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LOCAL GOVERNMENT LAW BULLETIN

PUBLISHED BY THE INSTITUTE OF GOVERNMENT / UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL

REGULATING SOLICITATION OF CHARITABLE CONTRIBUTIONS

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A CONSIDERABLE AMOUNT of litigation recently has arisen over the constitutionality of state statutes and local ordinances that provide for the licensing of charitable solicitations. A wide variety of nonprofit organizations, including the March of Dimes and the Unitarian Church, have challenged the efforts of governing bodies to regulate solicitations of the public. In North Carolina, a state statute,[1] the municipal ordinances of Charlotte[2] and Rocky Mount,[3] and a county ABC board resolution[4] have all been successfully attacked as violations of the First and Fourteenth Amendments of the U.S. Constitution.[5] This memorandum will (1) describe the competing interests that have given rise to litigation, (2) outline the general legal problems involved in this type of litigation, (3) address the specific features of regulation that have been successfully attacked, and (4) recommend other ways to protect the state's concerns.

COMPETING INTERESTS

The State's Concerns

The state may properly regulate charitable solicitation in order to protect its citizens against fraud, crime, and harassment. Some who seek money from the public on behalf of an organization do so in such a way as to deceive or intimidate the public. Solicitors may harass others by impeding

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1. N.C. GEN. STAT. §§ 108-75.1 to -75.25.
2. CHARLOTTE, N.C., CODE § 2-30.
3. ROCKY MOUNT, N.C., CODE § 12-2.
4. ABC Board Resolution (Nov. 25, 1975).
5. Heritage Village Church v. State, No. 77-CVS-6460 (Mecklenburg County Super. Ct., June 27, 1978), struck down the state statute. Carolina Action v. Pickard, 420 F. Supp. 310 (W.D.N.C. 1976), voided the Charlotte Ordinance. North Carolina v. Sheffrin (Nash County Dist. Ct., June 1978) struck down the Rocky Mount ordinance. U.S. Labor Party v. Knox, 430 F. Supp. 1359 (W.D.N.C. 1977), enjoined of the ABC resolution.

the flow of traffic on sidewalks or in busy transportation terminals. The pretense of soliciting for charity may be used to gain access to residential areas in order to further criminal pursuits. The United States Supreme Court noted in 1940 the legitimacy of some state regulations to protect the public from the potential for crimes: "Without doubt a State may protect its citizens from fraudulent solicitation by requiring a stranger . . . to establish his identity and his authority to act for the cause which he purports to represent."[6]

Compared with this interest in reducing the threat of crime, the state's interest in reducing public annoyance is less persuasive and therefore more subject to attack on constitutional grounds. Recent decisions are split on the extent to which the public must tolerate annoying solicitations. In ISKCON v. McAvery,[7] for example, solicitors sought access to benches surrounding a fountain in an outside plaza in New York. A federal district court in that state noted that other areas of the plaza were available and then upheld the ban on solicitation in the fountain area because "persons using the plaza should be able to relax and eat their lunches without interruption by plaintiff's activities."[8] In contrast, the federal district court in New Jersey recently held that "public inconvenience, annoyance, or even unrest" is insufficient justification for restricting the distribution of handbills in a bus terminal.[9] The most recent U.S. Supreme Court decision involving a solicitation ordinance noted that the ". . . Court has consistently recognized a municipality's power to protect its citizens from crime and undue annoyance by regulating soliciting and canvassing."[10] (Emphasis added.) It is difficult to determine the exact meaning of "undue annoyance" and thus to determine what activities a state may legitimately regulate.

The Solicitor's Concerns

Many nonprofit organizations depend almost totally on contributions from nonmembers for funding. Face-to-face contact with large numbers of potential contributors becomes critical in assuring the organizations' survival. Newly formed organizations and those that espouse controversial religious or political views are often short of money. Governmental restrictions on solicitors' access to the public therefore constitute a serious threat to their continued existence.

EXAMPLES OF LIMITATIONS ON SOLICITORS

Since members of controversial organizations may represent only a small and relatively powerless segment of the citizenry, legislation that restricts them is often easily enacted. People who are personally offended by the appearance, beliefs, or conduct of solicitors may pressure city councilmen or state legislators to enact legislation inhibiting the solicitors' access to the public. In order to limit solicitation, legislators have used a variety

6. Cantwell v. Connecticut, 310 U.S. 296, 306 (1940).
7. 450 F. Supp. 1265 (S.D.N.Y. 1978).
8. Id. at 1270.
9. Moskowitz v. Cullman, 432 F. Supp. 1263, 1268 (D.N.J. 1977).
10. Hynes v. Mayor of Oradell, 425 U.S. 610, 616 (1976).

of techniques, many of which have been held to be unconstitutional. For example, the speech of dissident organizations has been effectively censored by legislation that required licensing before solicitation of the public and vested unbridled discretion in the licensor. A specific example of this legislation is the Kansas City ordinance that required the written permission of the director of the city airport before solicitation could take place in the airport; in practice, the director denied all requests.[11]

Some other unconstitutional devices follow:

-- By banning solicitation in such public places as parks, bus terminals, and airports, localities have rendered contact with the public very difficult for solicitors. Governmental bodies have allowed solicitation only at times when or in places where solicitation was relatively ineffective, as did a Pennsylvania county that banned solicitation at the airport on the 48 highest-traffic days of the year.[12]

-- Issuance of a license to solicit has been made conditional upon payment of a license fee, thus limiting the right to collect money to those who are already financially solvent.

-- Other kinds of regulations, such as limitations on the administrative costs an organization may incur in soliciting, have silenced organizations merely because they were inefficient or could not recruit volunteer solicitors. North Carolina's statute regulating solicitation, for example, makes it a crime to solicit for charity if the licensor considers the expenses associated with the solicitation to be unreasonable.[13] Thus governing bodies may, either purposely or inadvertently, impede the flow of ideas from solicitors to the public.

LEGAL ISSUES INVOLVED IN REGULATING SOLICITATION

Regulations of charitable solicitation raise a variety of constitutional issues. Such regulations may offend the "free exercise," "establishment," or "free speech" clauses of the First Amendment. Licensing statutes trigger the constitutional objection to "prior restraint." They are particularly susceptible to charges of "vagueness," "overbreadth," or "excessive delegation of authority." Each of these basic legal problems will be addressed in this section.

Free Exercise of Religion

In two cases in the 1940s, the Supreme Court made it clear that, as applied to religious organizations, solicitation statutes will be closely examined (subjected to "strict scrutiny") to determine whether they violate the First Amendment's provision that protects the free exercise of religion.[14] In Cantwell v. Connecticut,[15] Jehovah's Witnesses attacked a state statute

11. KANSAS CITY, MO., CODE § 3.4.

12. See International Society for Krishna Consciousness v. Griffin, 437 F. Supp. 666 (W.D. Pa. 1977).

13. N.C. GEN. STAT. § 108-75.18(4).

14. Cantwell v. Connecticut, 310 U.S. 296 (1940); Murdock v. Pennsylvania, 319 U.S. 105 (1943).

15. 310 U.S. 296 (1940).

that required them to obtain a solicitation license from a named public official who was to issue the license only if he found the organization to be religious. The Court held that "to condition the solicitation of aid for the perpetuation of religious views or systems upon a license, the grant of which rests in the exercise of a determination by state authority as to what is a religious cause, is to lay a forbidden burden."[16] But the Court explicitly limited this holding by rejecting the argument that any state regulation of religious solicitation would be unconstitutional.

> The general regulation . . . of solicitation, which does not involve any religious test, and does not unreasonably obstruct or delay the collection of funds, is not open to any constitutional objection, even though the collection be for a religious purpose.[17]

Thus the Court established that, with respect to religious organizations, a state violated the free-exercise clause by vesting discretion in a licensor of solicitations.

A few years later, in Murdock v. Pennsylvania,[18] the Court reviewed a city ordinance setting up a schedule of license fees for solicitors. Once again, it found that the free-exercise rights of Jehovah's Witnesses were violated. The fees established were $1.50 a day, $7 a week, and $20 for three weeks. The Court stressed that this tax on solicitation was a flat license tax, "fixed in amount and unrelated to the scope of the activities," and was not "a nominal fee imposed as a regulatory measure to defray the expenses of policing."[19] Like Cantwell, Murdock demonstrates that the Court will be especially vigilant to detect potential state obstruction of solicitation by religious groups.

Prohibition Against the Establishment of Religion

Another legal objection to solicitation ordinances is that they violate the First Amendment's provision that the state may not make a law establishing a religion. A religious organization may successfully attack solicitation regulations that, either on their face or as applied, favor certain religions over others.[20] North Carolina's statute, for example, exempts most religious organizations from licensing but not religious groups whose financial support is derived mainly from nonmembers.[21] Thus the less traditional religions are burdened by licensing requirements while the conventional denominations are immune. This uneven treatment of religious organizations constitutes an establishment of religion that violates the First Amendment.

Right of Free Speech

The Supreme Court has never explicitly held that the right to seek contributions from the public is protected by the First Amendment's guarantee of free speech. In the absence of a firm Supreme Court precedent, the Fifth

16. Id. at 307. 17. Id. at 305. 18. 319 U.S. 105 (1943). 19. Id. at 113.

20. See Heritage Village Church v. State, No. 77-CVS-6460 (Mecklenburg County Super. Ct., June 27, 1978).

21. N.C. GEN. STAT. § 108-75.7(1).

Circuit Court of Appeals held in 1969 that "[n]o constitutional right exists to make a public solicitation of funds for charity."[22] Nevertheless, there is good reason to believe that the Supreme Court would protect solicitation by nonreligious groups. In Hynes v. Mayor of Oradell,[23] Court examined the ordinance in terms of its potential infringement on free speech, and it used First Amendment standards to declare the ordinance unconstitutional because of vagueness (see below). Since the plaintiff in Hynes was not a religious organization, the Court's application of First Amendment principles strongly suggests that the right to ask others for money is protected by the right of free speech and involves legal rights that are independent of the guarantee of freedom of religion. Further support for the view that solicitation is protected speech comes from the Supreme's Court's recent holding that speech that does "no more than propose a commercial transaction" is entitled to First Amendment protection.[24] Asking the public for money, like asking them to join an organization, seems protected by the First Amendment. Therefore, regulation of solicitation must meet the stringent standard of review that courts use when examining statutes that restrict speech.

Requiring Prior Approval to Solicit

In jurisdictions that require licenses to solicit, the potential solicitor cannot disseminate his ideas until he has governmental approval. Licensing speech before it is spoken or printed raises particularly difficult problems. As one commentator recently noted: "The Supreme Court has recognized only two circumstances in which the imposition of prior restraints upon expression is permissible: the imminent threat of the dissemination of obscenity and the imminent threat of grave harm to life or national security."[25] Since solicitation does not present these dangers, the only available justification for licensing solicitation is that solicitation involves conduct as well as speech. While a licensor cannot refuse to license on the basis of the content of the speech, he may impose some check on the conduct of the speaker. As with parade permits, solicitation licenses are not automatically (per se) unconstitutional because of their prior-restraint aspects, but they are suspect. The Court will look for safeguards in the licensing system to assure that the licensor does not censor speech.

Vagueness in Solicitation Statutes

In Hynes v. Mayor of Oradell,[26] the Supreme Court recently reiterated its doctrine that "in the First Amendment area government may regulate . . . only with narrow specificity." Hynes involved a challenge to a city ordinance that required solicitors for "recognized" charities to give advance notice to the police "in writing, for identification only." The Court struck down the

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22. National Foundation v. City of Fort Worth, 415 F.2d 41, 45 (5th Cir. 1969), cert. denied, 396 U.S. 1040 (1970).

23. 425 U.S. 610 (1976).

24. Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, 425 U.S. 748, 762 (1976).

25. Litwack, The Doctrine of Prior Restraint, 12 HARV.C.R.-C.L. 519, 545 (1977).

26. 425 U.S. at 620.

ordinance for vagueness because its language did not give guidance as to which charities were "recognized" or what kind of identification would be necessary.

To be valid, a law regulating speech must be impeccably drafted. Several local ordinances in North Carolina authorize the licensor to determine whether the proposed solicitation is "worthy";[27] the vagueness of that language is probably objectionable.

Overbroad Coverage of Solicitation Statutes

Statutes and ordinances that affect the expression of ideas must be carefully tailored to minimize infringement of speakers' rights. In Chicago Area Military Project v. City of Chicago[28] the Ninth Circuit Court of Appeals struck down Chicago's solicitation ordinance because it included too much--it banned all solicitation anywhere on airport premises. The court held that the city's interest in public safety could be protected with narrower regulations dealing only with specific high-traffic areas of the airport. Declaring the entire airport off limits to solicitors was too drastic a means of protecting the city's concerns. Thus the regulations a governing body uses to control solicitation must be the least restrictive means available to achieve the legitimate public purpose.

Improper Delegation of Authority

The greatest number of successful challenges to solicitation laws have arisen from the delegation of excessive discretion to licensors.[29] A clear line of Supreme Court cases establishes that licensors may not have discretion. The statute that creates the licensing body must precisely set out the circumstances under which a license is to be issued. Thus issuing or denying the license must be a purely ministerial act. Recently a federal district court in New York struck down a municipal ordinance providing that the clerk was to issue a solicitation permit "if reasonably satisfied with the applicant's qualifications" because the ordinance created a government censor who functioned without legislative guidelines.[30]

STATE STATUTE ATTACKED

Although current statutes and ordinances regulating solicitation are by no means uniform, they share a number of features. It seems therefore worthwhile to discuss in detail the provisions of the North Carolina Solicitation of Charitable Funds Act,[31] which Judge Sam Ervin, III, recently declared

27. See, e.g., GREENSBORO, N.C., CODE § 13-2.1(b)(11).

28. 508 F.2d 921 (7th Cir.), cert. denied, 421 U.S. 992 (1975).

29. See, e.g., International Society for Krishna Consciousness v. Engelhardt, 425 F. Supp. 176 (W.D. Mo. 1977); International Society for Krishna Consciousness v. Rochford, 425 F. Supp. 734 (N.D. Ill. 1977); Moskowitz v. Cullman, 432 F. Supp. 1263 (D.N.J. 1977).

30. Boe v. Colello, 46 U.S.L.W. 2140 (S.D.N.Y. Sept. 3, 1977).

31. N.C. GEN. STAT. §§ 108-75.1 to -75.25.

unconstitutional. The case soon will be heard by the North Carolina Court of Appeals.

This act requires all organizations that solicit for charity to file a written application with the Department of Human Resources (DHR) unless specifically exempted.[32] Religious organizations are exempted unless they derive their financial support primarily from nonmembers.[33] Other exempted organizations include some garden clubs, associations of volunteer firemen, and fraternal lodges.[34] The application for a solicitation license must include the names of key personnel in charge of fund raising and detailed financial information on the organization.[35] Certain persons are forbidden to solicit: those who have been convicted of a felony and have not had their citizenship rights restored and those who have been prohibited from soliciting in any jurisdiction.[36] The licensor pays particular attention to two aspects of the financial statement--the amount of money paid to professional solicitors and the total amount of money spent on fund raising. The act prohibits a license from being issued if a professional solicitor is paid more than 5 per cent of the gross amount of funds he raises[37] or if the total expenses associated with a fund drive exceed 35 per cent of the money raised.[38] The licensor may waive the 35 per cent limitation if he finds "special facts or circumstances" indicating that the solicitation expenses were not "unreasonable."[39] An organization whose application is denied may appeal or a hearing before DHR.[40] Annual fees ranging from $10 to $100 must accompany the application and are set aside "for the sole purpose of financing the requirements of the administration" of the act.[41]

Heritage Village Church v. North Carolina

In August 1977, the Heritage Village Church sought declaratory and injunctive relief against the state on the grounds that the North Carolina Solicitation of Charitable Funds Act deprived its members of their First and Fourteenth Amendment rights. The church is a nonprofit Christian organization that derives approximately 80 per cent of its income from solicitation of nonmembers. From January through June of 1977, a fund-raising team from the church raised over $100,000 in contributions in North Carolina. After receiving notice from the Secretary of DHR that it was subject to the requirements of the act, the church voluntarily ceased soliciting and brought a civil action in Mecklenburg County Superior Court.

In June 1978, Judge Ervin permanently enjoined the state from enforcing the act against the church[42] and held the act unconstitutional because it (1) worked to establish religion, (2) impaired the free exercise of religion, (3) was vague, (4) violated the equal protection clause, (5) was overly broad, (6) delegated excessive discretion, and (7) restrained speech before it was uttered.

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32. Id. § 108-75.6.
33. Id. § 108-75.7(1).
34. Id. § 108-75.7(7), (8).
35. Id. § 108-75.6(5), (6).
36. Id. § 108-75.20(h).
37. Id. § 108-75.11(a).
38. Id. § 108-75.18(6).
39. Id.
40. Id. § 108-75.19(b).
41. Id. § 108-75.23(b).
42. Heritage Village Church v. State, No. 77-CVS-6460 (Mecklenburg County Super. Ct., June 27, 1978).

Objections Based on Religious Grounds

The drafters of the act exempted most religious organizations from its licensing requirements. The act provides that organizations established for "religious purposes" are exempt unless they engage in secular activities or solicit funds primarily from nonmembers.[43] The statute defined "religious purposes" in terms of practices carried on "according to the rites of a particular denomination."[44] Thus groups that consider themselves religious but are not associated with a particular denomination are subject to the licensing requirement while denominations are not. Furthermore, organizations that are mobile or evangelical frequently derive their financial support primarily from nonmembers and thus are also subject to the act's licensing requirements. The effect of the act is therefore to exempt some, but not all, religious organizations from the licensing requirements. Judge Ervin found three violations of the First and Fourteenth Amendments in these provisions. By making different requirements of different religious groups, the state violated both the establishment and the equal protection clauses. The requirement that all religious groups be licensed with respect to their secular activities violated the free-exercise clause.

The correctness of Judge Ervin's holding with respect to the free-exercise violation is open to doubt. In Cantwell v. Connecticut, the Supreme Court noted that regulation of solicitations would not be unconstitutional "even though the collection be for a religious purpose"[45] if the statute was nondiscriminatory and did not "unreasonably obstruct" the collection of funds. Minimal regulation of all public solicitations, including religious solicitations, does not necessarily violate the constitutional guarantee of free exercise of religion.

Objections Based on Vagueness and Improper Delegation

Other grounds upon which the state statute was held to be unconstitutional relate to the protection afforded freedom of speech, whether exercised by religious or nonreligious organizations. Judge Ervin found the statute's provision that uses the term "members" (a term undefined by the act) to be void for vagueness. Similarly, he found the definition of "religious purposes" to be unconstitutional because it was too vague to give the licensor a clear standard on which to act.

Closely related to this objection was the challenge based on excessive delegation of authority. The act lists as grounds for denying a license the fact that "an unreasonable percentage" of funds is used in fund raising or the fact that the applicant has engaged in a "fraudulent" transaction.[46] Because the statute does not specify what percentage is reasonable or what constitutes a fraudulent act, it grants the licensor unconstitutional discretion.

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43. N.C. GEN. STAT. § 108-75.7(1).
44. Id. § 108-75.3(17).
45. 310 U.S. at 305.
46. N.C. GEN. STAT. § 108-75.18.

Objections Based on the Percentage Limitation

The act contains a provision that denies permits to applicants whose costs of fund raising exceed 35 per cent of the revenues obtained. Judge Ervin found this feature to be overbroad and unreasonable. In 1976, Judge McMillan of the federal district court in Charlotte found a similar provision (a 25 per cent limitation) in Charlotte's solicitation ordinance overbroad because it was "unrelated to and does not protect against fraud or violence on the part of solicitors."[47]

These decisions striking down limits on costs seem to distinguish between inefficiency and fraud. The state may prohibit fraudulent solicitation but not inefficient solicitation. Retaining as much as 35 per cent of the proceeds for administrative expenses may reflect inefficiency but not necessarily fraud. Considering other cases that interpret First Amendment guarantees, these decisions seem correct in suggesting that the state cannot flatly prevent a group from seeking financial support for its causes merely because the group's business practices are inefficient. Nevertheless, at some ratio of fund-raising costs to funds raised, the solicitation might be found fraudulent. One who contributes to a charity expects that much of his contribution will be used for the charity's ultimate ends; if he should learn that 85 per cent of his contribution was being absorbed by administrative expense, he might well feel defrauded. Thus despite the courts' unwillingness to accept, for example, 25 per cent or 35 per cent limitations, a much higher percentage limitation might be permissible.

RECOMMENDATIONS

The complexity of the legal issues involved in regulating solicitation and the recent successful litigation against existing laws have caused public officials to ask, "What can we do to protect the public without offending the Constitution?" Several suggestions can be offered with some assurance.

First, a court will scrutinize a licensing statute more closely than other means of regulating solicitation. Rather than license all solicitors, a governmental body may find it easier to prosecute abusive solicitors for assault or to prosecute dishonest ones for obtaining money by false pretenses. Solicitors who mislead contributors, intimidate them, or insist on offensive physical contact can be regulated without a licensing statute. Since prior restraint of speech is constitutionally forbidden, it seems clear that licensing of solicitations should be attempted only when no other alternative adequately protects the public.

Second, if a licensing statute is chosen as the means of regulating solicitation, the statute must contain explicit standards for the licensor to use in determining whether to grant, deny, or revoke the license. For example, the licensor cannot be given authority to license "if he is reasonably satisfied with the applicant's qualifications."

What kinds of statutory directive will themselves be unconstitutional? First, any directive that denies a license because of the organization's purposes

47. Carolina Action v. Pickard, 420 F. Supp. 310, 311 (W.D.N.C. 1976).

is clearly invalid. For example, a directive is unconstitutional if it allows the licensor to grant a license only to those organizations that profess a belief in Christ or in the American form of government. Similar problems are raised when certain organizations are exempt from licensing on the basis of their beliefs. Second, statutes that distinguish between categories of organizations will be vulnerable to attack. Treating different religions differently violates the prohibition against establishment of religion. Any other uneven treatment (such as exempting only civic organizations) must be supported by evidence that the favored organizations are much less likely than others to defraud the public.

Third, the governmental unit may charge fees for a solicitation license only if they are nominal and imposed to defray the expenses of policing solicitation. Thus a federal district court in Pennsylvania struck down a fee of $10 per day because it was neither nominal nor merely defraying.[48] The North Carolina Solicitation Act contains a fee schedule that probably will be upheld. The act provides a range of annual fees, graduated from $10 to $100 according to the amount of contributions received,[49] and it specifically requires that the fees collected be used to finance administration.[50]

Fourth, at least two federal courts have required the state to set up an unusual kind of appellate procedure.[51] If the licensor denies or revokes a license, the state must instigate an appeal and bear the burden of establishing that the solicitation in question was not constitutionally protected. The Supreme Court has required this same procedure in the licensing of motion pictures.[52] Because speech is being restrained in advance, the licensor must promptly obtain judicial endorsement of his decision. Although it is not yet clear that this kind of appellate procedure is mandatory, governmental units might be wise to include these provisions in their laws as an extra measure of constitutional protection.

Fifth, reasonable restrictions on the time, place, and manner of solicitation are constitutionally permissible. Predicting exactly which time, place, and manner restrictions a court will uphold is not easy. Specific restraints that have been struck down recently offer the best available guides. A total prohibition against door-to-door solicitation has been voided by the Seventh Circuit Court of Appeals.[53] Solicitation cannot be flatly prohibited in bus terminals or airports.[54] A prohibition against airport solicitation on forty-eight named days of the year was struck down in a Pennsylvania federal district court.[55] Prohibitions on soliciting in traditional public forums like

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48. International Society for Krishna Consciousness v. Griffin, 437 F. Supp. 666 (W.D. Pa. 1977).

49. N.C. GEN. STAT. § 108-75.23(a). 50. Id. § 108-75.23(b).

51. See Collin v. Chicago Park District, 460 F.2d 746 (7th Cir. 1972): International Society for Krishna Consciousness v. Griffin, 437 F. Supp. 666 (W.D. Pa. 1977).

52. Freedman v. Maryland, 380 U.S. 51 (1965).

53. Citizens For A Better Environment v. City of Park Ridge, 567 F.2d 689 (7th Cir. 1975).

54. Wolin v. Port of New York Authority, 392 F.2d 83 (2d Cir.), cert. denied, 393 U.S. 940 (1968); International Society for Krishna Consciousness v. Collins, 452 F. Supp. 1007 (S.D. Tex. 1977).

55. International Society for Krishna Consciousness v. Griffin, 437 F. Supp. 666 (W.D. Pa. 1977).

parks and sidewalks are generally impermissible. For example, the Court of Appeals for the Seventh Circuit has held that Chicago cannot deny a request to hold a political meeting in a particular public park on the grounds that four other parks are available.[56]

The government bears the burden of demonstrating that the specific limitations on the time, place, and manner of solicitation are reasonably related to legitimate state concerns. In balancing the weight of the state's concerns against the degree of infringement on First Amendment rights, the courts will strike different balances, but the vast majority will not be satisfied with sweeping generalizations by the state. For example, the Second Circuit Court refused to approve a total ban on solicitation in subways that was based on a general allegation that solicitation "would interfere with the safety and convenience of the public."[57] More narrowly tailored restrictions, such as prohibitions on soliciting at airport checkout counters or in the areas immediately leading to arrival and departure gates, have been upheld as a reasonable accommodation of the competing interests involved.

Morever, certain arguments offered by the government are consistently treated as inadequate. Thus the threat of litter or the fear that some members of the public will be annoyed by solicitations will not support restrictions.[58]

IN SUMMARY, a governmental body can limit somewhat the time, place, and manner of solicitation, but it cannot declare public parks, sidewalks, airports, or bus or train terminals completely off limits; nor can it use restrictions on solicitations to discriminate against some solicitors or to limit their contact with the public for any reason other than public safety.

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56. Collin v. Chicago Park District, 460 F.2d. 746 (7th Cir. 1972).
57. Wright v. Chief of Transit Police, 558 F.2d 67, 68 (2d Cir. 1977).
58. Moskowitz v. Cullman, 432 F. Supp. 1263, 1268 (D.N.J. 1977).