/* We continue with the ISOKC case regarding the Port Authority and the concurring opinion. */

II

It is my view, however, that the Port Authority's ban on the "solicitation and receipt of funds" within its airport terminals should be upheld under the standards applicable to speech regulations in public forums. The regulation may be upheld as either a reasonable time, place, and manner restriction, or as a regulation directed at the nonspeech element of expressive conduct. The two standards have considerable overlap in a case like this one.

It is well settled that "even in a public forum the government may impose reasonable restrictions on the time, place, or manner of protected speech, provided the restrictions `are justified without reference to the content of the regulated speech, that they are narrowly tailored to serve a significant governmental interest, and that they leave open ample alternative channels for communication of the information.'" Ward, supra, at 791 (quoting Clark v. Community for Creative Non-Violence, 468 U. S. 288, 293 (1984)). We have held further that the government in appropriate circumstances may regulate conduct, even if the conduct has an expressive component. United States v. O'Brien, 391 U. S. 367 (1968). And in several recent cases we have recognized that the standards for assessing time, place, and manner restrictions are little, if any, different from the standards applicable to regulations of conduct with an expressive component. Clark, supra, at 298, and n. 8; Ward, supra, at 798; Barnes v. Glen Theatre, Inc., 501 U. S. ---, --- (1991) (slip op., at 5) (plurality opinion); see generally Kalven, 1965 S. Ct. Rev., at 23, 27 (arguing that all speech contains elements of conduct which may be regulated). The confluence of the two tests is well demonstrated by a case like this, where the government regulation at issue can be described with equal accuracy as a regulation of the manner of expression, or as a regulation of conduct with an expressive component.

I am in full agreement with the statement of the Court that solicitation is a form of protected speech. Ante, at 4; see also Riley v. National Federation of Blind, 487 U. S. 781, 788-789 (1988); Schaumburg v. Citizens for a Better Environment, 444 U. S. 620, 629 (1980); Murdock v. Pennsylvania, supra. If the Port Authority's solicitation regulation prohibited all speech which requested the contribution of funds, I would conclude that it was a direct, content-based restriction of speech in clear violation of the First Amendment. The Authority's regulation does not prohibit all solicitation, however; it prohibits the "solicitation and receipt of funds." I do not understand this regulation to prohibit all speech that solicits funds. It reaches only personal solicitations for immediate payment of money. Otherwise, the "receipt of funds" phrase would be written out of the provision. The regulation does not cover, for example, the distribution of preaddressed envelopes along with a

plea to contribute money to the distributor or his organization. As I understand the restriction it is directed only at the physical exchange of money, which is an element of conduct interwoven with otherwise expressive solicitation. In other words, the regulation permits expression that solicits funds, but limits the manner of that expression to forms other than the immediate receipt of money.

So viewed, I believe the Port Authority's rule survives our test for speech restrictions in the public forum. In-person solicitation of funds, when combined with immediate receipt of that money, creates a risk of fraud and duress which is well recognized, and which is different in kind from other forms of expression or conduct. Travelers who are unfamiliar with the airport, perhaps even unfamiliar with this country, its customs and its language, are an easy prey for the money solicitor. I agree in full with the Court's discussion of these dangers in No. 91-155. Ante, at 10-11; ante, at 5 (opinion of O'Connor, J.). I would add that our precedents as well as the actions of coordinate branches of government support this conclusion. We have in the past recognized that in-person solicitation has been associated with coercive or fraudulent conduct. Cantwell v. Connecti- cut, 310 U. S. 296, 306 (1940); Riley, supra, at 800; Heffron v. International Society for Krishna Consciousness, Inc., 452 U. S. 640, 657 (1981) (Brennan, J., concurring in part and dissenting in part); Schaumburg, supra, at 636-638. In addition, the federal government has adopted regulations which acknowledge and respond to the serious problems associated with solicitation. The National Park Service has enacted a flat ban on the direct solicitation of money in the parks of the Nation's capital within its control. 36 CFR 7.96(h) (1991); see also United States v. Kokinda, 497 U. S., at 739 (Kennedy, J., concurring in judgment). Also, the Federal Aviation Authority, in its administration of the airports of Washington, D.C., even while permitting the solicitation of funds has adopted special rules to prevent coercive, harassing, or repetitious behavior. 14 CFR 159.94(e) - (h) (1992). And in the commercial sphere, the Federal Trade Commission has long held that "it constitutes an unfair and deceptive act or practice" to make a door-to- door sale without allowing the buyer a three-day -cooling-off period- during which time he or she may cancel the sale. 16 CFR 429.1 (1992). All of these measures are based on a recognition that requests for immediate payment of money create a strong potential for fraud or undue pressure, in part because of the lack of time for reflection. As the Court recounts, questionable practices associated with solicitation can include the targeting of vulnerable and easily coerced persons, misrepresentation of the solicitor's cause, and outright theft. Ante, at 10-11; see also International Society for Krishna Consciousness, Inc. v. Barber, 506 F. Supp. 147, 159-163 (NDNY 1980), rev'd on other grounds, 650 F. 2d 430 (CA2 1981).

Because the Port Authority's solicitation ban is directed at these abusive practices and not at any particular message, idea, or form of speech, the

regulation is a content-neutral rule serving a significant government interest. We have held that the content neutrality of a rule must be assessed based on whether it is -`justified without reference to the content of the regulated speech.'- Ward, 491 U. S., at 791 (quoting Clark, 468 U. S., at 293) (emphasis in original). It is apparent that the justification for the solicitation ban is unrelated to the content of speech or the identity of the speaker. There can also be no doubt that the prevention of fraud and duress is a significant government interest. The government cannot, of course, prohibit speech for the sole reason that it is concerned the speech may be fraudulent. Schaumburg, 444 U. S., at 637. But the Port Authority's regulation does not do this. It recognizes that the risk of fraud and duress is intensified by particular conduct, the immediate exchange of money; and it addresses only that conduct. We have recognized that such narrowly drawn regulations are in fact the proper means for addressing the dangers which can be associated with speech. Ibid.; Riley, 487 U. S., at 799, n. 11.

To survive scrutiny, the regulation must be drawn in narrow terms to accomplish its end and leave open ample alternative channels for communication. Regarding the former requirement, we have held that to be narrowly tailored a regulation need not be the least restrictive or least intrusive means of achieving an end. The regulation must be reasonable, and must not burden substantially more speech than necessary. Ward, supra, at 798-800. Under this standard the solicitation ban survives with ease, because it prohibits only solicitation of money for immediate receipt. The regulation does not burden any broader category of speech or expressive conduct than is the source of the evil sought to be avoided. And in fact, the regulation is even more narrow because it only prohibits such behavior if conducted in a continuous or repetitive manner. The Port Authority has made a reasonable judgment that this type of conduct raises the most serious concerns, and it is entitled to deference. My conclusion is not altered by the fact that other means, for example the regulations adopted by the Federal Aviation Authority to govern its airports, may be available to address the problems associated with solicitation, because the existence of less intrusive means is not decisive. Our cases do not so limit the government's regulatory flexibility. See Ward, supra, at 800.

I have little difficulty in deciding that the Port Authority has left open ample alternative channels for the communi- cation of the message which is an aspect of solicitation. As already discussed, see supra, at --- the Authority's rule does not prohibit all solicitation of funds: It restricts only the manner of the solicitation, or the conduct associated with solicitation, to prohibit immediate receipt of the solicited money. Requests for money continue to be permitted, and in the course of requesting money solicitors may explain their cause, or the purposes of their organization, without violating the regulation. It is only if the solicitor accepts immediate payment that a violation occurs. Thus the solicitor can continue to disseminate his message,

for example by distributing preaddressed envelopes in which potential contributors may mail their donations. See supra, at ---.

Much of what I have said about the solicitation of funds may seem to apply to the sale of literature, but the differences between the two activities are of sufficient significance to require they be distinguished for constitutional purposes. The Port Authority's flat ban on the distribution or sale of printed material must, in my view, fall in its entirety. See supra, at ---. The application of our time, place, and manner test to the ban on sales leads to a result quite different from the solicitation ban. For one, the government interest in regulating the sales of literature is not as powerful as in the case of solicitation. The danger of a fraud arising from such sales is much more limited than from pure solicitation, because in the case of a sale the nature of the exchange tends to be clearer to both parties. Also, the Port Authority's sale regulation is not as narrowly drawn as the solicitation rule, since it does not specify the receipt of money as a critical element of a violation. And perhaps most important, the flat ban on sales of literature leaves open fewer alternative channels of communication than the Port Authority's more limited prohibition on the solicitation and receipt of funds. Given the practicalities and ad hoc nature of much expressive activity in the public forum, sales of literature must be completed in one transaction to be workable. Attempting to collect money at another time or place is a far less plausible option in the context of a sale than when soliciting donations, because the literature sought to be sold will under normal circumstances be distributed within the forum. These distinctions have been recognized by the National Park Service, which permits the sale or distribution of literature, while prohibiting solicitation. Supra, at ---; 36 CFR 7.96(j)(2) (1991). Thus the Port Authority's regulation allows no practical means for advocates and organizations to sell literature within the public forums which are its airports.

Against all of this must be balanced the great need, recognized by our precedents, to give the sale of literature full First Amendment protection. We have long recognized that to prohibit distribution of literature for the mere reason that it is sold would leave organizations seeking to spread their message without funds to operate. "It should be remembered that the pamphlets of Thomas Paine were not distributed free of charge." Murdock, 319 U. S., at 111; see also Schaumburg, supra, at 628-635 (discussing cases). The effect of a rule of law distinguishing between sales and distribution would be to close the marketplace of ideas to less affluent organizations and speakers, leaving speech as the preserve of those who are able to fund themselves. One of the primary purposes of the public forum is to provide persons who lack access to more sophisticated media the opportunity to speak. A prohibition on sales forecloses that opportunity for the very persons who need it most. And while the same arguments might be made regarding solicitation of funds, the answer is that the Port Authority has not prohibited all solicitation, but only a narrow class of conduct

associated with a particular manner of solicitation.

For these reasons I agree that the Court of Appeals should be affirmed in full in finding the Port Authority's ban on the distribution or sale of literature unconstitutional, but upholding the prohibition on solicitation and immediate receipt of funds.

Justice O'Connor, concurring in 91-155 and concurring in the judgment in 91-339.

In the decision below, the Court of Appeals upheld a ban on solicitation of funds within the airport terminals operated by the Port Authority of New York and New Jersey, but struck down a ban on the repetitive distribution of printed or written material within the terminals. 925 F. 2d 576 (CA2 1991). I would affirm both parts of that judgment.

I concur in the Court's opinion in No. 91-155 and agree that publicly owned airports are not public fora. Unlike public streets and parks, both of which our First Amendment jurisprudence has identified as "traditional public fora," airports do not count among their purposes the "free exchange of ideas," Cornelius v. NAACP Legal Defense & Educational Fund, Inc., 473 U. S. 788, 800 (1985); they have not "by long tradition or by government fiat . . . been devoted to assembly and debate;" Perry Education Assn. v. Perry Local Educators' Assn., 460 U. S. 37, 45 (1983); nor have they "time out of mind, . . . been used for purposes of . . . communicating thoughts between citizens, and discussing public questions," Hague v. CIO, 307 U. S. 496, 515 (1939). Although most airports do not ordinarily restrict public access, "[p]ublicly owned or operated property does not become a `public forum' simply because members of the public are permitted to come and go at will." United States v. Grace, 461 U. S. 171, 177 (1983); see also Greer v. Spock, 424 U. S. 828, 836 (1976). "[W]hen government property is not dedicated to open communication the government may-without further justification-restrict use to those who participate in the forum's official business." Perry, supra, at 53. There is little doubt that airports are among those publicly owned facilities that could be closed to all except those who have legitimate business there. See Grace, supra, at 178. Public access to airports is thus not "inherent in the open nature of the locations," as it is for most streets and parks, but is rather a "matter of grace by government officials." United States v. Kokinda, 497 U. S. 720, 743 (1990) (Brennan, J., dissenting). I also agree with the Court that the Port Authority has not expressly opened its airports to the types of expression at issue here, see ante, at 7, and therefore has not created a -limited- or -designated- public forum relevant to this case.

For these reasons, the Port Authority's restrictions on solicitation and leafletting within the airport terminals do not qualify for the strict scrutiny

that applies to restriction of speech in public fora. That airports are not public fora, however, does not mean that the government can restrict speech in whatever way it likes. "The Government, even when acting in its proprietary capacity, does not enjoy absolute freedom from First Amendment constraints." Kokinda, supra, at 725 (plurality opinion). For example, in Board of Airport Commrs. of Los Angeles v. Jews for Jesus, Inc., 482 U. S. 569 (1987), we unanimously struck down a regulation that prohibited "all First Amendment activities" in the Los Angeles International Airport (LAX) without even reaching the question whether airports were public fora. Id., at 574-575. We found it "obvious that such a ban cannot be justified even if LAX were a nonpublic forum because no conceivable governmental interest would justify such an absolute prohibition of speech." Id., at 575. Moreover, we have consistently stated that restrictions on speech in nonpublic fora are valid only if they are -reasonable- and "not an effort to suppress expression merely because public officials oppose the speaker's view." Perry, 460 U. S., at 46; see also Kokinda, supra, at 731; Cornelius, supra, at 800; Lehman v. City of Shaker Heights, 418 U. S. 298, 303 (1974). The determination that airports are not public fora thus only begins our inquiry.

/* An attempt is being made here to go to an intermediate standard of review and justify this by pointing out that although the airports are not public forums, they are nevertheless government property. */

"The reasonableness of the Government's restriction [on speech in a nonpublic forum] must be assessed in light of the purpose of the forum and all the surrounding circumstances." Cornelius, supra, at 809. -`[C]onsideration of a forum's special attributes is relevant to the constitutionality of a regulation since the significance of the governmental interest must be assessed in light of the characteristic nature and function of the particular forum involved.'-Kokinda, supra, at 732, quoting Heffron v. International Soc. for Krishna Consciousness, Inc., 452 U. S. 640, 650-651 (1981). In this case, the -special attributes- and -surrounding circumstances- of the airports operated by the Port Authority are determinative. Not only has the Port Authority chosen not to limit access to the airports under its control, it has created a huge complex open to travelers and nontravelers alike. The airports house restaurants, cafeterias, snack bars, coffee shops, cocktail lounges, post offices, banks, telegraph offices, clothing shops, drug stores, food stores, nurseries, barber shops, currency exchanges, art exhibits, commercial advertising displays, bookstores, newsstands, dental offices and private clubs. See 1 App. 183-185 (Newark); id., at 185-186 (JFK); id., at 190-192 (LaGuardia). The International Arrivals Building at JFK Airport even has two branches of Bloomingdale's. Id., at 185-186.

We have said that a restriction on speech in a nonpublic forum is -reasonable- when it is -consistent with the [government's] legitimate interest in `preserv[ing] the property . . . for the use to which it is lawfully

dedicated.'-Perry, supra, at 50-51, quoting United States Postal Service v. Council of Greenburgh Civic Assns., 453 U. S. 114, 129-130 (1981) (internal quotation marks omitted). Ordinarily, this inquiry is relatively straightforward, because we have almost always been confronted with cases where the fora at issue were discrete, single-purpose facilities. See, e.g., Kokinda, supra (dedicated sidewalk between parking lot and post office); Cornelius v. NAACP Legal Defense & Educational Fund, Inc., 473 U. S. 788 (1985) (literature for charity drive); City Council of Los Angeles v. Taxpayers for Vincent, 466 U. S. 789 (1984) (utility poles); Perry, supra (interschool mail system); United States Postal Service v. Council of Greenburgh Civic Assns., supra, (household mail boxes); Adderley v. Florida, 385 U. S. 39 (1966) (curtilage of jailhouse). The Port Authority urges that this case is no different and contends that it, too, has dedicated its airports to a single purpose - facilitating air travel- and that the speech it seeks to prohibit is not consistent with that purpose. But the wide range of activities promoted by the Port Authority is no more directly related to facilitating air travel than are the types of activities in which ISKCON wishes to engage. See Jews for Jesus, supra, at 576 (The line between airport-related speech and nonairport-related speech is, at best, murky). In my view, the Port Authority is operating a shopping mall as well as an airport. The reasonableness inquiry, therefore, is not whether the restrictions on speech are "consistent with . . . preserving the property" for air travel, Perry, supra, at 50-51 (internal quotation marks and citation omitted), but whether they are reasonably related to maintaining the multipurpose environment that the Port Authority has deliberately created.

Applying that standard, I agree with the Court in No. 91-155 that the ban on solicitation is reasonable. Face-to- face solicitation is incompatible with the airport's functioning in a way that the other, permitted activities are not. We have previously observed that "[s]olicitation impedes the normal flow of traffic [because it] requires action by those who would respond: The individual solicited must decide whether or not to contribute (which itself might involve reading the solicitor's literature or hearing his pitch), and then, having decided to do so, reach for a wallet, search it for money, write a check, or produce a credit card. . . . As residents of metropolitan areas know from daily experience, confrontation by a person asking for money disrupts passage and is more intrusive and intimidating than an encounter with a person giving out information." Kokinda, 497 U. S., at 733-734 (plurality opinion) (citations omitted); id., at 739 (Kennedy, J., concurring in judgment) (accepting Postal Service's judgment that, given its past experience, "in-person solicitation deserves different treatment from alternative forms of solicitation and expression"); Heffron, supra, at 657 (Brennan, J., concurring in part and dissenting in part) (upholding partial restriction on solicitation at fair grounds because of state interest "in protecting its fairgoers from fraudulent, deceptive, and misleading solicitation practices"); id., at 665 (Blackmun, J., concurring in part and dissenting in part) (upholding partial

restriction on solicitation because of the -crowd control problems- it creates). The record in this case confirms that the problems of congestion and fraud that we have identified with solicitation in other contexts have also proved true in the airports' experience. See App. 67-111 (affidavits). Because airports users are frequently facing time constraints, and are traveling with luggage or children, the ban on solicitation is a reasonable means of avoiding disruption of an airport's operation.

In my view, however, the regulation banning leafletting- -or, in the Port Authority's words, the "continuous or repetitive . . . distribution of . . . printed or written material"-- cannot be upheld as reasonable on this record. I therefore concur in the judgment in No. 91-339 striking down that prohibition. While the difficulties posed by solicitation in a nonpublic forum are sufficiently obvious that its regulation may -rin[g] of common-sense," Kokinda, supra, at 734 (internal quotation marks and citation omitted), the same is not necessarily true of leafletting. To the contrary, we have expressly noted that leafletting does not entail the same kinds of problems presented by face-to- face solicitation. Specifically, "[o]ne need not ponder the contents of a leaflet or pamphlet in order mechanically to take it out of someone's hand . . . . `The distribution of literature does not require that the recipient stop in order to receive the message the speaker wishes to convey; instead the recipient is free to read the message at a later time.'" Ibid. (plurality opinion), quoting Heffron, 452 U. S., at 665 (Blackmun, J., concurring in part and dissenting in part).

/* Or free to throw it out or give it someone who cares. */

With the possible exception of avoiding litter, see Schneider v. State, 308 U. S. 147, 162 (1939), it is difficult to point to any problems intrinsic to the act of leafletting that would make it naturally incompatible with a large, multipurpose forum such as those at issue here.

We have only once before considered restrictions on speech in a nonpublic forum that sustained the kind of extensive, nonforum-related activity found in the Port Authority airports, and I believe that case is instructive. In Greer v. Spock, 424 U. S. 828 (1976), the Court held that even though certain parts of a military base were open to the public, they still did not constitute a public forum in light of -`the historically unquestioned power of [a] commanding officer summarily to exclude civilians from the area of his command.'- Id., at 838, quoting Cafeteria & Restaurant Workers v. McElroy, 367 U. S. 886, 893 (1961). The Court then proceeded to uphold a regulation banning the distribution of literature without the prior approval of the base commander. In so doing, the Court -emphasized- that the regulation on leafletting did "not authorize the Fort Dix authorities to prohibit the distribution of conventional political campaign literature." Rather, the Court

explained, "[t]he only publications that a military commander may disapprove are those that he finds constitute `a clear danger to [military] loyalty, discipline, or morale'" and that "[t]here is nothing in the Constitution that disables a military commander from acting to avert what he perceives to be a clear danger to the loyalty, discipline, or morale of troops on the base under his command." 424 U. S., at 840 (citation omitted). In contrast, the regulation at issue in this case effects an absolute prohibition and is not supported by any independent justification outside of the problems caused by the accompanying solicitation.

Moreover, the Port Authority has not offered any justifications or record evidence to support its ban on the distribution of pamphlets alone. Its argument is focused instead on the problems created when literature is distributed in conjunction with a solicitation plea. Although we do not "requir[e] that . . . proof be present to justify the denial of access to a nonpublic forum on grounds that the proposed use may disrupt the property's intended function," Perry, 460 U. S., at 52, n. 12, we have required some explanation as to why certain speech is inconsistent with the intended use of the forum. In Kokinda, for example, we upheld a regulation banning solicitation on postal property in part because the Postal Service's 30-year history of regulation of solicitation in post offices demonstrated that permitting solicitation interfered with its postal mission. 497 U. S., at 731-732 (plurality opinion). Similarly, in Cornelius, we held that it was reasonable to exclude political advocacy groups from a fundraising campaign targeted at federal employees in part because "the record amply support[ed] an inference" that the participation of those groups would have jeopardized the success of the campaign. 473 U. S., at 810. Here, the Port Authority has provided no independent reason for prohibiting leafletting, and the record contains no information from which we can draw an inference that would support its ban. Because I cannot see how peaceful pamphleteering is incompatible with the multipurpose environment of the Port Authority airports, I cannot accept that a total ban on that activity is reasonable without an explanation as to why such a restriction -preserv[es] the property-for the several uses to which it has been put. Perry, supra, at 50-51 (internal quotation marks and citation omitted).

Of course, it is still open for the Port Authority to promulgate regulations of the time, place, and manner of leafletting which are "content-neutral, narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication." Perry, supra, at 45; United States Postal Service, 453 U. S., at 132. For example, during the many years that this litigation has been in progress, the Port Authority has not banned sankirtan completely from JFK International Airport, but has restricted it to a relatively uncongested part of the airport terminals, the same part that houses the airport chapel. Tr. of Oral Arg. 5-6, 46-47. In my view, that regulation meets the standards we have applied to time, place, and manner

restrictions of protected expression. See Clark v. Community for Creative Non-Violence, 468 U. S. 288, 293 (1984).

I would affirm the judgment of the Court of Appeals in both No. 91-155 and No. 91-339.