id.* In addition, the remaining areas of the airport in which ISKCON could exercise its first amendment rights were not insubstantial. *Id.* at 269. The court rejected the city's suggestion that, even if it were denied use of airport facilities, ISKCON could present its views anywhere else in Chicago. *Id.* at 272.

163. 601 F.2d 809 (5th Cir. 1979).

164. *Id.* at 816-17. For a discussion of booth solicitation rules, see notes 167-70 *infra* and accompanying text.

165. The court did not address the five area restriction. Instead, the court noted that "appellants can ask for funds or attempt to sell religious tracts at any place in the airport where they are allowed to proselytize; the ordinance requires only that instead of accepting any proffered money, they refer the donor to a solicitation booth." 601 F.2d at 828-29.

166. *Id.* at 830. The court followed a novel approach in reaching the conclusion that the ordinance was not vague. Since the ordinance would be repeatedly applied by a small number of enforcement officials to the limited number of people licensed to proselytize at the airport, the court felt that "certain patterns of enforcement and tacit understandings . . ." would develop, and that the ordinance could therefore be permitted to be somewhat imprecise. *Id.* at 831.

167. For examples of cases involving state fairs which regulate religious solicitation through booth solicitation rules, see, e.g., *Heffron v. ISKCON, Inc.*, 452 U.S. 640 (1981); *Hynes v. Metropolitan Gov't*, 667 F.2d 549 (6th Cir. 1982) (per curiam); *Edwards v. Maryland State Fair & Agricultural Soc'y, Inc.*, 628 F.2d 282 (4th Cir. 1980); *ISKCON v. Bowen*, 600 F.2d 667 (7th Cir.), *cert. denied*, 444 U.S. 963 (1979); *ISKCON v. State Fair of Tex.*, 480 F. Supp. 67 (N.D. Tex. 1979); *ISKCON, Inc. v. Evans*, 440 F. Supp. 414 (S.D. Ohio 1977).

168. See *ISKCON, Inc. v. Bowen*, 600 F.2d 667 (7th Cir.) (state fair officials required members of ISKCON to practice Sankirtan from a booth), *cert. denied*, 444 U.S. 963 (1979); *ISKCON v. State Fair of Tex.*, 480 F. Supp. 67 (N.D. Tex. 1979) (state fair sought to confine plaintiffs to booth for all activities).

169. See *ISKCON, Inc. v. Barber*, 650 F.2d 430 (2d Cir. 1981) (booth rule restricted solicitation of funds to leased booths); *Edwards v. Maryland State Fair &*

solicitation rules are effectively the same, as both are likely to restrict donations. Solicitors either will decide to stay within the booths for other activities as well, or they will have to return to the booth—and convince the donor to return with them—for the purpose of accepting donations.<sup>170</sup>

Despite wide criticism of booth rules<sup>171</sup> the Supreme Court, in *Heffron v. ISKCON, Inc.*,<sup>172</sup> has insured, at least temporarily, the validity of booth solicitation rules at state fairs and the status of the state fair as a limited public forum. This result stems from the Court's unwillingness to equate a fair with a public street<sup>173</sup> and its validation of a state fair's booth rule.<sup>174</sup> Prior to *Heffron*, courts exempted ISKCON from the booth solicitation rule's coverage<sup>175</sup> and found that the states were without sufficient justification for confining ISKCON devotees to booths.<sup>176</sup>

### C. Other Tourist Attractions

In evaluating regulation of religious solicitation at tourist attractions other than state fairs, lower courts have not been hesitant to limit and even curtail solicitors' access to a forum when the forum's special characteristics warrant such restriction.

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Agricultural Soc'y, Inc., 628 F.2d 282 (4th Cir. 1980) (those wishing to solicit contributions, sell products, or distribute literature required to do so from a booth); *ISKCON, Inc. v. Evans*, 440 F. Supp. 414 (S.D. Ohio 1977) (regulation required all solicitations to be made from within a booth).

170. For an example of the contention that booth solicitation rules will discourage contributions, see *ISKCON of W. Pa., Inc. v. Griffin*, 437 F. Supp. 666, 673 (W.D. Pa. 1977).

171. See notes 65-66 *supra* and accompanying text.

172. 452 U.S. 640 (1981). For a discussion of *Heffron*, see notes 57-66 *supra* and accompanying text.

173. 452 U.S. at 651.

174. *Id.* at 655. Only one of *Heffron's* lower court predecessors had been willing to similarly limit the availability of a state fair as a public forum. See *ISKCON, Inc. v. Evans*, 440 F. Supp. 414, 425 (S.D. Ohio 1977) (fair not constitutional equivalent of park or street corner).

175. See, e.g., *ISKCON v. State Fair of Tex.*, 480 F. Supp. 67, 68 (N.D. Tex. 1979) (ISKCON alone exempted from defendants' booth solicitation rule, because other vendors' interest in free speech not on parity with ISKCON's).

176. See *Edwards v. Maryland State Fair & Agricultural Soc'y, Inc.*, 628 F.2d 282, 286-87 (4th Cir. 1980) (court unconvinced that crowd control was compelling state interest or that there were no less restrictive means by which it could be accomplished); *ISKCON, Inc. v. Bowen*, 600 F.2d 667, 669-70 (7th Cir.) (interest in combating fraud could be accomplished by less restrictive regulation, and plaintiffs' production of litter and interference with concessionaires' business was insufficient justification for restrictions), *cert. denied*, 444 U.S. 963 (1979).

The court in *ISKCON, Inc. v. New Jersey Sports & Exposition Authority*<sup>177</sup> was impressed with the Authority's unique concerns regarding its Meadowlands racetrack. The large number of race track patrons presented strong safety considerations, as well as enhanced risks of misrepresentation and fraud.<sup>178</sup> In addition, the court distinguished between " 'forum' like locations," such as city streets and parks and "other" facilities, such as fairs, subway stations, airports, and convention centers,<sup>179</sup> in reaching the conclusion that the Authority's policy of forbidding solicitation was warranted.<sup>180</sup>

The regulations which were at issue in *ISKCON, Inc. v. McAvey*<sup>181</sup> did not forbid solicitation at the World Trade Center in New York City, but rather limited the number of ISKCON devotees who could practice Sankirtan<sup>182</sup> in the center, as well as the times and places where it could be practiced.<sup>183</sup> The court upheld the regulations, stating that the plaintiffs had ample access to the forum despite the regulations, which kept solicitors from causing added confusion in the most congested areas of the center.<sup>184</sup> Similarly, the plaintiffs in *Lieberman v. Schesventer*<sup>185</sup> had ample access to the Castillo de San Marcos National Monument in Florida,<sup>186</sup> despite a regulation which permitted certain areas of national parks to be designated as unavailable for solicitation.<sup>187</sup> In *Lieberman*, the court upheld the regulation because

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177. 532 F. Supp. 1088 (D.N.J. 1981), *aff'd mem.*, 691 F.2d 155 (1982).

178. *Id.* at 1104.

179. *Id.* at 1103.

180. *Id.* at 1106. In addition, the court was unable to distinguish between religious and nonreligious solicitors, so that, according to the court, if the Authority were opened up to the plaintiffs, it would have to be opened up to other groups as well. *Id.* at 1105.

181. 450 F. Supp. 1265 (S.D.N.Y. 1978).

182. For a discussion of the ISKCON ritual of Sankirtan, see note 5 *supra* and accompanying text.

183. 450 F. Supp. at 1266. The regulations restrict solicitors to 10 areas of the World Trade Center, requiring solicitors to remain at least 15 feet away from designated areas. Since only one ISKCON devotee is permitted to practice Sankirtan within each of the 10 specified areas, a maximum of 10 devotees can be present in the World Trade Center. In addition, the regulations restrict devotees to practicing Sankirtan from 9:30 a.m. to 4:00 p.m. on weekdays and from 10:00 a.m. to 5:00 p.m. on weekends. *Id.* at 1268.

184. *Id.* at 1270. These areas include subway entrances, intersections, and highly trafficked corridors which are divided by columns. *Id.*

185. 447 F. Supp. 1355 (M.D. Fla. 1978).

186. *Id.* at 1360.

187. *Id.* at 1357. Areas were designated as unavailable if solicitation would "(1) cause injury or damage to park resources; or (2) unreasonably impair the atmosphere of peace and tranquility maintained in wilderness, natural, historic or commemorative areas; or (3) unreasonably interfere with interpretive, living history, visitors services, or other program activities or with the administrative functions of the

it permitted the plaintiffs to exercise first amendment rights and the government to maintain the atmosphere of the monument.<sup>188</sup>

In *ISKCON v. City of New York*,<sup>189</sup> a New York City Police Department policy barred the plaintiffs from proselytizing and soliciting in a specific area of the United Nations Headquarters.<sup>190</sup> The District Court for the Southern District of New York noted New York City's "particularly weighty obligations" respecting the security of the United Nations Headquarters,<sup>191</sup> including the fact that the area at issue in the case was "fraught with security problems."<sup>192</sup> Since alternative forums were available,<sup>193</sup> the court held that the government's interest in protecting the United Nations Headquarters outweighed the limitations which the police department's policy placed on the forum.<sup>194</sup>

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national park service; or (4) substantially impair the operation of public use facilities or services of national park service concessioners or contractors." *Id.*

188. *Id.* at 1361.

189. Two actions were involved in this case. In the first action, the court denied the plaintiffs' motion for a preliminary injunction. 484 F. Supp. 966 (S.D.N.Y. 1979). The second action resulted in a bench trial, at which the court determined that a proper balance had been attained between the conflicting interests presented in the case. 501 F. Supp. 684, 693 (S.D.N.Y. 1980).

190. The policy affects the sidewalks immediately adjacent to the Visitors' Gate. When the first action was brought, the east side of First Avenue between 45th and 46th Streets was affected. 484 F. Supp. at 967. By the time the second action was brought, the restricted area had been increased from between 45th and 46th Streets to between 42nd and 48th Streets. 501 F. Supp. at 686.

191. 484 F. Supp. at 971.

192. 501 F. Supp. at 693. The Visitors' Gate is the site of heavy pedestrian and vehicular traffic. *Id.* at 688. Police regularly have to deal with thousands of demonstrators and picketers at the United Nations Headquarters. *Id.* at 689. If the police are permitted to exclude all continuous presences from the east side of First Avenue, they can easily tell whether anyone is attempting to scale the fence which surrounds the United Nations Headquarters or to throw objects onto the property. *Id.* at 688, 693.

193. *Id.* at 689. According to the court, the plaintiffs may continue to practice Sankirtan at the United Nations Headquarters itself, as long as the devotees stay away from the small area which is restricted by the Police Department's policy. The Police Department has designated six areas as recommended for demonstrating and picketing, and has indicated that practically the only place it would object to plaintiffs' presence is in the area restricted by the policy. *Id.* at 686-87. Thus, the policy preserves the plaintiffs' access to the audience of United Nations Headquarters visitors, which plaintiffs seek because of their international character and receptivity. *Id.* at 693-94.

194. *Id.* at 693. In reaching its conclusion, the court reviewed the unusual nature of the United Nations Headquarters and the activities which are carried on there. *Id.* In addition, the court noted that it was considering only this particular policy of the New York City Police Department, and was not holding that the police could constitutionally prohibit plaintiffs' practicing Sankirtan elsewhere. *Id.* at 694. Although the court also noted that an unwritten policy such as the Police Department's might result in discretionary decisionmaking, it found no evidence that such discretion had been exercised. *Id.* at 687 n.4.

#### D. The "Flexible Forum"

A court's characterization of a forum will not necessarily be static. In *ISKCON v. Schrader*<sup>195</sup> the plaintiffs sought to enjoin enforcement of an ordinance which barred soliciting in a city convention center while it was leased to a private tenant.<sup>196</sup> The court found that a forum's characterization did not necessarily have to be permanent.<sup>197</sup> Each tenant's use of the center would determine whether ISKCON would be permitted to have access to the inside of the center.<sup>198</sup> Although ISKCON claimed that if it were denied access to the inside of the center it would be without alternative access to the forum, the court dismissed the claim, asserting that the sidewalks outside the center would nevertheless remain available to ISKCON.<sup>199</sup>

Thus, the characterization of a forum will determine whether religious solicitors will have access to it. As urban centers become increasingly complex, courts may be more willing to limit public forums and consequently uphold more restrictions on the regulation of religious solicitation.

#### V. Proposal For Model Ordinance

While it has long been established that municipalities may regulate religious solicitation,<sup>200</sup> the permissible boundaries of these regulations have never been clearly mapped out by the courts. Rather, courts have established what is impermissible.

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195. 461 F. Supp. 714 (N.D. Tex. 1978).

196. *Id.* at 715. While the center was leased to private tenants, the city maintained control over all of the center's interior corridors. *Id.* at 716.

197. *Id.* at 718. When a tenant's use of the center failed to render it a public forum, ISKCON could be denied access, regardless of "the state's role as landlord. . . ." *Id.* at 719. One example of a use which would fail to render the forum public was a convention of dental supply technicians. *Id.* at 718.

198. *Id.*

199. *Id.*

200. *See Hynes v. Mayor of Oradell*, 425 U.S. 610 (1976) (municipality's power to regulate in order to protect citizens from crime and undue annoyance has been consistently recognized by the Supreme Court); *Murdock v. Pennsylvania*, 319 U.S. 105, 116 (1943) (state regulation of the streets is permissible to protect the community from "the evils of solicitations"); *Cantwell v. Connecticut*, 310 U.S. 296, 305 (1940) (regulation of solicitation not constitutionally objectionable if it is in the public interest, does not involve any religious test, and does not unreasonably obstruct or delay the collection of funds); *ISKCON v. City of New York*, 484 F. Supp. 966 (S.D.N.Y. 1979) (government may reasonably restrict time, place and manner of exercising first amendment rights); *Westfall v. Board of Comm'rs*, 477 F. Supp. 862 (N.D. Ga. 1979) (reasonable restrictions upon time, place and manner of first amendment rights may unquestionably be imposed); *Weissman v. City of Alamo-gordo*, 472 F. Supp. 425 (D.N.M. 1979) (municipality's power to enforce reasonable requirements to protect its citizens is well recognized).

An ordinance which regulates religious solicitation may be constitutionally impermissible if it lacks the necessary *Freedman* procedural safeguards,<sup>201</sup> or if it requires the payment of a flat license tax as a condition of the exercise of first amendment activities.<sup>202</sup> However, solicitors may be required to pay a nominal licensing fee, if it is aimed at defraying the cost of policing solicitation activities.<sup>203</sup> Ordinances may not be overly burdensome to those who are regulated by them,<sup>204</sup> nor may they act as a prior restraint upon religious solicitation.<sup>205</sup> Such regulations may not contain absolute prohibitions or broad re-

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201. See notes 143-47 *supra* and accompanying text. *Freedman* is invoked when an ordinance permits the exercise of administrative discretion. See *Fernandes v. Limmer*, 663 F.2d 619, 628 (5th Cir. 1981) (Board's opinion as to legitimacy of applicant's organization was unguided), *cert. dismissed*, 103 S. Ct. 5 (1982); *Conlon v. City of N. Kansas City, Mo.*, 530 F. Supp. 985, 990 (W.D. Mo. 1981) (ordinance vested discretion to grant or deny solicitation certificates in city officials); *United States v. Silberman*, 464 F. Supp. 866, 874 (M.D. Fla. 1979) (ordinance lacked objective criteria); *ISKCON of Berkeley, Inc. v. Kearnes*, 454 F. Supp. 116, 124 (E.D. Cal. 1978) (limitations on criteria for obtaining permit necessary to protect against administrative officials' arbitrary denial); *ISKCON of W. Pa., Inc. v. Griffin*, 437 F. Supp. 666, 672 (W.D. Pa. 1977) (ordinance prompted director of aviation's application of personal notion of public interest). Section 4 of the model ordinance proposed in § V of this Comment, *infra*, is meant to be completely ministerial, with no discretion vested in the administrative official. Thus, *Freedman* procedural safeguards are not a necessity.

202. *Murdock v. Pennsylvania*, 319 U.S. 105 (1943). See also *Fernandes v. Limmer*, 663 F.2d 619, 633 (5th Cir. 1981) (an ordinance should not impose an exaction, even one that is moderate in amount, on the privilege of using a public forum for a constitutionally protected purpose, unless the governmental body demonstrates a link between the fee and the costs of the licensing process), *cert. dismissed*, 103 S. Ct. 5 (1982); *Troyer v. Town of Babylon*, 483 F. Supp. 1135, 1139 (E.D.N.Y.) (requirement that people from out of town secure consent from homeowners before approaching homes to solicit was "an indirect unconstitutional imposition of a licensing fee"), *aff'd*, 628 F.2d 1346 (2d Cir.), *aff'd sub nom.* *Town of Southampton v. Troyer*, 449 U.S. 988 (1980); *ISKCON of Western Pa., Inc. v. Griffin*, 437 F. Supp. 666, 670 (W.D. Pa. 1977) (ordinance's imposition of \$10 per day fee was void); *ISKCON v. Conlisk*, 374 F. Supp. 1010, 1016 (N.D. Ill. 1973) (licensing fee amounted to a taxing measure).

203. It is permissible to use a licensing fee to defray administrative costs if the governmental body can demonstrate a link between the fee and the costs of the licensing process. See *Murdock v. Pennsylvania*, 319 U.S. 105, 113-14 (1943); *Fernandes v. Limmer*, 663 F.2d 619, 633 (5th Cir. 1981), *cert. dismissed*, 103 S. Ct. 5 (1982). See also *ISKCON, Inc. v. Evans*, 440 F. Supp. 414, 422 (S.D. Ohio 1977) (fee charged for rental of booth space not constitutionally improper, because meant to defray expenses of exhibitors' activities).

204. See *Westfall v. Board of Comm'rs*, 477 F. Supp. 862, 867 (N.D. Ga. 1979) (ordinance which impermissibly required extensive identification procedures necessitated that a "double dose" of certain information be administered).

strictions.<sup>206</sup> The state's interest in the prevention of fraud is not sufficient to justify these types of regulation of religious solicitation.<sup>207</sup>

Ordinances seem to be invalidated most often on the basis of the court's assessment that the ordinances give too much administrative control to the governmental officials.<sup>208</sup> Courts advise that a licensing authority must be guided by narrow, objective, and definite standards<sup>209</sup> and that an ordinance must "sufficiently specify what those within its reach must do in order to comply."<sup>210</sup> Yet, courts have not set forth definitive standards.

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205. See *Southeastern Promotions, Ltd. v. Conrad*, 420 U.S. 546, 553 (1975) (public officials may not be given "the power to deny use of a forum in advance of actual expression"); *ISKCON of Atlanta v. Eaves*, 601 F.2d 809, 832 (5th Cir. 1979) (automatically revoking the permit of anyone who violated the ordinance and revoking all permits issued on behalf of an organization if three or more convictions representing the same organization occurred within six months was "simply a recipe for an unlawful prior restraint"); *ISKCON of Berkeley, Inc. v. Kearnes*, 454 F. Supp. 116, 124 (E.D. Cal. 1978) (ordinances which regulated content of speech by denying permits to those "likely" to engage in fraudulent behavior operated as prior restraint on exercise of speech).

206. See *McMurdie v. Douth*, 468 F. Supp. 766, 775 (N.D. Ohio 1979) (unlawful for mayor to completely cut off Unification Church's first amendment right to secure permits); *ISKCON v. Conlisk*, 374 F. Supp. 1010, 1017 (N.D. Ill. 1973) (arbitrary infringement on exercise of first amendment rights to limit solicitation to one day per year).

207. For a list of cases in which courts have sought to justify regulations by an interest in preventing fraud, see note 120 *supra* and accompanying text.

208. See *Kunz v. New York*, 340 U.S. 290, 293 (1951) (administrative official may not be given power to control citizens' right to speak about religion); *Cantwell v. Connecticut*, 310 U.S. 296, 305 (1940) (grant of license to conduct religious solicitation may not be conditioned upon state's determination of whether or not a cause is religious); *Schneider v. State*, 308 U.S. 147, 163-64 (1939) (applicant may not be required to submit evidence for police officer's judgment); *Conlon v. City of N. Kansas City, Mo.*, 530 F. Supp. 985, 989-90 (W.D. Mo. 1981) (impermissible to grant city officials unfettered discretion); *Walker v. Wegner*, 477 F. Supp. 648, 653 (D.S.D. 1979) (exercise of administrative discretion should be precluded by statutes which regulate religious solicitation); *Weissman v. City of Alamogordo*, 472 F. Supp. 425, 430 (D.N.M. 1979) (unconstitutional to condition freedom of speech upon municipal officials' discretion); *McMurdie v. Douth*, 468 F. Supp. 766, 776 (N.D. Ohio 1979) (mayor may not exercise unbridled authority in granting or denying solicitation permits); *ISKCON, Inc., v. Lentini*, 461 F. Supp. 49, 53 (E.D. La. 1978) (unfettered discretion impermissible); *Swearson v. Meyers*, 455 F. Supp. 88, 92 (D. Kan. 1978) (ordinance may not call for city officials' exercise of discretion); *ISKCON, Inc. v. Engelhardt*, 425 F. Supp. 176, 180 (W.D. Mo. 1977) (licensing authority's discretion may not be unlimited).

209. See *Shuttlesworth v. City of Birmingham*, 394 U.S. 147, 151 (1969); *Conlon v. City of N. Kansas City, Mo.*, 530 F. Supp. 985, 990 (W.D. Mo. 1981); *Sylte v. Metropolitan Gov't*, 493 F. Supp. 313, 319 (M.D. Tenn. 1980) (*per curiam*); *United States v. Silberman*, 464 F. Supp. 866, 873 (M.D. Fla. 1979); *ISKCON, Inc. v. Wolke*, 453 F. Supp. 869, 874 (E.D. Wis. 1978); *ISKCON, Inc. v. Hays*, 438 F. Supp. 1077, 1081 (S.D. Fla. 1977); *ISKCON of W. Pa., Inc. v. Griffin*, 436 F. Supp. 666, 671 (W.D. Pa. 1977); *ISKCON, Inc. v. Rochford*, 425 F. Supp. 734, 742 (N.D.



Once a court determines that an ordinance vests too much discretion in a governmental official, the court seldom evaluates the ordinance any further. Thus, municipalities have only the extremely broad reasonable time, place and manner standard<sup>211</sup> upon which to fashion their ordinances—a standard which, because it is so broad, easily may result in discriminatory treatment of controversial religious groups.<sup>212</sup> A solicitor may also be required to meet precise registration requirements,<sup>213</sup> as long as they do not vest discretion—especially discretion to determine the validity of a religion—in municipal employees.<sup>214</sup> Since courts themselves have sometimes required solicitors to wear identification cards,<sup>215</sup> such a requirement in a municipal ordinance would probably pass constitutional muster.<sup>216</sup> It is permissi-

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Ill. 1977), *aff'd in part, rev'd in part*, 585 F.2d 263 (7th Cir. 1978). See also *Greene v. Sinclair*, 491 F. Supp. 19, 23 (W.D. Mich. 1980) (necessity of clear, definite, and objective standards). Since § 4(a) of the model ordinance proposed in § V of this Comment, *infra*, vests the administrative official with no discretion, these standards are not required.

210. *Hynes v. Mayor of Oradell*, 425 U.S. 610, 621 (1976). See §§ 2-3 of the model ordinance proposed in § V of this Comment, *infra*.

211. See note 12 *supra* and accompanying text.

212. See notes 53-56 and 105-08 *supra* and accompanying text.

213. See note 216 *infra* and accompanying text. See also § 3 of the model ordinance proposed in § V of this Comment, *infra*.

214. See note 88 *supra* and accompanying text.

215. See note 126 *supra* and accompanying text.

216. "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." *Cantwell v. Connecticut*, 310 U.S. 296, 306 (1940). See also *Murdock v. Pennsylvania*, 319 U.S. 105 (1943) (permissible for ordinance to require solicitors to identify themselves, so that authorities have basis for investigating strangers); *Weissman v. City of Alamogordo*, 472 F. Supp. 425, 430 (D.N.M. 1979) (language indicating that ordinance may require stranger to establish identity and authority); *McMurdie v. Douth*, 468 F. Supp. 766, 776 (N.D. Ohio 1979) (solicitors may be required to establish identity); *ISKCON of Berkeley, Inc. v. Kearnes*, 454 F. Supp. 116, 124 (E.D. Cal. 1978) (constitutional for state to require solicitors to identify themselves to government officials). The court in *Westfall v. Board of Comm'rs*, 477 F. Supp. 862 (N.D. Ga. 1979), objected to the identification card provision of the ordinance, apparently because the ordinance required additionally that the cards be read, and that a further verbal explanation be provided. *Id.* at 867.

However, there is some opposition to identification badges. Both *ISKCON, Inc. v. Lentini*, 461 F. Supp. 49 (E.D. La. 1978) and *ISKCON of Houston, Inc. v. City of Houston*, 482 F. Supp. 852 (S.D. Tex. 1979), *rev'd*, 689 F.2d 541 (5th Cir. 1982) cite *Wulp v. Corcoran*, 454 F.2d 826 (1st Cir. 1972) (ordinance requiring newspaper vendors to wear official badge invalidated) and *Strasser v. Doorley*, 432 F.2d 567 (1st Cir. 1970) (unconstitutional for bootblacks and newsboys to be required to wear numbered metal badges on their hats) as support for the contention that solicitors cannot be required to wear identifying badges. *ISKCON, Inc. v. Lentini*, 461 F.

ble to limit door-to-door solicitation to daylight hours,<sup>217</sup> and to require public disclosure of organizational finances,<sup>218</sup> so that individuals' decisions as to whether they wish to contribute to certain organizations may be more informed.<sup>219</sup> Finally, it has been held that an ordinance may exempt those organizations which solicit solely from their own members.<sup>220</sup>

Based on the foregoing criteria, the following model ordinance should survive judicial scrutiny.

**MODEL ORDINANCE: MUNICIPAL REGULATION OF  
SOLICITATION FOR CHARITABLE, RELIGIOUS, OR  
EDUCATIONAL PURPOSES**

*NOTE:* For any ordinance which regulates charitable, religious, and educational solicitation to be constitutional, commercial and political solicitation must be at least as strictly regulated.

§ 1. "Soliciting" means

- (a) requesting the present or future donation of something of value,
- or
- (b) selling or offering to sell property and to use the proceeds for a charitable, religious or educational purpose.

§ 2. General Rules.

- (a) Registration certificates must be obtained before soliciting for charitable, religious or educational purposes, will be permitted.
- (b) To obtain a registration certificate, a registration statement must be submitted.
- (c) While soliciting for charitable, religious or educational purposes, individuals must visibly display identification cards.

Supp. at 53; *ISKCON of Houston, Inc. v. City of Houston*, 482 F. Supp. at 865. See § 2(c) & § 5 of the model ordinance proposed in § V of this Comment, *infra*.

217. *Westfall v. Board of Comm'rs*, 477 F. Supp. 862, 871 (N.D. Ga. 1979). Originally, the court did not object to the fact that defendants had placed this time limitation upon all of plaintiffs' solicitation activity. On reconsideration, however, the court decided that a distinction had to be made between soliciting in public areas and soliciting from house to house, and that the time restriction should only be applicable to the latter. *Id.* at 865. See § 2(d) of the model ordinance proposed in § V of this Comment, *infra*.

218. See § 6(c)(ii) of the model ordinance proposed in § V of this Comment, *infra*.

219. See *Village of Schaumburg v. Citizens for a Better Env't*, 444 U.S. 620, 637-38 (1980).

220. See *ISKCON of Houston, Inc. v. City of Houston*, 689 F.2d 541, 553 (5th Cir. 1982) (exception just reduces burden of registration when compliance with ordinance would be inappropriate); *National Found. v. City of Fort Worth*, 415 F.2d 41 (5th Cir. 1969) (considerations of such organizations different from those of other solicitors), *cert. denied*, 396 U.S. 1040 (1970). See also § 7 of the model ordinance proposed in § V of this Comment, *infra*.

- (d) Soliciting from house to house between the hours of 10:00 p.m. and 6:00 a.m. is prohibited.

§ 3. Registration Statement.

- (a) Statement must be filed on form provided by the city, and must be signed and acknowledged by the individual who is authorized to disburse the proceeds of the solicitation.
- (b) Payment of a five dollar (\$5.00) fee is required for the city to process the registration statement.
- (c) Statement must provide the following information:
  - (i) name, mailing address and telephone number of the individual authorized to disburse the proceeds of the solicitation, and
    - (A) if the registrant is a natural person, his/her business or residential address and corresponding telephone number
    - (B) if the registrant is a partnership, the name, principal business address and telephone number of each partner
    - (C) if the registrant is a corporation, its mailing address and telephone number, and the name of the individual in charge of the city office
    - (D) if the registrant is an association, its principle business address and telephone number or the principle business or residential addresses and corresponding telephone numbers of its officers
  - (ii) Brief description of charitable or religious purpose, means of accomplishing solicitation, and intended use of solicitation  
NOTE: Soliciting for a charitable or religious purpose other than that set forth in the registration statement is prohibited.
  - (iii) time period of solicitation, from beginning date to projected date of conclusion
  - (iv) if anyone connected with the solicitation has been convicted of a crime within the past seven (7) years, name of such individual(s), offense, state in which conviction occurred, and year of conviction.

§ 4. Registration Certificate.

- (a) Within ten (10) working days after the registration statement has been filed, the city shall either issue a registration certificate or shall notify the registrant as to the information which was missing and which is required before a registration certificate will issue.
- (b) Solicitors may not misrepresent registration certificates as endorsements by the city.

§ 5. Identification Cards.

- (a) Registrant must provide list of names and address of all solicitors desiring identification cards.

- (b) To obtain more than ten (10) identification cards with the registration certificate, the registrant must pay the city the actual cost of issuing the cards.
- (c) Identification cards shall bear name of registrant, name of individual solicitor and expiration date.
- (d) Identification cards may not be altered, transferred or misrepresented as an endorsement by the city.

§ 6. Expiration.

- (a) Registration certificates and identification cards expire on the date projected as the conclusion of the solicitation period or one (1) year from the date of their issuance, whichever is less.
- (b) Solicitation is prohibited once the registration certificate has expired.
- (c) Within thirty (30) days after the registration certificate has expired, the individual authorized to disburse the proceeds of the solicitation shall file a sworn closing statement with the city.
  - (i) The city shall provide a standardized form for the closing statement.
  - (ii) The statement shall show the cost of the solicitation and the total funds collected.

§ 7. Exceptions.

Compliance with this ordinance is not required when an organization or association solicits

- (a) from its own members, or
- (b) on premises which it owns or controls.

§ 8. Penalty. The penalty for violating an ordinance such as this might be a fine and/or a criminal sanction for repeat offenders. A discussion of permissible penalties is beyond the scope of this Comment.

§ 9. Severability. All provisions of this ordinance are severable from each other.

## VI. Conclusion

Conflict between municipal protection of citizens' interests and free expression of religious solicitors is inevitable. As long as municipalities attempt to regulate religious solicitation, courts will have to balance governmental interests against religious solicitors' constitutional rights. To achieve this difficult balance, courts must continue to evaluate the constitutional validity of statutes. Thus, legislators can act in the best interests of both governmental entities and religious groups by drafting neutral regulations which further government interests while zealously safeguarding constitutional guarantees.

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