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Noncommercial Door-to-Door Solicitation and the Proper Standard of Review for Municipal Time, Place, and Manner Restrictions

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NONCOMMERCIAL DOOR-TO-DOOR SOLICITATION AND
THE PROPER STANDARD OF REVIEW FOR
MUNICIPAL TIME, PLACE, AND MANNER
RESTRICTIONS

INTRODUCTION

The first amendment protects the freedom of speech1 against encroachment by federal, state, and municipal governments.2 Noncommercial door-to-door solicitation falls within the first amendment's protective embrace.3

Although written in absolute terms, the first amendment does not

1. The first amendment states in relevant part: "Congress shall make no law . . .
   abridging the freedom of speech, or of the press . . . ." U.S. Const. amend. I.

2. The first amendment is applicable to states and municipalities through the fourteenth amendment. See Edwards v. South Carolina, 372 U.S. 229, 235 (1963) (first amendment applicable to the states through the due process clause of the fourteenth amendment) (citing Gitlow v. New York, 268 U.S. 652 (1925)); Lovell v. City of Griffin, 303 U.S. 444, 450 (1938) (municipal ordinances constitute state action and are within prohibition of the first amendment); Gitlow v. New York, 268 U.S. 652, 666 (1925) (first amendment applicable to the states through the due process clause of the fourteenth amendment).


The Supreme Court at one time held that commercial door-to-door solicitation is not entitled to the protection of the first amendment. See Breard v. Alexandria, 341 U.S. 622, 642, 644-45 (1951). But see Village of Schaumburg v. Citizens for a Better Env't, 444 U.S. 620, 632 n.7 (1980) ("past decisions . . . indicat[ing] that commercial speech is excluded from First Amendment protections, . . . to that extent, are no longer good law") (citing Virginia Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc., 425 U.S. 748, 758-59, 762 (1976)).

This Note addresses the standard of review for regulations of noncommercial door-to-door solicitation. For a review of the possible implications of the recent commercial speech cases, see Note, Time, Place, or Manner Restrictions on Commercial Speech, 52 Geo. Wash. L. Rev. 127 (1983).
guarantee the right to communicate one's views at all times, in all places, or in any manner that one may desire. Expressive activity is subject to reasonable time, place, and manner restrictions. The reasonableness of time, place, and manner restrictions is determined by looking to the nature of the place where the expressive activity occurs. The Supreme Court has recognized four categories of "places": the public forum, the limited public forum, the nonpublic forum, and private property.


7. Public forums are those government held properties that traditionally have been opened to public access for all expressive activity. See United States v. Grace, 461 U.S. 171, 177 (1983); Perry Educ. Ass'n v. Perry Local Educators' Ass'n, 460 U.S. 37, 45 (1983). Streets, sidewalks, and public parks are classic examples of public forums. See Perry, 460 U.S. at 45; see also Grace, 461 U.S. at 180 (public sidewalks forming perimeter to Supreme Court's grounds are public forums). The term "public forum" was coined in an essay by Professor Kalven. See Kalven, The Concept of the Public Forum: Cox v. Louisiana, 1965 Sup. Ct. Rev. 1, 11-12.


10. See, e.g., PruneYard Shopping Center v. Robins, 447 U.S. 74, 85-88 (1980) (discussing right of access to privately owned shopping center under first amendment and California state constitution free speech clause); Hudgens v. NLRB, 424 U.S. 507, 520-21 (1976) (discussing and rejecting first amendment right of access by picketers to privately
The Court has indicated that the constitutionality of regulations limiting use of the public forum, the limited public forum, and private property when it is indistinguishable from the public forum,11 be evaluated under a high level of scrutiny12; the regulation must be “narrowly tailored to serve a significant governmental interest” and “leave open ample alternative channels of communication.”13 Additionally, the Court has incorporated a fourth requirement into the analysis of time, place, and manner in these forums requiring the government to show that there are no less drastic means14 available to accomplish a stated purpose.15

Regulations involving nonpublic forums, however, are subject to a lesser degree of scrutiny16; the government has the right to grant or deny access to the forum for any reason other than official opposition to the speaker’s viewpoint.17

Although noncommercial door-to-door solicitation is subject to reasonable, content-neutral time, place, and manner restrictions,18 the
proper standard of review for municipal ordinances regulating the hours of noncommercial door-to-door solicitation\(^9\) is currently a subject of debate.\(^{20}\)

Part I of this Note briefly examines the fundamental purposes of the first amendment, analyzes the public forum doctrine, and sets forth the reasoning behind the various tests. Part II determines the proper standard to apply to review noncommercial door-to-door solicitation ordinances given the implicated interests. This Note concludes that the less

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\(^9\) Jersey Citizen Action v. Edison Township, 797 F.2d 1250, 1255 (3d Cir. 1986) ("[A] municipality may subject door-to-door solicitation to reasonable time, place, and manner restrictions that are content neutral.") (citations omitted), cert. denied, 107 S. Ct. 1336 (1987); City of Watseka v. Illinois Pub. Action Council, 796 F.2d 1547, 1550-52 (7th Cir. 1986) ("To sustain a time, place, and manner restriction on First Amendment activities, the government must show that the restriction . . . is content-neutral . . ."), aff'd mem., 107 S. Ct. 919 (1987).

19. These ordinances place hourly limits on solicitation. In Watseka, the ordinance stated:

It is unlawful and shall constitute a nuisance for any person . . . to go upon any premises and ring the doorbell upon or near any door of a residence located thereon, or rap or knock upon any door, or create any sound in any other manner calculated to attract the attention of the occupant of such residence, for the purpose of securing an audience with the occupant thereof and engage in soliciting as herein defined, prior to 9:00 o'clock A.M. or after 5:00 o'clock P.M. of any weekday, or at any time on a Sunday or on a state or national holiday.


This Note does not discuss ordinances that restrict solicitation to daytime or have sunset limitations. Such ordinances have been struck down as impermissibly vague because the limitations are so variable as to give no notice to affected parties. See Massachusetts Fair Share, Inc. v. Town of Rockland, 610 F. Supp. 682, 690 (D. Mass. 1985); West Virginia Citizens Action Group, Inc. v. Daley, 324 S.E.2d 713, 720 (W. Va. 1984).


drastic means test properly belongs in the analysis of noncommercial
door-to-door solicitation ordinances as a matter of history and of neces-
sity to protect first amendment and privacy rights.

I. THE FIRST AMENDMENT AND PERMISSIBLE REGULATION

The first amendment prohibits the government from abridging the
freedom of speech or the freedom of the press. The Supreme Court has
stated that the first amendment "rests on the assumption that the widest
possible dissemination of information" is essential to the welfare of the
public. This theory assumes that the search for truth can be achieved
through the free flow of information in a "marketplace of ideas". With
greater access to sources of information, the listener more accurately
gauges the validity of various viewpoints. Thus, first amendment
protection is at least as important to the listener as it is to the speaker.

21. See supra notes 1-2 and accompanying text.
23. See Abrams v. United States, 250 U.S. 616, 630 (1919) (Holmes, J., dissenting) ("the ultimate good desired is better reached by free trade in ideas—that the best test of truth is the power of the thought to get itself accepted in the competition of the market"). The marketplace of ideas provides an individual faced with a decision with more information on which to base an informed judgment. See M. Nimmer, Nimmer on Freedom of Speech § 1.02[C], at 1-15 to -16 (1984).
24. See M. Nimmer, supra note 23, § 1.02[C], at 1-15 to -16; see also Bates v. State Bar of Arizona, 433 U.S. 350, 364 (1977) (the free flow of speech "serves individual and societal interests in ascertaining informed and reliable decisionmaking").
25. The rights of the listener frequently are addressed in commercial speech cases. See Bates v. State Bar of Ariz., 433 U.S. 350, 364 (1977) ("Even though the speaker's interest is largely economic, ... [t]he listener's interest is substantial: the consumer's concern for the free flow of commercial speech often may be far keener than his concern for urgent political dialogue.") (citation omitted); Virginia Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc., 425 U.S. 748, 756 (1976) ("First Amendment protection ... is a protection enjoyed by the ... recipients of the information, and not solely, if at all, by the [speakers].") (emphasis added); see also M. Nimmer, supra note 23, § 1.02[F][1], at 1-20 to -22 & n.37 (discussing first amendment right to receive and third party standing for speaker to seek enforcement of these rights). Since a commercial speaker may have no protection, or less protection than the noncommercial speaker, see Central Hudson Gas & Elec. Corp. v. Public Serv. Com'rn, 447 U.S. 557, 562-63 (1980) ("The Constitution ... accords a lesser protection to commercial speech than to other constitutionally guaranteed expression.") (citing Ohrailik v. Ohio State Bar Ass'n, 436
Although written in absolute terms, the Supreme Court has recognized that the first amendment does not guarantee the right to communicate one’s views at all times, in all places, or in any manner that one may desire. The first amendment and the rights it encompasses are subject to reasonable time, place, and manner regulations.

A. Time, Place, and Manner Restrictions

Time, place, and manner restrictions afford the speaker the opportunity to deliver his message free from the interference of other voices. They also ensure that the listener has the opportunity to receive clear messages. By facilitating the orderly flow of information in the marketplace of ideas, time, place, and manner regulations enhance the overall effectiveness of protected first amendment activity.

Time, place, and manner regulations also accommodate the government’s power to protect legitimate social interests and individual rights. They offer the state the means of restricting expressive activity when necessary to protect the community against crime and fraud, the indi-

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26. See Virginia Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc., 425 U.S. 748, 757 (1976) (freedom of speech necessarily protects the right to receive it); Martin v. City of Struthers, 319 U.S. 141, 143 (1943) (“This freedom [of speech] embraces the right to distribute literature, and necessarily protects the right to receive it.”) (emphasis added) (citation omitted).

27. See supra note 1.
28. See supra note 4.
29. See supra note 5.
30. For example, time regulation of city street use allows competing speakers to express themselves. See Grayned v. City of Rockford, 408 U.S. 104, 115 (1972) (government may limit use of streets to one parade at a time); Cox v. New Hampshire, 312 U.S. 569, 576 (1941) (municipality has power to issue permits for parade to prevent overlap); cf. Red Lion Broadcasting Co. v. FCC, 395 U.S. 367, 387-88 (1969) (FCC legitimately may regulate radio transmission licenses to prevent interference).

31. See supra cases collected at note 30.
32. See Breard v. Alexandria, 341 U.S. 622, 642 (1951) (“By adjustment of rights, we can have both full liberty of expression and an orderly life.”).
34. See Village of Schaumburg v. Citizens for a Better Env’t, 444 U.S. 620, 636-39 (1980) (municipality may regulate door-to-door solicitation to prevent crime, fraud, and

individual against invasion of his privacy as well as other societal interests. The power to regulate protected first amendment activity, however, does not include the power to discriminate against the subject matter of the communication. The Court has held that content-based restrictions generally are not permitted under the first amendment because they are disruptive of the free and uncensored flow of information to the public.


36. See Village of Schaumburg v. Citizens for a Better Env't, 444 U.S. 620, 636 (1980) (municipality has legitimate interest in protecting citizens from undue annoyance); see also Beard v. Alexandria, 341 U.S. 622, 644-45 (1951) (municipalities may regulate door-to-door solicitation to protect the privacy interests of its citizens); Martin v. City of Struthers, 319 U.S. 141, 144 (1943) (same).


The restrictions are permissible only when they are necessary to protect a compelling state interest and are enforced only when they are the least restrictive method of meeting that end. If the court finds that other means are available, then the regulation is struck down as overbroad.

1. Public Forum Analysis

The framework for the analysis of time, place, and manner restrictions of expressive conduct on real property has developed from the Supreme Court's recognition that control of the public streets is vested in municipalities. The Court has held that this power gives municipalities the right to enact content-neutral regulations that only incidentally infringe on protected first amendment activity if they are in furtherance of a legitimate governmental objective.


44. In 1939, Justice Roberts recognized in dictum that the public had a right to use public parks and streets for expressive activity.

Wherever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions. Such use of the streets and public places has, from ancient times, been a part of the privileges, immunities, rights, and liberties of citizens.


45. A content-neutral regulation does not aim at the content of expression, but, in the course of serving some significant governmental interest, it may place incidental restrictions on expression. See Consolidated Edison Co. v. Public Serv. Comm'n, 447 U.S. 530, 536 (1980); M. Nimmer, supra note 115, § 2.07, at 2-98 to -99; L. Tribe, supra note 200, § 12-20, at 682-83.

46. See Members of the City Council v. Taxpayers for Vincent, 466 U.S. 789, 804, 808 (1984); see also supra note 34-37 and accompanying text (setting forth government interests).
The extent of first amendment protection varies with the character of the property to which speakers seek access.\textsuperscript{46} The restriction must be reasonable in light of the nature of the forum and the governmental interests to be served.\textsuperscript{47} The Court has distinguished four categories of real property that entail somewhat different levels of scrutiny. These categories are: the public forum,\textsuperscript{48} the limited public forum,\textsuperscript{49} the nonpublic forum,\textsuperscript{50} and private property.\textsuperscript{51}

\textbf{a. Regulation of the Public Forum and the Limited Public Forum}

In order for a time, place, and manner regulation of expressive activity in the public\textsuperscript{52} and limited public\textsuperscript{53} forums to be found reasonable, the restriction must satisfy a three-prong test: the regulation must serve a significant government interest;\textsuperscript{54} it must be narrowly tailored to serve that interest;\textsuperscript{55} and it must leave ample alternative modes of communication open.\textsuperscript{56}

\begin{enumerate}
\item[46.] See Cornelius v. NAACP Legal Defense & Educ. Fund, Inc., 105 S. Ct. 3439, 3448 (1985) (government control of speaker's access based on nature of property); Grayned v. City of Rockford, 408 U.S. 104, 116 (1972) (nature of a place dictates the kinds of regulations of time, place, and manner that are reasonable).
\item[47.] See supra note 46.
\item[48.] See supra note 7.
\item[49.] See supra note 8.
\item[50.] See supra note 9.
\item[51.] See supra note 10.
\item[52.] See Perry Educ. Ass'n v. Perry Local Educators' Ass'n, 460 U.S. 37, 45 (1983); supra note 7.
\item[53.] See Perry, 460 U.S. at 45; supra note 8.
\item[56.] An ordinance is narrowly tailored when the "effect [on first amendment freedoms] is no greater than necessary to accomplish the City's purpose." See Members of the City Council v. Taxpayers for Vincent, 466 U.S. 789, 805 (1984).
\item[57.] For example in Clark, the Court upheld a regulation prohibiting overnight camping in Lafayette Park. Clark, 468 U.S. at 289. The Court found that the significant government interest in maintaining national parks necessitated measures such as the prohibition on camping even when such activity is assumed to be symbolic speech. See id. at 299. The ordinance, thus, was narrowly tailored because "[n]one of its provisions appear[ed] unrelated to the ends that it was designed to serve." Id. at 297.
\end{enumerate}

Where alternatives are insufficient, the Court has invalidated the challenged provision. See Schneider v. State, 308 U.S. 147, 163 (1939).
Additionally, the Court has often incorporated a fourth prong into the analysis: a less drastic means test.\(^{57}\) This prong requires an inquiry into whether there are other means of regulation that are less restrictive of first amendment activity yet adequate to protect the government interest served by the challenged regulation.\(^ {58}\) The Court has looked unfavorably on regulations that place any unnecessary restrictions on fundamental liberties.\(^ {59}\) The Court also has noted that precision of regulation is the touchstone of the first amendment.\(^ {60}\) The prohibitions of the first amendment require lawmakers to enact only those time, place, and manner reg-


In a case involving counterfeiting, however, one justice has stated that "[t]he less-restrictive-alternative analysis . . . has never been a part of the inquiry into the validity of a time, place, and manner regulation." Regan v. Time, Inc., 468 U.S. 641, 657 (1984) (plurality opinion of White, J.). This statement was not joined by a majority of the Court. See id. at 643. Indeed, a lower court has argued that the government interest in preventing counterfeiting "may well be a special case." See Wisconsin Action Coalition v. City of Kenosha, 767 F.2d 1248, 1255 n.4 (7th Cir. 1985); see also L. Tribe, supra note 38, \(\S\) 12-20, at 687 (noting that the less restrictive alternative analysis is relevant to decide whether regulation leaves too little room for a speaker).

\(^{58}\) See supra note 15 and accompanying text (cases discussing adequacy of government interest).

\(^{59}\) See United States v. Robel, 389 U.S. 258, 268 (1967) ("Congress must achieve its goal by means which have a 'less drastic' impact on the continued vitality of First Amendment freedoms.") (quoting Shelton v. Tucker, 364 U.S. 479, 488 (1960)); Shelton v. Tucker, 364 U.S. 479, 486-88 (1960) (less drastic means analysis applied to due process and first amendment); Dean Milk Co. v. City of Madison, 340 U.S. 349, 354 (1951) (less restrictive alternatives used in commerce clause case). See generally Note, supra note 57, at 973-74 (discussing application of the less restrictive test in due process, equal protection, commerce clause, and first amendment cases); Struve, The Less-Restrictive-Alternative Principle and Economic Due Process, 80 Harv. L. Rev. 1463, 1463 (1967) (proposing that economic regulations should stand if alternative means are less than equally effective).

\(^{60}\) See NAACP v. Button, 371 U.S. 415, 438 (1963); see also Members of the City Council v. Taxpayers for Vincent, 466 U.S. 789, 810 (1984) ("[T]he application of the ordinance in this case responds precisely to the substantive problem which legitimately concerns the City.").
ulations necessary to protect significant government interests. If less drastic means are available, then the regulation is overbroad and, therefore, unconstitutional.

b. Regulation of the Nonpublic Forum

The government may close the nonpublic forum completely to a speaker seeking to invoke first amendment rights without violating those rights. Unlike the public or the limited public forums, there is no constitutional right of access to nonpublic forums. If the government opens the nonpublic forum to public communication, content-based restrictions are permissible only if they do not discriminate among viewpoints. Further, any content-neutral time, place, and manner restriction on communication in a nonpublic forum withstands judicial scrutiny.

61. See City of Renton v. Playtime Theatres, Inc., 106 S. Ct. 925, 931 (1986) (ordinance necessary to prevent unwanted secondary effects of adult theaters); United States v. Grace, 461 U.S. 171, 182 (1983) (striking down ban on expressive activity on grounds of United States Supreme Court building as unnecessary); Schad v. Borough of Mount Ephraim, 452 U.S. 61, 69 n.7 (1981) (even incidental restrictions on expressive activity must be narrowly drawn to avoid unnecessary intrusions); Village of Schaumburg v. Citizens for a Better Env't, 444 U.S. 620, 637 (1980) ("The Village may serve its legitimate interests ... by narrowly drawn regulations designed to serve those interests without unnecessarily interfering with First Amendment freedoms."); United States v. O'Brien, 391 U.S. 367, 377 (1968) (regulation of expressive activity must be "no greater than is essential to the furtherance of that interest"); see also L. Tribe, supra note 28, § 12-20, at 687 ("[T]he availability of [less drastic] alternatives is relevant to deciding whether government has in fact left too little opportunity for communicative activity, whether for speakers or for listeners.").

62. See Village of Schaumburg v. Citizens for a Better Env't, 444 U.S. 620, 637-39 (1980); see also United States v. Grace, 461 U.S. 171, 182 (1983) (total ban on expressive activity on grounds of United States Supreme Court building invalid because it was more than necessary "for the maintenance of peace and tranquility").

63. See supra note 9.

64. See Perry Educ. Ass'n v. Perry Local Educators' Ass'n, 460 U.S. 37, 46 (1983); see also Adderley v. Florida, 385 U.S. 39, 47 (1966) ("The State, no less than a private owner of property, has power to preserve the property under its control for the use to which it is lawfully dedicated.").


The Court has drawn a distinction between content-based restrictions and viewpoint-based restrictions in the nonpublic forum. In the former, government directs regulations to a broad category of speech. See, e.g., Cornelius v. NAACP Legal Defense & Educ. Fund, Inc., 105 S. Ct. 3439, 3453 (1985) (exclusion of political speakers from fund drive in federal work place to "avoid[] the appearance of political favoritism is a valid justification for limiting speech in a nonpublic forum"); Perry Educ. Ass'n v. Perry Local Educators' Ass'n, 460 U.S. 37, 47 (1983) (exclusion of union from access to school mailboxes not inconsistent with access granted to civic organizations since different types of speech); Greer v. Spock, 424 U.S. 828, 838-39 (1976) (ban on political speakers' access to military base, a nonpublic forum, valid to keep "military activities ... wholly free of entanglement with partisan political campaigns of any kind"); Lehman v. City of Shaker Heights, 418 U.S. 298, 304 (1974) (plurality opinion of Blackmun, J.) (public transit system's ban on
c. Regulation of Expressive Conduct on Private Property

The Supreme Court has recognized that a private homeowner has the right to bar unwelcome visitors from his property without running afoul of the first amendment. When speakers have sought access to private property, invoking alleged first amendment rights, the Court has acceded to the interests of the private owner. As with the nonpublic forum, a speaker has no constitutional right to enter private land when entry has been denied, or to remain on private property when a permitted entry has been terminated. Indeed, the government may act to facilitate the limitation on expression desired by the private owner of real property without violating the first amendment.

When the homeowner’s desires are unknown, however, the Court has political advertising on busses, nonpublic forums, reasonable to avoid “the appearance of favoritism”).

Viewpoint-based restrictions occur when the government attempts to regulate the viewpoint of individual speakers. See, e.g., Cornelius, 105 S. Ct. at 3451 (“[The] Government violates the First Amendment when it denies access [to a nonpublic forum] to a speaker solely to suppress the point of view he espouses on an otherwise includible subject.”); Perry, 460 U.S. at 46 (“[The] State may reserve [a nonpublic] forum for its intended purposes . . . as long as the regulation on speech is reasonable and not an effort to suppress expression merely because public officials oppose the speaker’s view.”) (citing United States Postal Serv. v. Council of Greenburgh Civic Ass’ns, 453 U.S. 114, 131 n.7 (1981); Lehman, 418 U.S. at 303 (plurality opinion of Blackmun, J.) (“[T]he policies and practices governing access to [a nonpublic forum] must not be arbitrary, capricious, or invidious.”).


68. See Village of Schaumburg v. Citizens for a Better Env’t, 444 U.S. 620, 639 (1980) (noting in dictum approval of provision giving municipality power to enforce no solicitation signs); Martin v. City of Struthers, 319 U.S. 141, 148 (1943) (“A city can punish those who call at a home in defiance of the previously expressed will of the occupant . . . .”); see also Hudgens v. NLRB, 424 U.S. 507, 513 (1976) (“While statutory or common law may in some situations extend protection or provide redress against a private corporation or person who seeks to abridge the free expression of others, no such protection or redress is provided by the Constitution itself.”); Amalgamated Food Employees Union Local 590 v. Logan Valley Plaza, Inc., 391 U.S. 308, 324 (1968) (the right to freedom of speech contrary to the wishes of the property owner may not be asserted in “a situation involving a person’s home”), overruled, Hudgens v. NLRB, 424 U.S. 507, 518 (1976).

69. See Hudgens v. NLRB, 424 U.S. 507, 519-21 (1976) (pickets have no right to enter shopping center when entry denied by private owner); Lloyd Corp. v. Tanner, 407 U.S. 551, 567-68, 570 (1972) (speakers have no right to distribute literature when informed that anti-handbilling rule in privately owned mall will be enforced to exclude the speakers). When the private property is indistinguishable from the public forum, however, the desire of the private owner is not controlling. See supra notes 11 & 74-75.


72. See Rowan v. United States Post Office Dep’t, 397 U.S. 728, 738 (1970) (postal regulation giving homeowner right to bar certain mail from entering his home valid under the first amendment). It is undisputed, however, that government may not place
indicated that a speaker's right to seek entry is within the first amendedment's protection. The Court also has created an exception to the rule that private owners of land may curtail or end any expressive activity on their property when the property becomes indistinguishable from a public forum. In such an instance, time, place, and manner regulations are permitted only if they satisfy the public forum analysis.

The Court has also permitted government regulation of the owner's expressive activity on his own property. As with all time, place, and manner restrictions, the standard of reasonableness for the regulation of expressive conduct on private property varies with the nature of the expressive activity and the nature and use of the property.

II. Regulation of Door-to-Door Solicitation

Noncommercial solicitation implicates many of the interests regarded by the Supreme Court as fundamental to the first amendment. The Court has stated, therefore, that noncommercial door-to-door solicitation


73. This indication comes from the door-to-door solicitation cases. See Village of Schaumburg v. Citizens for a Better Env't, 444 U.S. 620, 633 (1980) ("[C]haritable solicitations in residential neighborhoods are within the protections of the First Amendment.") (dictum); Martin v. City of Struthers, 319 U.S. 141, 148-49 (1943) (discussing constitutional right to distribute door-to-door).

74. See Marsh v. Alabama, 326 U.S. 501, 503, 508-09 (1946) (company-owned town could not curtail first amendment liberties when it was indistinguishable from surrounding municipalities); see also supra note 11 (cases discussing private property indistinguishable from public forum).

However, even on property that arguably may be the equivalent of a public forum, the first amendment does not prevent state governments from providing greater access to private property consistent with state constitutional protections of expression. See PruneYard Shopping Center v. Robins, 447 U.S. 74, 87-88 (1980) (California's state-protected right of access to private shopping center valid under the first amendment).

75. See Marsh v. Alabama, 326 U.S. 501, 507-08 (1946) (equating treatment of company-owned town's regulation of expressive activity on streets with treatment of municipal regulation); see also Lloyd Corp. v. Tanner, 407 U.S. 551, 569-70 (1972) (distinguishing Marsh, which involved a company-owned town that had taken on the attributes of a municipality and had become "public," from a privately owned shopping center); M. Nimmer, supra note 23, § 4.09[D], at 4-114 (Marsh rationale still applicable where private property takes on characteristics of public forum).


78. Door-to-door solicitation "involve[s] a variety of speech interests—communication of information, the dissemination and propagation of views and ideas, and the advocacy of causes—that are within the protection of the First Amendment." Village of Schaumburg v. Citizens for a Better Env't, 444 U.S. 620, 632 (1980).
is among the modes of expression protected by the first amendment.\(^79\) Indeed, the Court has noted that noncommercial door-to-door solicitation is entitled to special solicitude because it is much less expensive than alternate forms of communication.\(^80\)

It is well recognized that a municipality may subject noncommercial door-to-door solicitation to reasonable time, place, and manner restrictions.\(^81\) Confusion has developed in the courts, however, over the proper standard of review to be applied to time regulations of noncommercial solicitation.\(^82\)

Three views permeate the cases. The first view analogizes the doorstep to the nonpublic forum, and therefore requires only a reasonable regulation that is not viewpoint-based.\(^83\) The second view considers private property a nonpublic forum, but applies an "ample alternatives" test that adopts the public forum analysis without the less drastic means enhancement.\(^84\) The third view favors the application of the public forum analysis with the less drastic means test.\(^85\) To determine the proper analytic framework, courts should examine the peculiar nature of private property in light of the relevant rights and interests implicated by municipal ordinances regulating door-to-door solicitation.\(^86\)

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\(^79\) See id. at 633.

\(^80\) See Members of the City Council v. Taxpayers for Vincent, 466 U.S. 789, 812-13 n.30 (1984) ("Door to door distribution of circulars is essential to the poorly financed causes of little people.") (quoting Martin v. City of Struthers, 319 U.S. 141, 146 (1943)).


\(^82\) See supra note 20 and accompanying text.

The Supreme Court's recent affirmance in City of Watseka v. Illinois Pub. Action Council, 107 S. Ct. 919 (1987), aff'g mem., 796 F.2d 1547 (7th Cir. 1986), does not end the speculation over the proper standard to apply to noncommercial door-to-door solicitation. In \emph{Watseka}, the Seventh Circuit accepted the less drastic means test as part of its analysis over the less stringent ample alternatives test. \emph{See id.} at 1553. The court, however, then stated that the ordinance in question would fall under either standard. \emph{See id.} at 1558. The Supreme Court's affirmance, thus, is inconclusive concerning the proper standard of review.


\(^84\) See Pennsylvania Alliance for Jobs & Energy v. Council of Munhall, 743 F.2d 182, 185-86 (3d Cir. 1984); \emph{see also} New Jersey Citizen Action v. Edison Township, 797 F.2d 1250, 1260 (3d Cir. 1986) ("scrupulously adhered" to \emph{PAJE}), \emph{cert. denied}, 107 S. Ct. 1336 (1987).

\(^85\) See City of Watseka v. Illinois Pub. Action Council, 796 F.2d 1547, 1553 (7th Cir. 1986), \emph{aff'd mem.}, 107 S. Ct. 919 (1987); Wisconsin Action Coalition v. City of Kenosha, 767 F.2d 1248, 1255 (7th Cir. 1985); Association of Community Orgs. for Reform Now v. City of Frontenac, 714 F.2d 813, 817-18 (8th Cir. 1983).

DOOR-TO-DOOR SOLICITATION

A. The Nature of Private Property

For purposes of analyzing municipal time, place, and manner restrictions, courts equate private residential property with either the public forum or the nonpublic forum. Neither analogy is precise because private property is owned by individuals, while the public forum and the nonpublic forum by definition are government held lands. The similarities between the various forums, however, provide guidance in selecting the proper analysis to extend to private property.

Door-to-door solicitation or canvassing requires access to both a public forum and private residential property. Although a canvasser uses the streets to gain access to the front door, the streets are not the forum for the expressive activity. The communication occurs on private property. In time, place, and manner cases, it is the place of the communication and not the means of access that determines the standard to be applied. The standard for regulation of door-to-door solicitation, therefore, must be based on the nature of private residential property.

The home is a place where a person may be free from outside distractions. The home, however, is also a place where the homeowner re-

89. See supra notes 52-53 & 63 and accompanying text.
90. See Members of the City Council v. Taxpayers for Vincent, 466 U.S. 789, 815 n.32 (1984) ("Generally an analysis of whether property is a public forum provides a workable analytical tool.").
91. See Village of Schaumburg v. Citizens for a Better Env't, 444 U.S. 620, 638-39 (1980) ("The ordinance is not directed to the unique privacy interests of persons residing in their homes because it applies not only to door-to-door solicitation, but also to solicitation on 'public streets and public ways.'") (citations omitted); Martin v. City of Struthers, 319 U.S. 141, 146 (1943) (door-to-door solicitation takes place at citizens' homes); City of Watseka v. Illinois Pub. Action Council, 796 F.2d 1547, 1556 (7th Cir. 1986) (homeowner grants consent to solicitors' approach to door to seek entry), aff'd mem., 107 S. Ct. 919 (1987).
95. See Carey v. Brown, 447 U.S. 455, 471 (1980) (the home is "the one retreat to which men and women can repair to escape from the tribulations of their daily pursuits"); FCC v. Pacifica Found., 438 U.S. 726, 748 (1978) ("[T]he privacy of the home, . . . the individual's right to be left alone plainly outweighs the First Amendment rights of an intruder."); Wisconsin Action Coalition v. City of Kenosha, 767 F.2d 1248, 1252 (7th
ceives visitors and collects information. The front door traditionally has represented a homeowner's consent to the reception of a visitor's attempt to seek entry. Private property that is held open by the homeowner is similar to the public forum. Both are places where speakers traditionally have access to willing listeners. This similarity is the basis for the argument that the standard of review for regulations of solicitation on private property must parallel the standard applied in the public forum.

A contrary argument has developed equating private property with the nonpublic forum based on the property owner's power to exclude visitors. Although the owner's right to exclude speakers from his private property is similar to the government's right to exclude all speakers from the nonpublic forum, the argument fails to consider the traditional right to seek access to open private property. Faults thus lie in both arguments. Assuming the private property is open to attempts at access, the front door more closely resembles the public forum, and time, place, and manner regulations of expressive activity should be judged accordingly.


97. See Breard v. Alexandria, 341 U.S. 622, 626 (1951) ("It is true that the knocker on the front door is treated as an invitation or license to attempt an entry, justifying ingress to the home by solicitors . . . ."); Martin v. City of Struthers, 319 U.S. 141, 141 (1943) (whether door-to-door solicitation is permitted depends on the will of the homeowner).

98. Compare Breard v. Alexandria, 341 U.S. 622, 626 (1951) (acknowledging owner's consent to open his property to speakers) and Martin v. City of Struthers, 319 U.S. 141, 141 (1943) (homeowner may consent to opening his property to solicitors) with United States v. Grace, 461 U.S. 171, 177 (1983) (public forums are associated with the traditional and free exercise of expressive activities). The similarity between private property and public forums disappears when the homeowner shuts his property to communicative activity. See, e.g., Hudgens v. NLRB, 424 U.S. 507, 520-21 (1976) (owner of shopping center has right to bar picketing on his property); Martin v. City of Struthers, 319 U.S. 141, 148 (1943) (homeowner may use "no soliciting" sign to bar access to his property by solicitors).

99. When a homeowner desires to have his home open to visitors, the protection for speech must rise at least to the level of speech in the public forum. See Village of Schaumburg v. Citizens for a Better Env't, 444 U.S. 620, 637 (1980) ("[v]illage may serve its legitimate interests . . . [with] narrowly drawn regulations designed to serve those interests without unnecessarily interfering with First Amendment freedoms").


101. See supra notes 68-71 and accompanying text.

102. See Cornelius v. NAACP Legal Defense & Educ. Fund, Inc., 105 S. Ct. 3439, 3448 (1985) ("[T]he Government 'no less than a private owner of property, has power to preserve the property under its control for the use to which it is lawfully dedicated.'") (quoting Greer v. Spock, 424 U.S. 828, 836 (1976)).

103. See supra note 73 and accompanying text.
B. The Competing Interests

1. The Right to Receive

Freedom to receive information is a necessary corollary to the freedom to speak. Indeed, the rights of the listener may be more important than the rights of the speaker. With respect to private residential property, the front door traditionally has represented a homeowner’s consent to a speaker’s request to enter and deliver his message. This consent may be terminated by the owner by posting a no solicitation sign or by requesting the speaker to vacate the premises. The first amendment does not guarantee the door-to-door solicitor access to all private property. It, however, does guarantee to the solicitor the right to seek access and to the willing listener the right to receive the solicitor’s message.

The Supreme Court has recognized that the right to determine who may gain access to private property for a first amendment, or any other, purpose, generally resides in the homeowner and not with the community. Ordinances that restrict door-to-door canvassing, however, impose an obstacle on the speaker’s right to seek access and the listener-homeowner’s right to choose what information and which visitors he receives.

The Court has struck down broad regulations that impose the will of a

105. See supra notes 25-26. In the context of residential private property where a homeowner has the right to ban all expressive activity from his property, see infra note 112, the only person with absolute protection for first amendment activity is the recipient.
106. See supra note 97 and accompanying text.
109. A solicitor cannot gain access to those properties that have been closed by the owner. See Amalgamated Food Employees Union Local 590 v. Logan Valley Plaza, Inc., 391 U.S. 308, 324 (1968) (if contrary to the wishes of the owner, expressive activity may not take place in “a situation involving a person’s home”) (overruled, Hudgens v. NLRB, 424 U.S. 507, 518 (1976)); Garner v. Louisiana, 368 U.S. 157, 202 (1961) (Harlan, J., concurring) (the right to freedom of speech “would surely not encompass verbal expression in a private home if the owner has not consented”); see also M. Nimmer, supra note 23, § 4.09[D][2][b][i], at 4-106.
110. See supra note 97 and accompanying text.
111. See supra note 104.
112. See Lloyd Corp. v. Tanner, 407 U.S. 551, 568 (1972) (“This Court has never held that a trespasser or an uninvited guest may exercise general rights of free speech on property privately owned and used nondiscriminatorily for private purposes only.”).
portion of the community on a private homeowner. Ordinances that deny the homeowner's discretion over who or what may enter his property have been viewed as tantamount to government censorship. These ordinances restrict the flow of potentially useful information, protected under the first amendment, and thus fall outside the scope of permissible regulation.

2. The Right of Privacy

The protection of the rights of privacy of unwilling listeners provides the government with a legitimate basis for regulation of protected speech, and is considered the primary justification for ordinances that regulate door-to-door solicitation. The government has authority to limit certain expressive activities that, although protected, are unduly intrusive and turn unwilling listeners into a "captive audience". This

113. See Martin v. City of Struthers, 319 U.S. 141, 143-44 (1943) ("The ordinance does not control anything but the distribution of literature, and in that respect it substitutes the judgment of the community for the judgment of the individual householder.").

114. See Bolger v. Youngs Drug Prods. Corp., 463 U.S. 60, 69 (1983) (Court invalidated government ban on unsolicited mailing of literature regarding contraceptives noting that it was not for the government to determine what was appropriate mail); Martin v. City of Struthers, 319 U.S. 141, 148-49 (1943) (broad ban on door-to-door solicitation that took discretion from homeowner was an invalid infringement of protected first amendment activity).

115. See Martin v. City of Struthers, 319 U.S. 141, 147 (1943) (broad ban was nothing more than "the naked restriction of the dissemination of ideas").

116. See Erznoznik v. City of Jacksonville, 422 U.S. 205, 208 (1975) (city contends ordinance that prohibits exposure of female nudity on drive-in movie screens visible from public streets is justified to protect unwilling viewer); Cohen v. California, 403 U.S. 15, 16, 21 (1971) (state's punishment of person wearing jacket bearing certain words justified on grounds that it is disturbing to unwilling listeners). See generally Haiman, Speech v. Privacy: Is There a Right Not To Be Spoken To?, 67 Nw. U.L. Rev. 153, 199 (1972) (concluding that right of privacy of unwilling listener does not outweigh right of free speech of speakers).


118. See, e.g., Breard v. Alexandria, 341 U.S. 622, 640-41 (1951) (protection of individual homeowner's privacy interests is valid objective that may be achieved by ban on commercial door-to-door solicitation); City of Watseka v. Illinois Pub. Action Council, 796 F.2d 1547, 1550 (7th Cir. 1986) (privacy protection is legitimate goal of solicitation ordinance), aff'd mem., 107 S. Ct. 919 (1987); Wisconsin Action Coalition v. City of Kenosha, 767 F.2d 1248, 1251-52 (7th Cir. 1985) (same).

Professor Chafee has asserted that door-to-door solicitation was entitled to only minimal protection because of the invasion of privacy it entailed. See Z. Chafee, Freedom of Speech in the United States, 406 (1941) ("Of all the methods of spreading unpopular ideas, [door-to-door solicitation] seems the least entitled to extensive protection. The possibilities of persuasion are slight compared with the certainties of annoyance.").

119. See Rowan v. United States Post Office Dep't, 397 U.S. 728, 736-38 (1970) (government statute enabling citizen to bar unsolicited mailings valid to protect individual privacy); Kovacs v. Cooper, 336 U.S. 77, 86-87 (1949) (government may ban sound
power, however, generally does not extend to complete bans on offensive or intrusive forms of expression.\textsuperscript{121}

The private individual's ability to avoid expressive activity that annoys or offends him, further limits the government's ability to regulate that form of expressive conduct.\textsuperscript{122} Thus, when government time, place, and manner regulations are the only means of protection for the privacy of the individual homeowner, the state may regulate as it sees fit.\textsuperscript{123} When the homeowner has the ability to avoid the nuisance, however, less drastic means are available and must be used to satisfy the obligations imposed on the municipality by the first amendment.\textsuperscript{124}

The right of privacy also guarantees that individuals remain free from unreasonable government intrusion.\textsuperscript{125} A state has no power to regulate what a person may think or read in his own home.\textsuperscript{126} Door-to-door canvassing takes place either in the private residence or on its doorstep. If the communication takes place in the house, the government has little power to regulate the communicative activity.\textsuperscript{127} If the expressive activi-

\textsuperscript{120} See Lehman v. City of Shaker Heights, 418 U.S. 298, 304 (1974) (political advertising ban on public transit reasonable to protect captive audience); Public Utilities Comm'n v. Pollak, 343 U.S. 451, 468 (1952) (Douglas, J., dissenting) ("The street car audience is a captive audience.").

\textsuperscript{121} See Bolger v. Youngs Drug Prods. Corp., 463 U.S. 60, 71-73 (1983) (complete ban on mailing of literature on contraceptive devices not justified to protect citizens from offensive materials); Erznoznik v. City of Jacksonville, 422 U.S. 205, 208, 217 (1975) (complete ban on nudity on drive-in movie screens invalid to protect unwilling viewer); Cohen v. California, 403 U.S. 15, 21-22 (1971) (Court rejected state's claim that punishment of person wearing jacket bearing offensive political slogan was necessary to protect unwilling listener).

\textsuperscript{122} See Erznoznik v. City of Jacksonville, 422 U.S. 205, 210-11 (1975).

\textsuperscript{123} See Kovacs v. Cooper, 336 U.S. 77, 87 (1949); see also FCC v. Pacifica Found., 438 U.S. 726, 748-51 (1978) (due to pervasive nature of broadcast, FCC ban on George Carlin's "filthy words" monologue was valid).

\textsuperscript{124} See Bolger v. Youngs Drug Prods. Corp., 463 U.S. 60, 72, 74-75 (1983) (government regulation barring unsolicited mailings of information pertaining to contraception invalid because mail was not so intrusive and individual had ability to remedy situation); Martin v. City of Struthers, 319 U.S. 141, 147 (1943) (when traditional legal methods for protecting government interests exist, ban on door-to-door solicitation invalid as nothing more than a "naked restriction of the dissemination of ideas"); Schneider v. State, 308 U.S. 147, 163-64 (1939) (ban on door-to-door solicitation invalid as censorship when there are other means for regulation).

\textsuperscript{125} See Stanley v. Georgia, 394 U.S. 557, 564 (1969) (possession of obscene material within the home is not an actionable offense due to privacy interests coupled with the first amendment). The right of privacy has been deemed the right to be let alone. See FCC v. Pacifica Found., 438 U.S. 726, 748 (1978); Olmstead v. United States, 277 U.S. 438, 478 (1928) (Brandeis, J., dissenting) (overruled, Katz v. United States, 389 U.S. 347, 352 (1967)); see also Warren & Brandeis, The Right to Privacy, 4 Harv. L. Rev. 193, 205 (1890) (speaking of a general right to be let alone).

\textsuperscript{126} See Stanley v. Georgia, 394 U.S. 557, 565 (1969); see also Eisenstadt v. Baird, 405 U.S. 438, 453 (1972) (individual has the right to be free from "unwarranted governmental intrusion") (citing Stanley v. Georgia, 394 U.S. 557, 564 (1969)).

ity takes place on the doorstep, outside the house, similar limitations on
government power to regulate should inure. That space immediately sur-
rounding the home including the doorstep, termed curtilage, is protected
from governmental
intrusion.128 The right of a homeowner to be free
from government regulations of protected first amendment activity, thus,
should extend to the front door.129 Given the homeowner's privacy
rights in conjunction with his rights to receive information130 under the
first amendment, a municipality should not impose its will on the home-
owner when less drastic means of achieving a desired result exist.

3. The Other Interests

Crime131 and fraud132 also are asserted as bases for government time,
place, and manner regulations.133 Both interests are recognized by the
Supreme Court in dictum as proper justifications for the regulation of
noncommercial door-to-door solicitation.134 Other courts, however, find
that although crime and fraud are valid interests, a municipality must
develop the proper factual backing to support time, place, and manner
restrictions on noncommercial door-to-door solicitation.135

129. Although never explicitly linked to the first amendment, the curtilage concept has
implications for protected speech. In Stanley v. Georgia, the Court indicated that the
first and fourth amendment combine to protect homeowner privacy interests. See Stanley
v. Georgia, 394 U.S. 557, 564-65 (1969); see also Bowers v. Hardwick, 106 S. Ct. 2841,
2852-53 (1986) (Blackmun, J., dissenting) (reliance on the fourth amendment supported
not only the Court's outcome in Stanley but actually was necessary to it). The Court
recognized that the homeowner's privacy interest includes his communications. See
Stanley, 394 U.S. at 565 ("If the First Amendment means anything, it means that a State
has no business telling a man, . . . in his own house, what books he may read or what
films he may watch."). Although some privacy is lost on the doorstep when the com-
unicants are in open view, see California v. Ciraolo, 106 S. Ct. 1809, 1812-13 (1986)
(warrantless naked-eye aerial observation of curtilage not a violation of fourth amend-
ment), the subject matter of the communication remains protected if there is a reasonable
by public telephone entitled to protection of fourth amendment due to reasonable
expectation of privacy).
130. See Virginia Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc., 425
dictum).
132. See id.
(fraud and public safety) (dictum); New Jersey Citizen Action v. Edison Township, 797
F.2d 1250, 1256 (3d Cir. 1986) (crime), cert. denied, 107 S. Ct. 1336 (1987); City of
Watseka v. Illinois Pub. Action Council, 796 F.2d 1547, 1551 (7th Cir. 1986) (crime),
134. See Village of Schaumburg v. Citizens for a Better Env't, 444 U.S. 620, 636
(1980).
135. The government has the burden of proving that a given time, place, and manner
regulation does not impinge unduly upon protected expressive activity. See Organization
for a Better Austin v. Keefe, 402 U.S. 415, 419 (1971). When the proof mustered by
the government is insufficient, the ordinance is invalidated. See, e.g., New Jersey Citizen
C. The Rationales

1. The Nonpublic Forum's Reasonable Restrictions and "Ample Alternatives" Tests

At least one judge has proposed that the proper standard of review for doorstep regulations of expressive activity is the reasonable restriction test of the nonpublic forum. The characterization of the front door as a nonpublic forum is inappropriate. This argument is based on the notion that the government, "no less than a private owner of property," has the power to preserve the property under its control. Indeed, the government may exclude speakers from nonpublic land in the same way that a private owner may exclude speakers from his property. This analysis, however, does not suggest that because the private individual may regulate his land, the government also has the right to regulate the individual's land in the same manner.

Second, the nature of private property is substantially different from that of nonpublic governmentally-owned property. The doorstep traditionally has represented an invitation and consent by the homeowner to seek access to his property, while nonpublic property traditionally has been closed to the public.

Third, the function of a private residence is substantially different from the function of a nonpublic forum. The home is a place where a person is free in his thoughts and actions. This notion of privacy has no place...
Finally, this view fails to account for the free speech rights of the homeowner who desires to receive the messages of door-to-door solicitors. To allow municipal governments to assert a legitimate government interest and thereby restrict communication to the private homeowner, imposes the will of the municipality upon the homeowner. Municipal impositions on a homeowner's discretion seriously infringe on his right to decide whose message he receives and what viewpoints he analyzes. A broad regulation of the hours of door-to-door solicitation, therefore, significantly diminishes the effectiveness of the communication and impedes the protected flow of information.

The Court of Appeals for the Third Circuit held that regulations of door-to-door solicitation are based on the nonpublic forum concept. Instead of applying the reasonable restriction test of the nonpublic forum, the Third Circuit has applied the ample alternatives test derived from the public forum analysis without using the less drastic means prong.

Even assuming that the Third Circuit's choice of tests was proper, the availability of ample alternatives is insufficient to meet the requirements of door-to-door solicitation. The requirement of ample alternative channels of communication recognizes that the incidental infringement on one type of expressive activity may be overcome if there are alternative avenues by which a speaker may deliver his message. But, as the Supreme Court has stated, door-to-door solicitation is entitled to a spe-
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solicitation because it is inexpensive. Indeed, some courts find that “door-to-door communication has a special significance not duplicated by less personal forms of contact.” In a political context, the advantage of contacting constituents at home for campaigning and for signing petitions cannot be overcome by alternate channels of communication. Ample alternatives, therefore, do not preserve adequately the effectiveness of door-to-door solicitation.

3. The Importance of “Less Drastic Means”

The proper standard of review for municipal time, place, and manner regulations of expressive activity on private residential property is the less drastic means test. Although private residential property is not a public forum, private residential property held open by the homeowner sufficiently resembles a public forum to warrant application of the public forum analysis. The first amendment rights of willing listeners should not be derogated to appease unwilling listeners. By requiring strict scrutiny, the courts applying the less drastic means test support the precision that is essential in first amendment cases.

159. See supra note 57 and accompanying text.
160. See supra notes 93-94 and accompanying text.
161. See supra notes 95-99 and accompanying text.

Regulations that pass constitutional muster under the ample alternatives test might fail under the less drastic means test. In Pennsylvania Alliance for Jobs & Energy v. Council of Munhall, 743 F.2d 182 (3d Cir. 1984), the Court of Appeals for the Third Circuit
The government still may enact regulations of door-to-door solicitation that are precise and serve the interest when no less drastic means exist.\footnote{See supra notes 107-08.} The privacy of the unwilling listener may be protected by enforcement of traditional legal methods\footnote{See supra note 72.} or by statutes geared to facilitate\footnote{City of Watseka v. Illinois Pub. Action Council, 796 F.2d 1547, 1558 (7th Cir. 1986) ("Watseka has failed to offer evidence that its 5 p.m. to 9 p.m. ban on solicitation is narrowly tailored to achieve Watseka’s legitimate objectives."). aff’d mem., 107 S. Ct. 919 (1987); Wisconsin Action Coalition v. City of Kenosha, 767 F.2d 1248, 1258 (7th Cir. 1985) ("[W]e recognize that the City’s interest in protecting the privacy and peace of its residents increases (perhaps geometrically) with the latency of the hour;"); Citizens for a Better Env’t v. Village of Olympia Fields, 511 F. Supp. 104, 107 n.5 (N.D. Ill. 1980) ("[T]he public annoyance argument might well assume a quite different cast in the context of a case attacking an ordinance that forbade soliciting after some late evening hour in view of the supportable fact that the overwhelming majority of residents . . . are either asleep or preparing for sleep . . . .")} a homeowner’s desire to be let alone. Further, as the balance of interests among the willing listeners, the unwilling listeners, and the community changes, the community’s power to regulate also will change, and even hour regulations of noncommercial door-to-door solicitation may become acceptable.\footnote{See Village of Schaumburg v. Citizens for a Better Env’t, 444 U.S. 620, 637 (1980); City of Watseka v. Illinois Pub. Action Council, 796 F.2d 1547, 1557-58 (7th Cir. 1986), aff’d mem., 107 S. Ct. 919 (1987); Citizens for a Better Env’t v. Village of Olympia Fields, 511 F. Supp. 104, 107 & n.5 (N.D. Ill. 1980).}

CONCLUSION

The government has the right and the power to regulate various modes of expression to facilitate the free flow of ideas and to accommodate other significant societal interests. That power extends to regulation of noncommercial door-to-door solicitation.

Regulations of door-to-door communication place significant burdens on a homeowner’s use of his property and his right to receive communications. Similarly, time, place, and manner regulations of door-to-door solicitation limit the speaker’s right to seek access to private property to deliver his message. The reasonable restriction test and the ample alternatives test fail to provide protection for these significant interests.

upheld ordinances barring door-to-door solicitation after 5:00 p.m. See id. at 184. The court found that the towns’ interest in preventing crime and protecting the privacy of the homeowner supported the validity of the ordinances. See id. at 186-87. The court held that the ordinances in question were valid because ample alternatives to noncommercial door-to-door solicitation were available. See id. at 187-88. In City of Watseka v. Illinois Pub. Action Council, 796 F.2d 1547 (7th Cir. 1986), aff’d mem., 107 S. Ct. 919 (1987), the Court of Appeals for the Seventh Circuit struck down a similar ordinance barring door-to-door solicitation after 5:00 p.m. Id. at 1549, 1559. The court found that “application and registration requirements for solicitors, as well as . . . enforcing laws against trespass, fraud, burglary, and other offenses against a resident on his or her property” were less drastic means for protecting the significant government interests, see id. at 1557, and therefore struck down the ordinance. See id. at 1559. The application of the less drastic means test should result in greater protection for the speaker and the listener.
Although private property does not fit directly under either the analysis of the public forum or the nonpublic forum, the extension of the less drastic means test that arises from the public forum cases serves the interests of the willing homeowner and comports with the essence of the first amendment. Because determinations of the validity of ordinances are factually based, the results of the application of the less drastic means test might change with the circumstances. The less drastic means test, however, most capably serves the competing interests.

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