

Privacy in One's Home

Frisby v. Schultz, 487 U.S. 474 (1988)

Abortion protesters brought suit seeking to enjoin enforcement of a municipal ordinance prohibiting picketing before or about residence or dwelling of any individual.

"The State's interest in protecting the well-being, tranquility, and privacy of the home is certainly of the highest order in a free and civilized society." *Carey v. Brown*, 447 U.S., at 471, 100 S.Ct., at 2296. Our prior decisions have often remarked on the unique nature of the home, "the last citadel of the tired, the weary, and the sick," *Gregory v. Chicago*, 394 U.S. 111, 125 [89 S.Ct. 946, 954, 22 L.Ed.2d 134] (1969) (Black, J., concurring), and have recognized that "[p]reserving the sanctity of the home, the one retreat to which men and women can repair to escape from the tribulations of their daily pursuits, is surely an important value." *Carey*, supra, 447 U.S., at 471, 100 S.Ct., at 2295. One important aspect of residential privacy is protection of the unwilling listener. Although in many locations, we expect individuals simply to avoid speech they do not want to hear, cf. *Erznoznik v. City of Jacksonville*, supra, 422 U.S., at 210-211, 95 S.Ct., at 2273-74; *Cohen v. California*, 403 U.S. 15, 21-22, 91 S.Ct. 1780, 1786-1787, 29 L.Ed.2d 284 (1971), the home is different. "That we are often 'captives' outside the sanctuary of the home and subject to objectionable speech ... does not mean we must be captives everywhere." *Rowan v. Post Office Dept.*, 397 U.S. 728, 738, 90 S.Ct. 1484, 1491, 25 L.Ed.2d 736 (1970). Instead, a special benefit of the privacy all citizens enjoy within their own walls, which the State may legislate to protect, is an ability

*485 to avoid intrusions. Thus, we have repeatedly held that individuals are not required to welcome unwanted speech into their own homes and that the government may protect this freedom. See, e.g., *FCC v. Pacifica Foundation*, 438 U.S. 726, 748-749, 98 S.Ct. 3026, 3039-3040, 57 L.Ed.2d 1073 (1978) (offensive radio broadcasts); *id.*, at 759-760, 98 S.Ct. at 3045-3047 (Powell, J., concurring in part and concurring in judgment) (same); *Rowan*, supra (offensive mailings); *Kovacs v. Cooper*, 336 U.S. 77, 86-87, 69 S.Ct. 448, 453-54, 93 L.Ed. 513 (1949) (sound trucks). [7] This principle is reflected even in prior decisions in which we have invalidated complete bans on expressive activity, including bans operating in residential areas. See, e.g., *Schneider v. State*, 308 U.S. 147, 162-163, **2503 60 S.Ct. 146, 151-152, 84 L.Ed. 155 (1939) (handbilling); *Martin v. Struthers*, 319 U.S. 141, 63 S.Ct. 862, 87 L.Ed. 1313 (1943) (door-to-door solicitation)

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National Funeral Services, Inc. v. Rockefeller, 870 F.2d 136 (4th Cir. 1989),

p. 143 “in-person solicitation may exert pressure and often demands an immediate response, without providing an opportunity for comparison or reflection. The aim and effort of in-person solicitation may be to provide a one-sided presentation and to encourage speedy and perhaps uninformed decisionmaking....

p. 143: the Supreme Court has recently noted, in-person solicitation is "a practice rife with possibilities for overreaching, invasion of privacy, the exercise of undue influence, and out-right fraud." *Shapiro v. Kentucky Bar Assoc.*, 486 U.S. 466, ----, 108 S.Ct. 1916, 1922, 100 L.Ed.2d 475 (1988) (attorney solicitation).

p. 144: “in-person solicitation in this regard and poses the same threat of undetectable fraudulent and deceptive sales practices. [It] presents a much greater threat of overreaching or undue influence

p. 144: “a recipient of telephone solicitation must answer the phone to determine who is calling, and must risk an uncomfortable confrontation to rid himself of the solicitor. Further, it is beyond dispute that this most sensitive product makes an uninvited telephone call even more upsetting, especially when it invades the privacy of the home. In the words of one commentator, "[t]he telephone is an instrument with a unique capacity to intrude. Note, *Give Me A Home Where No Salesmen Phone: Telephone Solicitation and the First Amendment*, 7 *Hastings Const. L.Q.* 129. Thus, like in-person solicitation, telemarketing poses a very real threat to the privacy of a consumer's home.”