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Constitutional Law - Freedom of Speech: Door-to-Door Permit Requirements for Noncommercial Convassers, Domestic Threat or Freedom of Speech

Zachary E. Pelham

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CONSTITUTIONAL LAW—FREEDOM OF SPEECH:
DOOR-TO-DOOR PERMIT REQUIREMENTS FOR
NONCOMMERCIAL CANVASSERS, DOMESTIC THREAT OR
FREEDOM OF SPEECH?

Watchtower Bible & Tract Society of New York, Inc. v. Village of Stratton,
536 U.S. 150 (2002)*

I. FACTS

The Jehovah's Witnesses spread their religion by offering free religious literature to anyone interested in reading it.¹ It is the responsibility of each Jehovah's Witness' to follow the example of Jesus and follow his command "to go from house to house" and tell others about the "Kingdom of God."² Typically, Jehovah's Witnesses will distribute their religious tracts by canvassing door-to-door.³ Jehovah's Witnesses do not solicit funds or orders for merchandise, but they do accept donations.⁴

Watchtower Bible and Tract Society of New York, Inc. (Watchtower) is the body that organizes the preaching activities of Jehovah's Witnesses across the United States.⁵ Watchtower publishes Bibles and Bible-based publications for Jehovah's Witnesses to distribute free of charge to anyone interested.⁶ The Wellsville, Ohio, Congregation of Jehovah's Witnesses, Inc. conducts the activities of its members in an area of Ohio that includes the Village of Stratton (Village).⁷

The local Jehovah's Witness congregation has experienced problems with Village officials since 1979.⁸ Both the police and the mayor have attempted to hinder the Jehovah's Witnesses' door-to-door activity.⁹ Ac-

* Winner of a North Dakota State Bar Foundation Outstanding Note/Comment Award.

1. *Watchtower Bible & Tract Soc'y of N.Y., Inc. v. Vill. of Stratton*, 536 U.S. 150, 153 (2002).

2. Brief for Petitioners at 2, *Watchtower Bible & Tract Soc'y of N.Y., Inc. v. Vill. of Stratton*, 536 U.S. 150 (2002) (No. 00-1737).

3. *Watchtower*, 536 U.S. at 160-61.

4. *Id.* at 153.

5. *Id.*

6. Petitioner's Brief at 2, *Watchtower* (No. 00-1737).

7. *Watchtower*, 536 U.S. at 153.

8. Petitioner's Brief at 3, *Watchtower* (No. 00-1737).

9. *Id.* Watchtower cited two instances where authorities from the Village intervened with their door-to-door proselytizing. *Id.* On one occasion, a member of the Village police instructed a group of Jehovah's Witnesses to leave saying: "I could care less about your rights." *Id.* In addition, the mayor, John Abdalla, confronted four Jehovah's Witnesses who had gone door-to-door

ording to Village Mayor John Abdalla, there were never any documented complaints concerning the Jehovah's Witnesses' activity in Stratton.¹⁰ However, he did state that no one in the town had any desire to listen to the Jehovah's Witnesses.¹¹

Watchtower challenged the constitutionality of Stratton, Ohio, Ordinance No. 1998-5: "Ordinance Regulating Uninvited Peddling and Solicitation Upon Private Property in the Village of Stratton, Ohio."¹² The ordinance prohibited Jehovah's Witnesses, and other non-commercial groups,¹³ from going house-to-house without first obtaining a permit issued by the mayor.¹⁴

Watchtower first sought an injunction in the United States District Court for the Southern District of Ohio against the Village's enforcement of the ordinance, which regulated "uninvited peddling" and soliciting on private property in the Village.¹⁵ Watchtower considered the ordinance a burden imposed on its First Amendment rights.¹⁶ The complaint alleged that the ordinance violated several constitutional rights including the free exercise of religion, free speech, and freedom of the press.¹⁷ The ordinance, specifically section 116.01,¹⁸ prohibited "canvassers" from "going in and upon" private residential property in order to promote any "cause" without

and stated that they were not allowed in the Village and had they been males he would have put them in jail. *Id.*

10. *Id.* at 4.

11. *Id.*

12. *Id.* at 2.

13. Watchtower Bible & Tract Soc'y of N.Y., Inc. v. Vill. of Stratton, 536 U.S. 150, 158 (2002); see also STRATTON, OHIO, ORDINANCE NO. 1998-5, § 116.07(b) (1998). This portion of the ordinance allowed residents to file a "No Solicitation Registration Form" with the mayor's office that automatically prevented certain groups from canvassing door-to-door at the specific resident's home. STRATTON, OHIO, ORDINANCE NO. 1998-5, § 116.07(b). Suggested exemptions included: Camp Fire Girls, scouting organizations, other churches, political candidates, Christmas carolers, Little League, and trick or treaters during Halloween season. *Id.*

14. Brief for Petitioners at 2, Watchtower Bible & Tract Soc'y of N.Y., Inc. v. Vill. of Stratton, 536 U.S. 150 (2002) (No. 00-1737).

15. *Watchtower*, 536 U.S. at 154; Watchtower Bible & Tract Soc'y of N.Y., Inc. v. Vill. of Stratton, 61 F. Supp. 2d 734, 736 (S.D. Ohio 1999).

16. Petitioner's Brief at 2, *Watchtower* (No. 00-1737).

17. *Watchtower*, 61 F. Supp. 2d at 736.

18. STRATTON, OHIO, ORDINANCE NO. 1998-5, § 116.01 (1998). This portion of the ordinance stated in part:

The practice of going in and upon private property and/or the private residence of Village residents in the Village by canvassers, solicitors, peddlers, hawkers, itinerant merchants or transient vendors of merchandise or services, not having been invited to do so by the owners or occupants of such private property or residences, and not having first obtained a permit pursuant to Section 116.03 of this Chapter, for the purpose of advertising, promoting, selling and/or explaining any product, service, organization or cause . . . is hereby declared to be a nuisance and is prohibited.

Id.

first obtaining a permit pursuant to section 116.03, which required the applicant to give their name, address, and other information on the application.¹⁹ Though there was no cost to the registrant for the permit,²⁰ and a permit holder was authorized to enter the premises of homes listed on the registration form, the registrant had to carry the permit at all times and show it if requested by a resident or police officer.²¹ The ordinance allowed for a potential canvasser to be denied a permit, but no application had been denied or any permit taken away.²² The district court held for the Village, which asserted its interest to protect the residents from what the mayor called “flim flam” con artists preying on small towns like Stratton.²³

The Sixth Circuit Court of Appeals affirmed the district court’s decision.²⁴ The Sixth Circuit found that the ordinance was content neutral and generally applicable to all canvassers.²⁵ The Village’s interests in protecting residents from fraud and annoyance were sufficient to justify the permit regulation.²⁶

19. *Watchtower*, 536 U.S. at 154; STRATTON, OHIO, ORDINANCE NO. 1998-5, § 116.03 (1998). The ordinance stated in relevant part:

(a) No canvasser . . . described in Section 116.01 of this Chapter and who intends to go in or upon private property . . . in the Village . . . shall go in or upon private property . . . without first registering in the office of the Mayor and obtaining a Solicitation Permit. (b) . . . The Form shall be completed by the Registrant and it shall then contain the following information: (1) The name and home address of the Registrant and Registrant’s residence for five years . . . ; (2) A brief description of the nature and purpose of the . . . cause . . . ; (3) The name and address of the employer or affiliated organization, with credentials . . . ; (4) The length of time for which the privilege to canvass or solicit is desired; (5) The specific address of each private residence at which the Registrant intends to engage in the conduct described in Section 116.01

STRATTON, OHIO, ORDINANCE NO. 1998-5, § 116.03.

20. *Watchtower*, 536 U.S. at 154.

21. *Id.* at 156; STRATTON, OHIO, ORDINANCE NO. 1998-5, § 116.04 (1998). This section required that:

Each person shall at all times, while exercising the privilege in the Village incident to such permit, carry upon his person his permit and the same shall be exhibited by such person whenever he is requested to do so by any police officer or by any person who is solicited.

STRATTON, OHIO, ORDINANCE NO. 1998-5, § 116.04.

22. *Watchtower*, 536 U.S. at 155-56; *see also* STRATTON, OHIO, ORDINANCE NO. 1998-5, § 116.06 (1998) (providing that the Village may revoke or deny a permit if the registration form contains incomplete information or if there is any fraud or misrepresentation on the form).

23. *See Watchtower Bible & Tract Soc’y of N.Y., Inc. v. Vill. of Stratton*, 61 F. Supp. 2d 734, 736-40 (S.D. Ohio 1999) (holding the ordinance unconstitutional in part where it forbade canvassers from going door-to-door during the hours between 5:00 p.m. and 9:00 a.m.).

24. *Watchtower Bible & Tract Soc’y of N.Y., Inc. v. Vill. of Stratton*, 240 F.3d 553, 569 (6th Cir. 2001).

25. *See id.* at 561 (explaining that the ordinance was content neutral and of general applicability because the ordinance required all individuals seeking to canvass door-to-door to register regardless of the content of their message).

26. *Id.* at 565.

Watchtower then appealed to the United States Supreme Court.²⁷ The issue the Court decided was whether a municipal ordinance that required a noncommercial canvasser to obtain a permit before engaging in door-to-door advocacy of a cause violated the First Amendment protection given to anonymous speech.²⁸ The Court *held* it “offensive—not only to the values protected by the First Amendment, but to the very notion of a free society—that in the context of everyday public discourse a citizen must first inform the government of her desire to speak to her neighbors and then obtain a permit to do so.”²⁹

II. LEGAL BACKGROUND

For more than fifty years the Supreme Court has repeatedly invalidated restrictions on door-to-door canvassing on First Amendment grounds.³⁰ The First Amendment of the United States Constitution states in pertinent part, “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech.”³¹

Jehovah’s Witnesses are bound by their religion to proselytize door-to-door.³² As such, it should not be surprising that Jehovah’s Witnesses have brought many of the Supreme Court’s cases dealing with the constitutionality of door-to-door canvassing.³³ Historically, several themes involving the Jehovah’s Witnesses’ First Amendment right to proselytize door-to-door developed: the value of their speech, the importance of door-to-door canvassing as a vehicle to proffer their speech, and the rights of other groups to espouse their views by door-to-door canvassing.³⁴

A. VALUE OF SPEECH

Distributing tracts is an age-old form of missionary evangelism, as old as the printing press.³⁵ In *Murdock v. Pennsylvania*,³⁶ the Court held that a

27. *Watchtower*, 536 U.S. at 153.

28. *Id.* at 159-60.

29. *Id.* at 165-66.

30. *Id.* at 159.

31. U.S. CONST. amend. I.

32. *See* *Murdock v. Pennsylvania*, 319 U.S. 105, 108 (1943) (explaining that Jehovah’s Witnesses take Mark 16:15, “Go ye into all the world, and preach the gospel to every creature”, and Acts 20:20, to teach “publicly [sic], and from house to house,” literally).

33. *Watchtower Bible & Tract Soc’y of N.Y., Inc. v. Vill. of Stratton*, 536 U.S. 150, 161 (2002).

34. *Id.*

35. *Murdock*, 319 U.S. at 108.

36. 319 U.S. 105 (1943).

licensing tax on all canvassers was unconstitutional because “preaching from the pulpits” and going door-to-door were essentially the same, occupying the same “high estate” under the First Amendment.³⁷ The speech involved in door-to-door canvassing is a form of religious worship, thus, it is entitled to the same First Amendment protection as other more conventional exercises of religion.³⁸ The speech involved when a Jehovah’s Witness knocks on a door to proselytize is a valuable form of speech under the Constitution.³⁹

B. A VEHICLE

Pamphleteering and door-to-door canvassing have been important vehicles for spreading new ideas and causes.⁴⁰ When a Jehovah’s Witness was convicted for canvassing door-to-door without a permit while offering books and pamphlets, the Court stated that this canvassing was an effective manner of disseminating her views.⁴¹ In *Schneider v. State*,⁴² an ordinance required a canvasser to be subject to the discretion of a government official for issuance of a permit.⁴³ The Court recognized that the distribution of pamphlets by door-to-door canvassing was an effective means of communication and determined that because the ordinance imposed censorship on the individual, it violated her First Amendment rights.⁴⁴ This type of censorship caused the very struggle in England that led to the establishment of the doctrine of freedom of the press in the United States Constitution.⁴⁵ The ordinance “str[uck] at the very heart of the constitutional guarantees” because police chiefs could deny applications for licenses at their discretion.⁴⁶ Thus, the Court invalidated the ordinance because police chiefs could directly censor freedom of speech in violation of the Constitution.⁴⁷

Although the vehicle of disseminating ideas by door-to-door canvassing is a part of the American tradition of free and open discussion, there are

37. *Murdock*, 319 U.S. at 109.

38. *Id.*

39. *Id.*

40. *Id.* at 108-09; *Schneider v. State*, 308 U.S. 147, 164 (1939); *Lovell v. City of Griffin*, 303 U.S. 444, 452 (1938).

41. *Schneider*, 308 U.S. at 164.

42. 308 U.S. 147 (1939).

43. *Schneider*, 308 U.S. at 164.

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.*

interests that a town may regulate, such as fraud.⁴⁸ In *Cantwell v. Connecticut*,⁴⁹ the Court recognized that the “cloak of religion” cannot prevent certain actions by a state to protect its citizens against “fraudulent solicitation.”⁵⁰ In the interest of public safety, peace, comfort, and convenience, a state may regulate the time and manner of solicitation in general.⁵¹

In addition to protecting its citizens from fraud, a state can require restrictions on door-to-door canvassing in order to prevent crime.⁵² In *Martin v. City of Struthers*,⁵³ the Court established that the potential for criminals to “case” their target home by soliciting door-to-door was real.⁵⁴ To enable a state to protect its citizens from this criminal threat, the Court recognized a legitimate interest in preventing crime, which allowed states to place some restrictions on door-to-door canvassing.⁵⁵

1. *Anonymity Protected*

When canvassing door-to-door, it is not necessary to give up one’s anonymity if one does not desire to do so.⁵⁶ In *Buckley v. American Constitutional Law Foundation, Inc.*,⁵⁷ the Court invalidated an ordinance that

48. *Cantwell v. Connecticut*, 310 U.S. 296, 306 (1940). In *Cantwell*, the Court held that the ordinance that required Jehovah’s Witnesses to obtain a license prior to canvassing door-to-door was invalid, but it recognized that “a State may protect its citizens from fraudulent solicitation by requiring a stranger in the community, before permitting him publicly to solicit funds for any purpose, to establish his identity and his authority to act for the cause which he purports to represent.” *Id.* The Court further held that a state could regulate, without unconstitutionally violating the liberties protected by the Fourteenth Amendment, the time, place, and manner of soliciting on its streets in order to protect the peace and the “good order and comfort of the community.” *Id.* at 304.

49. 310 U.S. 296 (1940).

50. *Cantwell*, 310 U.S. at 306. The Court held that giving states the power to establish the identity of the solicitor and to limit the solicitor’s authority to act for any purpose was only a minor inconvenience to the exercise of religion. *Id.*

51. *Id.* at 306-07.

52. *Martin v. City of Struthers*, 319 U.S. 141, 144 (1943).

53. 319 U.S. 141 (1943).

54. *Martin*, 319 U.S. at 144.

55. *Id.* Although the Court found the ordinance regulating non-commercial canvassing unconstitutional, it stated that crime prevention was a valid purpose for the regulation. *Id.* However, this was not the purpose of the ordinance in *Martin*. *Id.* The purpose was to prevent residents from being annoyed by Jehovah’s Witnesses knocking on their doors. *Id.* In his concurrence, Justice Murphy stated that “[n]o doubt there may be relevant considerations which justify considerable regulation of door to door canvassing, even for religious purposes,—regulation as to time, number and identification of canvassers, etc., which will protect the privacy and safety of the home and yet preserve the substance of religious freedom.” *Id.* at 151. Justice Black, who delivered the majority opinion, acknowledged that police and health restrictions, as well as time and manner restrictions, on door-to-door canvassing would be permitted. *Id.* at 147.

56. *Buckley v. Am. Constitutional Law Found. Inc.*, 525 U.S. 182, 200 (1999).

57. 525 U.S. 182 (1999).

required circulators of petitions to wear badges with their names on them.⁵⁸ The Court determined that the requirement to wear identification badges inhibited many people from participating in ballot-initiative petition drives.⁵⁹ The Court acknowledged that the badge requirement would inhibit potential petition circulators from volunteering due to the potential threat of retaliation on controversial issues.⁶⁰ Even though face-to-face interaction revealed the canvassers' physical identity, the Court found that they should be able to maintain their anonymity.⁶¹

2. *The Right to Spontaneity*

Speech must be allowed to be spontaneous.⁶² In *Grosjean v. American Press Co.*,⁶³ the Court invalidated an ordinance requiring newspapers with a certain circulation number to pay a tax.⁶⁴ Throughout Anglo-American history, governments have tried to impose taxes on information by taxing newspapers.⁶⁵ This attempt at censoring was not just an attempt to censor the press, for it was an action by the government to prevent free and general discussion on matters affecting the public.⁶⁶ The Court found this censorship to be unconstitutional, reasoning that citizens must be able to intelligently exercise their rights to free speech.⁶⁷

C. THE RIGHTS OF OTHERS

The Jehovah's Witnesses' struggle against free speech regulations has furthered the rights of other groups.⁶⁸ The ability to spread their causes by

58. *Buckley*, 525 U.S. at 200.

59. *Id.* at 198, 200.

60. *Id.* at 198-99.

61. *Id.* at 199; *see also* *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 348-49 (1995). In *McIntyre*, the Court held an Ohio law unconstitutional because it required distributors of political leaflets to publish the author on the leaflets. *McIntyre*, 514 U.S. at 334. The Court reasoned that "[w]hatever the motivation [for anonymous speech] may be, at least in the field of literary endeavor, the interest in having anonymous works enter the marketplace of ideas unquestionably outweighs any public interest in requiring disclosure as a condition of entry." *Id.* at 342.

62. *Grosjean v. Am. Press Co.*, 297 U.S. 233, 250-51 (1936).

63. 297 U.S. 233 (1936).

64. *Grosjean*, 297 U.S. at 251.

65. *Id.* at 246-48. The American Revolution was brought on in part by a 1765 stamp tax on newspapers, which was characterized as a "tax[] on knowledge." *Id.* at 246. The taxes were intended to curtail the circulation of newspapers, especially the least expensive ones, whose readers were the general masses. *Id.*

66. *Id.* at 249-50.

67. *Id.* at 250-51.

68. *Watchtower Bible & Tract Soc'y of N.Y., Inc. v. Vill. of Stratton*, 536 U.S. 150, 163 (2002); *see also* Brief of Amicus Curiae Independent Baptist Churches of America at 1, *Watchtower Bible & Tract Soc'y of N.Y., Inc. v. Vill. of Stratton*, 536 U.S. 150 (2002) (No. 00-1737);

going door-to-door has been essential for small, under-funded groups.⁶⁹ In *Thomas v. Collins*,⁷⁰ the Court determined that a labor leader did not have to obtain a permit before delivering a speech to potential union members.⁷¹ The Court held that the requirement to register by obtaining a permit before making a public speech was fundamentally at odds with the exercise of free speech and assembly.⁷² As long as the assemblies involved no element of “grave and immediate danger,” which a state has an interest in protecting against, then there would have been no need to require prior registration of the speaker.⁷³

Unions and their workers have as much of a constitutional right to assemble in order to debate to gain support as do businesspeople, farmers, educators, politicians, and others.⁷⁴ The exercise of free speech cannot be criminalized by requiring people to obtain a permit in order to exercise their constitutional right to free speech.⁷⁵ If one solicited support for labor causes and was required to have a permit as a pre-condition, then so must any person who wished to solicit support for any social, business, religious, or political cause.⁷⁶ The Court held that the requirement to register before enlisting support for a lawful cause was incompatible with the First Amendment.⁷⁷

D. SUMMARY OF LEGAL BACKGROUND

The World War II-era cases provided the Court with a sound foundation to determine the constitutionality of the type of speech challenged in *Watchtower*.⁷⁸ These cases established that the value of speech proffered

Karen Kane, *Local Church Joins National Case in Favor of Door-to-Door Solicitation*, PITTSBURGH POST-GAZETTE, June 2, 2002, at N4.

69. See *Martin v. City of Struthers*, 319 U.S. 141, 145-46 (1943) (recognizing that other religious groups, labor organizations, and politicians have relied on the ability to go door-to-door to espouse their beliefs without any hindrance from the law).

70. 323 U.S. 516 (1945).

71. *Thomas*, 323 U.S. at 518. Thomas was a leader in two labor unions. *Id.* at 520. He served as president of the International Union United Automobile, Aircraft, and Agricultural Implements Workers (U.A.W.) and as vice president of the Congress of International Organizations (C.I.O.). *Id.* Thomas regarded the permit requirement as a restraint upon free speech and free assembly because it prevented him from speaking or encouraging people to join the union without first having a permit. *Id.* at 522; see also *Watchtower*, 536 U.S. at 163 (revealing that the *Thomas* Court relied on precedent involving Jehovah’s Witnesses to help reach its decision).

72. *Thomas*, 323 U.S. at 539.

73. *Id.*

74. *Id.*

75. *Id.* at 540.

76. *Id.*

77. *Id.*

78. *Watchtower Bible & Tract Soc’y of N.Y., Inc. v. Vill. of Stratton*, 536 U.S. 150, 164 (2002).

by door-to-door, non-commercial canvassing was very important and worthy of constitutional protection.⁷⁹ Although the Court in *Martin* and *Cantwell* recognized that door-to-door canvassing was a valid vehicle to spread one's cause, it also allowed reasonable limits on the time and manner of canvassing and recognized the states' right to protect their citizens from crime and fraud.⁸⁰ In seeking protection under the wing of the Constitution, Jehovah's Witnesses have enabled other groups to exercise their First Amendment rights without obtaining a permit.⁸¹

III. ANALYSIS

The United States Supreme Court reached a split decision in *Watchtower Bible & Tract Society of New York, Inc. v. Village of Stratton*.⁸² Justice Stevens delivered the Court's majority opinion.⁸³ Justice Breyer⁸⁴ and Justice Scalia⁸⁵ wrote concurring opinions. Chief Justice Rehnquist wrote the lone dissent.⁸⁶

Despite recognizing the interests a state has in preventing crime and fraud, as well as protecting the privacy of residents, precedent mandated the Court to strike a balance between these interests and the effect regulation would have on First Amendment rights.⁸⁷ To determine this balance, however, the Court refused to state which standard of review was appropriate for assessing the constitutionality of the ordinance.⁸⁸ Instead, the Court resolved the dispute by determining that the breadth and nature of the speech that was affected clearly outweighed the Village's interests in preventing fraud, crime, and annoyances to its residents.⁸⁹

A. MAJORITY OPINION

Justice Stevens wrote the majority opinion, which Justices O'Connor, Kennedy, Souter, Ginsburg, and Breyer joined.⁹⁰ The Court recognized that the ordinance applied to a wide variety of noncommercial and commercial

79. *Murdock v. Pennsylvania*, 319 U.S. 105, 109 (1943).

80. *Martin v. City of Struthers*, 319 U.S. 141, 147 (1943); *Cantwell v. Connecticut*, 310 U.S. 296, 306 (1940).

81. *Thomas v. Collins*, 323 U.S. 516, 539 (1945).

82. 536 U.S. 150 (2002).

83. *Watchtower*, 536 U.S. at 153.

84. *Id.* at 169 (Breyer, J., concurring).

85. *Id.* at 171 (Scalia, J., concurring).

86. *Id.* (Rehnquist, C.J., dissenting).

87. *Id.* at 164-65.

88. *Id.* at 164. Justice Breyer insisted that intermediate scrutiny was in fact used. *Id.* at 170.

89. *Id.* at 164.

90. *Id.* at 152.

canvassers.⁹¹ It found that the ordinance was overbroad, not only applying to religious causes but also to political ones.⁹² The Court determined that the ordinance did not differentiate between commercial and noncommercial solicitations.⁹³ If the ordinance differentiated between commercial and noncommercial solicitations, it would have been better tailored to further the Village's stated interests of preventing fraud and protecting privacy.⁹⁴ In fact, Justice Stevens noted that the ordinance included many noncommercial "canvassers" promoting various "causes."⁹⁵

1. *Liberty Restricted*

Although the permits were distributed in a nondiscriminatory manner to all who desired them, the Court found the permit requirement offensive to the values protected by the First Amendment.⁹⁶ Justice Stevens reasoned that to require a citizen to first fill out a form informing the government of a desire to speak to a neighbor, then requiring a permit to do so, was a significant departure from tradition and heritage.⁹⁷

The Court found the ordinance's requirement mandating canvassers to surrender their anonymity by being identified on an application for a permit available for public viewing unconstitutional.⁹⁸ It found many reasons why the decision to favor anonymity was prudent—the fear of economic or official retaliation, social ostracism, or simply the desire to preserve one's privacy.⁹⁹ Whatever the reason, the Court found that the interest of having

91. *Id.* at 165.

92. *Id.*

93. *Id.*

94. *See id.* at 162, 165 (recognizing that ordinances differentiate between commercial and noncommercial solicitations, particularly when solicitation of money is involved); *see also* *Cantwell v. Connecticut*, 310 U.S. 296, 306 (1940) (condoning limitations on commercial solicitors because of the potential for fraud).

95. *Watchtower Bible & Tract Soc'y of N.Y., Inc. v. Vill. of Stratton*, 536 U.S. 150, 165 (2002). Some of the non-commercial groups included in the portion of the ordinance that allowed residents to file "No Solicitation Forms" with the Village to preclude the particular group from going to that resident's home were: Camp Fire Girls, Jehovah's Witnesses, political candidates, trick or treaters during Halloween season, and persons affiliated with Stratton Church. *Id.*

96. *Id.* at 165-66.

97. *See id.* (realizing that it would be a mere ministerial task to fill out the form, but the act of doing so would be antithetical to the notions embedded in the First Amendment guarantee of free speech).

98. *Id.* at 166.

99. *See id.* (quoting *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 341-42 (1995) (outlining the opposition to an Ohio statute requiring handbills to be labeled with the author's name and recognizing the strong historical policy of allowing an author to remain anonymous)).

anonymous thoughts entering the marketplace of ideas far outweighed any interest requiring disclosure.¹⁰⁰

The Court reasoned that while it would be true that anyone choosing to canvass door-to-door in a neighborhood would give up one's anonymity to the cause they were espousing, the interests of anonymity would still be present.¹⁰¹ The Court referred to *Buckley* where a requirement that forced circulators of petitions to wear badges with their names was invalidated.¹⁰² It noted that the Court in *Buckley* determined that the requirement to wear identification badges inhibited many people from participating in ballot-initiative petition drives.¹⁰³ This was because the regulation in *Buckley* made potential petition circulators on controversial issues afraid of retaliation, thus less likely to volunteer.¹⁰⁴ Analogizing *Watchtower* to *Buckley*, the Court stated that strangers to the Village would certainly maintain their anonymity without the ordinance, but the ordinance could deter them from canvassing for unpopular causes if they knew their anonymity would not be protected.¹⁰⁵ The Village ordinance covered unpopular causes that were clearly unrelated to commercial activities or to the integrity of the election process.¹⁰⁶

The Court also reasoned that requiring citizens holding religious or patriotic views to first obtain a permit in order to exercise their right to speak would impose a significant burden.¹⁰⁷ It found that the religious beliefs of potentially significant numbers of persons would preclude them from obtaining a permit in order to canvass door-to-door.¹⁰⁸ In addition to religious objectors, there could be what the Court called "patriotic citizens" who be-

100. *Id.* at 166-67 (quoting *McIntyre*, 514 U.S. at 342). In *McIntyre*, the Court stated that "[a]nonymity thereby provides a way for a writer who may be personally unpopular to ensure that readers will not prejudice her message simply because they do not like its proponent." *McIntyre*, 514 U.S. at 342.

101. *See Watchtower Bible & Tract Soc'y of N.Y., Inc. v. Vill. of Stratton*, 536 U.S. 150, 166-67 (2002) (explaining that the Jehovah's Witnesses did not object to their loss of anonymity, but they brought the claim on the basis of overbreadth). *But see Watchtower Bible & Tract Soc'y of N.Y., Inc. v. Vill. of Stratton*, 240 F.3d 553, 563 (6th Cir. 2001) (holding that Jehovah's Witnesses who canvassed in the Village would "reveal a portion of their identities" just by virtue of going door-to-door).

102. *Watchtower Bible & Tract Soc'y of N.Y., Inc. v. Vill. of Stratton*, 536 U.S. 150, 167 (2002) (citing *Buckley v. Am. Constitutional Law Found., Inc.*, 525 U.S. 182, 184 (1999)).

103. *Id.* (citing *Buckley*, 525 U.S. at 184).

104. *Id.* (citing *Buckley*, 525 U.S. at 198-99).

105. *Id.* (citing *Buckley*, 525 U.S. at 198-99).

106. *See id.* (recognizing that anonymity is not as important as protecting residents from fraudulent commercial transactions).

107. *Id.*

108. *Id.*; *see also Lovell v. City of Griffin*, 303 U.S. 444, 448 (1938) (stating that Jehovah's Witnesses consider the requirement of getting a permit to canvass door-to-door "an act of disobedience to His commandment").

lieved their uninhibited right of free debate in the context of door-to-door advocacy to be sacred, and they would prefer silence over speech licensed by the government.¹⁰⁹

Justice Stevens recognized that spontaneous speech would be banned by the ordinance.¹¹⁰ He reasoned that if any citizens of Stratton decided on a weekend or a holiday to take an active role in a political campaign, they would be forbidden from going door-to-door until they obtained the required permit.¹¹¹ Justice Stevens noted a similarity between *Watchtower* and *Grosjean*, where an ordinance that required newspapers with a certain circulation number to pay a tax was invalidated.¹¹² Quoting *Grosjean*, he reasoned that “any action of the government by means of which it might prevent such free and general discussion of public matters as seems absolutely essential to prepare the people for an intelligent exercise of their rights as citizens” was to be avoided.¹¹³ Justice Stevens recognized that the government cannot regulate spontaneous speech by enacting laws to regulate the manner of expression.¹¹⁴

2. *Narrowly Tailored*

In addition to finding that the ordinance did not pass First Amendment scrutiny because of the ordinance’s “breadth and unprecedented nature,” the Court found that the ordinance was not narrowly tailored to the Village’s stated interests.¹¹⁵ Though the majority found that the interest in preventing fraud could justify regulating commercial transactions and the solicitation of funds, that interest could not justify regulating door-to-door solicitations of Jehovah’s Witnesses, political campaigns, or groups encouraging support for unpopular causes.¹¹⁶ The Court noted Judge Gilman’s dissent in the Sixth Circuit’s decision in which he found that the ordinance restricted a “substantial quantity of speech unrelated to the Village’s interest in eliminating fraud.”¹¹⁷ The Court agreed with Judge Gilman who expressed that

109. *Watchtower Bible & Tract Soc’y of N.Y., Inc. v. Vill. of Stratton*, 536 U.S. 150, 167 (2002).

110. *Id.*

111. *See id.* (recognizing that a spontaneous decision by a citizen to urge a neighbor to a certain cause would be restricted without first getting a permit from the mayor).

112. *Id.* at 168 (citing *Grosjean v. Am. Press Co.*, 297 U.S. 233, 251 (1936)).

113. *Id.* (quoting *Grosjean*, 297 U.S. at 249-50 (quoting 2 T. COOLEY, CONSTITUTIONAL LIMITATIONS 886 (8th ed. 1927))).

114. *Id.*

115. *Id.*

116. *Id.*

117. *Id.* at 160 (citing *Watchtower Bible & Tract Soc’y of N.Y., Inc. v. Vill. of Stratton*, 240 F.3d 553, 572 (6th Cir. 2001) (Gilman, J., dissenting)).

the Village failed to show the effectiveness of the restriction or the reality of harm to the Village.¹¹⁸ The overbreadth of the ordinance outweighed the potential for fraud.¹¹⁹

The Court noted that in addition to preventing fraud, the Village argued that the interest of protecting its citizens' privacy validated the ordinance.¹²⁰ The Court acknowledged that there has always been the unquestioned right of individuals to refuse to converse with a visitor.¹²¹ It concluded that this right to refuse provided adequate protection to the privacy of the unwilling listener.¹²² Additionally, the Court recognized that the posting of "No Solicitation" signs by residents was not challenged.¹²³ The Court further noted that annoyance caused by an unwelcome knock would be the same regardless of whether the visitor had a permit.¹²⁴

The Court found that requiring permits for canvassers would not reduce the criminal threat to residents; thus, the ordinance was not narrowly tailored to this interest either.¹²⁵ It reasoned that if a criminal wanted to bypass the permit requirement, the criminal could pose as a surveyor or another person not covered by the ordinance.¹²⁶ A criminal could also register with the mayor's office under a false name because the ordinance did not require a background check on the identity of the applicant.¹²⁷ The Village did not assert crime prevention as an interest in previous cases, and there was no evidence offered regarding a special crime problem related to door-to-door solicitation in the Village.¹²⁸ While the Supreme Court refused to state which standard of review was appropriate for assessing the constitutionality of the ordinance, it determined that the breadth and nature of the speech that was affected outweighed the Village's interests in preventing fraud, crime, and annoyances to its residents.¹²⁹

118. *Id.* (quoting *Watchtower*, 240 F.3d at 572 (Gilman, J., dissenting)).

119. *Id.* at 164.

120. *Id.* at 168.

121. *Id.*

122. *Id.* The Court recognized that Jehovah's Witnesses heed "No Solicitation" signs. *Id.* at 156.

123. *Id.* at 168.

124. *Id.* at 168-69.

125. *Id.* at 169.

126. *Id.* The ordinance would not require a permit for a surveyor because such an individual would not be entering private property "for the purpose of advertising, promoting, selling and/or explaining any product, service, organization or cause . . ." *Id.* at 156 n.1 (quoting STRATTON, OHIO, ORDINANCE NO. 1998-5, § 116.01 (1998)).

127. *Id.* at 169.

128. *Id.*

129. *Id.* at 164.

B. JUSTICE BREYER'S CONCURRENCE

Justice Breyer joined the majority, but he wrote separately to note that the "crime prevention" argument of the dissent was weak.¹³⁰ Primarily, Justice Breyer did not believe that the Village relied on what the courts below based their decision on, crime deterrence.¹³¹ He argued that the general references to "deterring crime" in the Village's brief to the Court included nothing that could be construed as more than preventing fraud as the Village specifically discussed.¹³²

Justice Breyer reasoned that in the intermediate scrutiny context, the Court does not supply reasons why an interest fits when the legislative body has not provided them.¹³³ He concluded that if the Village thought preventing burglaries and violent crimes was an important justification for the regulation, it would have specifically claimed this justification in its brief.¹³⁴

Justice Breyer argued that the ordinance did not serve any governmental interest in preventing crime.¹³⁵ He reasoned that several groups of criminals would not be affected by the Village's ordinance.¹³⁶ In addition, Justice Breyer stated that it was not enough for the Court to accept by mere conjecture the possibility that the ordinance would prevent potential criminals from preying on the residents of Stratton.¹³⁷ The possibility of preventing crime, mere conjecture according to Justice Breyer, did not outweigh the cost of abridging the speech covered by the ordinance.¹³⁸

130. *Id.* (Breyer, J., concurring).

131. *See id.* at 170 (defining crime as burglaries and violent crime, not con artists seeking to defraud residents); *see also* Watchtower Bible & Tract Soc'y of N.Y., Inc. v. Vill. of Stratton, 240 F.3d 553, 565 (6th Cir. 2001) (stating that the Village had the right to protect its residents from "fraud and undue annoyance"); Watchtower Bible & Tract Soc'y of N.Y., Inc. v. Vill. of Stratton, 61 F. Supp. 2d 734, 736 (S.D. Ohio 1999) (describing the ordinance as "constructed to protect the Village residents from 'flim flam' con artists").

132. Watchtower Bible & Tract Soc'y of N.Y., Inc. v. Vill. of Stratton, 536 U.S. 150, 170 (2002); *see also* Brief for Respondents at 14-18, Watchtower Bible & Tract Soc'y of N.Y., Inc. v. Vill. of Stratton, 536 U.S. 150 (2002) (No. 00-1737) (arguing the Village's claimed interest of preventing crime).

133. *See Watchtower*, 536 U.S. at 170 (quoting *United States v. Playboy Entm't Group, Inc.*, 529 U.S. 803, 816 (2000) (explaining that when the government restricts speech, it has the burden of proving the constitutionality of its actions)).

134. *Id.*

135. *Id.*

136. *Id.* The majority opinion pointed out that the ordinance did not require permits for surveyors who could potentially be impersonated by criminals to gain access to the homes of residents. *Id.* at 156 n.1.

137. *Id.* at 170 (quoting *Nixon v. Shrink Mo. Gov't PAC*, 528 U.S. 377, 392 (2000)).

138. *Id.* at 171.

C. JUSTICE SCALIA'S CONCURRENCE

While Justice Scalia agreed in the judgment, he did not agree that one of the reasons for the invalidity of the ordinance was that some people would have an objection to applying for a permit because of their religion.¹³⁹ He was concerned with the concept of an otherwise lawful licensing requirement being invalidated because some people, for religious reasons, might choose to forego their speech rather than adhering to the requirement.¹⁴⁰

Justice Scalia ended his opinion by referencing the majority opinion's "fairy-tale" category of "patriotic citizens," those who would rather be silenced than licensed.¹⁴¹ He did not agree with this characterization and stated, "If our free-speech jurisprudence is to be determined by the predicted behavior of such crackpots, we are in a sorry state indeed."¹⁴²

D. CHIEF JUSTICE REHNQUIST'S DISSENT

In his dissent, Chief Justice Rehnquist stated that the majority's decision contravened prior established case law, created a new doctrine that would leave communities helpless to address the safety threat that canvassers bring, and ultimately would result in less door-to-door communication.¹⁴³ He proffered the example of the relatively small college town of Hanover, New Hampshire, home of Dartmouth College, where two professors were killed by canvassers.¹⁴⁴ In the Chief Justice's example, two teenagers went door-to-door intending to steal credit card numbers and then kill

139. *Id.* (Scalia, J., concurring). Justice Scalia quoted the majority opinion in saying that others do not "have such firm convictions about their constitutional right to engage in uninhibited debate in the context of door-to-door advocacy, that they would prefer silence to speech licensed by a petty official." *Id.*

140. *Id.*

141. *Id.*

142. *Id.*; see also Shawn Francis Peters, *Court Ruling Again Places Jehovah's Witnesses as Patriotic Citizens*, MILWAUKEE J. SENTINEL, July 21, 2002, at 3J (stating that Scalia's comment concerning "patriotic citizens" was "crudely" meant to be an affront on Jehovah's Witnesses); Jason L. Riley, *Houses of Worship: Door-to-Door, Disturbingly*, WALL ST. J., June 21, 2002, at W15 (believing Scalia's comments concerning the "patriotic citizens" and "crackpots" referred to Jehovah's Witnesses in general). *But see Letters to the Editor: For the Witnesses, Love Says It All*, WALL ST. J., July 5, 2002, at A13 (stating that Justice Scalia was not specifically referring to Jehovah's Witnesses). A letter to the editor by Philip Brumley and Paul Polidoro, general counsel for Watchtower, stated that Scalia did not refer to Jehovah's Witnesses specifically as the "patriotic citizens" and "crackpots." *Id.* Brumley and Polidoro instead believed that Scalia was referring to the majority's hypothetical "other patriotic citizens" and not specifically Jehovah's Witnesses. *Id.*

143. *Watchtower Bible & Tract Soc'y of N.Y., Inc. v. Vill. of Stratton*, 536 U.S. 150, 172 (2002) (Rehnquist, C.J., dissenting).

144. *Id.* (citing Pamela Ferdinand, *Dartmouth Professors Called Random Targets*, WASH. POST, Feb. 20, 2002, at A2).

the owners.¹⁴⁵ Chief Justice Rehnquist argued that the reason the Village enacted the ordinance was to prevent such grave risks associated with canvassing.¹⁴⁶ He reasoned that because the residents did not prohibit canvassers from going door-to-door, the Village's interests in preventing crime and protecting the privacy of residents were constitutional.¹⁴⁷

Chief Justice Rehnquist determined permit requirements on door-to-door canvassing were constitutional, as evidenced in case law.¹⁴⁸ He argued that for over sixty years, permit requirements for door-to-door canvassers, which did not give discretion to the issuing authority, had been constitutional.¹⁴⁹ Chief Justice Rehnquist recognized that in *Cantwell*, the Court held that it would not allow persons, "under the cloak of religion,"¹⁵⁰ to commit frauds upon the public with impunity.¹⁵¹ He agreed with the Court in *Cantwell* that religion could be inconvenienced so that the state could prevent injury to its citizens.¹⁵²

Chief Justice Rehnquist was also troubled by the majority's lack of discernment regarding what test it applied to find that the ordinance violated the First Amendment.¹⁵³ He thought a straightforward application of intermediate scrutiny would have allowed the ordinance to easily pass constitutional muster.¹⁵⁴ He reasoned that because the ordinance would have allowed anyone to canvass in the Village, it was content neutral; the ordinance only required someone to get a permit before canvassing door-to-door.¹⁵⁵ He cited to *Ward v. Rock Against Racism*,¹⁵⁶ where even in a public forum, it was within the government's power to "impose reasonable restrictions on the time, place, or manner of protected speech" so long as the restrictions were content-neutral in nature and narrowly tailored to serve a significant governmental interest, and there also had to be room for ade-

145. *Id.* at 172-73.

146. *Id.* at 173.

147. *Id.*

148. *Id.* at 173-74 (citing *Hynes v. Mayor of Oradell*, 425 U.S. 610, 616-17 (1976); *Martin v. City of Struthers*, 319 U.S. 141, 148 (1943); *Cantwell v. Connecticut*, 310 U.S. 296, 306 (1940)).

149. *See id.* (pointing out that Justices Douglas and Black, who had the Supreme Court's most expansive view of the First Amendment, believed permit requirements were constitutional).

150. *Cantwell*, 310 U.S. at 306.

151. *See Watchtower Bible & Tract Soc'y of N.Y., Inc. v. Vill. of Stratton*, 536 U.S. 150, 174 (2002) (quoting *Cantwell*, 310 U.S. at 306).

152. *See id.* (quoting *Cantwell*, 310 U.S. at 306).

153. *Id.* at 175.

154. *See id.* (recognizing that there was no support in case law for applying anything more stringent than intermediate scrutiny).

155. *Id.*

156. 491 U.S. 781 (1989).

quate alternative ways to communicate information effectively.¹⁵⁷ The Village ordinance did not bar citizens from going door-to-door because obtaining a permit was all that was required before they were allowed to canvass.¹⁵⁸

Chief Justice Rehnquist continued by arguing that states may prevent fraudulent solicitation by requiring strangers to identify themselves before allowing them to solicit in the community.¹⁵⁹ The ordinance did not forbid door-to-door canvassing, for it merely required the canvasser to obtain a permit, which was granted without discretion by the mayor prior to canvassing.¹⁶⁰

Chief Justice Rehnquist believed that the Village's significant interest of preventing crime should have rendered the ordinance constitutional.¹⁶¹ He relied on the Court's assertion in *Martin* that door-to-door canvassing posed a risk of crime.¹⁶² He reasoned that this assertion should have enabled the Village to rely on the Court's rationale in *Martin*.¹⁶³ While the majority conceded that preventing crime was an important interest, it stated that the absence of crime related to door-to-door canvassing lessened the interest.¹⁶⁴ Chief Justice Rehnquist thought that the Village should be able to rely on previous decisions and experiences of other jurisdictions regarding crime arising from door-to-door activity.¹⁶⁵ The double murder in Hanover was one example he offered to show that the Village should have been able to rely on the experiences of other jurisdictions in order to justify the ordinance.¹⁶⁶

157. *Watchtower Bible & Tract Soc'y of N.Y., Inc. v. Vill. of Stratton*, 536 U.S. 150, 175 (2002) (quoting *Ward*, 491 U.S. at 791 (quoting *Clark v. Cmty. for Creative Non-Violence*, 468 U.S. 288, 293 (1984))).

158. *Id.*

159. *Id.* at 174 (quoting *Cantwell v. Connecticut*, 310 U.S. 296, 306 (1940)).

160. *Id.* at 167, 175.

161. *See id.* at 177-78 (recognizing that the majority conceded that preventing crime was a valid interest, but it found that no special crime problem related to door-to-door solicitation was on the record and therefore the interest was lessened).

162. *Id.* (quoting *Martin v. City of Struthers*, 319 U.S. 141, 144 (1943)).

163. *Id.* (quoting *Martin*, 319 U.S. at 144).

164. *Id.*

165. *Id.*; *see also* *City of Erie v. Pap's A.M.*, 529 U.S. 277, 296-97 (2000). In *Erie*, the Court stated that a "city need not 'conduct new studies or produce evidence independent of that already generated by other cities'" to show the problem of crime "so long as whatever evidence the city relies upon is reasonably believed to be relevant to the problem that the city addresses." *Erie*, 529 U.S. at 296-97 (quoting *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 51-52 (1986)).

166. *Watchtower Bible & Tract Soc'y of N.Y. v. Vill. of Stratton*, 536 U.S. 150, 177 (2002). The other examples Chief Justice Rehnquist gave were: a man who solicited gardening jobs door-to-door and tied up and robbed elderly residents, a door-to-door vacuum cleaner salesman who raped a woman, and a man going door-to-door purportedly on the behalf of a church who committed sexual assaults. *Id.*

The majority found the interests of the Village too broad because they affected too many noncommercial canvassers, but Chief Justice Rehnquist believed that this finding was countered by the fact that noncommercial canvassers could violate "No Trespassing" signs and engage in criminal activity just as easily as commercial canvassers.¹⁶⁷ He argued that the ordinance was narrowly tailored to the important government interests of preventing crime and protecting the privacy of residents because it applied to everyone who canvassed door-to-door.¹⁶⁸

Chief Justice Rehnquist then addressed whether the ordinance served the important interests of protecting privacy and preventing fraud and crime.¹⁶⁹ He argued that by requiring a permit, a resident would receive fewer uninvited knocks.¹⁷⁰ He further argued that deterring criminals from taking advantage of door-to-door canvassing would not necessarily depend on them registering; the ordinance prevented and detected crime by making it a crime not to register.¹⁷¹ A law need not solve the crime problem to surmount intermediate scrutiny, for it need only further the interest in preventing the crime.¹⁷²

Chief Justice Rehnquist stated that a homeowner has a right to be left alone.¹⁷³ He did not understand why regulations concerning speech occurring on private property should be subjected to a higher level of scrutiny than regulations concerning speech taking place in public.¹⁷⁴ He argued that the Court's precedent was contrary to this distinction.¹⁷⁵

In addition to having an interest in preventing crime and protecting privacy, Chief Justice Rehnquist determined that the ordinance provided am-

167. See *id.* at 178-79 (quoting *Martin*, 319 U.S. at 144 (stating that regardless of whether a canvasser was distributing leaflets or selling pots, that person could "spy out" the home for potential burglary, lessening the peaceful enjoyment of the home)).

168. *Id.* at 178.

169. *Id.* at 178-79.

170. *Id.* at 179.

171. *Id.* Chief Justice Rehnquist elaborated that the murderers at Dartmouth College made five visits before finding their victims. *Id.* He argued that if there had been a permit requirement, they may have been stopped by the police or an alert neighbor before reaching their objective. *Id.*

172. *Id.* at 179-80.

173. *Id.* at 178.

174. *Id.* at 176.

175. *Id.* at 175. Chief Justice Rehnquist quoted the prominent Harvard Law School Professor Zechariah Chafee:

Of all the methods of spreading unpopular ideas, [house-to-house canvassing] seems the least entitled to extensive protection. The possibilities of persuasion are slight compared with the certainties of annoyance. Great as is the value of exposing citizens to novel views, home is one place where a man ought to be able to shut himself up in his own ideas if he desires.

Id. at 176 (quoting *Hynes v. Mayor of Oradell*, 425 U.S. 610, 619 (1976) (quoting ZECARIAH CHAFEE, *FREE SPEECH IN THE UNITED STATES* 406 (1954) (alteration in the original))).

ple alternatives to express one's views.¹⁷⁶ He reasoned that canvassers were free to go door-to-door if they filled out a permit application.¹⁷⁷ Additionally, even if one did not have a permit, that person could still communicate in public places.¹⁷⁸

Chief Justice Rehnquist feared that striking down the ordinance would provide for less door-to-door communication.¹⁷⁹ He argued that homeowners could place a "No Solicitation" sign on their property and it would be a crime to ignore the sign's warning.¹⁸⁰ If the government did not have the right to regulate non-commercial door-to-door canvassers, many residents would decide to place "No Solicitation" signs on their property, thereby cutting off door-to-door communication completely.¹⁸¹

IV. IMPACT

Since the Court's decision in *Watchtower*, courts have sought to distinguish the holding by differentiating between commercial and noncommercial canvassing laws.¹⁸² In *Anderson v. Treadwell*,¹⁸³ the Second Circuit rejected an argument by real estate brokers to strike down an ordinance that forbid them from canvassing in certain neighborhoods that were "at risk" for "blockbusting."¹⁸⁴ The court rejected the Supreme Court's approach in *Watchtower*, reasoning that it applied only to noncommercial speech.¹⁸⁵ The important interest of prohibiting "blockbusting" barred the real estate brokers from succeeding in their constitutional challenge.¹⁸⁶

While courts have not been quick to expand the Supreme Court's opinion in *Watchtower* to commercial canvassing laws,¹⁸⁷ the decision prompted some municipalities to look hard at their current ordinances, and

176. *Id.* at 180.

177. *Id.*

178. *Id.*

179. *Id.*

180. *Id.*

181. *Id.*

182. *See, e.g., Anderson v. Treadwell*, 294 F.3d 453, 462 (2d Cir. 2002).

183. 294 F.3d 453 (2d Cir. 2002).

184. *Anderson*, 294 F.3d at 456-57. Blockbusting is the practice of soliciting real estate sales by making representations that the neighborhood is changing in racial, ethnic, or religious character. *Id.* at 457. Section 296(3-b) of New York Human Rights Law outlaws this practice. *Id.*; N.Y. EXEC. LAW § 296(3-b) (McKinney 2001). Section 442-h of New York Real Property Law allows the Secretary of State to prohibit all solicitations of residential real estate listings and sales in a defined geographic area that have been found to be subject to blockbusting practices. *Anderson*, 294 F.3d at 457; N.Y. REAL PROP. LAW § 442-h(3) (McKinney 2001).

185. *Anderson*, 294 F.3d at 461.

186. *See id.* (realizing that the privacy of residents is an important interest that a government can safeguard through regulation of solicitation).

187. *See, e.g., id.; Anderson v. Treadwell*, 294 F.3d 453, 461-65 (2d Cir. 2002).

in some cases, ban the requirement of permits for commercial door-to-door canvassing.¹⁸⁸ In two suburban Chicago communities, Inverness and Lake Barrington, local boards voted to abandon registration and background checks for anyone wanting to conduct door-to-door business.¹⁸⁹ Though neither ordinance regulated religious or political canvassers, the attorney for both communities recommended the change.¹⁹⁰ In Sunrise, Florida, the city attorney recommended that the city drop the requirement that people soliciting for charities pay for a city permit before going door-to-door.¹⁹¹

While some municipalities changed their ordinances to allow commercial canvassing without a permit, others believed that their ordinances complied with the Court's decision in *Watchtower* because the ordinances did not regulate noncommercial canvassers and the Court's decision in *Watchtower* did not apply to commercial canvassing regulations.¹⁹² West Lafayette, Indiana, concluded that its ordinance requiring door-to-door commercial canvassers to obtain a license from the police department was not affected by the Court's decision in *Watchtower*.¹⁹³ Mount Vernon, New York, recently reviewed its ordinance that required commercial vendors to pay a fee, concluding that the ordinance was distinct because it allowed for noncommercial door-to-door canvassing.¹⁹⁴ Undoubtedly, many other municipalities have ordinances with similar restrictions on commercial canvassers that do not restrict noncommercial canvassing.¹⁹⁵

Still other communities have been forced to change their ordinances because they required permits for religious and political noncommercial canvassers.¹⁹⁶ The city council of Mount Vernon, New York, while decid-

188. Aamer Madhani, *Suburbs Relax Laws on Home Canvassing*, CHI. TRIB., Aug. 9, 2002, at 1; Jeremy Milarsky, *Solicitors Can Skip Permits*, S. FLA. SUN-SENTINEL, Aug. 9, 2002, at 1.

189. Madhani, *supra* note 188, at 1.

190. *Id.* The attorney stated, "I don't think the ruling leaves any practical room for a system of permits. . . . The feeling is, if you are going to have people register, it should be across the board. It can be problematic to have restrictions on some people and not on others." *Id.*

191. Milarsky, *supra* note 188, at 1 (stating that the residents who do not wish to be bothered by salespeople can put up "No Soliciting" signs and trespassers will be arrested).

192. Stacy Brown, *Door-to-Door Speech Protected*, J. NEWS, June 18, 2002, at 1A; Marc B. Geller, *Door-to-Door Ruling Pleases Leaders*, J. & COURIER, July 5, 2002, at 1A; Tony Mauro, *Church of Free Speech*, AM. LAW., Feb. 2002, at 67. Paul Polidoro, associate general counsel for Watchtower, stated that most municipalities have allowed Jehovah's Witnesses to go door-to-door and that only "pockets around the country" have regulated permit requirements. Mauro, *supra*, at 67.

193. Geller, *supra* note 192, at 1A.

194. Brown, *supra* note 192, at 1A.

195. *All Things Considered* (National Public Radio (NPR) radio broadcast, June 17, 2002). There are many local governments requiring permits specifically for commercial solicitation; there are fewer permit regulations that address political, religious, and charitable canvassers. *Id.*

196. Stacy Brown, *Mount Vernon*, J. NEWS, July 1, 2002, at 3B; Harriet Chiang & Ryan Kim, *Door-to-Door Soliciting Ruled Constitutional Right*, S.F. CHRON., June 18, 2002, at A1.

ing to keep regulations on commercial canvassers, was forced by the Court's decision in *Watchtower* to stop requiring religious canvassers to buy permits before going door-to-door.¹⁹⁷ Though it rarely enforced its ordinance banning religious or charitable organizations from going door-to-door, Pleasanton, California, was prepared to rework its ordinance to render it consistent with the Court's decision in *Watchtower*.¹⁹⁸

Jehovah's Witnesses were not the only group that benefited from the decision in *Watchtower*.¹⁹⁹ In 1983, outside of Pittsburgh, Pennsylvania, the youth pastor of Calvary Baptist Church (CBC) was stopped by police for going door-to-door on a "crusade."²⁰⁰ Ten years later, a similar confrontation occurred between a church staff member and authorities.²⁰¹ Because of this constriction of its First Amendment rights, CBC, along with forty-five other independent Baptist churches, joined the Jehovah's Witnesses lawsuit against the Village by filing an amicus curiae brief.²⁰² CBC was concerned that the Village ordinance would spread, preventing it from "preach[ing] the gospel."²⁰³

197. Brown, *supra* note 196, at 3B. Praising the decision by the city council, local Jehovah's Witnesses welcomed the change. *Id.* The ordinance that was repealed stated: "Anyone canvassing or soliciting on behalf of a religious organization without a permit shall be guilty of a violation punishable by a fine not to exceed \$150 or a jail term not to exceed 90 days or both." *Id.* (citing MOUNT VERNON, N.Y., CITY CODE § 194-38 repealed).

198. Chiang & Kim, *supra* note 196, at A1.

199. Geller, *supra* note 192, at 1A; Karen Kane, *Communities Likely to Review Law After Ruling*, PITTSBURGH POST-GAZETTE, June 23, 2002, at N3.

200. Kane, *supra* note 68, at N4.

201. *Id.*

202. *Id.* CBC joining in the lawsuit with the Jehovah's Witnesses was difficult and somewhat surprising because it considered the Jehovah's Witnesses an "apostate religion" that "willfully departed from the clear teaching of the Scripture." *Id.*; see also Brief of Amicus Curiae Independent Baptist Churches of America at 1, *Watchtower Bible & Tract Soc'y of N.Y., Inc. v. Vill. of Stratton*, 536 U.S. 150 (2002) (No. 00-1737). The amicus brief stated:

The Independent Baptist Churches of America [(CBC and forty-five other Baptist churches)] believe that anonymous solicitation and canvassing of communities to solicit membership in churches and Sunday schools is both constitutionally protected and biblically prescribed. Specifically, the Independent Baptist Churches of America rely upon the First and Fourteenth Amendments to the United States Constitution, and upon the biblical imperatives stemming from Jesus Christ's command in Matthew 28:19, 20, and the biblical prescription for door-to-door, two-by-two canvassing as set forth in Luke 10:1:4.

Brief of Amicus Curiae Independent Baptist Churches of America at 1, *Watchtower* (No. 00-1737).

203. Kane, *supra* note 68, at N3 (quoting CBC's pastor who stated that though his church had not been challenged very much while engaging in door-to-door proselytizing, his church now had the authority of the Supreme Court to evangelize); see also Geller, *supra* note 192, at 1A. Geller's article highlighted a Maranatha Baptist Church pastor who supported the *Watchtower* decision saying, "This is America. We are supposed to have the freedom of speech." Geller, *supra*, at 1A. The pastor cited the importance of church members having the freedom to go door-to-door without first obtaining a permit to proselytize. *Id.* Politicians have also endorsed the deci-

V. CONCLUSION

Though it recognized a governmental interest to protect citizens from the potential of crime, fraud, and annoyance from door-to-door canvassers, the Supreme Court deemed these interests to be substantially outweighed by the “significant number of noncommercial ‘canvassers’ promoting a wide variety of ‘causes.’”²⁰⁴ The ordinance permit requirement, while but a “ministerial task,” interfered with a person’s right to free speech and “constitute[d] a dramatic departure from our national heritage and constitutional tradition.”²⁰⁵ Because the ordinance restrictions outweighed the high cost of limiting the speech covered, the Court held the ordinance unconstitutional.²⁰⁶

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sion to strike down the Village ordinance saying it upholds the Constitution’s guarantee of freedom of speech. *Id.*

204. *Watchtower Bible & Tract Soc’y of N.Y., Inc. v. Vill. of Stratton*, 536 U.S. 150, 165 (2002).

205. *Id.* at 166.

206. *Id.* at 169.