

1 IN THE SUPREME COURT OF THE UNITED STATES

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3 WATCHTOWER BIBLE AND TRACT :

4 SOCIETY OF NEW YORK, INC., :

5 ET AL.,

6 Petitioners :

7 v. : No. 00-1737

8 VILLAGE OF STRATTON, OHIO, :

9 ET AL. :

10 - - - - -X

11 Washington, D.C.

12 Tuesday, February 26, 2002

13 The above-entitled matter came on for oral

14 argument before the Supreme Court of the United States at

15 11:11 a.m.

16 APPEARANCES:

17 PAUL D. POLIDORO, ESQ., Patterson, New York; on behalf of

18 the Petitioners.

19 ABRAHAM CANTOR, ESQ., Concord, Ohio; on behalf of the

20 Respondents.

21 DAVID M. GORMLEY, ESQ., Solicitor General, Columbus, Ohio;

22 on behalf of Ohio, et al., as amicus curiae,

23 supporting the Respondents.

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P R O C E E D I N G S

(11:11 a.m.)

CHIEF JUSTICE REHNQUIST: We'll hear argument next in Number 00-1737, The Watchtower Bible and Tract Society of New York, v. The Village of Stratton, Ohio.

Mr. Polidoro.

ORAL ARGUMENT OF PAUL D. POLIDORO

ON BEHALF OF THE PETITIONERS

MR. POLIDORO: Mr. Chief Justice and may it please the Court:

It's 11:00 Saturday morning in the Village of Stratton. Good morning. In light of recent events, I've made a special effort to come to your door to speak to you about what the Prophet Isaiah has referred to as something better. That's the good news Christ Jesus spoke about, the good news of the Kingdom of God.

It is a criminal act to go from door to door in the Village of Stratton and deliver that message unless one has first obtained a permit from the village to do so. It is also illegal to go from door to door and hand out a leaflet that says, democracy is wonderful, please vote next week.

In drafting a permit scheme designed to address fraud and privacy that includes those interested in pure discourse, Stratton has eliminated the ability to engage

1 in door-to-door, one-on-one political advocacy. As such,
2 we submit the ordinance is overbroad and unconstitutional.

3 QUESTION: I don't see how it has eliminated any
4 chance of a political -- going door to door in a political
5 discourse if you register with the mayor and you can't be
6 turned down if you fill out that form. You can go door to
7 door, except where there's a no-trespassing sign.

8 MR. POLIDORO: Your Honor, we are not suggesting
9 at all that a resident cannot post a no-trespassing sign
10 and keep all away from their door. However, in order to
11 get the right to go to that door, one must go to the
12 mayor, give his name, give a brief description of the
13 cause they want to speak about, as well as their
14 association or affiliation.

15 We believe that this Court in McIntyre said
16 there's an interest in having anonymous works enter the
17 marketplace of ideas, and that unquestionably outweighs
18 any interest in requiring disclosure as a precondition to
19 entry.

20 QUESTION: Well, do you focus on the right of
21 anonymity, or the right of unrestricted speech, as of the
22 time you get to the door, or when you go to the mayor's
23 office, because our most recent cases talk about going to
24 the door, and that's where your brief focuses on.

25 It seems to me that what you've begun with, and

1 it's also troubling to me, is that you have to make the
2 disclosure to the mayor as well, so I take it those are
3 two different parts of your case.

4 MR. POLIDORO: Correct, Justice Kennedy.

5 QUESTION: But you emphasize only the latter,
6 really, in your briefs. Are the records that the mayor
7 keeps, are they open to the public?

8 MR. POLIDORO: They are, absolutely, indeed,
9 Your Honor. Under Ohio State law those records are open
10 to the public, so anyone would be able to go to look at
11 the record, which would include the name, your message,
12 and your associations.

13 QUESTION: So you would have no objection to
14 this statute if you didn't have to give your name?

15 MR. POLIDORO: Your Honor, we --

16 QUESTION: It's perfectly okay to say, you can't
17 talk to anybody without getting a permit, so long as you
18 don't have to give your name when you get the permit?

19 MR. POLIDORO: Your Honor, we believe the name
20 is the constitutional infirmity in deed.

21 QUESTION: That's the only problem, so if this
22 were revised somehow so that all you had to give was a
23 reference, maybe somebody in the community who would vouch
24 for the integrity of these Jehovah's Witnesses, that would
25 then be okay, because they wouldn't have to --

1 MR. POLIDORO: Your Honor --

2 QUESTION: The only problem is if they have to
3 give their name. You see, I would have thought you would
4 have objected to the necessity of going to the mayor and
5 saying, please, Mr. Mayor, can I talk to your citizens
6 going house-to-house, but that's not your problem. Your
7 only problem is that you have to disclose your identity.

8 MR. POLIDORO: No, Your Honor. We do not
9 believe that anyone needs to go to the Government for
10 permission to speak to their neighbor about any message,
11 most importantly, a message --

12 QUESTION: I think that's the strongest part of
13 your case.

14 MR. POLIDORO: Yes, Your Honor.

15 QUESTION: But you call them neighbors, but I
16 take it in many cases they're simply strangers who come
17 into town.

18 MR. POLIDORO: Well, actually, Your Honor, in
19 this circumstance the Village of Wellsville, which is a
20 neighboring village, has assumed responsibility for
21 preaching door to door in the Village of Stratton, and
22 many individuals are, in fact, known to each other, and
23 that's common in most areas of this country. We don't
24 believe that one is required to go to the Government to
25 get permission to speak to a private resident owner when

1 the power belongs to that private resident owner to keep
2 all away from their door if that owner so chooses.

3 QUESTION: Can you tell me why that is? I agree
4 that at some level it seems contrary to our traditions,
5 but if we can focus just on going to the mayor's office,
6 it seems to me that one of the strongest parts of your
7 case is that you have to identify your cause. That seems
8 problematic to me. Is that part of your case, and if so,
9 what is the root constitutional principle that's violated
10 there?

11 MR. POLIDORO: Your Honor, Jehovah's Witnesses
12 have a long historical memory as to what they've suffered
13 at the hands of municipalities --

14 QUESTION: Well --

15 MR. POLIDORO: -- purely to go door to door to
16 speak the good news. In this instance, the village is
17 compelling disclosure of name, cause, and associational
18 information.

19 QUESTION: What's wrong with identifying the
20 cause?

21 MR. POLIDORO: Your Honor, we believe that under
22 this Court's holding there are some individuals who do not
23 want to identify their cause. It opens them up, as
24 McIntyre said, to official retaliation, to economic
25 retaliation, to social ostracism, and perhaps, as McIntyre

1 said, they just don't want to disclose more of their
2 privacy than they have to.

3 We don't believe that on this record the village
4 has shown a necessity to so incumber pure discourse that
5 is not the source of harm. There's no allegation in this
6 case that pure religious speech, or pure political speech,
7 cause the harm that the village seeks to protect its
8 residents against.

9 QUESTION: But I take it your argument only goes
10 to the political speech, because as I understand it,
11 Jehovah's Witnesses do not object to identifying
12 themselves, and your concern is with the overbreadth that
13 goes into the political sphere, is that correct?

14 MR. POLIDORO: That is absolutely correct,
15 Justice Souter. Jehovah's Witnesses will, indeed,
16 identify themselves at the door, but it's their personal
17 decision to do so.

18 QUESTION: And yet the question that you phrase
19 says that this permit, which contains one's name, now,
20 when we turn to the village's brief, they say, no, it
21 doesn't. The permit doesn't require any names. You have
22 to have your name at the mayor's office, the mayor has to
23 accept all-comers, as long as you're not fraudulent.
24 There's no discretion that is what infected the old
25 prohibitions against the Jehovah Witnesses' speech, so

1 here anybody can go door to door. The name is at the
2 mayor's office. The name doesn't have to be disclosed to
3 the homeowner.

4 Now, you said in your brief the name has to be
5 disclosed to the homeowner. They say in their brief, no,
6 it doesn't, so which one is right?

7 MR. POLIDORO: Justice Ginsburg, if I might, at
8 the joint appendix on page 248a there's a copy of the
9 blank permit and it says, permit to canvass, to solicit,
10 et cetera, and it says, in accordance with the relevant
11 provision of the statute, the mayor of the Village of
12 Stratton, Ohio, has issued to the above applicant a
13 permit, the above applicant a permit, so we believe on the
14 plain language of the permit, the name is, indeed,
15 disclosed.

16 QUESTION: Did you ever apply for a permit?

17 MR. POLIDORO: We never did, Chief Justice
18 Rehnquist.

19 QUESTION: So you don't know, as a matter of
20 practical fact, how that would work out?

21 MR. POLIDORO: That's correct, with respect to
22 Jehovah's Witnesses.

23 QUESTION: It might be a number, applicant
24 number 5.

25 MR. POLIDORO: There's no showing, Justice

1 Souter, in the ordinance that there's any sort of
2 numbering scheme.

3 QUESTION: Well, no, there's no -- that's the
4 trouble, I think, with the argument. There is no showing,
5 but I suppose the exhibit is consistent with a numbering
6 as well as a naming system on the permit card.

7 MR. POLIDORO: But Justice Souter, I believe the
8 exhibit would be inconsistent with the concession of the
9 village that name disclosure is, in fact, required at the
10 door. At page 27 of their brief, and page 29 to 30 of
11 their brief, they do say that name identity is compelled
12 to be disclosed by a resident or by a police officer in
13 further of his official business.

14 QUESTION: They said about five times in their
15 brief that the permit that must be shown to the police
16 officer or the homeowner does not have a name on it --
17 does not have a name on it. Now, it's very confusing, but
18 this -- I looked at this and said, well, maybe this is the
19 bottom -- you have the application, then, you know, you
20 tear off the bottom, and this is the bottom, and the
21 applicant is above, but the permit that you put in your
22 pocket doesn't have that name.

23 If that's the case, then why isn't this case
24 just like the Buckley case, where this Court said, the
25 badge doesn't have to have the name on it, but we

1 recognize that the Colorado law also says that with every
2 set of petitions the circulator has to have an affidavit,
3 and that affidavit is filed with the petition, so there is
4 an official record of the name and the address of the
5 circulator. Why isn't this just the same thing?

6 MR. POLIDORO: It's different for two reasons,
7 Justice Ginsburg. First, Buckley dealt with the mechanics
8 of the electoral process, and clearly that's a compelling
9 governmental interest to ensure there's no corruption in
10 that process. The circulator in Buckley wanted to make
11 herself part of that process. The rules of that game are
12 that you submit your name when you submit the affidavits.
13 We have something different here indeed. We have just
14 pure speech unrelated to the mechanics of the electoral
15 process. The interesting --

16 QUESTION: I thought you were saying it only
17 applied to those who were engaged in the political -- I
18 thought that was the point of your overbreadth objection.

19 MR. POLIDORO: I think there's a distinction,
20 Justice Souter, to just pure speech, the dissemination of
21 information and ideas, and speech that in some way
22 involves the mechanics of the electoral process. You're
23 going to do something with the information that you obtain
24 from that householder, and then submit yourself to an
25 area, an arena that the Government has a right to have

1 some play in. We don't submit that the Government does
2 have a right in one-on-one intimate conversation about
3 religion or politics, to have a play there.

4 QUESTION: But one of your examples was that
5 door to door solicitation of signatures for an initiative
6 to put on the ballot, and that's exactly what was involved
7 in the Buckley case.

8 MR. POLIDORO: Yes, Justice Ginsburg, but that
9 disclosure took place after the one-on-one dissemination
10 of information was done. If that individual did not want
11 to submit those affidavits, she could have maintained her
12 anonymity. The question is, when can the Government
13 compel you --

14 QUESTION: She could not have been a circulator,
15 then, because a condition of being a circulator -- she
16 could not have submitted her petition, because to submit
17 her petition she has to have this affidavit, and I don't
18 see -- I really can't see any difference in consequence
19 whether the official form is made before or made after.
20 The point is that the name and address is in an official
21 record.

22 MR. POLIDORO: Because of the compelling
23 governmental interest that's involved, Justice Ginsburg,
24 and that's the distinction. When we have one-on-one --

25 QUESTION: That doesn't handle your example. I

1 mean, why don't you just say it was a bad example? You
2 shouldn't have used the example. It's not worth your
3 time. You shouldn't have used the example of a petitioner
4 circulator. You are concerned about people who just want
5 to come up and say, I want to talk to you about why you
6 should vote for Smith.

7 MR. POLIDORO: That's correct, Justice Scalia.

8 QUESTION: Is that the case?

9 MR. POLIDORO: It is, indeed, the case.

10 QUESTION: Is it the case that your clients
11 don't ask for any money, not a penny, and they don't sell
12 Bibles, and they're not selling anything, all that they do
13 is say, I want to talk to you about religion? They don't
14 ask for any --

15 MR. POLIDORO: Your Honor, the record is
16 absolutely clear, in the Village of Stratton, Jehovah's
17 Witnesses did not ask for money. In other jurisdictions
18 the record is equally clear that sometimes they will
19 mention a voluntary donation arrangement. However, to
20 make our interest absolutely clear, what we're involved
21 with in Stratton, we did not mention the voluntary
22 donation arrangement. We are not seeking a solicitation
23 of funds. We're merely seeking to talk to people about
24 the Bible.

25 Now, Justice Ginsburg --

1 QUESTION: Don't you hand out the Watchtower,
2 too?

3 MR. POLIDORO: We do, Your Honor, on a no-cost
4 basis if someone's interested in reading it. We would
5 send that out.

6 QUESTION: So you said just -- you briefly
7 mentioned -- because you know, I've had many fine
8 conversations with Jehovah's Witnesses. It's fine. But
9 I've never noticed any of them objecting to anything about
10 giving their name. I mean, is this a real issue here,
11 that for some reason this particular group objects to
12 giving their name? What's the situation?

13 MR. POLIDORO: No, Your Honor, Jehovah's
14 Witnesses have no objection to giving their name. The
15 objection to giving their name comes in the realm of
16 anonymous political discourse. Jehovah's Witnesses have
17 felt that this ordinance, which is designed to regulate
18 business transactions, need not have reached pure
19 religious speech, need not have reached pure political
20 speech.

21 QUESTION: But you would say that without
22 reference to the name. Isn't your position that you don't
23 have to go to the mayor and ask for permission to talk to
24 a neighbor about something that's interesting?

25 MR. POLIDORO: That's correct, Your Honor.

1 That's quite correct.

2 QUESTION: Is that here in front of us? I mean,
3 what I'm having a hard time getting our hands on is, it
4 looks as if a group of people who really don't mind giving
5 their name are objecting to the name of a different group
6 of people who might not, and those might be people who
7 might want to say, vote for Smith, and what's worrying me
8 about deciding this case in the context which is obvious
9 from the briefs is, that might have considerable legal
10 implications for the question of whether you can require
11 disclosure of campaign contributions, which is a totally
12 different issue, but would seem legally related, so I'd
13 appreciate those three things that I've mentioned -- you
14 see what I'm -- what the blur is in my mind, and I'd
15 appreciate your views on that.

16 MR. POLIDORO: Justice Breyer, it has been our
17 contention that the ordinance was drafted in an overbroad
18 manner, meaning reaching speech that was not the source of
19 harm, including our religious speech, but also including
20 pure political speech. When we put forth the interest of
21 those interested in anonymous political discourse, that
22 was under this Court's overbreadth doctrine, and we don't
23 believe that the Court has to wait until a violation takes
24 place to remove this potential weapon, some sort of weapon
25 from the hands of the village.

1 QUESTION: Of course, to do that we would just
2 say, you can't require the names to be disclosed. We can
3 still require you to check in with the mayor before you go
4 door to door.

5 MR. POLIDORO: Your Honor, we don't see how --

6 QUESTION: Have you photograph taken, maybe, you
7 know. You don't have to give a name, but we'll have your
8 photograph on file just in case. That's okay, then,
9 right?

10 MR. POLIDORO: No, Justice Scalia.

11 QUESTION: That's what you want us to do?

12 MR. POLIDORO: No, not at all. We don't
13 believe --

14 QUESTION: I didn't think so.

15 MR. POLIDORO: We don't believe that this Court
16 should sanction a regulation of a Government that requires
17 one citizen to get a license to speak to another citizen
18 at that citizen's home.

19 QUESTION: Okay, but the basis -- as I
20 understand the nub of your argument is -- goes back to
21 your answer to Justice Ginsburg, and that is -- in
22 distinguishing Buckley, and I think what you were saying
23 was, in Buckley the Government had an interest because it
24 had an interest in checking the veracity of the
25 endorsement solicitation, the petition solicitation

1 process, are these real people, go to the person who asked
2 and check, whereas here, if we're not talking about the
3 solicitation of money and of signatures in a political
4 sphere, there's nothing for the Government to verify, and
5 therefore there is no interest here, whereas there was an
6 interest in Buckley, and that's the distinction. Is -- am
7 I --

8 MR. POLIDORO: Precisely.

9 QUESTION: -- stating your argument correctly?

10 MR. POLIDORO: Precisely, Justice Souter.

11 QUESTION: Okay.

12 MR. POLIDORO: Precisely.

13 QUESTION: The brief didn't mention -- you took
14 Buckley as being 100 percent in your favor, and that's
15 what surprised me, is that Buckley made the very
16 distinction that you say is inappropriate here, that is,
17 face-to-face encounter, you don't have to have your name,
18 but back in an official's office, you do.

19 MR. POLIDORO: Your Honor, I think that Buckley
20 followed on language in Your Honor's portion of the
21 opinion in McIntyre, where you spoke to limited -- there
22 might be larger circumstances where identification might
23 be required, and in the electoral process, the mechanics
24 of how an election works, those are larger purposes.

25 We don't think those larger purposes are present

1 in one-on-one conversations --

2 QUESTION: You have in your case -- most of the
3 Jehovah's Witnesses cases dealt with that official who was
4 exercising discretion to keep out the Witnesses but
5 letting in the Republicans, and that was that line of
6 cases. Then we have the, what I call the Village Green
7 line of cases. McIntyre would fit in that category.

8 But is there any precedent for saying that if
9 you want to go into private homes in this town, we want to
10 know who you are, and -- but anybody, that applies to
11 anybody, and we will give the permit to anybody.

12 MR. POLIDORO: Justice Ginsburg, the only
13 precedent that I'm aware of with respect to identification
14 schemes comes from the dicta in Cantwell and Martin that
15 speaks about a municipality, a municipality's interest in
16 knowing strangers in the community when connected with the
17 solicitation of funds. I don't believe there's any --

18 QUESTION: Don't you think that the practice
19 around the country of various towns and cities is to
20 require permits for people to go door to door in
21 residential areas? I think I even live in a community
22 that probably does that. The concern may stem from a
23 concern about preventing burglaries and unfortunate
24 incidents in the area, and they want to identify the
25 people who are going door to door.

1 MR. POLIDORO: Justice O'Connor, my experience
2 is quite to the opposite, that after the battles between
3 Jehovah's Witnesses and the municipalities in the thirties
4 and forties, municipalities have stopped attempting to
5 regulate Jehovah's Witnesses by forcing them to get a
6 permit to go from door to door. This is an experience
7 that we're having in the past few years, that more and
8 more municipalities are now requiring not only a permit
9 but, as Justice Scalia touched on, finger-printing.

10 QUESTION: Well, there was a story in the paper
11 just last week here about the double murder up at
12 Dartmouth, how the kids who did it went from house to
13 house purporting to be taking a survey, and then what they
14 were actually doing was casing the houses for robbery, so
15 that's certainly something that a municipality can take
16 into consideration, isn't it?

17 MR. POLIDORO: Chief Justice Rehnquist, we think
18 it's implausible to think that someone intent on
19 committing a violent crime would stop at the city hall to
20 get a permit or in any way be deterred, and in the
21 circumstance Your Honor posits of someone just going door
22 to door and observing, or taking notes, the ordinance in
23 this instance doesn't prevent that. The only time the
24 ordinance comes into play is --

25 QUESTION: But it does give a record of who it

1 was, which would probably deter someone.

2 QUESTION: I think you're wrong when you said,
3 only if they speak, that the mayor requires anybody who
4 rings door to door. That was my understanding of this
5 ordinance. Anybody who rings door to door has to sign up
6 in the mayor's office.

7 MR. POLIDORO: No, Chief Justice -- no, Justice
8 Ginsburg, I believe it's anyone who wants to go door to
9 door to discuss a cause, and that's the language of the
10 ordinance. It's the --

11 QUESTION: Now, suppose --

12 QUESTION: It goes broader than that. It would
13 apply if you were leaving a leaflet saying, I repair
14 roofs, or I do painting, and I'm just going to leave it at
15 the door. It obviously covers all of that without saying
16 a thing.

17 MR. POLIDORO: Which is a speech interest,
18 Justice O'Connor. That is a speech interest.

19 QUESTION: But suppose I am concerned that the
20 mayor, in my view, or the Government has no right to
21 demand previous registration or to give his consent before
22 I go to my neighbors to talk about neighborhood problems,
23 or whatever. What case do I put down when I write the
24 opinion to that effect for --

25 MR. POLIDORO: Excuse me, Justice Kennedy, I --

1 QUESTION: What's your best case, or best --
2 what are your best cases for the proposition that it is
3 simply unconstitutional for the Government to require a
4 permit before you go door to door to talk about a cause?
5 What are your best cases?

6 MR. POLIDORO: Martin, predicated on Lovell,
7 predicated on Schneider. There are interests that the
8 Government may have to interpose themselves into that
9 process, Your Honor, but there has to be some sort of real
10 substantial basis. We think the equity lies with --

11 QUESTION: Most of those cases -- I think
12 they're the closest, too, but they're not right on point,
13 because they were concerned with the discretion --

14 MR. POLIDORO: Justice Kennedy --

15 QUESTION: -- that the official had --

16 MR. POLIDORO: -- there is discretion in this
17 instance. If we look at the ordinance --

18 QUESTION: And also may I say there's language
19 in those cases that suggests that it would be -- you read
20 it yourself, this stranger has to identify himself or
21 herself. That runs in those cases as well, but those were
22 all cases where the danger was the official who was going
23 to pick and choose, and it was wide-open discretion.

24 MR. POLIDORO: If I might, Justice Ginsburg and
25 Justice Kennedy, when we look at the ordinance on appendix

1 4a, and it's section 116.03(b)(6), it says that the mayor
2 can ask for such other information --

3 QUESTION: 4a of the petition?

4 MR. POLIDORO: Of -- I'm sorry, it's our brief
5 for petitioners, Chief Justice Rehnquist, page 4a, section
6 (b)(6), such other information concerning the registrant
7 and its business or purpose as may be reasonably necessary
8 to accurately describe the nature of the privilege desire.

9 Now, in this instance --

10 QUESTION: That has been taken out of the case.

11 MR. POLIDORO: No. No, Justice --

12 QUESTION: I thought that the only thing that
13 the mayor asked -- isn't -- wasn't there something in the
14 district court opinion that cut that back?

15 MR. POLIDORO: No, Your Honor. That is still
16 very much in the case, and very much part of the case.
17 The only thing the district court cut out was the
18 reference to Jehovah's Witnesses in the administrative
19 paperwork. The Court also said that it was an onerous
20 requirement to make individuals list all the addresses one
21 wanted to visit, and said the village could cure that.

22 QUESTION: But I thought the village made a
23 concession. It says, all we're going to ask is the name.
24 Didn't the village make that concession in some court?

25 MR. POLIDORO: No, Your Honor, not at all. This

1 provision --

2 QUESTION: I'll ask the village if they did,
3 because I remember something that said we're going to ask
4 only for the name and the address.

5 MR. POLIDORO: No, it --

6 QUESTION: Even if that's so, I mean, where a
7 slight state of confusion is, I thought this case now
8 sounds very theoretical. I thought it would have to do
9 with requiring your name on a permit.

10 Now I get into it, and I discover we don't know
11 if they require the name on a permit. Then I thought,
12 well it had to do with requiring the name when you go to
13 the city hall, and now I see there's a problem here
14 because your group doesn't mind, but you're trying to talk
15 through somebody else. Then I thought, well, maybe it
16 requires a matter of discretion at the city hall, but then
17 I get a record which is forcing me to decide this on the
18 assumption, all you do is go to city hall, and they give
19 it to you automatically. Then I thought it had to do with
20 fraud, but there's no money.

21 So now I think it has to do with somebody who
22 goes there and asks for a permit, which he gets
23 automatically, and what's the objection to that? You
24 don't want to do it, and what's to be said on the other
25 side, not much --

1 (Laughter.)

2 QUESTION: -- but I guess they'll say, well,
3 here at least he'll read the rules. At least he'll see
4 that there are some people who don't want any
5 solicitation, and we can be sure that that will happen, so
6 it looks like there's something on the one side and I
7 don't know how much on the other.

8 QUESTION: Mr. Cantor, I'm confused here. I
9 thought that you object to this even if the name doesn't
10 have to be disclosed, and even if there is not excessive
11 discretion with the mayor.

12 MR. POLIDORO: Exactly, yes.

13 QUESTION: Is that your objection, that you do
14 not want to have to go to city hall in order to ring
15 doorbells --

16 MR. POLIDORO: Precisely, Justice Scalia.

17 QUESTION: -- no matter what?

18 MR. POLIDORO: Precisely.

19 QUESTION: They want you there because they know
20 at least you'll find out which homeowners don't want
21 people around, and you'll read what the rules are, all
22 right. Is that good enough?

23 MR. POLIDORO: Justice Breyer, we have not
24 contested that provision of the ordinance, section 116.07,
25 which allows a homeowner to post a no-solicitation sign

1 and then go to the village and say, I want this group and
2 not this group, has not been contested.

3 QUESTION: But your position is, of course, that
4 Governments always want to know what it's people are
5 thinking, but they don't have any right to find out.

6 MR. POLIDORO: Well, that's an expression of the
7 residents' interest in who they want. It's not the
8 Government making the decision for them.

9 Now, with respect to the --

10 QUESTION: I'm talking about your clients.

11 MR. POLIDORO: Your Honor, we --

12 QUESTION: Take it. Take it. It's good.

13 (Laughter.)

14 MR. POLIDORO: I think that's an appropriate
15 point Chief Justice Rehnquist asked. If I may reserve the
16 balance of my time.

17 QUESTION: Very well, Mr. Polidoro.

18 MR. POLIDORO: Thank you.

19 QUESTION: Mr. Cantor, we'll hear from you.

20 ORAL ARGUMENT OF ABRAHAM CANTOR

21 ON BEHALF OF THE RESPONDENTS

22 MR. CANTOR: Mr. Chief Justice, and may it
23 please the Court:

24 Stratton is exercising its police power when it
25 seeks to protect the privacy of its residents, when it

1 seeks to deter crime. The no canvassing or soliciting on
2 private property ordinance simply requires preregistration
3 and the carrying of a permit during the course of the
4 door-to-door activity.

5 QUESTION: Do you know any other case of ours
6 that has even involved an ordinance of this breadth, that
7 involves solicitation, not asking for money, not selling
8 goods, but even, you know, I want to talk about Jesus
9 Christ, or I want to talk about protecting the
10 environment? Is there -- have we had a case like that?

11 MR. CANTOR: There is --

12 QUESTION: The mere fact that -- I'm familiar
13 with something like -- maybe they've become current now,
14 but the mere fact that I don't even know of such cases,
15 over two centuries, makes me --

16 QUESTION: You haven't been around that long.

17 (Laughter.)

18 QUESTION: I -- do you know of any?

19 MR. CANTOR: Your Honor, there's no holding by
20 this Court that identifies this --

21 QUESTION: Never mind a holding, a case. A case
22 in this Court involving -- the breadth of this thing is
23 novel to me.

24 MR. CANTOR: There is no case that identifies
25 the breadth of this case, but perhaps that might be part

1 of the beauty, beauty in the sense that it is content-
2 neutral, and that is --

3 QUESTION: You think it's a beautiful idea that
4 I have to ask the Government for permission before I go
5 down the block, where I don't know all of the people, I
6 wave to them but I don't really know them, I say, I want
7 to talk to you because I'm concerned about the garbage
8 pick-up, because I'm concerned about our Congressman,
9 whatever. I have to ask the Government before I can do
10 that?

11 MR. CANTOR: No, Your Honor --

12 QUESTION: It's astounding.

13 MR. CANTOR: No, Your Honor. What we are
14 talking about is canvassers, hawkers, and those who are
15 going door to door for a cause.

16 QUESTION: Well, how about trick-or-treaters?
17 Do they have to go get a permit?

18 (Laughter.)

19 MR. CANTOR: Interesting --

20 QUESTION: Under this ordinance it looks like
21 it, doesn't it?

22 MR. CANTOR: Your Honor --

23 QUESTION: And they're soliciting, too.

24 (Laughter.)

25 QUESTION: They are. Does it cover them? I'm

1 serious.

2 MR. CANTOR: The answer is no, and --

3 QUESTION: Why not? Literally it does.

4 MR. CANTOR: The track --

5 QUESTION: You may not enforce it, but it

6 literally covers them, doesn't it?

7 MR. CANTOR: That hypothetical was raised by the

8 trial court judge, Your Honor, and it was answered by

9 Mr. Bruzzese to the negative, and the reason why it was

10 answered to the negative is that these people are not --

11 who are going door to door are not seeking to communicate,

12 they are begging candy, and therefore --

13 QUESTION: That's Girl Scouts.

14 MR. CANTOR: Yes, Girl Scouts would be covered.

15 QUESTION: Or Christmas carollers?

16 MR. CANTOR: Sale -- sale would constitute

17 conduct that would be require --

18 QUESTION: Or how about borrowing --

19 QUESTION: This is really --

20 QUESTION: -- a cup of sugar from your neighbor?

21 Do I have to get a permit to go borrow a cup of sugar from

22 my neighbor?

23 MR. CANTOR: No, Your Honor, I don't believe --

24 QUESTION: This is really a novel argument.

25 You're saying this thing is okay, this ordinance is okay

1 because it addresses only communication.

2 (Laughter.)

3 QUESTION: Anything else is okay. It's only
4 communication that we're concerned about.

5 MR. CANTOR: The limiting language, Your Honor,
6 deals with canvassing and hawking of the area.

7 QUESTION: Okay, go back to Justice Kennedy's
8 example that started all of this. The neighbor wants to
9 go up and down the street because he doesn't think the
10 garbage collection is very good. That's a cause. He's
11 got to register, right?

12 MR. CANTOR: No, Your Honor.

13 QUESTION: Why?

14 MR. CANTOR: Because it is not the type of cause
15 that the communication is directed at.

16 QUESTION: Well, who knows? I mean, where's the
17 restricted definition of cause?

18 MR. CANTOR: Within the beginning of the
19 ordinance.

20 QUESTION: And what's the language that you rely
21 on?

22 All right, you're on page what?

23 MR. CANTOR: I'm looking at section 116.03. It
24 is in the respondent's brief, page 3a.

25 QUESTION: 3a, okay. Okay, now tell me where

1 you're reading from, and let's go --

2 MR. CANTOR: No canvasser, solicitor, peddler,
3 hawker, itinerant merchant, or transient vendor of
4 merchandise or services who is described in 116.01 of this
5 chapter, and who intends to go in or upon private
6 property, or a private resident of the village, for any
7 other purposes described in .01, shall go in or upon such
8 private property or residence without first registering.

9 QUESTION: Okay. Well, in .01, where does the
10 definition exclude people with a cause, like Justice
11 Kennedy's neighbor who wants the garbage picked up?

12 QUESTION: I mean, unless you're interpreting
13 canvasser very literally, in which case it wouldn't
14 include Jehovah's Witnesses -- why are Jehovah's Witnesses
15 covered? Are they canvassers, solicitors, peddlers,
16 hawkers, itinerant merchants or transient vendors of
17 merchandise or services? They're none of those, are they?

18 MR. CANTOR: The district court determined that
19 they were canvassers.

20 QUESTION: They were canvassers. So you have a
21 very broad definition of canvassers, if it includes
22 Jehovah's Witnesses. I would have thought a canvasser was
23 somebody who said, I'm doing a survey, I'm canvassing
24 public opinion, or something like that, but if it includes
25 Jehovah's Witnesses, it certainly includes the, you know,

1 the garbage canvasser, so --

2 QUESTION: The dictionary says canvasser is a
3 person who's looking for a vote. It doesn't include them
4 at all, at least the dictionary definition wouldn't, but
5 you've -- it's conceded that the city does -- what's the
6 purpose? That is, what -- your brief is all about fraud,
7 but fraud seemed to have to do with money, and the
8 ordinance seems to have to do with money. I haven't read
9 anything in your brief that says what the purpose is for
10 requiring these people who are not interested in money,
11 not interested in selling, not even interested in votes,
12 to go the city hall and register. What's the city's
13 purpose?

14 MR. CANTOR: The city's purpose is to prevent
15 annoyance of the property owner. Chief Justice Rehnquist
16 mentioned that there was a no-trespassing provision within
17 the ordinance. There is also a no-solicitation -- there's
18 a no-trespassing portion in the ordinance. There's a no-
19 solicitation portion in the ordinance. That portion
20 allows a registrant who lives within the community and who
21 has private property to register with the community and
22 indicate they do not want to be solicited, they don't want
23 to be canvassed.

24 QUESTION: That's not challenged, as I
25 understand it.

1 MR. CANTOR: That is correct, Your Honor, that
2 is not challenged.

3 QUESTION: All right, so given that, what's the
4 purpose of the registration?

5 MR. CANTOR: The purpose is to prevent -- the
6 purpose of the registration, the initial registration is
7 to identify who in the community is going door to door.

8 QUESTION: Because?

9 MR. CANTOR: Because of two factors, the privacy
10 of the person who is --

11 QUESTION: How does it work? Spell it out. I
12 mean, how does it work? I mean, what's the connection
13 between the purpose and the result, which is you have to
14 come to the mayor and get a permit? It's not obvious to
15 me. Maybe I'm being dim, but I don't see it. I see it
16 with asking for money. You want to know who's asking for
17 money so if they lie, you find out later, but where
18 they're just interested in a cause, spell it out, if you
19 can, please, for me.

20 MR. CANTOR: In Martin v. Struthers, Your Honor,
21 in footnote 5, this Court relied upon the utilization of a
22 book as well as an FBI bulletin to determine that those
23 who go door to door may be doing so as a guise. The Sixth
24 Circuit Court of Appeals identified that you cannot
25 determine who is going door to door with regard to the

1 criminality aspect of it, and therefore it would not
2 suffice to simply say that just because you are having a
3 concern over money or sales, that that's enough. You can
4 go door to door for a purpose such as spreading the new,
5 giving additional information. That can be the outward,
6 the outward point of view, but in reality it could be
7 something very different.

8 QUESTION: It could be, and I suppose you could
9 say everybody who gets up on a soapbox may provoke a riot,
10 but you know, this seems to me one of the normal risks of
11 life. It doesn't let the Government go around making it a
12 privilege to go -- I love the last provision of the
13 ordinance -- what is it, 116.03(b)(6) says that the mayor
14 can demand such other information concerning the
15 registrant and its business or purpose as may be
16 reasonably necessary to accurately describe the nature of
17 the privilege desired, the privilege of going about to
18 persuade your fellow citizens about one thing or another.
19 I just can't understand that.

20 QUESTION: That was the provision that I thought
21 was out of it because of the concession that the city
22 made. If I'm wrong on that --

23 MR. CANTOR: Your Honor, the provision remains.
24 The provision is a catch-all to determine -- make sure
25 that the identifying information is present, the

1 identification of the individual as well as the cause.

2 QUESTION: Wasn't there some point when the
3 mayor said, all I'm going to ask is the name and the
4 address?

5 MR. CANTOR: The first five sections of that
6 subsection give the information. That information is
7 consistent with this Court's suggestion in Martin v.
8 Struthers at footnote 14 as well as Cantwell.

9 The purpose has also been discussed in the
10 context, Your Honor, of how it would benefit the
11 community. There was testimony at the time of trial from
12 Helen MacMurray, chief of the public -- chief of the
13 Consumer Affairs Section of the Iowa Attorney General's
14 Office, and she determined that legislation of this type
15 is helpful because it deters individuals who have an
16 improper motive from signing up and going door to door.

17 QUESTION: Well, footnote 14 of Martin has to do
18 with solicitation of funds.

19 MR. CANTOR: That's correct, Your Honor.

20 QUESTION: And your ordinance is much broader
21 than that.

22 MR. CANTOR: That's correct, Your Honor.
23 There -- it is indistinguishable to determine who was
24 going door to door. The -- Justice O'Connor had indicated
25 a situation where people were claiming they were going

1 door to door prior to the commission of a murder. They
2 were going for a reason that was --

3 QUESTION: No. No. No, the -- footnote 14 of
4 Martin v. Struthers --

5 MR. CANTOR: Yes, Your Honor.

6 QUESTION: -- you cited when we were talking
7 about whether or not you can at least give your name, said
8 this is necessary for those who solicit funds, but your
9 ordinance goes much -- sweeps much more widely than the
10 solicitation of funds, so footnote 14 doesn't support the
11 ordinance that is now before us.

12 MR. CANTOR: I'm going to suggest to Your Honor
13 that it does, and the reason that it does is because it
14 requires identification information, and that
15 identification information is necessary regardless of
16 whether someone is going to solicit funds, or whether or
17 not he is going to go door to door for some other purpose,
18 as a pretext.

19 QUESTION: Well, what about using the telephone?
20 I -- you know, that's a common ploy of people who want to
21 commit a crime. You know, my car broke down, can I use
22 the telephone. Is there a risk of that? Of course. Of
23 course there's a risk. So should you require everybody
24 who rings a doorbell to get finger-printed at city hall
25 before you can ring a doorbell? That minor risk of a

1 crime occurring is enough to require everybody who wants
2 to ring a doorbell to register at city hall? Of course it
3 isn't.

4 MR. CANTOR: The determination of the nature and
5 the amount of risk is perhaps highlighted by MacMurray's
6 testimony. She found that legislation of this nature had
7 previously been suggested in communities where disasters
8 had occurred. It was her opinion that, as a result of
9 this type of legislation, that potential fraudulent
10 transactors decided to not register within the community
11 and would bypass it.

12 In addition, it was an aid to law enforcement in
13 the event that there was, in fact, some type of
14 criminality, and finally, it was an aid to the elderly,
15 and it was an aid to the elderly because it gave them a
16 bright line to determine whether or not the individual
17 before them was one that was properly registered. In
18 otherwise, it heightened the awareness of the propriety of
19 the individual at the door.

20 Both the district court as well as the Sixth
21 Circuit Court of Appeals determined that this was content-
22 neutral legislation, that it applied to the parties in
23 this case --

24 QUESTION: Well, McIntyre suggests that an
25 anonymity requirement makes it content-based. What are we

1 to do about that?

2 MR. CANTOR: Your Honor, the issue in -- at the
3 registration aspect deals with that we are not at the
4 point of persuasion. McIntyre was a automatic inclusion
5 of information when the reader took the document and was
6 attempted to be persuaded.

7 The pre-registration format is probably closer
8 to Buckley, where that is the other end of the book end,
9 where this is not at the point of persuasion. Buckley is
10 after the persuasion occurs, so we would suggest to you
11 that it is appropriate to register in advance of going
12 door to door to prove the purpose of the ordinance.

13 QUESTION: Well, the disclosure means that it
14 certainly is not anonymous. How do we resolve the dispute
15 on what the permit has to contain, whether it contains the
16 name or not?

17 MR. CANTOR: Your Honor, I would suggest that
18 you would resolve it based on the record. The record
19 identifies the permit. The record identifies an
20 identification of that permit, which is the testimony of
21 the village's mayor, and it is found at page 386 of the
22 joint appendix. That is the only information concerning
23 the identification of the permit.

24 QUESTION: Well, we're not supposed to be
25 resolving these back-door questions. In the first

1 instance you can't tell from that form whether it has an
2 applicant's name or a number or nothing.

3 MR. CANTOR: Your Honor, this case was tried on
4 the registration requirement. This, we would suggest to
5 you, is a belated attempt on the issue of the content of
6 the permit to bring it before the Court.

7 QUESTION: Well --

8 QUESTION: You mean, it originally was that they
9 just didn't want to register, anonymous or not?

10 MR. CANTOR: No, Your Honor. The attack was
11 always on the registration issue. The attack was always
12 to determine whether or not they were included within the
13 phraseology --

14 QUESTION: Right. Right.

15 MR. CANTOR: -- of the language.

16 QUESTION: Well, the question we took refers to
17 display upon demand.

18 MR. CANTOR: The permit --

19 QUESTION: We've not limited the case to that.

20 MR. CANTOR: The display, there is a display of
21 the permit required on demand.

22 QUESTION: One of the things in this record that
23 you did delete, at one time you gave the homeowners a
24 choice specifically of Jehovah Witnesses in or out, but --

25 MR. CANTOR: Yes, Your Honor.

1 QUESTION: And that, now you've deleted that,
2 but could the village say to the homeowner, it's your
3 choice, you tell us who you want and you don't want, and
4 we'll enforce that, so if you don't want the Jehovah
5 Witnesses you don't have to have them, you don't want the
6 Democrats you don't have to have them? Would that be
7 permissible for the village to do to facilitate the
8 homeowner's choice?

9 MR. CANTOR: The village would be acting as a
10 bulletin board. It would be the homeowner, the private
11 resident would be making a determination as to who would
12 be making the content, so in that type of a context --

13 QUESTION: And the village could enforce that
14 private discrimination?

15 MR. CANTOR: Your Honor, there is no requirement
16 that anyone decide that anyone allow someone else to come
17 into their home whether for a good or a bad purpose. The
18 individual has the right to exclude even valid ideas from
19 their home place. It is the privacy issue here that we
20 are suggesting --

21 QUESTION: Does the State -- when the State
22 assists that private choice -- we're talking about
23 limitations on the State, not on the homeowner.

24 MR. CANTOR: Well, we're only assisting -- the
25 prior cases that this Court has considered deals with the

1 Government being some type of a censor or a limiter of the
2 speech that is going.

3 Stratton doesn't do that. Instead, it says,
4 everyone's going to come to your door unless you register
5 to indicate no solicitation. At that point in time, the
6 identification of who can come to the door is identified
7 by the resident of that dwelling. That information is
8 provided to the person who is going door to door not to go
9 to this particular place if you fall within the framework.

10 QUESTION: Suppose the homeowner said, only
11 Caucasian solicitors?

12 MR. CANTOR: No, I believe that that would be
13 invalid on its face. The -- it would not be different
14 from something in a title search situation, where there
15 would be something, a remnant from the forties.

16 QUESTION: How is that any different from no
17 Jehovah Witnesses?

18 MR. CANTOR: Because the issue there is that
19 this is a speech that is not -- that they do not wish to
20 accept.

21 QUESTION: That's very nice. I don't know. I
22 don't know. We have general trespass laws, and I suppose
23 if somebody doesn't want a Jehovah's Witness to trespass
24 and is perfectly willing to let everybody else trespass, I
25 guess the State might enforce that. I don't know.

1 MR. CANTOR: Well, the issue here, Your Honor,
2 is dealing with whether or not this is a consensual
3 intrusion. If it's with consent, then there is no
4 trespass.

5 With regard to no solicitation, it should be
6 reminded that the record below would indicated that the
7 Jehovah Witnesses do not consider themselves as
8 solicitors, and therefore would not abide by a no
9 solicitation sign, and that -- they, however, would abide
10 by a no trespassing sign.

11 QUESTION: I take it there are many gated, so-
12 called private communities where the solicitor can never
13 go in at all. I don't know, maybe that -- I assume that's
14 the way they work. I'm not sure.

15 MR. CANTOR: In the Village of Stratton --

16 QUESTION: And in a sense, I guess you're just
17 trying to give your residents the protection that people
18 have when they live in a closed-in place.

19 MR. CANTOR: That would be appropriate to
20 compare it to.

21 QUESTION: Although I don't -- I haven't seen
22 any cases. That would be like Marsh v. Alabama, perhaps.

23 MR. CANTOR: Thank you, Your Honor. Thank you.

24 QUESTION: Thank you, Mr. Cantor.

25 We'll hear from you, Mr. Gormley.

1 ORAL ARGUMENT OF DAVID M. GORMLEY
2 ON BEHALF OF OHIO, ET AL., AS AMICUS CURIAE,
3 SUPPORTING THE RESPONDENTS

4 MR. GORMLEY: Mr. Chief Justice, and may it
5 please the Court:

6 The ordinance in this case differs from the
7 statute in McIntyre in two critical ways. First, it
8 applies only when someone goes onto the private property
9 of a village resident. Of course, in McIntyre, that Ohio
10 statute required Mrs. McIntyre to put her name on a piece
11 of paper wherever she wanted to distribute it, on a public
12 sidewalk, even in her own home, outside a polling place,
13 anywhere. This ordinance is much more narrow. It only
14 applies when the speaker wants to go onto someone else's
15 private property.

16 QUESTION: Not necessarily. I mean, you're
17 envisioning little cottages with a pathway up to the door.
18 Don't you have anybody who's in an apartment building,
19 where the Jehovah's Witness knocks on the door? He's not
20 on that person's private property. He just knocks on the
21 door.

22 MR. GORMLEY: But Your Honor, the ordinance --

23 QUESTION: Or maybe another house, that they
24 don't have a setback restriction, the door is right, you
25 know, right on the public sidewalks, knocks on the door.

1 MR. GORMLEY: But the point is, Your Honor, the
2 ordinance is designed to protect the concerns that village
3 residents have, no matter how much space is between them
4 and a sidewalk.

5 QUESTION: That's a different point, but I mean,
6 I don't think you can say that the difference is that this
7 involves only speech that occurs on private property, not
8 necessarily. Not necessarily.

9 MR. GORMLEY: Nonetheless, Your Honor, the point
10 would be that when someone knocks on a door, no matter how
11 far away they are from a sidewalk or a street, there is
12 concern on the part of the resident that this often a
13 stranger, certainly an uninvited person, is here on my
14 property, perhaps just a few inches away from a public
15 way, but nonetheless coming to my home, perhaps asking to
16 actually enter my home, and I think the village is
17 entitled to say, we're concerned about that kind of
18 activity.

19 QUESTION: Oh, you're concerned about people who
20 were even not concerned about it. I mean, that's the
21 problem. Those people that are concerned can put up a
22 sign that says, no solicitors, but the village is saying
23 even those people who welcome Jehovah Witnesses, they're
24 sitting their lonely, they would love to talk to somebody
25 about anything --

1 (Laughter.)

2 QUESTION: -- and these people still have to go
3 register with the mayor to get the privilege of ringing
4 their doorbell.

5 MR. GORMLEY: But Your Honor, that's no
6 different than the Frisby case decided by this Court 14
7 years ago. It may well be that some people are not
8 concerned about picketing outside a home. Nonetheless,
9 the Court upheld an ordinance there that was content-
10 neutral and so described by the Court, and said a village,
11 a city was entitled to enforce it. The same is true --

12 QUESTION: Well, we have always said that
13 picketing is an activity which is focused, it's constant,
14 it repeats a message over a long period of time, and
15 that's simply different from a single encounter, which is
16 what you prevent.

17 MR. GORMLEY: Nonetheless, I think in both
18 situations, Your Honor, the Government is rightly
19 concerned about an activity that causes some public
20 problem. In the one case, certainly annoyance of a
21 continuous nature, in the other, natural fear on the part
22 of people when some uninvited person shows up on their
23 property, and --

24 QUESTION: But that is met, as has already been
25 pointed out, by the opportunity to put up a no-

1 trespassing, no solicitor sign.

2 MR. GORMLEY: It addresses --

3 QUESTION: Why does the ordinance have to do
4 more?

5 MR. GORMLEY: Sure, well, certainly no
6 trespassing signs address some of the problem, but those
7 often provide after-the-fact remedies, if someone actually
8 invades the space you can prosecute, but by then you may
9 well not be able to find the person any more, and even
10 with the no-solicitation registration form that the
11 petitioners have not challenged, that does not protect the
12 person who, for whatever reason, chooses not to put up
13 such a sign.

14 Perhaps people want to be visited by solicitors
15 once they've registered and, in fact, it may well
16 encourage some people who would otherwise put up a no-
17 solicitation sign on their property to take that down,
18 because they now have confidence in this village that
19 these people are registered, there'll be some way to track
20 them down if something goes wrong.

21 QUESTION: Well, what standard of review should
22 we apply, do you suppose, in looking at this ordinance?

23 MR. GORMLEY: Well, I think that both of the
24 courts below applied the proper approach. It's a content-
25 neutral, time, place and manner regulation. The mayor has

1 no discretion in terms of issuing the permits.

2 QUESTION: Well, that would be intermediate
3 scrutiny?

4 MR. GORMLEY: That's what the court of appeals
5 called it, Your Honor.

6 QUESTION: And under that standard, aren't
7 you -- the Government required to show that it restricts
8 no more speech than is reasonably necessary to accomplish
9 its interests?

10 MR. GORMLEY: That's correct.

11 QUESTION: I take it that's the standard?

12 MR. GORMLEY: Yes, Your Honor, and I think
13 that's true here, because every time that someone
14 approaches the private property, comes onto the private
15 property of a village resident, those residents are
16 rightly concerned about who this uninvited person is, and
17 what are they going --

18 QUESTION: Why couldn't you serve all those
19 purposes if you just print up some signs that people can
20 put up if they want saying, no canvassers without a
21 permit. People who want to get all that assurance can get
22 it, people who don't, don't have to.

23 MR. GORMLEY: But I think the village rightly is
24 concerned with having some information --

25 QUESTION: Given, say, the imaginary signs, what

1 is the purpose? What is the purpose to require them just
2 to come down to the mayor?

3 MR. GORMLEY: Because it gives some record on
4 file about who these people are, thereby giving village
5 residents a little greater sense of security that if
6 something goes wrong when this person is on my land, I'm
7 not going to be left without any --

8 QUESTION: If that person turns out to be a con
9 man, too, it would enable a better chance of locating him
10 to make --

11 MR. GORMLEY: Absolutely. In the worst case
12 scenario though, the purposes are certainly clear, I
13 think.

14 QUESTION: Can you give me an example of a con
15 man who doesn't want any money or anything else?

16 (Laughter.)

17 MR. GORMLEY: Oh -- just coming into --

18 QUESTION: We're serious.

19 MR. GORMLEY: -- into your house, maybe he wants
20 to steal your property. I don't know if that's
21 necessarily taking money, but he might want to come in
22 and --

23 QUESTION: Potential thief, a person --

24 MR. GORMLEY: Sure.

25 QUESTION: A potential thief who is willing to

1 rape and burgle, but stops short of failing to register at
2 city hall, right?

3 (Laughter.)

4 MR. GORMLEY: Your Honor --

5 QUESTION: This gives your citizens treat
6 confidence that --

7 (Laughter.)

8 MR. GORMLEY: But, Your Honor, I think the fact
9 that the ordinance is not going to catch everyone who's
10 going to do something wrong doesn't mean that the village
11 is not entitled to try to do something to give its
12 residents some comfort. You probably passed people this
13 morning on the highway who don't have a license to drive.
14 It doesn't mean the Government can't --

15 QUESTION: The question is, how much? How
16 necessary is it? We can all stipulate that the safest
17 societies in the world are totalitarian dictatorships.
18 There's very little crime. It's a common phenomenon, and
19 one of the costs of liberty is to some extent a higher
20 risk of unlawful activity, and the question is whether
21 what this is directed at stops enough unlawful activity to
22 be worth the cost of requiring the privilege of ringing
23 somebody's doorbell.

24 MR. GORMLEY: I think it does, Your Honor, and
25 it's a very modest restriction. Remember, there's nothing

1 that the mayor can do to prevent someone from getting the
2 permit. It's essentially a declaration that I intend to
3 go door to door in your community, and whether the mayor
4 wants to give it out or not, he's going to do it, but that
5 seems to me much different than a --

6 QUESTION: It's so modest that we can't find a
7 single case reporting a single municipality that has ever
8 enacted an ordinance of that type. I don't think that's
9 modest.

10 MR. GORMLEY: Well, but I think, Your Honor,
11 it's a -- it shows that this village is perhaps trying to
12 take some proactive steps that other communities have not
13 to try --

14 QUESTION: Do we know where the village got it
15 from? I don't think it was original with this village,
16 was it?

17 MR. GORMLEY: I'm not sure. In Richard Riordo's
18 amicus brief, he refers to similar ordinances in Plano,
19 Texas, Oshkosh, Wisconsin, and Grand Rapids Township,
20 Michigan. I believe that the village solicitor -- and odd
21 title, the village's attorney came up with the draft of
22 this ordinance on his own. There had been, as I
23 understand it, similar ordinances in this village dating
24 back into the forties. My guess as they probably had the
25 same defects that Cantwell and other ordinances had.

1 QUESTION: The mayor here said in his
2 testimony -- it's on 385a of the -- I've never -- I never
3 have denied anybody a permit. Nobody has ever asked for
4 one.

5 (Laughter.)

6 MR. GORMLEY: I think --

7 QUESTION: That's extraordinary.

8 MR. GORMLEY: I think he was speaking about the
9 Jehovah's Witnesses, Your Honor. At the time of the
10 hearing in the district court, six people had requested
11 permits and received them. Those begin on page 230 of the
12 joint appendix. I believe now 15 people have received
13 permits.

14 QUESTION: Could the city say, to facilitate the
15 homeowners' choice, we're going to say, nobody rings bells
16 for anything, but the homeowner -- make the homeowner the
17 one to come to sign up in city hall to say, I don't mind
18 having solicitors.?

19 MR. GORMLEY: Certainly that's the part of the
20 ordinance that the petitioners have not challenged here.
21 Homeowners can both post the no --

22 QUESTION: But suppose, in order to meet the
23 objection that the solicitors don't want to sign up, or
24 the canvassers don't want to sign up, the city says, well,
25 we'll just have a total ban on ringing doorbells, but any

1 homeowner who wants to have it can?

2 MR. GORMLEY: I mean, given your -- the Court's
3 decision in Martin, I'd be hesitant to say you can have an
4 outright ban on ringing doorbells or knocking.

5 QUESTION: Thank you, Mr. Gormley.

6 MR. GORMLEY: Thank you, Your Honor.

7 QUESTION: Mr. Polidoro, you have 4 minutes.

8 REBUTTAL ARGUMENT OF PAUL D. POLIDORO

9 ON BEHALF OF THE PETITIONERS

10 MR. POLIDORO: Thank you, Mr. Chief Justice. If
11 I make a few points, please.

12 Justice O'Connor asked a question as to whether
13 this would apply to trick-or-treaters. I open to the
14 joint appendix, page 199, which is one of the no-
15 solicitation registration forms, Your Honor. Indeed,
16 trick-or-treaters are -- and specifically, point 13,
17 trick-or-treaters during Halloween are mentioned, so
18 they're encompassed under the ordinance.

19 Too, I heard a point being made about the
20 ordinance being a way to help track down the bad guys.
21 There's no independent verification mechanism in this
22 ordinance at all. I can go to the village hall and say
23 I'm Abraham Cantor and get a permit and go from door to
24 door. Mr. Bruzzese at page, transcript page 174, and
25 Ms. MacMurray, page 478a, both recognized the ordinance

1 has no verification mechanism to tie in to the person
2 who's asking for the permit.

3 With respect to discretion, Mayor Abdullah
4 testified that -- and this is in the transcript, pages 124
5 and 126, that if someone came, gave their name, address,
6 cause, and said they were unaffiliated with an
7 organization, he would likely not issue a permit to them.
8 We believe that this is manifestly exercise of discretion.

9 And lastly, Your Honors, I've heard our door-
10 to-door activity be referred to as an annoyance to be
11 compared to obnoxious picketing at the home. I
12 respectfully suggest that our activity indeed lies at the
13 heart of the First Amendment.

14 QUESTION: I wanted to ask you, if you're
15 through --

16 MR. POLIDORO: Yes.

17 QUESTION: -- I don't want to take your rebuttal
18 time -- as I looked at page 199 and I thought that was a
19 list of exceptions to the ordinance.

20 MR. POLIDORO: It is, and what --

21 QUESTION: So that in other words the trick-or-
22 treaters are expressly excepted, just like Christmas
23 carollers and the others listed.

24 MR. POLIDORO: Well, what had happened there,
25 Justice Stevens, they would be accepted if the box was

1 checked and they were allowed, and on that particular
2 form, no one was allowed at the door.

3 QUESTION: You mean the person applying for the
4 ordinance has to check all these things to be -- I don't
5 quite understand how it --

6 MR. POLIDORO: No, what --

7 QUESTION: This is the homeowner who allows
8 certain solicitations. This is the homeowner's form.

9 MR. POLIDORO: That's the homeowner's form.

10 CHIEF JUSTICE REHNQUIST: Thank you, Mr.
11 Polidoro.

12 MR. POLIDORO: Thank you.

13 CHIEF JUSTICE REHNQUIST: The case is submitted.

14 (Whereupon, at 11:11 a.m., the case in the
15 above-entitled matter was submitted.)
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