No. 00-1737

IN THE

Supreme Court of the United States

WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., and WELLSVILLE, OHIO, CONGREGATION OF JEHOVAH'S WITNESSES, INC.,

Petitioners,

v.

VILLAGE OF STRATTON, OHIO, and JOHN M. ABDALLA, Mayor of the Village of Stratton, Ohio, in his official capacity,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR PETITIONERS

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QUESTION PRESENTED

Does a municipal ordinance that requires one to obtain a permit prior to engaging in the door-to-door advocacy of a political cause and to display upon demand the permit, which contains one's name, violate the First Amendment protection accorded to anonymous pamphleteering or discourse?

STATEMENT PURSUANT TO RULE 29.6

Petitioners' Rule 29.6 Statement was set forth at page ii of the Petition for a Writ of Certiorari, and there are no amendments to that Statement.

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STATEMENT OF JURISDICTION

The judgment of the United States Court of Appeals for the Sixth Circuit was entered on February 20, 2001. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS AND ORDINANCES INVOLVED

The First Amendment to the Constitution of the United States provides, in relevant part: "Congress shall make no law . . . abridging the freedom of speech or of the press."

The Fourteenth Amendment to the Constitution of the United States provides, in relevant part: "Nor shall any State deprive any person of life, liberty, or property, without the due process of law."

The Village of Stratton Ordinance No. 1998-5, "Ordinance Regulating Uninvited Peddling and Solicitation Upon Private Property in the Village of Stratton, Ohio, and Amending Ordinance No. 1996-__ of the Ordinances of the Village of Stratton, Ohio." This is set forth in full in the

Appendix to this brief (Merits Brief Appendix or "MBA") at MBA 1a. Petitioners did not challenge section 116.07 of the Ordinance, "Owner's/Occupant's Prohibition Against Entry."

STATEMENT OF THE CASE

Petitioners are the Watchtower Bible and Tract Society of New York, Inc., and individual Jehovah's Witnesses who consider it part of their individual responsibility before Jehovah God to follow Jesus' example and obey his command to go from house to house to speak to people about the Kingdom of God. (Robert Ciranko, Tr. 18-20, J.A. 313a-15a). As part of their public ministry, individual Jehovah's Witnesses offer Bibles and Bible-based literature published by the Watchtower Bible and Tract Society ("Watchtower") to anyone who is interested in receiving it free of charge. (Robert Ciranko, Tr. 20-21, J.A. 315a-16a). Petitioners brought suit to challenge the constitutionality of Ordinance No. 1998-5, "Ordinance Regulating Uninvited Peddling and Solicitation Upon Private Property in the Village of Stratton, Ohio, and Amending Ordinance No. 1996-__ of the Ordinances of the Village of Stratton, Ohio" (the "Ordinance") (MBA 1a), which among other things prohibits them from going from house to house as part of their ministry without a permit. They challenge this ordinance because it imposes a burden on their First Amendment rights similar to burdens that have been imposed on Jehovah's Witnesses by hostile authorities throughout the United States over the years. *Prince v. Massachusetts*, 321 U.S. 158, 176 (1944) (Murphy, J., dissenting).

The efforts of Jehovah's Witnesses in the 1930s and 1940s restored "to their high, constitutional position the liberties of itinerant evangelists who disseminate their

religious beliefs in the tenets of their faith through distribution of literature." *Murdock v. Pennsylvania*, 319 U.S. 105, 117 (1943). As a result, legal conflicts between municipalities and the Witnesses regarding their public ministry largely ceased.

Ministers associated with the local congregation of Jehovah's Witnesses in Wellsville, Ohio ("Congregation"), have been experiencing difficulties with Village of Stratton officials about their door-to-door ministry since 1979. (Plaintiffs' Exhibit 3, Letter of Frank J. Bruzzese to Vercil E. Koontz, January 3, 1980, Tr. 86, J.A. 100a). In the early 1990s, a Village policeman told a group of Jehovah's Witnesses to leave the Village, stating, "I could care less about your rights." (Vercil Koontz, Tr. 58-59, J.A. 345a). The matter came to a head in 1998 when Stratton's Mayor personally confronted four Jehovah's Witnesses, who were leaving the Village after having returned to speak with residents who had previously shown interest in Bible-based discussions. (Tammy Tuckosh, Tr. 76-77, J.A. 362a-63a). After the Witnesses told the Mayor that they were "sharing Bible thoughts" with people, the Mayor told them that they were not allowed in the Village, that people had moved to Stratton with the understanding that they would not be bothered by Jehovah's Witnesses, and that if they had been men, he would have put them in jail. (Tammy Tuckosh, Tr. 77, J.A. 362a-63a).

Shortly thereafter, the Village of Stratton promulgated the Ordinance at issue in this litigation. (Defendants' Exhibit 21, Letter of Frank J. Bruzzese to Richard D. Moake, June 17, 1998, Tr. 86, J.A. 142a). The Ordinance requires anyone desiring to engage in any door-to-door, one-on-one communication to first obtain a permit issued at no cost from

the Mayor. Ord. § 116.03(a) (MBA 3a). This Ordinance is the successor to Ordinance No. 1996-06, which the Village revised after Watchtower disputed its applicability and constitutionality. (Plaintiffs' Trial Exhibit 5D, Tr. 86).

The record below is devoid of evidence or legislative history (town council minutes) supporting the necessity of this Ordinance. There are no documented complaints concerning the activities of Jehovah's Witnesses in Stratton. (Mayor John Abdalla, Tr. 115, J.A. 398a). The Village has never experienced a single incident of consumer fraud related to door-to-door activity. There have been no burglaries in Stratton. (Mayor John Abdalla, Tr. 115, J.A. 399a). Stratton has suffered no crime (violent or otherwise) related to door-to-door activities. (Mayor John Abdalla, Tr. 115-16, J.A. 399a). There are no documented incidents of crimes involving con games or schemes to bilk people from door to door. (Mayor John Abdalla, Tr. 115-16, J.A. 399a). The Mayor said he had never received a complaint that anyone called on a home at which a "No Trespassing" sign was posted. He never received a complaint of an individual calling on a residence despite the presence of a "No Solicitation" sign. (Mayor John Abdalla, Tr. 116, J.A. 400a).

Mayor Abdalla also stated that he understands that no one in the Village wants to listen to Jehovah's Witnesses. (Mayor John Abdalla, Tr. 129, J.A. 410a). According to the Mayor, the activity of Jehovah's Witnesses in going from door to door to speak with residents about the Bible fits within the Village Ordinance because "[i]n my opinion, they are going door to door, and they're preaching their so-called gospel." (Mayor John Abdalla, Tr. 127-28, J.A. 408a).

Despite the plain language of the Ordinance restricting door-to-door activity from 9:00 a.m. to 5:00 p.m., all six non-Witness applicants who requested a permit to go from door to door after 5:00 p.m. were issued such permits. (Defendants' Trial Exhibits 35 A-F, Completed Solicitor's Registration Forms, Tr. 86, J.A. 230a-47a). In contrast, the Mayor testified that even if one of Jehovah's Witnesses had applied for a permit to go from door to door after 5:00 p.m., he would not have issued it. (Mayor John Abdalla, Tr. 114, J.A. 398a).

Watchtower was unsuccessful in its efforts to convince the Village that its solicitation Ordinance did not apply to the pure speech and press activities of Jehovah's Witnesses. The Village insisted that its Ordinance applied, even though at no time during their public ministry in Stratton did the Witnesses seek donations while speaking with people from door to door. The Village had modified the predecessor ordinance by removing the requirement that someone invited to the home of a Village resident must first obtain a permit from the Mayor. (Ordinance § 116.03 of 1996-06, Plaintiffs' Trial Exhibit 5D, Tr. 86). The Village also eliminated the prior Ordinance's $10 permit fee. (Ordinance § 116.04 of 1996-06, Plaintiffs' Trial Exhibit 5D, Tr. 86). Despite these modifications, Jehovah's Witnesses continued to contest the Ordinance's applicability and constitutionality. However, the Village made it clear that it would enforce the Ordinance against Jehovah's Witnesses despite the long-standing recognition by courts that it is against the Witnesses' religious beliefs to obtain a permit to engage in their public ministry. *See Schneider v. New Jersey*, 308 U.S. 147, 159 (1939); *Lovell v. City of Griffin*, 303 U.S. 444, 448 (1938); *Coleman v. City of Griffin*, 189 S.E. 427, 428 (Ga. Ct. App. 1936), *appeal dismissed*, 302 U.S. 636 (1937); *Tucker v. Randall*, 15 A.2d 324, 325 (N.J. 1940).

The Ordinance became the subject of an action brought against the Village in the United States District Court for the Southern District of Ohio by the Congregation and Watchtower. The jurisdiction of the district court was invoked under 28 U.S.C. §§ 1331, 1343, 2201, and 2202, in that the validity of the Ordinance was challenged under the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. §§ 1983 and 1985. Jehovah's Witnesses did not challenge the validity of section 116.07 of the Ordinance, entitled "Owner's/Occupant's Prohibition Against Entry," by which a resident can post a "No Solicitation" sign and register with the Mayor his desire not to be visited. Plaintiffs' Reply Memorandum to the Defendants' Memorandum in Opposition to Plaintiffs' Motion for Preliminary Injunction at 1-2, *Watchtower Bible and Tract Society of New York, Inc. v. Village of Stratton*, 61 F. Supp. 2d 734 (S.D. Ohio 1999).

On August 18, 1999, U.S. District Court Judge Edmund A. Sargus, Jr., issued a final order (J.A. 58a), holding that the Ordinance could validly be applied to Jehovah's Witnesses because they were "canvassers" who visited homes for the purpose of "explaining their 'cause,' the Gospel of Jehovah." (J.A. 50a). However, the court also held that three provisions of the Ordinance were improper.

First, the court found section 116.03(b)(5) to be onerous because it requires permit applicants to list the specific addresses of each private residence they intend to visit. The court held that the Village remedied this problem by agreeing to provide applicants a list of all addresses in the Village which could be appended to the permit application. (J.A. 52a).

Second, the court addressed section 116.03(b)(6), which requires the permit applicant to provide "[s]uch other information concerning the Registrant and its business or purpose as may be reasonably necessary to accurately describe the nature of the privilege desired." (J.A. 52a). The court held that this provision would be satisfied if Petitioners were to state as their purpose "the Jehovah's Witness ministry." (J.A. 53a).

Third, the court found that section 116.05's limitation of door-to-door activity to the hours of 9:00 a.m. to 5:00 p.m. to be an invalid restriction and ordered the Ordinance be modified to allow activity "to occur during reasonable hours of the day." (J.A. 55a).

Except for those three provisions, the court upheld the Ordinance's permit scheme. However, the court required the Village to discontinue listing "Jehovah [sic] Witnesses" as a category of unwanted visitors on the Registration Form. The court noted that "[n]o other religious group is listed separately or singled out on this list. . . . Although the Registration Form is an administrative form designed to facilitate compliance with the Ordinance, its language and its form must be content neutral." (J.A. 56a).

The Sixth Circuit affirmed, holding that the Ordinance was content neutral and of general applicability and therefore subject to intermediate scrutiny. (J.A. 71a-72a). The court held that the Ordinance did not violate the free exercise or free speech claims of Jehovah's Witnesses. (J.A. 86a). The court did not comment on the free press claims raised by the Witnesses.

The circuit court ruled that the Ordinance was not a flat prohibition on the dissemination of ideas and did not give the Mayor discretion in granting permits. (J.A. 87a). It also found the law to be content neutral, holding that reference to Jehovah's Witnesses in the registration form was not part of the text of the Ordinance. (J.A. 88a). Additionally, the court found that the Mayor's statement that he would not grant Jehovah's Witnesses an exemption from the Ordinance's time restrictions did not compel a finding of unequal application of the Ordinance, because the Witnesses had never requested an exemption from these restrictions. (J.A. 88a). Further, the circuit court held that the Ordinance was not unconstitutionally vague. (J.A. 77a-78a).

With respect to anonymity, although the Ordinance requires individuals engaging in political speech to give their names and addresses to the Village and to reveal their names to residents or police officers by displaying their permit upon demand, the circuit court held that this does not render the Ordinance unconstitutionally overbroad. (J.A. 76a). The circuit court held that requiring canvassers to reveal their names does not impinge anonymous political speech because they reveal a portion of their identity (their physical appearance) in the very act of going from door to door. (J.A. 76a). The circuit court held that requiring "political canvassers to reveal the remainder of their identities, i.e., their names," does not violate the First Amendment. (J.A. 76a-77a).

As for the Witnesses' free speech claims, the circuit court held that the Village's interests — protecting its residents from fraud and undue annoyance in their homes — were sufficiently significant to justify impinging pure advocacy. (J.A. 80a-81a). It also found that there was a real threat of

the harm that the Village sought to prevent, namely, criminals posing as canvassers in order to defraud residents. (J.A. 81a-82a). The court paid deference to the Village's predictive judgment in enacting the Ordinance to protect its residents against this anticipated harm. (J.A. 83a).

The circuit court also held that the Ordinance protected privacy by penalizing individuals for ignoring "No Solicitation" signs. (J.A. 83a-84a). As for fraud, the court held that the Ordinance would assist the Village both in turning away individuals posing as Jehovah's Witnesses and in apprehending individuals committing fraud. (J.A. 84a). Finally, the court held that several alternatives to door-to-door canvassing were available — specifically, canvassing in stores, in restaurants, on street corners, and in parks and other public forums.

The dissent agreed with the majority that the Ordinance was not unconstitutionally vague and did not violate the free exercise rights of Jehovah's Witnesses. (J.A. 92a). The dissent agreed that intermediate scrutiny was the proper standard of review because the Ordinance was neutral on its face. (J.A. 92a). However, the dissent disagreed with the majority's intermediate scrutiny analysis and would have held that the Ordinance violated the First Amendment, because it burdens more speech than is necessary to further the Village's legitimate interests. (J.A. 93a). The dissent was concerned that subjecting non-commercial solicitation to the Ordinance's permit requirements restricted a substantial amount of speech unrelated to fraud. Further, the dissent noted that the availability of other outlets for speech did not alleviate the special burden placed on door-to-door communication of religious and political beliefs. (J.A. 94a-95a). In addition, the dissent felt that enforcing trespass laws

was a less restrictive means of protecting homeowners from unwanted annoyance. (J.A. 95a). Finally, the dissent stated that the Village failed to demonstrate either the reality of the harm it sought to prevent or the efficacy of the Ordinance's restrictions in preventing the anticipated harm and would have held the permit requirement to be an unconstitutional infringement of Jehovah's Witnesses' First Amendment rights. (J.A. 97a).

SUMMARY OF ARGUMENT

The Village of Stratton's judicially sanctioned requirement that a door-to-door advocate or pamphleteer obtain the government's permission prior to engaging in pure speech or pure press activities is an unprecedented invasion of the free speech and free press liberties guaranteed to citizens of the Republic under the First Amendment.

This Court long ago limited the extent to which a municipality may invade "the free communication of information and opinion secured by the Constitution" to protect residents from fraud and annoyance. *Schneider v. New Jersey*, 308 U.S. 147, 163 (1939). Despite the unbroken line of authority protecting the right to engage in unlicensed door-to-door advocacy, Stratton has enacted an Ordinance that regulates all forms of door-to-door speech and press activity. This Ordinance is anachronistic in that it: (1) relegates door-to-door, one-on-one dissemination of ideas without a permit to the status of a "nuisance" that is to be suffered by residents only after the Village has granted a person the "privilege" to engage in such activity (MBA 3a, 4a); (2) mimics solicitation ordinances from the 1930s; and (3) ignores the status accorded pure advocacy in well-established First Amendment jurisprudence. *See Lovell v. City of Griffin*, 303 U.S. 444

(1938); *Talley v. California*, 362 U.S. 60 (1960); *McIntyre v. Ohio Elections Commission*, 514 U.S. 334 (1995); *Buckley v. American Constitutional Law Foundation, Inc.*, 525 U.S. 182 (1999).

Although the free one-on-one exchange of ideas is a pillar of our democracy, Stratton has devalued both the constitutional right of speakers to express information and the constitutional right of residents to receive it if they so choose. *Martin v. City of Struthers*, 319 U.S. 141 (1943). Indeed, the scope of the Ordinance is so broad that it even reaches communication granted the most stringent constitutional protection — core political speech. In sweeping so broadly, the Ordinance effectively bans anonymous door-to-door political advocacy and pamphleteering. Not only must a person first give her name and address to the Village (which keeps it as a public record) to receive permission to go from door to door, but she must also produce her permit and thereby disclose her name to police officers or residents who demand to see it. Since failure to obtain a permit is a criminal offense under the Ordinance, engaging in door-to-door communication without a permit in Stratton is a criminal act.

The Village could have used alternative means of protecting its interests that do not abridge First Amendment rights. It could prosecute those who actually commit fraud or violate privacy. It could allow residents to post "No Trespassing" or "No Solicitation" signs, thereby deciding for themselves whether and how to deter fraud or protect their privacy. The Village could have drafted the Ordinance to regulate only commercial activity. It could enforce the existing array of Ohio state consumer protection laws that address the anticipated problems. In sum, absent any evidence

to suggest that the exercise of pure speech or press activity had or would cause the harm it sought to avoid, the Village has not narrowly tailored its Ordinance to create a nexus between the perceived problems of consumer fraud and invasion of residential privacy and the prophylactic mechanism it has enacted.

Among the bedrock principles upon which this nation was founded is the precept that citizens need no license to speak to each other; need no license to disseminate printed material without charge. Stratton's Ordinance is anathema to America's system of government; it strikes at the foundation of a free government by a free people and therefore is unconstitutional.

ARGUMENT

I. Stratton's regulation of uninvited canvassing is unconstitutionally overbroad because it criminalizes anonymous advocacy.

a. Rather than recognizing that freedom of speech and press are fundamental personal rights and liberties protected by the First Amendment, the Village has made pure door-to-door, one-on-one advocacy without its prior permission a criminal act.

Reflecting a way of thinking that was rejected 50 years ago, Stratton enacted the Ordinance predicated on the notion that communicating with its residents is a privilege to be bestowed by the Village. Section 116.01 of its Ordinance declares that "[t]he practice of going in and upon private property and/or the private residences of Village residents . . . not having been invited to do so by the owners or occupants . . . and not having first obtained a permit . . . is . . . a nuisance and is prohibited."

(MBA 3a). Section 116.02 authorizes Village officials "to abate any such nuisance." (MBA 3a). Section 116.99(a) makes door-to-door, one-on-one advocacy without a previously obtained permit a criminal act.[1] (MBA 9a-10a).

While regulating "solicitors, peddlers, hawkers, itinerant merchants or transient vendors of merchandise or services," section 116.01 also requires "canvassers . . . explaining any . . . cause" to obtain a permit. *Id*. According to the Village, "[t]he word 'cause' in Chapter 116 serves the statute's intent to apply to *all* forms of door-to-door canvassing, whether for commercial, political, or religious purposes." Brief of Appellees at 20, *Watchtower Bible and Tract Society of New York, Inc. v. Village of Stratton*, 240 F.3d 553 (CA6 2001) (No. 99-4087) (emphasis in the original).

The Ordinance is premised upon the notion that the Village is entitled to grant permission, "the privilege," to engage in one-on-one, door-to-door communication. Ord. § 116.03(b)(4) (MBA 4a). To obtain a permit, a person must state "[t]he length of time for which the *privilege* to canvass or solicit is desired." Section 116.03(b)(4) (emphasis added). Such a premise completely ignores the bedrock principle that door-to-door "dissemination of ideas [is] in accordance with the best tradition of free discussion." *Martin v. City of Struthers*, 319 U.S. at 145. According to Stratton, unless he first obtains the Village's permission, a person commits a crime when he goes to his neighbors' homes without invitation to speak about religion, politics, or the Cincinnati Reds' need for starting pitchers.

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1. Violation of the Ordinance is a misdemeanor of the fourth degree (§ 116.99(a)) punishable by a term of imprisonment not more than 30 days, Ohio Rev. Code § 2929.21(B)(4), or fine of not more than $250, *id*. § 2929.21(C)(4).

b. This Court has never upheld an ordinance requiring a person to obtain the government's permission as a precondition to engaging in pure speech and press advocacy from door to door.

Stratton is hardly the first municipality to attempt to prohibit or regulate pure religious advocacy. Many municipalities in the past have attempted unsuccessfully to apply commercial solicitation ordinances to the religious speech and press activities of Jehovah's Witnesses. *See, e.g.*, *Tucker v. Texas*, 326 U.S. 517 (1946); *Marsh v. Alabama*, 326 U.S. 501 (1946); *Martin v. City of Struthers*, 319 U.S. 141 (1943); *Murdock v. Pennsylvania*, 319 U.S. 105 (1943); *Jamison v. Texas*, 318 U.S. 413 (1943); *Cantwell v. Connecticut*, 310 U.S. 296 (1940); *Schneider v. New Jersey*, 308 U.S. 147 (1939); *Lovell v. City of Griffin*, 303 U.S. 444 (1938). This line of authority establishes a bulwark against municipal regulation of pure door-to-door religious and political advocacy. *Hynes v. Mayor of Oradell*, 425 U.S. 610 (1976).

Protection against such regulation extends even to door-to-door solicitations for money, because such activity often is intertwined with advocacy. *Village of Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620 (1980). Although Jehovah's Witnesses did not solicit money in the Village, and are not seeking the right to solicit funds without a permit, *Village of Schaumburg* well illustrates the protection accorded door to door dissemination of ideas. In fact, in *Village of Schaumburg* this Court expressly rejected a restrictive reading of the protection afforded door-to-door advocacy:

> It is urged that the ordinance should be sustained because it deals only with solicitation and because any charity is free to propagate its views from door to door in the Village without a permit as long as it refrains from soliciting money. But this represents a

> far too limited view of our prior cases relevant to canvassing and soliciting by religious and charitable organizations.

Id. at 628.

Unlike the Village of Stratton, the Village of Schaumburg recognized the unlawfulness of requiring municipal permission as a precondition to the dissemination of ideas and information. It well appreciated that a pre-speech, pre-publication/circulation license was an impermissible denial of liberty.

c. By criminalizing unauthorized door-to-door political advocacy, the Village impermissibly abolishes anonymous political discourse.

By sweeping all forms of discourse within its Ordinance, the Village regulates speech that

> occupies the core of the protection afforded by the First Amendment:
>
> > "Discussion of public issues . . . are integral to the operation of the system of government established by our Constitution. The First Amendment affords the broadest protection to such political expression in order 'to assure [the] unfettered interchange of ideas for the bringing about of political and social changes desired by the people.'"

McIntyre v. Ohio Elections Commission, 514 U.S. at 346 (citations omitted).[2]

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2. First Amendment limitation against abridging freedom of speech or the press is applicable to the states and their political subdivisions. *City of Ladue v. Gilleo*, 512 U.S. 43, 45 n.1 (1994) (citing *Gitlow v. New York*, 268 U.S. 652 (1925), and *Lovell v. City of Griffin*, 303 U.S. 444 (1938)).

In *McIntyre*, Mrs. McIntyre was engaged in "handing out leaflets in the advocacy of a politically controversial viewpoint — [which] is the essence of First Amendment expression." *Id.* at 347. In Stratton, a person desiring to engage in the same activity must disclose her name, both on an application and on a permit, as a condition to undertaking such activity. Ord. §§ 116.03(b)(1) and 116.04. (MBA 4a, 5a). Thus, the Village disregards a speaker's First Amendment right not to identify herself. The Ordinance flies in the face of this Court's determination in *McIntyre* that "the identity of the speaker is no different from other components of the document's content that the author is free to include or exclude." *Id*. at 348.

A person cannot withhold her identity since her name and address must be provided to the Mayor in advance and kept on file at his office as a public record.[3] She cannot withhold her identity since the Ordinance requires that the permit (containing the holder's name)[4] be displayed upon the request of a resident or police officer. Ord. § 116.04. (MBA 5a). It was Mrs. McIntyre's name on her flyers that was protected from compulsory disclosure, and it was irrelevant that she chose to personally hand out some of her handbills. Individuals who choose to reveal "their physical identities — to the residents they canvass" do not lose the right to withhold their name. (J.A. 76a).

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3. *See* Ohio Rev. Code § 149.43(A)(1) ("'Public Record' means any record that is kept by any public office.") *id*. § 149.43(B)(1) ("all public records shall be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours").

4. The permit states that it is "issued to the above Applicant." (Defendant's Trial Exhibit 36, Blank "Permit to Canvass to Solicit, Etc., Tr. 86, J.A. 248a).

The justification for including anonymous discourse within the liberty protected by the free speech and free press clauses predates the formation of this country. The press licensing law of England, the persecution of those engaged in the secret distribution of information, and the importance of anonymous discourse by pre-Revolutionary patriots moved this Court to recognize that "[a]nonymous pamphlets, leaflets, brochures and even books have played an important role in the progress of mankind." *Talley v. California*, 362 U.S. 60, 64 (1960). Thus, Los Angeles' flat ban on anonymous leafletting was held to be void on its face. *Talley* held that a prohibition of anonymous leafletting, which required that handbills contain "the names and addresses of the persons who prepared, distributed or sponsored them," *id*. at 63-64, abridged freedom of speech and press. The reason was that "such an identification requirement would tend to restrict freedom to distribute information and thereby freedom of expression. 'Liberty of circulating is as essential to that freedom as liberty of publishing; indeed, without the circulation, the publication would be of little value.'" *Id.* at 64, *quoting Lovell v. City of Griffin*, 303 U.S. at 452. As the *Talley* Court observed, "[i]t is plain that anonymity has sometimes been assumed for the most constructive purposes." 362 U.S. at 65.

The *McIntyre* Court stated that *Talley*'s "reasoning embraced a respected tradition of anonymity in the advocacy of political causes." *McIntyre*, 514 U.S. at 343. Mrs. McIntyre's right to engage in one-on-one dissemination of information without revealing her identity was upheld against a state prohibition against distribution of unsigned campaign leaflets. As the *McIntyre* Court explained:

> Under our Constitution, anonymous pamphleteering is not a pernicious, fraudulent practice, but

> an honorable tradition of advocacy and of dissent. Anonymity is a shield from the tyranny of the majority. . . . It thus exemplifies the purpose behind the Bill of Rights, and of the First Amendment in particular: to protect unpopular individuals from retaliation — and their ideas from suppression — at the hand of an intolerant society.

Id. at 357. *McIntyre* recognized that "[w]hatever the motivation 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. Further, "[t]he decision in favor of anonymity may be motivated by fear of economic or official retaliation, by concern about social ostracism, or merely by a desire to preserve as much of one's privacy as possible." *Id.* at 341-42. Under Stratton's Ordinance, it is a criminal act to engage in anonymous pamphleteering from door to door.

The Ordinance also requires a person to inform the Mayor of the nature and purpose of the cause being discussed and the organization involved. The Ordinance states:

> (b) The registration required by subsection (a) hereof shall be made by filing a Solicitor's Registration Form, at the office of the Mayor, on a form furnished for such purpose. The Form shall be completed by the Registrant and it shall then contain the following information:
>
> . . . .

> (2) A brief description of the nature and purpose of the business, promotion, solicitation, organization, cause, and/or the goods or services offered;
>
> (3) The name and address of the employer or affiliated organization, with credentials from the employer or organization showing the exact relationship and authority of the Applicant.

Ord. § 116.03(b)(2), (3) (MBA 4a).

What if a person wants to discuss the need for a new mayor, or his dissatisfaction with the current Mayor's treatment of minority religious groups? Especially within the small community of Stratton, when he applies for a permit and reveals his name, would he not be exposed to the "fear of economic or official retaliation"? At the very least, he would lose his right "to preserve as much of [his] privacy as possible." *McIntyre*, 514 U.S. at 341-42. *Cf. Brown v. Socialist Workers '74 Campaign Committee*, 459 U.S. 87, 92 (1982) ("The Constitution protects against the compelled disclosure of political associations and beliefs. Such disclosures 'can seriously infringe on privacy of association and belief guaranteed by the First Amendment.'") (quoting *Buckley v. Valeo*, 424 U.S. 1, 64 (1976)). Stratton's ban on anonymous door-to-door pamphleteering is not consistent with the free speech interests recognized in *McIntyre*, which spoke of anonymity being a shield against tyranny. Such a shield is most needed when the Mayor of a small town, who also serves as the municipal judge, is the official from whom the permit must be obtained.

The Ordinance also impermissibly invades the protection accorded core political speech in *Buckley v. American Constitutional Law Foundation, Inc.*, 525 U.S. 182 (1999). *Buckley* dealt with initiative petition circulation, "interactive communication concerning political change." *Id*. at 186. Colorado's attempt to force "circulators to reveal their identities at the same time they deliver their political message" did not pass constitutional muster because it was a restraint on speech "more severe than was the restraint in *McIntyre*." *Id*. at 198-99. While noting the similarities to *McIntyre*,[5] the *Buckley* Court recognized a greater interest in anonymity: "Petition circulation is the less fleeting encounter, for the circulator must endeavor to persuade electors to sign the petition. . . . The injury to speech is heightened for the petition circulator because the badge requirement compels personal name identification at the precise moment when the circulator's interest in anonymity is greatest." *Id*. at 199.

Stratton's Ordinance violates the First Amendment protection against the government's compelling a person to divulge her name as a pre-condition to engage in pure speech activity. Revealing one's name to the Mayor removes anonymity as effectively as a badge requirement. Further, during a door-to-door, face-to-face conversation, a person violates the Ordinance if she refuses to present her permit and thereby her name "at the precise moment when [her] interest in anonymity is greatest."

Section 116.04 requires that, while the holder is exercising the privilege conveyed by the permit, the permit "*shall be exhibited* by such person whenever he is requested

5. "Circulating a petition is akin to distributing a handbill . . . . Both involve a one-on-one communication." *Buckley*, 525 U.S. at 646, *citing McIntyre.*

to do so by any police officer or by any person who is solicited." Ord. § 116.04 (emphasis added) (MBA 5a). Under section 116.06(f), the permit may be revoked if the holder fails to comply with the request. (MBA 6a). In any other town in America, if one refuses to give one's name to a householder, the resident can shut the door and ignore the message. However, the speaker does not lose his right to call on the next door. On the other hand, in Stratton, by refusing to identify himself, one runs the risk of losing the "privilege" to continue to engage in one-on-one, door-to-door political discourse.

Refusing to participate in the permit scheme by engaging in door-to-door advocacy without obtaining a permit in Stratton is a criminal act; therefore, one cannot freely engage in the "respected tradition of anonymity in the advocacy of political causes" in the Village. *McIntyre*, 514 U.S. at 343.

d. The Ordinance is unconstitutionally overbroad because it restricts more speech than the Constitution permits.

The Ordinance is unconstitutionally overbroad because it restricts a substantial amount of constitutionally protected speech. Under the "overbreadth doctrine," Petitioners may assert the interests of others not before the Court — in this instance, those desiring to engage in political discourse. However, the Witnesses continue to assert that the Ordinance is also unconstitutionally overbroad in its inclusion of religious speech.[6]

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6. This overbreadth claim is fairly included within the Question Presented. *See R.A.V. v. City of St. Paul*, 505 U.S. 377, 381 n.3 (1992).

Jehovah's Witnesses are neutral in the political affairs of this world. (*Knowledge That Leads to Everlasting Life*, Watchtower's Trial Exhibit 6E, pg. 124, Tr. 86, referring to John 17:14). Although they themselves do not participate in political discourse (anonymous or otherwise), Petitioners may properly challenge Stratton's Ordinance as being unconstitutionally overbroad because it prohibits anonymous political discourse. "[A] party [may] challenge an ordinance under the overbreadth doctrine in cases where . . . the ordinance sweeps too broadly, penalizing a substantial amount of speech that is constitutionally protected." *Forsyth County v. Nationalist Movement*, 505 U.S. 123, 129-30 (1992).

Since Stratton's permit scheme applies to, and may well deter, individuals who wish to engage in one-on-one political communication from door to door, its existence may cause "others not before the court to refrain from constitutionally protected speech or expression." *Broadrick v. Oklahoma*, 413 U.S. 601, 612 (1973). To assess the facial invalidity of the Ordinance, Petitioners may invoke the overbreadth doctrine. *Los Angeles Police Dep't v. United Reporting Publishing Corp.*, 528 U.S. 32 (1999). The possibility that "persons whose expression is constitutionally protected may well refrain from exercising their right for fear of criminal sanctions provided by a statute susceptible of application to protected expression," *id.* at 38, *quoting Gooding v. Wilson*, 405 U.S. 518, 520-21 (1972), amply supports the use of this doctrine to address the facial unconstitutionality of the Ordinance.

While the Ordinance creates an impermissible risk of suppression of core political speech, it also sweeps religious speech within its ambit. In considering whether the Ordinance

is overbroad, the Court may properly consider that it also regulates religious speech. At times, "religious" and "political" discourse may be indistinguishable. For example, this Court cited religious speech cases in support of the statement that political speech in *McIntyre* was "the essence of First Amendment expression." *McIntyre*, 514 U.S. at 347, *citing International Society for Krishna Consciousness, Inc. v. Lee*, 505 U.S. 672 (1992), *and Lovell v. City of Griffin*, 303 U.S. 444 (1938). In fact, the speech and press interests addressed in *Lovell* are identical to the speech and press issues raised in this case, as both arose from the dissemination of Bible-based literature by Jehovah's Witnesses.

In the context of pure advocacy, religious speech and political speech are equivalent liberty interests.

> In the realm of religious faith, and in that of political belief, sharp differences arise. In both fields the tenets of one man may seem the rankest error to his neighbor. To persuade others to his own point of view, the pleader, as we know, at times, resorts to exaggeration, to vilification of men who have been, or are, prominent in church or state, and even to false statement. But the people of this nation have ordained in the light of history, that, in spite of the probability of excesses and abuses, these liberties are, in the long view, essential to enlightened opinion and right conduct on the part of the citizens of a democracy.

Cantwell v. Connecticut, 310 U.S. 296, 310 (1940); *see also Heffron v. International Society for Krishna Consciousness*, 452 U.S. 640, 652-53 (1981) ("organizations having social, political or other ideological messages to proselytize . . . are entitled to rights equal to those of religious groups").

Although some speech is more readily classified as wholly "religious" or "political" in nature, other speech has aspects of both. "Ideas have layers and textures that resist legal classifications." Vincent Blasi, *Milton's* Areopagitica *and the Modern First Amendment* (March 1995), *available at* http://www.nhc.rtp.nc.us:8080/ideasv42/blasi4.htm. In any event, pure expression of religious ideas warrants the same First Amendment protection extended to pure expression of political ideas: "A priest has as much liberty to proselytize as a patriot." *Good News Club v. Milford Central School*, 121 S. Ct. 2093, 2107 (2001) (Scalia, J., concurring).

Because it abridges Jehovah's Witnesses' freedom of religious speech, the Ordinance is unconstitutionally overbroad. The Village has made clear that it would enforce the Ordinance against the Witnesses. In light of the long-standing recognition by courts that it is against the Witnesses' religious beliefs to obtain a permit to engage in their public ministry, *see Lovell v. City of Griffin*, 303 U.S. at 448; *Schneider v. New Jersey*, 308 U.S. at 159, the effect of the Village's position is to ban them from speaking door to door in Stratton. "Indeed, in Anglo-American history, at least, government suppression of speech has so commonly been directed precisely at religious speech that a free-speech clause without religion would be Hamlet without the prince. Accordingly, we have not excluded from free-speech protections religious proselytizing." *Capitol Square Review and Advisory Board v. Pinette*, 515 U.S. 753, 760 (1995).

As this Court recognized in *Buckley*, Colorado's requirement that circulators be registered voters was an impermissible burden on speech. There were a variety of reasons underlying why some did not register. *Buckley*, 525 U.S. at 195, 196 ("ignorance or apathy," 'implication of

political thought and expression,' "private and public protest"). In the final analysis, the reason or motivation for not registering was irrelevant to the conclusion that the registration requirement itself was an impermissible burden on speech. Similarly, the reason or motivation not to obtain a permit under Stratton's Ordinance is irrelevant to the conclusion that the permit requirement itself is an impermissible burden on speech. A burden on religious expression that the State has failed to justify is as impermissible as a "burden on political expression that the State has failed to justify." *Meyer v. Grant*, 486 U.S. 414, 428 (1988). The Ordinance abridges free speech because it bans religious expression without a permit.

e. The Ordinance is an unconstitutional prior restraint because it delegates overly broad discretion to the decisionmaker.

"Generally, speakers need not obtain a license to speak." *Riley v. National Federation of the Blind of North Carolina, Inc.*, 487 U.S. 781, 802 (1988). The Ordinance falls "squarely within the ambit of the many decisions of this Court . . . holding that a law subjecting the exercise of First Amendment freedoms to the prior restraint of a license, without narrow, objective, and definite standards to guide the licensing authority, is unconstitutional." *Shuttlesworth v. City of Birmingham*, 394 U.S. 147, 150-51 (1969). In making this statement, the *Shuttlesworth* Court cited *Lovell v. City of Griffin*, *Schneider v. New Jersey*, *Cantwell v. Connecticut*, and *Marsh v. Alabama* (each of which involved the public ministry of Jehovah's Witnesses) among the 17 cases forming the basis of the statement. *Shuttlesworth*, 394 U.S. at 150-51 n.2.

It is well established that a municipality must overcome a heavy presumption against the validity of a permit scheme that imposes a prior restraint upon speech. *See Forsyth County v. Nationalist Movement*, 505 U.S. 123 (1992); *see also United States v. Playboy Entertainment Group, Inc.*, 529 U.S. 803, 804 (2000). In upholding Stratton's permit scheme, the Sixth Circuit Court of Appeals overlooked this precedent.

Under the overbreadth doctrine, a party may challenge an Ordinance "in cases where every application creates an impermissible risk of suppression of ideas, such as an ordinance that delegates overly broad discretion to the decisionmaker." *Forsyth County*, 505 U.S. at 129. It is appropriate, in an overbreadth challenge, to consider the context within which a case arose:

> In evaluating respondent's facial challenge, we must consider the county's authoritative constructions of the ordinance, including its own implementation and interpretation of it. . . . In the present litigation, the county has made clear how it interprets and implements the ordinance.

Id. at 131 (citations omitted).

The Ordinance delegates overly broad discretion to the Mayor. In processing a permit application, the Mayor may request "[s]uch other information concerning the Registrant and its business or purpose as may be reasonably necessary to accurately describe the nature of the privilege desired." Ord. § 116.03(b)(6) (MBA 4a). Though not clearly identified in section 116.03(b)(6), the "privilege" is apparently "the privilege to canvass or solicit" referenced in section 116.03(b)(4). (MBA 4a). Thus, the Mayor is given the discretion to decide whether

the purpose for which canvassing or soliciting is desired is accurately described and whether the person seeking a permit has provided sufficient information about himself and his business or purpose. Such broad discretion provides an open door for the "tyranny of the majority." *McIntyre*, 514 U.S. at 357.

The Village has made it clear how it interprets the permit scheme embodied in the Ordinance. At the time of his deposition, the Mayor, who was also the municipal judge, said that he did not know what the provision allowing him to request "[s]uch other information . . . as may be reasonably necessary to accurately describe the nature of the privilege desired" referred to. (Mayor John Abdalla, Tr. 123-24). So, in the Mayor's mind, there are no guidelines restraining his interpretation and enforcement of this section of the Ordinance. The impermissibility of this type of provision has already been established. As the Court said in *City of Lakewood v. Plain Dealer Publishing Co.*, 486 U.S. 750, 769 (1988), the statutory provision as to "such other terms and conditions deemed necessary and reasonable by the Mayor" permitted unbridled discretion. "It is apparent that the face of the ordinance itself contains no explicit limits on the mayor's discretion." Also, although he had granted permits to all six non-Witness applicants who had applied to go from door to door after 5:00 p.m., the Mayor said he would not have issued such a permit to Jehovah's Witnesses. (Defendants' Trial Exhibits 35 A-F, Completed Solicitor's Registration Forms, Tr. 86, J.A. 230a-47a). (Mayor John Abdalla, Tr. 114, J.A. 397a-98a). Further, if an individual applied for a permit, giving his name and address, said he wanted to go door to door to discuss a "cause," but was not affiliated with an organization, the Mayor said he would likely not issue a permit. (Mayor John Abdalla, Tr. 124, 126).

As implemented and interpreted, the Ordinance impermissibly grants the Mayor "overly broad licensing discretion." *Forsyth County*, 505 U.S. at 130.

II. Stratton's blunderbuss approach to regulating door-to-door advocacy fails strict scrutiny and is unconstitutional because it is neither narrowly tailored to serve overriding municipal interests nor an alternative less restrictive to speech.

The overbreadth of the Ordinance is corroborated by its inability to withstand strict scrutiny. As an abridgment of political expression, the Ordinance must be analyzed to determine whether it was "narrowly tailored to serve an overriding state interest." *McIntyre*, 514 U.S. at 347. The circuit court omitted this analysis.

As a regulation that bans core political speech and press (anonymous political discourse), the Ordinance can be upheld only if it survives exacting scrutiny in that "[n]o form of speech is entitled to greater constitutional protection." *Id*. First Amendment protection of core political speech, which includes "'interactive communication concerning political change,' . . . is 'at its zenith.'" *Buckley*, 525 U.S. at 640 (citations omitted); *see also Meyer v. Grant*, 486 U.S. at 420 ("limitation on political expression [is] subject to exacting scrutiny"). Therefore, the Ordinance must be "narrowly tailored to serve an overriding state interest." *McIntyre*, 514 U.S. at 347.

In addition, because the Ordinance requires the speaker to disclose his name — which he might otherwise have chosen not to disclose — it is "a direct regulation of the content of speech." *Id*. at 345; *see also Buckley*, 525 U.S. at

209 (Thomas, J., concurring) ("The challenged badge requirement . . . directly regulates the content of speech" and therefore "must be evaluated under strict scrutiny"); *Riley v. National Federation of the Blind of North Carolina, Inc.*, 487 U.S. at 795 ("Mandating speech that a speaker would not otherwise make necessarily alters the content of the speech. We therefore consider the Act as a content-based regulation of speech.").

Moreover, "if a less restrictive alternative would serve the Government's purpose, the legislature must use that alternative." *United States v. Playboy Entertainment Group, Inc.*, 529 U.S. at 804; *see also Reno v. A.C.L.U.*, 521 U.S. 844, 874 (1997) ("burden on adult speech is unacceptable if less restrictive alternatives would be at least as effective in achieving the legitimate purpose that the statute was enacted to serve").

The Ordinance withers under exacting scrutiny. The Village refuses to avail itself of several less restrictive alternatives that would address the concerns it has identified. For example, the simple expedient of residents posting their own "No Trespassing" or "No Solicitation" signs would be effective less-restrictive alternatives to protect them against annoyance and fraud. Moreover, relying on residents to post signs allows each resident to choose for himself whether to accept uninvited visitors. The Village could enforce existing criminal statutes, which provide a means of protecting residents from fraud that is less restrictive than the Ordinance's permit scheme. "The Village's legitimate interest in preventing fraud can be better served by measures less intrusive than a direct prohibition on solicitation. Fraudulent misrepresentations can be prohibited and the penal laws used to punish such conduct directly." *Village of Schaumburg*, 444 U.S. at 637.

Rather than trying to prevent fraud or to protect privacy by banning pure speech without a permit, the Village could accomplish these objectives by enforcing existing laws, including Ohio's Charitable Solicitation Act,[7] the Consumer Sales Protection Act, or the Home Sales Solicitation Act. Enforcing existing laws would be a less restrictive means of protecting residents from fraudulent misrepresentation than imposing a prior restraint on pure speech. Likewise, the enforcement of laws against trespass would less restrictively protect residents' privacy. *Id*. at 639. The existence of this array of less restrictive alternatives underscores the Ordinance's unconstitutionality.

In addition, the Ordinance is not narrowly tailored to the interests that the Village purportedly seeks to serve.

> [M]ore narrowly tailored rules are in keeping with the First Amendment directive that government not dictate the content of speech absent compelling necessity, and then, only by means precisely tailored. "Broad prophylactic rules in the area of free expression are suspect. Precision of regulation must be the touchstone in an area so closely touching our most precious freedoms."

Riley v. National Federation of the Blind of North Carolina, Inc., 487 U.S. at 800-01, *quoting NAACP v. Button*, 371 U.S. 415, 438 (1963) (citations omitted). To survive strict scrutiny, the Ordinance must be "narrowly tailored." *Boos v. Barry*,

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7. Interestingly, the Ohio General Assembly specifically exempted "any religious agencies and organizations" from the purview of this statute, Ohio Rev. Code § 1716.03, an exemption approved by the Sixth Circuit. *Dayton Area Visually Impaired Persons, Inc. v. Fisher*, 70 F.3d 1474, 1478 (CA6 1995).

485 U.S. 312, 329 (1988). Stratton's Ordinance fails this test since it is not narrowly tailored to those forms of speech that are allegedly the source of harm.

> Content-based speech restrictions are generally unconstitutional unless they are narrowly tailored to a compelling state interest. This is an exacting test. It is not enough that the goals of the law be legitimate, or reasonable, or even praiseworthy. There must be some pressing public necessity, some essential value that has to be preserved; and even then the law must restrict as little speech as possible to serve the goal.

Turner Broadcasting System, Inc. v. FCC, 512 U.S. 622, 680 (1994) (O'Connor, J., concurring in part, dissenting in part) (citations omitted).

Rather than being narrowly tailored, Stratton's Ordinance encumbers all forms of door-to-door speech and press activity. *Buckley*, 525 U.S. at 210 (Thomas, J., concurring) ("It burdens all . . . whether they are responsible for committing fraud or not."). "Where at all possible, government must curtail speech only to the degree necessary to meet the particular problem at hand, and must avoid infringing on speech that does not pose the danger that has prompted regulation." *Federal Election Commission v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 265 (1986). Pure advocacy, unconnected to the solicitation of funds poses no danger to the residents of Stratton.

That the Ordinance is not narrowly tailored is plainly seen by reviewing the only portion of the Ordinance that was not contested below. Section 116.07 provides a means by

which a resident may give notice that he does not want any or certain uninvited canvassers, solicitors, peddlers, hawkers, itinerant merchants, or transient vendors coming on his property. (MBA 6a-9a). Simply by registering his property with the Mayor's office and posting a "No Solicitation" sign on his property, the resident avails himself of the protection of the Ordinance. Therefore, anyone who is within the proper definition of a "solicitor" and comes to that home uninvited is in violation of the Ordinance. In effect, section 116.07 allows the resident, and not the Village, to regulate who comes on his property. If implemented on its own, section 116.07 would be an effective means of protecting the Village's interests in preventing fraud and protecting privacy. Jehovah's Witnesses do not challenge section 116.07.

The existence of section 116.07 demonstrates the availability of less intrusive means to protect the Village's interests. *See Village of Schaumburg*, 444 U.S. at 639 ("Other provisions of the ordinance, which are not challenged here, such as the provision permitting homeowners to bar solicitors from their property by posting signs reading 'No Solicitors or Peddlers Invited,' . . . suggest the availability of less intrusive and more effective measures to protect privacy.") Section 116.07 of the Ordinance, standing alone, is a more narrowly tailored (and less restrictive) means of deterring fraud and protecting privacy than the challenged portions of the Ordinance. There is no need for the permit provisions of the Ordinance.

The Sixth Circuit Court of Appeals expressly rejected the application of strict scrutiny to review Stratton's Ordinance, in part because *"McIntyre's* holding misses Stratton's ordinance." (J.A. 76a). However, the circuit court correctly recognized that the Ordinance would not survive

such scrutiny. As the circuit court explained: "Even if *McIntyre* were implicated, we would find the ordinance constitutional on its face. In reviewing Ohio's statute, the [*McIntyre*] Court applied strict scrutiny. As we have already noted, we are reviewing Stratton's ordinance under intermediate scrutiny. We believe the difference in scrutiny would be outcome determinative." (J.A. 77a at n.6). Had the Sixth Circuit Court of Appeals applied the proper standard of scrutiny, it would have stricken the Ordinance. *Meyer v. Grant*, 486 U.S. at 425 ("[T]he statute trenches upon an area in which the importance of First Amendment protections is 'at its zenith.' For that reason the burden that [the state] must overcome to justify this criminal law is well-nigh insurmountable.").

III. The Village failed to meet its burden of establishing real, as opposed to conjectural, interests to justify its encumbrance of pure speech and press activity.

In attempting to justify the Ordinance, the Village asserts that it protects residents' privacy and deters fraudulent solicitation. Brief of Appellees at 18, *Watchtower Bible and Tract Society of New York, Inc. v. Village of Stratton*, 240 F.3d 553 (CA6 2001) (No. 99-4087). However, the Village has failed to meet its burden of establishing the reality of, as opposed to its conjecture about, the anticipated harms it seeks to remedy.

As this Court has stressed:

> When the Government defends a regulation on speech as a means to redress past harms or prevent anticipated harms, it must do more than simply "posit the existence of the disease sought to be

> cured." . . . It must demonstrate that the recited harms are real, not merely conjectural, and that the regulation will in fact alleviate these harms in a direct and material way.

Turner Broadcasting System, Inc. v. FCC, 512 U.S. at 664 (citations omitted); *accord United States v. Playboy Entertainment Group, Inc.*, 529 U.S. at 804, 822 ("When the Government restricts speech, the Government bears the burden of proving the constitutionality of its actions. . . . [T]he Government must present more than anecdote and supposition."); *Nixon v. Shrink Missouri Government PAC*, 528 U.S. 377, 379 (2000) ("This Court has never accepted mere conjecture as adequate to carry a First Amendment burden.").

a. The Village failed to meet its burden to prove that abridging door-to-door advocacy is justified by real harm to residential privacy.

The "privacy of the home is certainly of the highest order in a free and civilized society." *Carey v. Brown*, 447 U.S. 455, 471 (1980). "[A] special benefit of the privacy all citizens enjoy within their own walls, which the State may legislate to protect, is an ability to avoid intrusions. . . . [I]ndividuals are not required to welcome unwanted speech into their own homes and . . . the government may protect this freedom." *Frisby v. Schultz*, 487 U.S. 474, 484-85 (1988). Jehovah's Witnesses do not challenge the legitimacy of this right to privacy.

The Village advanced no evidence that posted "No Trespassing" signs have been ineffectual, that "No Solicitation" signs posted pursuant to section 116.07 of

the Ordinance have been ineffectual, or that Jehovah's Witnesses or others engaged in door-to-door advocacy have refused to leave private property when requested to do so by residents. There is simply no evidence that Stratton's permit scheme is needed for the sake of residential privacy.

Jehovah's Witnesses are not seeking to force unwilling listeners to hear messages they do not wish to hear. They readily accept a resident's expression of disinterest or request that they leave. But a resident may be willing to accept uninvited visitors, expressing his willingness by not posting a "No Trespassing" or "No Solicitation" sign. It is one thing to protect a resident from uninvited picketing in front of his home. It is quite another to protect him from unexpected visitors with whom he may wish to speak or whom he can send away in a matter of moments.

That the Ordinance does not secure residents' privacy interest is made clear by considering an unwilling listener who does not post a prohibiting sign at his residence. A person with a permit may legally knock on the resident's door. If a political candidate without a permit knocked at the door, the resident's privacy would be invaded. If that candidate obtained a permit and then knocked on the resident's door, the resident's privacy would still be invaded. *Cf. Schaumburg*, 444 U.S. at 638 ("householders are equally disturbed by solicitation on behalf of organizations satisfying the 75-percent requirement as they are by solicitation on behalf of other organizations"). The permit portion of the Ordinance has no nexus to a resident's privacy. In the absence of a posted notice, a resident has no privacy right not to have his door knocked upon.

b. The Village failed to meet its burden to prove that abridging door-to-door advocacy is justified by real harm caused by fraudulent solicitation.

While a municipality's interest in preventing fraudulent solicitation "is . . . legitimate and important," *Ohralik v. Ohio State Bar Association*, 436 U.S. 447, 462 (1978), it is not clear that prevention of consumer fraud rises to the level of compelling where core religious and political speech, rather than fundraising, are involved. *See Memorial Hospital v. Maricopa County*, 415 U.S. 250 (1974); *Secretary of State of Maryland v. Joseph H. Munson Co.*, 467 U.S. 947 (1984). Assuming, arguendo, that this interest is compelling, the Village failed to show the existence of a real problem concerning fraudulent solicitation in Stratton to support its subordination of free speech and free press.

In upholding the Ordinance, the Sixth Circuit deferred to the Village's "predictive judgments" (J.A. 79a), the testimony of the Mayor and Village Solicitor, who were "aware of problems in other Ohio cities with door-to-door fraud" (J.A. 82a), and the testimony of an Ohio State Assistant Attorney General, which was limited to opining that the Ordinance would be "helpful" in addressing the Village's interests. (Helen MacMurray, Tr. 216, J.A. 467a). Such speculative and anecdotal evidence is insufficient to justify the encumbrance the Village imposes on expressive activity that is not a source of harm. "Conceding that fraudulent appeals may be made in the name of charity and religion" a municipality 'cannot decide who may impart information from house to house.' *Schneider*, 308 U.S. at 164.

> Frauds may be denounced as offenses and punished by law. Trespassers may similarly be

> forbidden. If it is said that these means are less efficient and convenient [than the challenged ordinance], the answer is that considerations of this sort do not empower a municipality to abridge freedom of speech and press.

Id.

The record shows that the Village has never experienced even a single incident of consumer fraud related to door-to-door activity. In fact, the record reveals no burglaries, no crime (violent or otherwise) related to door-to-door activities, and no record of crimes committed in door-to-door activity involving con games or schemes to bilk people. The Mayor said he never received a complaint that someone called on a home at which a "No Trespassing" sign was posted. No resident ever complained of an individual calling despite the presence of a "No Solicitation" sign. There are no documented complaints whatsoever concerning the activities of Jehovah's Witnesses. (Mayor John Abdalla, Tr. 115, 116, J.A. 398a-400a). Corroborating the absence of door-to-door fraud, the Village solicitor testified that the entirety of the Village's written records contained merely five incidents of unauthorized soliciting. (Frank Bruzzese, Tr. 165, J.A. 437a). The "offense" in four of these incidents was the failure to possess a permit. The fifth incident involved individuals' attempting to locate the owner of a parked vehicle displaying a "for sale" sign. (Frank Bruzzese, Tr. 141, 143, 144, J.A. 419a, 420a, 421a).

No evidence was presented to establish that the Ordinance could not have been drafted to regulate only commercial or charitable solicitations. No evidence was presented to establish why it was necessary to regulate political, religious, or any other kind of advocacy that does not involve money. In fact, the record is devoid of legislative history (town council minutes) supporting the necessity of this Ordinance.

The Village has failed to meet its burden of proof necessary to overcome the heavy presumption against the validity of a permit scheme that imposes a prior restraint on speech. *See Forsyth County v. Nationalist Movement*, 505 U.S. 123 (1992); *see also United States v. Playboy Entertainment Group, Inc*., 529 U.S. 803 (2000). Allowing the Village to prevail, without evidence showing the necessity of encumbering and preventing pure advocacy that causes no harm, would turn into a talisman whatever phrase a municipality would choose to utter to support its regulations. *Cf. Bates v. City of Little Rock*, 361 U.S. 516, 525 (1960) ("governmental action does not automatically become reasonably related to the achievement of a legitimate and substantial governmental purpose by mere assertion in the preamble of an ordinance").

IV. Although the scrutiny applicable to speech on government property does not apply to the Ordinance, even if it did, the Ordinance is invalid.

Before the circuit court, the Village argued that the lower standards applicable to governmental regulation of speech on government property should apply to its regulation of speech on private residential property. Brief of Appellees at 16, *Watchtower Bible and Tract Society of New York, Inc. v. Village of Stratton*, 240 F.3d 553 (CA6 2001) (No. 99-4087). This argument is patently faulty. Even if, arguendo, a lower standard of review were used, Stratton's Ordinance still unconstitutionally burdens speech.

Stratton argued that its Ordinance "need not be the most restrictive means available, nor must it be the most effective, most reasonable, or most obvious choice, it need only be reasonable." Brief of Appellees at 16-17, *Watchtower Bible*

and Tract Society of New York, Inc. v. Village of Stratton, 240 F.3d 553 (CA6 2001) (No. 99-4087). The Village cites no authority to support its argument that private residential property is subject to the same regulation as government property that is not a traditional public forum. A resident's door clearly is not government property. Residential doors have historically been loci of communication of thoughts among citizens.

> For centuries it has been a common practice in this and other countries for persons not specifically invited to go from home to home and knock on doors or ring doorbells to communicate ideas to the occupants or to invite them to political, religious, or other kinds of public meetings.

Martin v. City of Struthers, 319 U.S. 141, 141 (1943). Thus, contrary to the Village's argument below, there is no basis to apply a reasonable standard to speech on private residential property.

Moreover, even if reasonableness were the applicable standard, the Village cannot use the Ordinance as "an effort to suppress expression merely because public officials oppose the speaker's view." *Perry Education Association v. Perry Local Educators' Association*, 460 U.S. 37, 46 (1983). The Village cannot single out one religious group on an administrative registration form (Judge Edmund A. Sargus, Jr., Tr. 272-73), assert that people move there because they know they will be free from the message of that particular religious group, and then claim that its Ordinance need only reasonably accomplish municipal interests.

Different rules apply to the government's regulation of speech on government-owned property that is a quintessential public forum. The government may regulate the time, place, and manner of expression on its own property, if its regulations "are content-neutral, are narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication." *Perry Education Association*, 460 U.S. at 45. Even if residential property were to be treated the same as government-owned property, as Stratton asserted, the Ordinance fails even this level of constitutional scrutiny for at least three reasons.

First, the Ordinance is not content-neutral in that it expressly dictates content by requiring the disclosure of the speaker's name. For that reason alone, the Ordinance fails even this level of constitutional scrutiny.

Second, as set forth above, the Ordinance is not narrowly tailored. It is not limited to those forms of advocacy that allegedly are the exact source of the evil sought to be remedied, *City of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 808 (1984), nor was it limited to rectify "the evils that it seeks to eliminate." *Ward v. Rock Against Racism*, 491 U.S. 781, 800 n.7 (1989).

Third, the Ordinance fails to leave open ample alternative channels of communication. In the first place, "one is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place." *Schneider v. New Jersey*, 308 U.S. at 163. Whether a resident would be more likely to have a one-on-one discussion on a controversial subject in the privacy of his home, on a public street, or in some public place should be left to the speaker and the listener. What business is it of

the government to intrude into such private conversations? Further, the Sixth Circuit's holding that canvassing "at stores, on street corners, in restaurants, in parks, and other public forums" (J.A. 86a) are ample alternatives ignores door-to-door advocacy's status as a "venerable means of communication that is both unique and important." *City of Ladue v. Gilleo*, 512 U.S. 43, 54 (1994); *see also City of Los Angeles v. Taxpayers for Vincent*, 466 U.S. at 812 n.30, *citing Martin v. City of Struthers*, 319 U.S. at 146 ("Door to door distribution of circulars is essential to the poorly financed causes of little people.").

As shown by the testimony in this case, there are no ample alternatives to house-to-house contact.

> Q. In your opinion, sir, are there any ample alternatives to the house-to-house ministry?
>
> A. No, we [Jehovah's Witnesses] do not feel there is. We feel that we must be on the grass roots level. We feel our message is so important to life that we dare not miss anyone with it, and the only way to find everyone is to go from house to house.

(Robert Ciranko, Tr. 20, J.A. 315a).

> Q. Do you [Mayor Abdalla] know how an individual would be able to reach someone door to door who was not home between the hours of nine to five?
>
> A. Yes, they can leave a card and tell them to call back if they are interested.

Q. Is there any other way that they can be reached?

A. Not to my knowledge, no.

(Mayor John Abdalla, Tr. 114-15, J.A. 398a).

Jehovah's Witnesses have determined that the most effective way for them to conduct their "grass roots level" ministry is to contact people by going from house to house, as was done by first-century Christians. (Acts 5:42; 20:20). This Court has long recognized that "perhaps the most effective way" to disseminate ideas is to bring them to the notice of individuals "at the homes of the people." *Martin v. City of Struthers*, 319 U.S. at 145, *citing Schneider v. New Jersey*, 308 U.S. at 164. There is no alternative that is functionally equivalent to this method. "The First Amendment protects appellee's right not only to advocate their cause but also to select what they believe to be the most effective means for so doing." *Meyer v. Grant*, 486 U.S. at 424. This argument applies with equal force to those desiring to engage in political discourse. For this reason, the Ordinance is unconstitutional even under a lowered standard of scrutiny.

Stratton's Ordinance is strikingly reminiscent of the ordinance passed by the town of Irvington, New Jersey, over 60 years ago. The ordinances are similar in that they ban "unlicensed communication of any views or the advocacy of any cause from door to door." *Schneider*, 308 U.S. at 163. Many provisions of both ordinances are almost identical.

Irvington, NJ (1939)	Stratton, OH (2001)
"No person . . . shall canvass . . . without first having . . . received a written permit."	"No canvasser . . . shall go in or upon . . . private property . . . without first . . . obtaining a Solicitation Permit."
Canvasser must give "name, address, . . . by whom employed, address of employer"	Canvasser must give "name and home address"; "name and address of the employer or affiliated organization"
"[D]escription of project for which he is canvassing"	"Such other information . . . as may be reasonably necessary to accurately describe the nature of the privilege desired."
"[T]hat canvassing may only be done between 9 A.M. and 5 P.M."	"No activity permitted under authority of this chapter shall commence prior to 9:00 a.m. nor continue after 5:00 p.m."[8]
"[T]hat the permittee must exhibit the permit to any police officer or other person upon request"	"Each person shall at all times . . . 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."
"Violation is punishable by fine or imprisonment."	"Violation . . . is a misdemeanor of the fourth degree."

8. The district court ordered this section be modified to allow activity "during reasonable hours of the day." (J.A. 55a).

This Court ruled that Irvington's ordinance was an unconstitutional violation of free speech and press liberties.

To be sure, unlike Irvington's, Stratton's Ordinance lacks the patently unconstitutional grant of censorial discretion to a municipal official to assess the "good character" of the permit applicant. *Schneider*, 308 U.S. at 163-64. Nevertheless, both ordinances reflect the same paternalistic municipal mindset. Stratton determined that its residents "are less able, than the village, to identify and regulate the conduct of persons, corporations, entities and organizations" engaged in door-to-door advocacy. Ord. § 2. (MBA 10a). Reflecting this paternalistic attitude, the Mayor 'understands' that no one in the Village wants to listen to Jehovah's Witnesses. (Mayor John Abdalla, Tr. 129, J.A. 410a). He states that people move into Stratton with the "understanding that they would not be bothered by Jehovah's Witnesses." (Tammy Tuckosh, Tr. 77, J.A. 362a).

This paternalistic "Village knows best" attitude also was reflected in the Village's principal brief in the circuit court. The Village cited no authority whatsoever to support its subordination of pure speech and pure press to the prior restraint of a permit. Rather, it argued that its Ordinance should "be analyzed according to a standard that is no less liberal than that controlling permissible First Amendment restrictions on government property . . ." Brief of Appellees at 16, *Watchtower Bible and Tract Society of New York, Inc. v. Village of Stratton*, 240 F.3d 553 (CA6 2001) (No. 99-4087).

Of course the government has the right to regulate access to its own property. It is quite another thing, however, for the government to regulate access to private residential

property. For Stratton to do so tramples the constitutional rights of those who desire to receive information at their homes. "Whether such visiting shall be permitted has in general been deemed to depend upon the will of the individual master of each household, and not upon the determination of the community." *Martin v. City of Struthers*, 319 U.S. at 141. Like Struthers before it, Stratton "submits the distributer to criminal punishment for annoying the person on whom he calls, even though the recipient of the literature distributed is in fact glad to receive it." *Id*. at 144. *Cf. Vasquez v. Housing Authority of the City of El Paso*, __ F.3d __, 2001 WL1254820 (CA5 2001) ("The first amendment guarantees the unrestricted flow of information into the market place of ideas. This first amendment protection extends not only to those who contribute to the market place of ideas, but necessarily extends to those who seek to benefit from the resultant dialogue."). The Ordinance's provisions "in effect, makes a person a criminal trespasser if he enters the property of another for an innocent purpose without an explicit command from the owners to stay away." *Martin v. City of Struthers*, 319 U.S. at 148.

Paternalistic municipal regulation of speech has consistently been criticized. *See Riley v. National Federation of the Blind of North Carolina, Inc*., 487 U.S. at 790-91:

> The State's remaining justification — the paternalistic premise that charities' speech must be regulated for their own benefit — is equally unsound. . . . cf. *First National Bank of Boston v. Bellotti*, 435 U.S. 765, 791-792, and n. 31 . . . (1978) (criticizing State's paternalistic interest in protecting the political process by restricting speech by corporations); *Linmark Associates, Inc.*

> *v. Willingboro*, 431 U.S. 85, 97 . . . (1977) (criticizing, in the commercial speech context, the State's paternalistic interest in maintaining the quality of neighborhoods by restricting speech to residents). . . . [T]he government, even with the purest of motives, may not substitute its judgment as to how best to speak for that of speakers and listeners; free and robust debate cannot thrive if directed by the government.

"[I]t is safer to assume that the people are smart enough to get the information they need than to assume that the government is wise or impartial enough to make the judgment for them." *Id*. at 804 (Scalia, J., concurring in part, concurring in judgment).

Stratton's paternalistic lack of confidence in its residents' ability to evaluate for themselves the merits of pure noncommercial communication is not a sufficient predicate upon which to impose a prior restraint on speech and press. The Village must be held to a standard of proof, a standard of reality, a standard of accountability, lest the liberty of speech and press guaranteed by the Bill of Rights be greatly, and sadly, diminished.

CONCLUSION

Never before has a municipality been permitted to regulate one-on-one, door-to-door pure speech and press activity, without first establishing that such communication was an actual source of harm entitling it to override rights that lie "at the foundation of free government by free men." *Schneider v. New Jersey*, 308 U.S. at 161. Stratton's Ordinance effectively bans door-to-door anonymous discourse. It effectively bans the door-to-door activity of Jehovah's Witnesses. For the reasons stated above, Petitioners respectfully request that this Court rule it facially unconstitutional and reverse the decision of the Sixth Circuit Court of Appeals.

Respectfully submitted,

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APPENDIX — ORDINANCE NO. 1998-5

ORDINANCE NO. 1998-5

ORDINANCE REGULATING UNINVITED PEDDLING AND SOLICITATION UPON PRIVATE PROPERTY IN THE VILLAGE OF STRATTON, OHIO, AND AMENDING ORDINANCE NO. 1996-__ OF THE ORDINANCES OF THE VILLAGE OF STRATTON, OHIO.

BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF STRATTON, OHIO, that Ordinance No. 1996-06 of the Ordinances of the Village of Stratton, Ohio, which was passed on September, 1996, is hereby amended, by replacing the language of said Ordinance No. 1996-06 in its entirety, with the following language:

BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF STRATTON, OHIO, that, pursuant to authority granted in Section 715.61 of the Ohio Revised Code, and pursuant to Home Rule powers vested in the Village under Section 3, Article XVIII of the Ohio Constitution, the Codified Ordinances of the Village of Stratton, Ohio are hereby amended by the adoption of the following Chapter and Codified Ordinance Sections.

CHAPTER 116

Peddlers and Solicitors

CROSS REFERENCES

Power to inspect food products — see Ohio R.C. 715.46
Power to regulate — see Ohio R.C. 715.61 et seq.
Home solicitation sales — see Ohio R.C. 1345.21 et seq.
Charitable solicitations — see Ohio R.C. Ch. 1716
Trespassing — see Ohio R.C. 2909.21
Frozen desserts — see Ohio R.C. 3717.51 et seq.
Littering — see Ohio R.C. 3767.20

116.01 UNINVITED PEDDLING AND SOLICITING DECLARED A NUISANCE.

The practice of going in and upon private property and/or the private residences 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, or for the purpose of soliciting orders for the sale of goods, wares, merchandise or services, is hereby declared to be a nuisance and is prohibited.

116.02 ENFORCEMENT.

The Chief of Police (Village Marshall) and Village Police Officers are hereby required and authorized to abate any such nuisance as is described in Section 116.01.

116.03 REGISTRATION REQUIRED — PROHIBITION OF UNREGISTERED SOLICITATION, ETC.

(a) No canvasser, solicitor, peddler, hawker, itinerant merchant or transient vendor of merchandise or services who is described in Section 116.01 of this Chapter and who intends to go in or upon private property or a private residence in the Village for any of the purposes described in Section 116.01, shall go in or upon such private property or residence without first registering in the office of the Mayor and obtaining a Solicitation Permit.

(b) The registration required by subsection (a) hereof shall be made by filing a Solicitor's Registration Form, at the office of the Mayor, on a form furnished for such purpose. 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 next preceding the date of registration;

(2) A brief description of the nature and purpose of the business, promotion, solicitation, organization, cause, and/or the goods or services offered;

(3) The name and address of the employer or affiliated organization, with credentials from the employer or organization showing the exact relationship and authority of the Applicant;

(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 of this Chapter; and,

(6) Such other information concerning the Registrant and its business or purpose as may be reasonably necessary to accurately describe the nature of the privilege desired.

116.04 ISSUANCE OF PERMIT; FEE, CONTENT AND DISPLAY.

Each Registrant who complies with Section 116.03(b) shall be furnished a Solicitation Permit. The permit shall indicate that the applicant has registered as required by Section 116.03 of this Chapter. No permittee shall go in or upon any premises not listed on the Registrant's Solicitor's Registration Form.

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.

Section 116.01 of this Chapter shall not apply and shall not be construed to apply to the holder of a valid permit issued pursuant to this Section.

116.05 TIME LIMITATIONS.

No activity permitted under authority of this chapter shall commence prior to 9:00 a.m. nor continue after 5:00 p.m. This time limitation shall be stated on the permit.

116.06 DENIAL OR REVOCATION OF PERMIT.

Permits described in Section 116.04 of this Chapter may be denied or revoked by the Mayor for any one or more of the following reasons:

(a) Incomplete information provided by the Registrant in the Solicitor's Registration Form.

(b) Fraud or misrepresentation contained in the Solicitor's Registration Form.

(c) Fraud, misrepresentation or false statements made in the course of conducting the activity.

(d) Violation of any of the provisions of this chapter or of other Codified Ordinances or of any State or Federal Law.

(e) Conducting canvassing, soliciting or business in such a manner as to constitute a trespass upon private property.

(f) The permittee ceases to possess the qualifications required in this chapter for the original registration.

The revocation of a permit shall be in addition to any penalty provided in Section 116.99 of the Codified Ordinances of the Village of Stratton, Ohio, or any other penalty that may be imposed upon the permittee in accordance with law.

116.07 OWNER'S/OCCUPANT'S PROHIBITION AGAINST ENTRY.

(a) Notwithstanding the provisions of any other Section of this Chapter 116, any person, firm or corporation who is

the owner or lawful occupant of private property within the territorial limits of the Village of Stratton, Ohio, may prohibit the practice of going in or upon the private property and/or the private residence of such owner or occupant, by uninvited canvassers, solicitors, peddlers, hawkers, itinerant merchants or transient vendors, by registering its property in accordance with Subdivision (b) of this Section and by posting upon each such registered property a sign which reads "No Solicitation" in a location which is reasonably visible to persons who intend to enter upon such property.

(b) The registration authorized by Subsection (a) hereof shall be made by filing a "No Solicitation Registration Form", at the office of the Mayor, on a form furnished for such purpose. The form shall be completed by the property owner or occupant and it shall then contain the following information:

(1) The name and address of the owner or occupant who wishes to prohibit uninvited canvassing, soliciting, peddling, hawking, merchandising and/or transient vending upon the private property of the owner or occupant;

(2) The specific address of each property at which the owner or occupant prohibits such conduct; and,

(3) A written and signed statement which reads:

"I, the undersigned, am the owner or lawful occupant of private property which is described in this No Solicitation Form, and I,

hereby, give notice that I prohibit the practice of uninvited canvassers, solicitors, peddlers, hawkers, itinerant merchants or transient vendors coming upon my private property for the purpose of soliciting the attention of any occupant of that property or for the purpose of advertising, promoting, selling and/or explaining any product, service, organization or cause, or for the purpose of soliciting orders for the sales of any product.

I have posted a sign which reads, "No Solicitation", at the property, and the sign is located so that it is reasonably visible to persons who might be considering entering upon the property.

I consider any person entering upon the property for a prohibited purpose to be a trespasser.

The only exceptions to this prohibition are the persons and organizations listed below:

_____
_____
_____
_____
_____
_____
_____
_____"

(c) No uninvited canvasser, solicitor, peddler, hawker, itinerant merchant or transient vendor of merchandise or services, shall go in or upon the private property of an owner or occupant of property who has registered and posted such property in accordance with Subsections (a) and (b) of this Section, for the purpose of advertising, promoting, selling or explaining any product, service, organization or cause, or for the purpose of soliciting orders for the sale of goods, wares, merchandise or services.

(d) The holder of a permit issued pursuant to Section 116.04 of this Chapter shall not be exempt from the prohibition contained in Subsection (c) of this Section. The holder of such permit shall not go in or upon any private property which has been registered and posted in accordance with Subsection (a) and (b) of this Section, for the purpose of advertising, promoting, selling or explaining any product, service, organization or cause, or for the purpose of soliciting orders for the sale of goods, wares, merchandise or services.

116.99 PENALTY.

(a) Violation of Section 116.01 is a misdemeanor of the fourth degree, the penalty for which is set forth in Section 999.99 of the Codified Ordinances of the Village of Stratton, Ohio.

(b) Violation of Section 116.03 is a misdemeanor of the fourth degree, the penalty for which is set forth in Section 999.99 of the Codified Ordinances of the Village of Stratton, Ohio.

(c) Violation of Section 116.07(c) is a misdemeanor of the fourth degree, the penalty for which is set forth in Section 999.99 of the Codified Ordinances of the Village of Stratton, Ohio.

(d) Violation of Section 116.07(d) is a misdemeanor of the fourth degree, the penalty for which is set forth in Section 999.99 of the Codified Ordinances of the Village of Stratton, Ohio.

SECTION 2: This Ordinance is hereby declared to be an emergency Ordinance, necessary to the preservation of the public peace, safety and welfare of the citizens of the Village of Stratton, Ohio, and such emergency exists by reason of the fact that the failure to regulate the time and manner of the conduct which is regulated by the above Ordinance, and the failure to identify those engaged in such conduct, creates a risk of unwanted intrusion, annoyance and potential harm to Village residents who are less able, than the Village, to identify and regulate the conduct of persons, corporations, entities and organizations engaged in such conduct.

SECTION 3: This Ordinance shall be in full force and effect immediately upon its passage.

_____
MAYOR

ATTEST: s/ Lola Kakascik
CLERK