CHARITABLE SOLICITATION AND THE FIRST AMENDMENT: *VILLAGE OF SCHAUMBURG v. CITIZENS FOR A BETTER ENVIRONMENT(CBE)*

Solicitation of funds frequently invokes the first amendment[1] protections for disseminating information and advocating causes.[2] When it does, any governmental restrictions imposed must bear a precise relation[3] to fulfillment of a compelling state interest[4] to avoid a serious challenge to their constitutionality.[5] In *Village of Schaumburg v. Citizens for a Better Environment (CBE)*,[6] the United States Supreme Court held unconstitutional[7] an ordinance[8] that barred[9] so-

1. U.S. CONST. amend. I.

2. The social interest that the "First Amendment upholds is meaningful operation of the political process allowing the nation to more readily adopt courses of action that satisfy the desires of the majority." Wellington, *On Freedom of Expression*, 88 YALE L.J. 1105, 1112 n.33 (1979), *quoting* A. BICKEL, THE MORALITY OF CONSENT 62 (1975).

Constitutional theorists readily admit that the first amendment bears a necessary relationship to the democratic process. BeVier, *The First Amendment and Political Speech: An Inquiry into the Substance and Limits of Principle*, 30 STAN. L. REV. 299, 302 (1978).

3. *See* G. GUNTHER, CONSTITUTIONAL LAW 1042 (9th ed. 1975); Jones, *Solicitations—Charitable and Religious*, 31 BAYLOR L. REV. 53 (1979) [hereinafter cited as Jones].

4. *See generally*, Jones, *supra* note 3.

5. *See* United States v. Carolene Prod. Co., 304 U.S. 144, 152 n.4 (1938) (no presumption of constitutionality for laws restricting first amendment freedoms).

6. 444 U.S. 620 (1980).

7. The Court had statutory jurisdiction in this case. 28 U.S.C. § 1257(2) (1976). This provision gives the Supreme Court jurisdiction in cases involving a challenge to the validity of a state statute on the ground of its repugnancy to the Constitution. *Id.* This encompasses every legislative act sanctioned by a state. Judiciary Act of 1789, ch. 20, 1 Stat. 73, 85, *construed in* King Mfg. Co. v. Augusta, 277 U.S. 100, 102 (1928).

8. *See* SCHAUMBURG, ILL., VILLAGE CODE, ch. 22, art. III, § 20(g) (1974), which required:

Satisfactory proof that at least seventy-five per cent of the proceeds of such solicitation will be used directly for the charitable purposes of the organization. For

licitation by charitable organizations[10] failing to meet an arbitrary, fixed limit on administrative expenses. The Court ruled that the ordinance was unconstitutionally overbroad.[11]

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such purposes, the following items shall not be deemed to be used for the charitable purposes of the organization:

1) Salaries or commissions paid to solicitors;

2) Administrative expenses of the organization, including, but not limited to, salaries, attorney's fees, rents, telephone, advertising expenses, contributions to other organizations and persons, except as a charitable contribution and related expenses incurred as administrative or overhead items.

For the purpose of satisfying the requirements of sub-paragraph (g), the organization shall submit a certified audit of the last full year of operations, indicating the distribution of funds collected by the organization, or such other comparable evidence as may demonstrate the fact that at least seventy-five per cent of the funds collected are utilized directly and solely for the charitable purpose of the organization.

Id.

9. The Court emphasized the fact that the ordinance contained no provision permitting an organization unable to comply with the 75% requirement, *see* note 8 *supra*, to obtain a permit by demonstrating that its solicitation costs were justified. 444 U.S. at 635 n.9. Moreover, because the city based compliance with the 75% requirement upon organizations' receipts and expenses during the *previous* year, there appeared to be no way an organization could alter its spending patterns to comply with the ordinance in the short run. Finally, although organizations like Citizens for a Better Environment (CBE) might pay only reasonable salaries, they would still necessarily spend more than 25% of their budgets on salaries and administrative expenses, and would therefore be barred from solicitation in the Village. *Id.*

10. *See* note 18 *infra*.

11. "An overbroad statute is one that is designed to burden or punish activities which are not constitutionally protected, but the statute includes within its scope activities which are protected by the First Amendment." *See* J. NOWAK, R. ROTUNDA & J. YOUNG, CONSTITUTIONAL LAW 722 (1978) [hereinafter cited as NOWAK]; G. GUNTHER, CONSTITUTIONAL LAW 1132-36 (9th ed. 1975). *See, e.g.*, Broadrick v. Oklahoma, 413 U.S. 601 (1973) (Brennan, J., dissenting) ("substantial overbreadth" approach).

There are three types of overbreadth statutes:

1) *Remedial* statutes "hamper First Amendment activities for the purpose of promoting values which are within the concern of the Amendment. . . [R]emedial laws include . . . the fairness doctrine of the broadcast media, as well as laws regulating lobbying, campaign contributions, and union elections." The Court is more tolerant of remedial laws than of the other two types of overbreadth statutes.

2) *Inhibitory* laws "impinge on expressive and associational conduct but [their] impact tends to be neutral as to viewpoints sought to be advocated . . . such as libel laws."

3) "*Censorial* laws seek to burden the advocacy of matters of public concern, such as criminal syndicalism laws." The Court is least tolerant of censorial statutes. NOWAK, *supra*, at 725-26.

In *Village of Schaumburg*, the Court categorized the solicitation ordinance as

Citizens for a Better Environment (CBE), a nonprofit charitable organization, distributed literature[12] and disseminated views[13] on environmental issues door-to-door[14] without invitation.[15] CBE had asked the lower courts[16] for declaratory and injunctive relief from a

censorial ("[deciding in advance] what information may be disseminated from house to house, and who may impart the information"). 444 U.S. at 639. *See* Jones, *supra* note 3, at 59 ("Conditions for the issuance of a permit are prime targets for constitutional attacks based on vagueness or overbreadth.").

12. Village of Schaumburg v. CBE, 444 U.S. 620 (1980). *See generally* Hynes v. Mayor of Oradell, 425 U.S. 610 (1976). In *Hynes*, the Court dealt with a city ordinance requiring an identification permit for canvassing from house to house for charitable or political purposes. The Court held that soliciting and door-to-door canvassing were subject to reasonable regulation so as to protect citizens against crime and undue annoyance, but that the first amendment required the regulation to be drawn with "narrow specificity." *Id.* at 620. For the text of the ordinance see *id.* at 611-14.

13. In Thornhill v. Alabama, 310 U.S. 88 (1940), the Court observed that freedom of expression, if it is to fulfill its historic function in our nation, must embrace all issues about which information is needed or appropriate to enable the members of our society to cope with the exigencies of their period. *Cf.* Village of Schaumburg v. CBE, 444 U.S. 620 (1980). The Court stated that the solicitation for funds is "subject to reasonable regulation". The Court emphasized, however, that such solicitation is often combined with information dissemination and advocacy of causes that involve political and social matters. The Court concluded that without this solicitation the flow of information and advocacy would probably cease. *Id.* at 632.

14. The landmark case of Schneider v. State (Town of Irvington), 308 U.S. 147 (1949), involved a canvasser for a religious society who passed out booklets door-to-door and asked for contributions. The canvasser was arrested under an ordinance which prohibited canvassing, soliciting, or distribution of circulars door-to-door without a permit. The issuance of the permit rested in the discretion of public officials. The town claimed that the ordinance was valid as a protection against fraudulent solicitations and the solicitation of funds without a permit. The Supreme Court, in reversing the judgment of the lower court, asserted that the ordinance not only applied to religious canvassers, but to anyone wishing to present his or her political, social, or economic views. *Id.* at 163. Consequently, the Court held that the town could not, in the name of preventing fraudulent appeals, subject door-to-door advocacy and the communication of views to the permit requirement. *Id. But cf.* Breard v. Alexandria, 341 U.S. 622, 642 (1951) (Court upheld state prohibition of uninvited door-to-door solicitation for magazine subscriptions, stating that it was a valid economic due process regulation in the interest of privacy).

15. The Court has asserted that the decision whether to contribute funds to a door-to-door solicitor should be left to the individual homeowner. *E.g.*, Rowan v. Post Office Dep't, 397 U.S. 728, 731-35 (1970) (sign could be used to keep solicitors away). Martin v. City of Struthers, 319 U.S. 141, 148 (1943) (state should not intrude unnecessarily upon the first amendment rights of solicitors).

16. The Seventh Circuit Court of Appeals, which had decided this case below, noted that three years earlier in a case also involving CBE it had recognized the problems inherent in a flat ban "of canvassing . . . by a non-profit group . . . ex-

municipal ordinance which imposed a fixed spending requirement on all[17] charitable organizations soliciting on a door-to-door basis.[18] The municipality argued that it precisely drew the solicitation permit provision to serve the compelling governmental interests of protection from fraud,[19] invasion of privacy,[20] and preservation of public safety.[21] The Supreme Court disagreed,[22] stating that the speech interests of CBE and other charitable organizations[23] received inade-

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press[ing] essentially political ideas." CBE v. Village of Schaumburg, 590 F.2d 220, 225 n.7 (7th Cir. 1978), *aff'd*, 444 U.S. 620 (1980), *quoting* CBE v. City of Park Ridge, 567 F.2d 689, 692 (7th Cir. 1975).

17. "Broad rules [protecting] free expression are [automatically] suspect." NAACP v. Button, 371 U.S. 415, 438 (1963).

18. Specific terms in the village ordinance were defined in accordance with the wording of the Illinois solicitation statute. ILL. ANN. STAT. ch. 23, § 5101(a), (e), (f) (1976) (Smith-Hurd). The statute provides the following three relevant definitions:

a) "Charitable organization." Any benevolent, philanthropic, patriotic, or eleemosynary person or one purporting to be such which solicits and collects funds for charitable purposes and includes each local, county, or area division within this State of such charitable organization, . . .

e) "Professional solicitor." Any person who is employed or retained for compensation by a professional fund raiser to solicit contributions for charitable purposes from persons in this State.

f) "Charitable purpose." Any charitable, benevolent, philanthropic, patriotic, or eleemosynary purpose.

Id.

19. *See* Village of Schaumburg v. CBE, 444 U.S. 620, 636-37 (1980).

20. *Id.* at 638.

21. The Court admitted the "substantial" governmental interest in public safety, as well as in protection against fraud and intrusions upon privacy. *Id.* at 636. Nevertheless, it said that "these interests . . . [were] only peripherally promoted by the 75% spending requirement." *Id.* The Court concluded that the three public interests which the municipality proferred could be served by less burdensome measures. *Id.* at 636-37. *See* Schneider v. State, 308 U.S. 147, 162 (1939) (punishing litterers rather than handbillers considered an alternative means for preventing littering which would constitute lesser interference with protected freedom of speech).

22. Emphasizing the unreasonableness of the fixed spending limitation, the Court pointed out that "the costs incurred by charitable organizations" that solicit funds door-to-door can vary greatly depending on many factors, some of which are beyond the organizations' control. Village of Schaumburg v. CBE, 444 U.S. 620 at 637.

23. In *Village of Schaumburg*, the Supreme Court was not concerned with the particular characteristics of CBE but instead with the impact of § 22-20(g), *supra* note 8, on organizations of the *type* CBE purported to be. 444 U.S. at 627. In appraising a statute's inhibitory effect upon first amendment rights, the Court has taken into account possible applications of a regulation in other factual contexts besides the one at bar. *See* NAACP v. Button, 371 U.S. 415 (1963) (concern with breadth of law's potential application).

It is well settled that an ordinance which directly implicates first amendment inter-

quate protection[24] under the ordinance. The Court therefore held the ordinance unconstitutionally overbroad[25] on its face[26] in violation of the first and fourteenth amendments.[27]

The Supreme Court has consistently adhered to the principle that the Constitution affords special protection to free speech interests.[28]

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ests is unconstitutional if it creates even the *potential* for abuse in its application. *See* Shuttlesworth v. City of Birmingham, 394 U.S. 147, 151 (1969) ("narrow, objective, and definite standards" required to uphold permit mechanism); Lovell v. City of Griffin, 303 U.S. 444, 450-53 (1938) (ordinance prohibiting distribution of *any* literature without permit held unconstitutional restraint).

24. The Court stated that a penalty or a financial disclosure requirement would have been less intrusive ways of regulating CBE's first amendment interests. 444 U.S. at 637-38.

25. *See* note 11 *supra*. A concept closely related to that of overbreadth is vagueness, which concerns precision of statutory language. *Hynes v. Mayor of Oradell* provides the yardstick against which precision of language in an enactment must be measured. 425 U.S. 610, 620 (1976).

26. 444 U.S. at 639. In first amendment areas involving overbreadth, a common distinction is made between a statute that is overbroad on its face, and one that is overbroad as applied to a particular factual situation. Comment, *Constitutional Law—The Fine Line Between Protected and Non-Protected Speech*—McCall v. State, 354 So. 2d 869 (Fla. 1978), 7 FLA. ST. U.L. REV. 749, 750 (1979). This distinction is important because a court reviews a statute challenged on facial overbreadth differently than a statute challenged for overbreadth as applied. *Id.* If it is not possible for the statute to reach protected activity, the statute is facially constitutional. However, in an overbreadth challenge to a statute as it has been applied, the facts in the record are crucial. *Id.* at 751.

The Supreme Court asserted that the 75% requirement was unreasonable on its face because it barred solicitation by a "substantial category of charities" even where the contributions would be used to pay reasonable salaries to those who gathered and disseminated information relevant to a "charitable purpose." Village of Schaumburg v. CBE, 444 U.S. 620, 635-38 (1980).

27. The parties in *Village of Schaumburg* agreed that the only issue was the constitutional status of the spending regulation. 444 U.S. 620, 628, 633 (1980). Consequently, the Village would have no discretion to refuse issuance of a permit to CBE if the Court ruled in favor of CBE on this legal issue.

28. Freedom of speech holds a preferred status in the order of American liberties and, as one of the first amendment freedoms, is protected from even the subtlest governmental interference. *See* Buckley v. Valeo, 424 U.S. 1, 11-14 (1976) (political contribution and expenditure limitations within fundamental first amendment activities because discussion of public issues integral to operation of representative democracy); Thomas v. Collins, 323 U.S. 516, 529-30 (1945) (freedom to state views and advocate causes necessary for informed public discussion of labor issues); Jones, *supra* note 3, at 53-54 (courts regard first amendment rights as fundamental to a free society; consequently, they place them in a preferred position); Leventhal, *Courts and Political Thickets*, 77 COLUM. L. REV. 345, 361 (1977) (in area of basic freedoms, Court has developed an array of importance). The theory underlying the principle that the Constitution affords special protection to certain private interests "is that in American

One specially protected free speech interest is the right to engage in conduct for the communication of opinions and ideas.[29] Accordingly, the Supreme Court has applied strict standards[30] to statutes regulating and restraining conduct that involves such interests as political[31] and religious expression.[32] In contrast, the Court until recently did not show solicitude for purely commercial interests.[33] Be-

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society some individual interests have greater value than others and thus are entitled to special judicial protection." Note, *Of Interests, Fundamental and Compelling: The Emerging Constitutional Balance*, 57 B.U.L. REV. 462 (1977).

The Court has noted that acceptable justifications for regulation of the freedom of speech include considerations of the time, place, and manner of a proposed activity so as to insure order and convenience between competing interests. Hague v. CIO, 307 U.S. 496 (1939). The Court added, however, that such restraints have been upheld only in cases where strict procedural safeguards exist to counter the encroachment on first amendment freedom. *Id.* at 516-17. *See also* Freedman v. Maryland, 380 U.S. 51 (1964), where the Court set forth procedural safeguards applicable to all licensing laws affecting first amendment rights. One of these procedural rules was a guarantee of prompt final judicial decision. *Id.* at 58-59. In subsequent federal litigation, a district court implied that what might otherwise be an unconstitutionally overbroad legislative scheme can be saved by a provision guaranteeing a prompt judicial resolution. ISKCON v. Griffin, 437 F. Supp. 666, 672 (W.D. Pa. 1977).

29. *See* Schneider v. State (Town of Irvington), 308 U.S. 147, 161-62 (1939).

30. *See* note 3 *supra*.

31. *See, e.g.*, Thomas v. Collins, 323 U.S. 516 (1945). The Court in *Thomas* reasoned that the solicitation of labor union memberships was so intertwined with speech that a prior permit could not be required. *Id.* at 532. Moreover, the Court stated that a governmental body could only regulate the "collection of funds" in such a manner as not to intrude upon the rights of free speech and free assembly. *Id.* at 541.

32. *See, e.g.*, Cantwell v. Conn., 310 U.S. 296 (1940). This case involved a statute forbidding the solicitation of contributions of anything of value by religious, charitable, or philanthropic causes without obtaining official approval. The state prosecuted three members of a religious group for selling books, distributing pamphlets, and soliciting contributions or donations. The Court overturned the state court convictions, holding that the state regulation which gave broad licensing discretion to designated officials was an invalid prior restraint on the free exercise of religion. *Id.* at 307.

33. The Court long distinguished speech that is purely commercial in context from speech that is not. *See, e.g.*, Breard v. Alexandria, 341 U.S. 622 (1951) (Court distinguished "commercial feature" of the transactions from their informational overtone). Recent cases indicate the Court is now more willing to protect commercial speech. *See* First Nat'l Bank of Boston v. Bellotti, 435 U.S. 765 (1978) (corporate speech on economic issue intimately related to the corporation's business interests is entitled to same first amendment protection as that of individuals); Bates v. State Bar of Ariz., 433 U.S. 350 (1977) (Court noted that prospective legal client and society in general may have strong interests in the free flow of commercial information); Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, 425 U.S. 748, 761-63 (1976) ("purely economic" interest in pharmacist's commercial advertisement did not disqualify him from protection under the first and fourteenth amendments).

cause interests of both a commercial and noncommercial nature commonly characterize solicitation efforts, such acts have received hybrid treatment in the courts.[34]

Several decisions by federal courts have developed the parameters of free speech protection for solicitation.[35] In the seminal case of *Green River v. Fuller Brush Co.*,[36] the Tenth Circuit Court of Appeals held that a city could properly enact an ordinance prohibiting door-to-door solicitation by salesmen.[37] The express purpose of the ordinance was to protect homeowners from annoyance by preventing uninvited visitation of private residences for business purposes.[38] The court applied the "reasonable means" test[39] to the activity in question, which it deemed purely commercial.[40] This test, evidencing the usual judicial deference to legislative intent, only requires that an enactment bear a rational or reasonable relation to the fulfillment of a legitimate policy goal.[41] The court in *Green River* held any first amendment protection inapplicable in the sales context, as it did not recognize a free speech interest in the commercial solicitation. Con-

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In *Bellotti*, the Court asserted that regulation of corporate speech must be supported by a compelling state interest and be the least restrictive means toward achieving the state purpose. 435 U.S. at 776, 786. *See also* note 3 and accompanying text *supra*.

34. *See* notes 35-62 and accompanying text *infra*.

35. *See, e.g.*, CBE v. City of Park Ridge, 567 F.2d 689 (7th Cir. 1975) (court attacking *blanket* prohibition on charitable solicitation); National Found. v. City of Fort Worth, 415 F.2d 41 (5th Cir. 1969) (court allowing regulation of charitable solicitors because statutory presumption of excessive costs rebuttable).

36. 65 F.2d 112 (10th Cir. 1933).

37. *Id. Cf.* Breard v. Alexandria, 341 U.S. 622 (1951) (Court allowed statutory prohibition of uninvited door-to-door solicitation by sellers of commercial products and distributors of literature; activity alleged to be a nuisance).

38. 65 F.2d at 114-15.

39. The "reasonable means" test only requires that there be a reasonable or rational connection between the means of regulation and the public end served. The preferred character of first amendment rights dictates a more rigorous standard than the reasonable means standard, which is applied in substantive due process and equal protection cases where no fundamental right or suspect classification is involved. *See* United States v. Carolene Prod. Co., 304 U.S. 144, 152 n.4 (1938).

40. 65 F.2d at 115-16. The Court in *Village of Schaumburg* quickly disposed of the defendant's contention that CBE was motivated primarily by interest in profit. In addition to asserting that CBE was predominantly interested in social and political causes, the Court said that charitable solicitation is not dealt with as a variety of purely commercial speech because such solicitation does more than disseminate economically beneficial information. 444 U.S. at 632.

41. *See* note 39 *supra*.

sequently, the court did not apply the rigorous "least restrictive means" test[42] which requires that a legislative enactment infringing free speech interests relate closely to a policy goal of compelling importance.

The Supreme Court's decision in *Thomas v. Collins*[43] showed that advocacy would receive judicial protection even if solicitation of funds were involved.[44] Plaintiff contested a state statute which prohibited him from soliciting memberships in labor unions without a permit. The Court held that the permit requirement constituted an unlawful restraint on plaintiff's free speech interests. The opinion emphasized that the solicitation of funds by the laborer did not alter the constitutionally protected status of his speech.[45]

In *National Foundation v. City of Fort Worth*,[46] the Fifth Circuit upheld an ordinance limiting the amount charitable organizations could spend on solicitation to a certain percentage of funds collected.[47] Because the ordinance allowed a rebuttal of the presumption of excessive solicitation costs when a charity exceeded the percentage limit,[48] the court did not perceive an unreasonable limitation on the free speech interest at issue. The court therefore held the

42. The "least restrictive means" test requires that the governmental interest promoted by the regulation undergoing "strict scrutiny" be served by measures least destructive of the free speech interests concerned. *See* note 3 and accompanying text *supra*; Hynes v. Mayor of Oradell, 425 U.S. 610, 620 (1976) (legislative controls on first amendment interests must be narrowly related to such governmental ends as protection of citizens against crime and undue annoyance).

43. 323 U.S. 516 (1945).

44. The Court rejected the view that an organization espousing a lawful collective cause could have its first amendment rights of free speech (and of free assembly) dismissed because the organization engaged in business activities or happened to have a leader who received compensation for exercising these rights. *Id.* at 531.

45. *Id.*

46. 415 F.2d 41 (5th Cir. 1969), *cert. denied*, 396 U.S. 1040 (1970).

47. A city may reasonably require a solicitor to furnish it with a statement of the past and expected receipts and costs of collection of the funds solicited within its limits. *Id.* at 46.

48. Although the ordinance imposed a cost cut-off, the court allowed the ordinance to stand because in its opinion the cost regulation was within the city's police power, *see* note 49 *infra*. The court premised its position on the fact that the ordinance allowed for a determination of the reasonableness of the ratio between the cost of solicitation and the amount collected when the cost of solicitation exceeded 20% of the amount collected. *Id.* at 42. *Contra*, Village of Schaumburg v. CBE, 444 U.S. 620, 635 n.9 (1980), where the ordinance did not allow for such a determination of reasonableness.

ordinance to be a valid exercise of the city's power to enact legislation protecting the safety and welfare of those within its jurisdiction.[49]

The Seventh Circuit condemned a blanket prohibition[50] on charitable solicitations in *Citizens for a Better Environment (CBE) v. City of Park Ridge*.[51] The court invalidated the ordinance in spite of the city's police power interests in safeguarding the privacy of citizens and protecting them from fraud.[52] The principal issue in *Park Ridge* was whether, in the absence of a property owner's stated desire to keep canvassers away, the municipality could nevertheless prohibit door-to-door solicitation of funds.[53] The court held that the city could not constitutionally impose a blanket prohibition on nonprofit charitable organizations that expressed essentially political ideas.[54]

In *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc.*,[55] the Supreme Court expanded the scope of protection for solicitors.[56] The case involved commercial advertisement of prescription drugs. Contrary to precedent, the Court asserted that even purely commercial speech merits the protection of the first amendment.[57] Recognizing a speech interest in commercial solicitation, the Court balanced the interests of the state in protecting citizens from fraud and misrepresentation against the interests of the communicator and recipients in a free flow of price information.[58] In applying

49. *Id.* Police power is the common term given to denote this inherent right of state and local governments. For background information on the nature of the police power, see NOWAK, *supra* note 11, at 389, 409-10.

50. The Supreme Court in *Village of Schaumburg* also condemned a blanket prohibition on charitable solicitation, stating that the Village's interests could be served by narrower means than direct prohibition. 444 U.S. at 637-38.

51. 567 F.2d 689 (7th Cir. 1975) (per curiam).

52. *Id.* at 692.

53. *Id.* at 691.

54. *Id.* at 692.

55. 425 U.S. 748 (1976).

56. The Court's rationale for expanding first amendment protection was that the interest of recipients in obtaining commercial information might exceed their interest in political matters because commercial information has a more immediate impact on individuals' everyday conduct. *Id.* at 757-58 n.15. The Court added that society in general has an interest in the free flow of commercial information, stating that this type of information could even spread political truth. *Id.* at 764-65.

57. *Id.* at 761.

58. *Id.* at 758-65. *See generally* Martin v. City of Struthers, 319 U.S. 141 (1943) (Court recognized the need to balance the governmental interests in protection and domestic order against the traditions and values of free discussion and the dissemination of ideas).

the strict scrutiny test, which proved fatal to the Virginia statute, the Court reasoned that commercial information has value in the marketplace of ideas.[59]

As noted above, solicitation is often a multipurpose enterprise. In *Village of Schaumburg v. Citizens for a Better Environment (CBE)*,[60] the Court invalidated a city ordinance which prohibited the solicitation of funds by a charitable organization whose primary purpose was to disseminate information and advocate environmental causes.[61] The Supreme Court held that this public, nonprofit organization was entitled to relief insofar as the ordinance purported to prohibit canvassing by charities which failed to meet an arbitrary and fixed limit on administrative expenses.[62] The Court asserted that the ordinance unconstitutionally interfered with speech interests protected by the first and fourteenth amendments. In applying the strict scrutiny test to the ordinance, the Court asserted that the spending provision bore an insufficient relation to compelling governmental interests[63] in protecting the public from fraud,[64] crime,[65] and undue annoyance.[66]

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59. 425 U.S. at 760.

60. 444 U.S. 620 (1980).

61. The purpose of this type of organization is to gather and disseminate information on public issues, using paid solicitors to help fund the organization. *Id.* at 635 (citing Citizens for a Better Environment (CBE) v. Village of Schaumburg, 590 F.2d 220, 225 (7th Cir. 1978)), *aff'd*, 444 U.S. 620 (1980).

62. The Court concluded that the 75% spending limitation unduly infringed on the first amendment rights of both CBE and other parties not involved in this case. *Id.* at 633-35. *See* notes 11 and 23 *supra*.

63. The Court conceded that the governmental interests in protecting the public from fraud, crime, and invasion of privacy were "substantial." 444 U.S. at 636.

64. The Court asserted that the Village's legitimate interest in preventing fraudulent solicitation could be better served by "measures less intrusive than a direct prohibition" on CBE's fundraising. The Court suggested penal laws and disclosure laws as alternatives to direct prohibition. *Id.* at 637-38. *See* text accompanying note 49 *supra*.

65. The Court stated that it could not discern a close relationship between the spending provision and the protection of public safety. *Id.* at 638. There was no assurance, in the Court's judgment, that solicitors employed by organizations which exceeded the spending limit could be trusted more than workers for organizations which satisfied the limit. *Id.*

66. The Court asserted that the 75% requirement inadequately served the interest in privacy because it only reduced the total number of solicitors, as would any prohibition on solicitation. Moreover, the Court stated that the ordinance was not precisely drawn to serve the unique privacy interests of homeowners because it also applied to solicitation on "public streets and public ways." *Id.*

Village of Schaumburg demonstrates that a governmental entity must satisfy the heavy burden of proving the necessity of regulating charitable solicitation to protect compelling governmental interests.[67] Restraints[68] on a charitable organization's speech interests appear valid only in cases where strict procedural safeguards—such as prompt judicial determination, with the burden on the censor to establish the unprotected nature of the speech interests—exist to counter the encroachment on first amendment rights.[69] In *Green River*, to the contrary, a reasonable connection[70] between the ordinance and its purported purpose satisfied judicial review. The distinction between the cases is that in *Green River* the salesmen's interest was purely commercial, unlike the speech interests at issue in *Village of Schaumburg*. In *National Foundation v. City of Fort Worth*, the Fifth Circuit upheld a restrictive ordinance, but noted that the organization could rebut the presumption of excessive costs upon a proper showing.[71] Conversely, the Supreme Court in *Village of Schaumburg* emphasized the speech interests of a charitable organization in invalidating an ordinance creating an *irrebuttable* presumption of excessive costs.

In *Citizens for a Better Environment (CBE) v. Park Ridge* and in *Village of Schaumburg* there were, respectively, a blanket prohibition and an unqualified cost limitation on charitable solicitation, in both

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67. *Contra*, National Found. v. City of Fort Worth, 415 F.2d 41, 46 (5th Cir. 1969), *cert. denied*, 396 U.S. 1040 (1970) (charitable fundraiser had burden of establishing that city ordinance did not rest on any reasonable basis).

68. Though the matter of prior restraints was only discussed indirectly by the Court in *Village of Schaumburg*, it raises important constitutional issues in the First Amendment area. *See* NOWAK, *supra* note 11, at 741-48, 844-45.

The doctrine of prior restraint is designed to subject governmental curbs on freedom of expression to a heavy presumption of unconstitutionality. Prior restraints have generally been defined as those preventing information and ideas from reaching the public. Accordingly, they have been described as the primary evil against which the first amendment was directed. *See* Litwack, *The Doctrine of Prior Restraint*, 12 HARV. C. R.-C. L.L. REV. 519, 519 (1977).

In Cantwell v. Connecticut, 310 U.S. 296 (1940), the statute under review forbade any person to solicit funds for a religious cause without having a certificate obtained from an official who had broad discretion over whether or not to grant the certificate. The Court ruled that the statute was unconstitutional as a prior restraint upon the free exercise of religion. *Id.* at 303-04. *See* note 32 and accompanying text *supra*.

69. *See* Freedman v. Maryland, 380 U.S. 51, 58-59 (1965).

70. *See* note 39 *supra*.

71. *See* Village of Schaumburg v. CBE, 444 U.S. 620, 627 (1980) (*National Foundation* distinguished).

cases despite a lack of complaints of disturbance or property right infringement by homeowners. In both cases the ordinance was invalidated. *Thomas v. Collins* is consistent with *Village of Schaumburg* because in the former the right to advocate a cause, an obvious speech interest, was upheld against the regulatory designs of the municipality. Moreover, *Virginia State Board of Pharmacy*, like *Thomas v. Collins*, emphasized recipients' right of access to information[72] and solicitors' right to disseminate information in the commercial context. The extension of first amendment protection to purely commercial speech increases the onus on government to demonstrate a compelling interest promoted by regulation of charitable solicitors that overrides solicitors' free speech interests.[73]

An ordinance designed to regulate charitable solicitation previously carried a presumption of reasonableness and constitutionality.[74] The Supreme Court's statement in *Village of Schaumburg* that charitable solicitation involves more than commercial speech,[75] combined with the Court's holding in *Virginia State Board of Pharmacy* that even purely commercial speech merits first amendment protection, repudiates that presumption. The Court now seems generous in allowing immunity for charitable organizations from severe and rigid statutory restraints when they engage primarily in research, advocacy, or public education,[76] using their own paid staff to perform

72. *See* Ivester, *The Constitutional Right to Know*, 4 HASTINGS CONST. L.Q. 109, 109-10 (1977).

73. *See* Schneider v. State (Town of Irvington), 308 U.S. 147, 161 (1939) (in reviewing legislation restricting dissemination of knowledge, the Court must examine the effect of the challenged legislation and "weigh the circumstances and . . . appraise the substantiality of the reasons advanced in support of the regulation. . .").

74. *See* Jones, *supra* note 3, at 60.

75. In a recent charitable solicitation case, a state court upheld a city ordinance which regulated charitable solicitors. Holloway v. Brown, 62 Ohio St. 2d 65, 403 N.E.2d 191 (1980). This case, however, is distinguishable in the following ways from the factual and legal context in *Village of Schaumburg*: 1) The ordinance in *Holloway* set a significantly higher limit on costs than the Village of Schaumburg ordinance, and it limited such costs to the actual costs of raising funds; 2) The ordinance in *Holloway* was not an outright prohibition of charitable solicitation; instead, it only made a classification between nonaffiliated and affiliated solicitors for charities; 3) The specified percentage limitations in the *Holloway* ordinance could be rebutted. 403 N.E.2d at 191-92.

76. It can be surmised in the light of a succession of free speech cases culminating with *Village of Schaumburg* that Breard v. Alexandria, 341 U.S. 622 (1951), is no longer good law insofar as it prohibited the distribution of magazines, which are a major source of information for the general public.

these functions.[77] This perception is consistent with the Court's history of delimiting the power of government to regulate free speech interests.

In *Village of Schaumburg* the Court did not list the specific circumstances prerequisite to validating limits upon charitable solicitation.[78] Furthermore, the Court's attempt to distinguish *National Foundation* was not persuasive because the charitable organization there still had to satisfy a cost percentage limitation which left discretion to municipal officials. It is clear, however, that the process of first amendment adjudication will continue to be one of "balancing" and protecting free speech values against other societal objectives.[79] In weighing the respective interests, the Court will be wary of strict solicitation guidelines imposed by states upon charitable organizations.

Frank Rubin

77. *But see* Village of Schaumburg v. CBE, 444 U.S. at 639-45 (Rehnquist, J., dissenting with regard to broad scope of majority's position).

78. A major reason for the Court's tentativeness may have been the great number of *amici curiae* in the case. Many other charitable organizations presumably would have sharply opposed a decision in favor of the municipality. Telephone interview with Robert Rothschild, Attorney for Citizens for a Better Environment (CBE), from St. Louis to Chicago (Sept. 11, 1980).

Municipalities could try to circumvent the constitutional barrier that the Village of Schaumburg encountered by asking homeowners to erect signs warning solicitors to keep off their property. There is wording in *Village of Schaumburg* to the effect that this tactic would not succeed. Specifically, the Court insisted that the decision whether to contribute to certain charitable organizations should be left to individual choice. 444 U.S. at 638. A reasonable inference would be that the Court would not support this kind of municipal influence, given the Court's broad protection of freedom of speech.

79. *See* A. BICKEL, THE LEAST DANGEROUS BRANCH 51-55 (1962); BeVier, *supra* note 2, at 347.