a law or regulation that is not specifically addressed to speech or to conduct necessarily associated with speech (such as picketing or demonstrating)."[546]

Out of a concern that is closely related to that behind the overbreadth doctrine, the Court has insisted that when the government seeks to carry out a permissible goal and it has available a variety of effective means to do so, "[i]f the First Amendment means anything, it means that regulating speech must be a last—not first—resort."[547] Thus, the Court applies "strict scrutiny" to content-based regulations of fully protected speech; this means that it requires that such regulations "promote a compelling interest" and use "the least restrictive means to further the articulated interest."[548]

With respect to most speech restrictions to which the Court does not apply strict scrutiny, the Court applies intermediate scrutiny; *i.e.*, scrutiny that is "midway between the 'strict scrutiny' demanded for content-based regulation of speech and the 'rational basis' standard that is applied—under the Equal Protection Clause—to government regulation of nonspeech activities."[549] Intermediate scrutiny requires that the governmental interest be "significant" or "sub-

---

[546] Virginia v. Hicks, 539 U.S. 113, 119–20, 124 (2003) (italics in original; citations omitted) (upholding, as not addressed to speech, an ordinance banning from streets within a low-income housing development any person who is not a resident or employee and who "cannot demonstrate a legitimate business or social purpose for being on the premises"). Virginia v. Hicks cited Broadrick v. Oklahoma, 413 U.S. 601 (1973), which, in the majority opinion and in Justice Brennan's dissent, id. at 621, contains extensive discussion of the overbreadth doctrine. Other restrictive decisions include Arnett v. Kennedy, 416 U.S. 134, 158–64 (1974); Parker v. Levy, 417 U.S. 733, 757–61 (1974); and New York v. Ferber, 458 U.S. 747, 766–74 (1982). Nonetheless, the doctrine continues to be used across a wide spectrum of First Amendment cases. Bigelow v. Virginia, 421 U.S. 809, 815–18 (1975); Erznoznik v. City of Jacksonville, 422 U.S. 205 (1975); Doran v. Salem Inn, 422 U.S. 922, 932–34 (1975); Village of Schaumburg v. Citizens for a Better Environment, 444 U.S. 620, 633–39 (1980); Secretary of State of Maryland v. Joseph H. Munson Co., 467 U.S. 947 (1984) (charitable solicitation statute placing 25 percent cap on fundraising expenditures); City of Houston v. Hill, 482 U.S. 451 (1987) (city ordinance making it unlawful to "oppose, molest, abuse, or interrupt" police officer in performance of duty); Board of Airport Comm'rs v. Jews for Jesus, 482 U.S. 569 (1987) (resolution banning all "First Amendment activities" at airport); Reno v. ACLU, 521 U.S. 844, 874–879 (1997) (statute banning "indecent" material on the Internet).

[547] Thompson v. Western States Medical Center, 535 U.S. 357, 373 (2002).

[548] Sable Communications of California v. FCC, 492 U.S. 115, 126 (1989).

[549] Madsen v. Women's Health Center, Inc., 512 U.S. 753, 790 (1994) (parentheses omitted). The Court, however, applied a rational basis standard to uphold a state statute that banned the sale of sexually explicit material to minors. Ginsberg v. New York, 390 U.S. 629, 641 (1968). Of course, governmental restrictions on some speech, such as obscenity and fighting words, receive no First Amendment scrutiny, except that particular instances of such speech may not be discriminated against on the basis of hostility "towards the underlying message expressed." R.A.V. v. City of St. Paul, 505 U.S. 377, 386 (1992).