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 RESPONDENTS

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QUESTION PRESENTED

Whether the First Amendment protection of anonymity is abridged by a municipality's registration and permit legislation that protects an unwilling listener at his home.

STATEMENT PURSUANT TO RULE 29.6

Pursuant to Rule 29.6, Village of Stratton, Ohio and John M. Abdalla, Mayor of the Village of Stratton, Ohio, in his official capacity, state that the Village of Stratton, Ohio is a political subdivision of the State of Ohio, and that the Mayor of Stratton, Ohio is an elected public official.

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STATEMENT OF THE CASE

Respondent, Village of Stratton, Ohio, is a municipal village located at the Eastern border of the state, adjacent to the Ohio River. It is situated approximately a quarter mile from the state of West Virginia, and about 15 to 16 miles from the Pennsylvania state line. Ohio Route 7 runs parallel to the Village, only a few feet from the Village's border. (Mayor John Abdalla, Tr. 88-89, J.A. 374a-375a). Stratton has a very small residential section which extends approximately two to two and one half football fields in an east and west direction, and is approximately one-half mile in a north and south direction. (Mayor John Abdalla, Tr. 89, J.A. 375a). There is one full time police officer and one part time officer. (Mayor John Abdalla, Tr. 100, J.A. 382a).

Chapter 116 of the Stratton Village Code [which is set forth in full in the Appendix to this brief (Response Brief Appendix or "RBA") at RBA 1a] was enacted in response to concerns of Village residents and officials about the intrusion of uninvited, and at times fraudulent, solicitors approaching their homes for a variety of purposes. (Mayor John Abdalla, Tr. 94-97, 106-107, J.A. 377a-381a, 387a-389a; Defendants' Trial Exhibits 12, 13, J.A. 120a-127a). Specific instances of problems that occurred within the Village were discussed before the legislative body, including the selling of siding, selling meats out of a pickup truck, and blacktop driveways. (Mayor John Abdalla, Tr. 94-97, J.A. 378a-380a). This "close knit" community (Mayor John Abdalla, Tr. 100, J.A. 382a) saw a need to offer protection to Stratton's vulnerable senior

citizen population, which was perceived as being **espe**cially susceptible to the scams and frauds that are commonly perpetrated through door-to-door solicitation. (Mayor John Abdalla, Tr. 94-97, **J.A.** 377a-381a; Village Solicitor **Frank** J. Bruzzese, Tr. **137-140,** 159-162, **J.A.** 415a-418a, 433a-437a).

The Ordinance mandates that individuals register with the Mayor's office and obtain permits, prior to engaging in door-to-door solicitation within the Village. (Ordinance § 116.06, **RBA** 5a).

Permits are automatically issued to **all** applicants upon completion of the registration form, There is no charge to the registrant. (Village Solicitor Frank J. Bruzzese, Tr. 146-147, **J.A.**423a-424a). **Village** council **was** informed by its Solicitor during the legislative process that:

> * * * I remember making a big speech on the council floor to say – to pound home this point. 1 said something almost exactly **like** this. Let's get this straight. When the little pig-tailed, heckle-faced girl scout comes to sell girl scout cookies, she gets a permit. **And** they **all** shake their heads. Then I say, when the Nazi party comes and **asks** for **a** permit, they get a permit. The **girl** scout with the pig tails is the same and the Nazi party, same as the Ku Klux Klan. Everybody gets a permit. And the only thing they have to do is complete the form. And **I** used the phrase "a completed information form is an automatic trigger." And I think I used the same phraseology to Mr. Moakc. The completed form – We are not going to decide: **Are** you bad? Are you good? **If** you complete the information, it's an automatic trigger. * * *

(Village Solicitor Frank J. Bruzzese, Tr. **156-157, J.A. 431**a-4324.

The legislative purpose included giving law enforcement a place to begin an investigation (Mayor John Abdalla, Tr. 106, **J.A.**388a), and preventing residents from being disturbed in their homes. (Mayor John **Abdalla,** Tr. 106-107, **J.A.** 388a-389a; Village Solicitor Frank J. Bruzzese, Tr. **137-138, J.A.** 415a-416a).

No individual or organization has been denied a permit, nor has there been a permit revoked, under the Ordinance. (Mayor John Abdalla, Tr. 103-105, **J.A.** 385a-387a).

Chapter 116 only allows a resident to limit solicitation and canvassing on their property through the **sub**mission of **a** "No Solicitation Registration Form" and the posting of **a** "No Solicitation" sign on the home. (Ordinance § 116.07, **RBA** 6a). No government representative **makes** any limitation or censors any message. At **the** time the Petitioners filed their Complaint, at least twenty (20) property owners had registered twenty-one (21) properties. (Defendants' Exhibit 34a-u, **J.A.** 167a-229a). Petitioners do not contest the constitutionality of this section **of** the Ordinance. Brief of Petitioners, p. 2.

Expert testimony by Helen MacMurray, the Chief of the Consumer Protection Section of the Ohio Attorney General's Office, established that door-to-door scams are a threat to residents and in particular to senior citizens. (Helen MacMurray, Tr. **211-214,** 217-221, J.A. 462a-466a, 468a-473a). Ms. MacMurray stated that based an her experience, registration and permit ordinances such as

Stratton's deter fraudulent door-to-door activity, and assist law enforcement officials in apprehending those guilty of committing such frauds. She further stated that a registration and permit format also aided the senior by identifying a legitimate canvasser/solicitor from an illegitimate canvasser/solicitor. (Helen MacMurray, Tr. 215-217, 466a-469a).

Petitioners are members of the Wellsville, Ohio Congregation of Jehovah's Witnesses, Inc. (Vercil Koontz, Tr. 52, J.A. 52; Tammy Tuckosh, Tr. 72, J.A. 357a-358a). The Jehovah's Witnesses engage in door-to-door canvassing in order to preach, proselytize (Robert Ciranko, Tr. 19-21, **23-25,** 28-29, 36-37, **45,** J.A. 313a-316a, 317a-320a, 322a-324a, 326a-328a, 334a-335a), and, as a general policy, may offer "information" about how individuals can donate financially to the organization. (Robert Ciranko, Tr. 47, J.A. 336a-337a; Tammy Tuckosh, Tr. **73-74,** J.A. 358a-359a) ("Well, usually **we** take the opportunity at the end of discussing a Bible thought . . . then we mention to them **if** they would like to donate towards the worldwide work. . . . ").

In **April** 1998, Richard D. Moake, counsel for Watchtower Bible and Tract Society of New **York,** Inc., the national Jehovah's Witnesses oversight group (Robert **Ciranko,** Tr. 17-18, 26-29, **41, J.A.** 312a-313a, 320a-324a; Tammy Tuckosh, Tr. 84, **J.A.** 370a-371a), contacted the Village contending that aspects of the predecessor Ordinance to current Chapter 116 were unconstitutional under the First and Fourteenth Amendments. (Village Solicitor Frank J. Bruzzese, Tr. **144-145,** J.A. 421a-423a; Defendants' Exhibit 17, **J.A.** 128a-134a).

Following the receipt of Mr. **Moakc's** letter, Frank J. Bruzzese, the Village Solicitor, initiated correspondence with him in an attempt to reach agreement with the Petitioners on the language of a revised Ordinance that would make the Jehovah's Witnesses feel welcome in the community, and ensure that their First Amendment rights were protected. (Village Solicitor **Frank** J. **Bruzzese,** Tr. 145, **J.A.** 422a-423a; Defendants' Exhibit 17, J.A. 128a-134a; see *generally* Defendants' Exhibits **17-24, J.A.** 128a-166a). On **April** 17, 1998, Mr. Bruzzese wrote to Mr. Moake inviting Mr. Moake's suggestions for modifications to the language of the Ordinance that would allay Petitioners concerns, yet protect the property owners from unwanted intrusions. Mr. Bruzzese stated, "The road to a solution is cooperation." (Defendants' Exhibit 17, **J.A.** 133a).

In subsequent letters, Mr. Moake **did make several** drafting suggestions to the Village, some of which were incorporated into the present Ordinance. (Village Solicitor Frank J. **Bruzzese,** Tr. 145-148, **J.A.** 422a-425a; Defendants' Exhibits 17, 22, **J.A.** 128a-134a, 157a-160a). However, Mr. Moake insisted that the Ordinance did not apply to the Petitioners, despite the Village's explicit statements that all solicitors and canvassers, including the Petitioners, were meant to fall within its ambit. (Defendants' Exhibits 18, 22, **J.A.** 135a-137a, 157a-160a). Mr. **Moake** suggested as an alternative that the Jehovah's Witnesses would be willing to notify the Village Police Department "before conducting door-to-door ministry in Stratton." (Defendants' Exhibit 18, **J.A.** 135a-137a).

The Village did not legislatively create the content of the permit utilized in furtherance of the registration provision. The actual permit, administratively created and used, does not identify the permit holder by name OF other means. (Defendants' Trial Exhibit 36, J.A. 248).

Petitioners have never made an application to canvass or solicit within the Village. (Mayor John Abdalla, Tr. 103, J.A. 385a-386a).

Petitioners filed a pre-application facial and as applied Constitutional attack upon the Ordinance in the United States District Court for the Southern District of Ohio seeking declaratory and injunctive relief on the basis that Chapter 116 **of** the Stratton Village Code is unconstitutional under the First and Fourteenth Amendments. (Complaint With Exhibit **A:** Ordinance No. 1998-5 **And** Civil Cover Sheet, **J.A.** 10a-47a). The District Court granted in part and denied in part the Petitioners' motion and dismissed the case. (Judgment of the United States District Court **for** the Southern District, **J.A.** 61a).

Both the District Court and the Sixth Circuit Court of Appeals concluded that the Ordinance was content neutral and of general applicability subject to intermediate scrutiny. (Opinion of the United States Court of Appeals for the Sixth Circuit, **J.A.** 70a-71a). The Court of **Appeals** noted that the Village's principle objective in promulgating the Ordinance **was** to prevent fraud and protect the privacy interests of the residents of the Village. (Opinion of the United States Court of Appeals for the Sixth Circuit, J.A. 71a).

On October 15, 2001, this Court granted Petitioners' writ of *certiorari* solely as to Question 2 presented by the

Petition. (Order of the Supreme Court of the United States Allowing Certiorari, **J.A.** 98a).

Question 2 of Petitioners' Writ of *Certiorari* is entitled: "The Sixth Circuit's decision requiring individuals desiring to engage in anonymous door-to-door communication to obtain **a** permit conflicts directly with *McIntyre v. Ohio Elections Commission,* **514** U.S. **334** (1995) and *Buckley v. American Constitutional Law Foundation, Inc.,* 525 U.S. 182 (1999)."

SUMMARY OF ARGUMENT

The writ issued by this Court questions whether the Stratton Ordinance overbroadly sanctions speech which is constitutionally permissible under *McIntyre v. Ohio Elections Commission,* **514** U.S. **334** (1995), and *Buckley v. American Constitutional Law Foundation,* **525** U.S. 182 **(1999).**

A review of the Ordinance indicates that it does not restrict any speech in **a** traditional public forum or designated public .forum, nor to the willing listener in his home. Rather, this Ordinance is directed towards securing the privacy of residents in their homes and protecting residents in their homes from criminal activity. The Ordinance applies only on private property. This Court has long recognized that door-to-door expression or dissemination of ideas is rooted in the best traditions of free expression. At the same time, however, the Court has not hesitated to recognize the right of the property owner to enjoy peace **and** tranquility in the home, and to be free from unwanted speech in the privacy of the home. This

privacy interest applies regardless of whether the unwanted message is delivered into the home from an outside source, such as a public street or sidewalk, or through the mail. *Frisby v. Schultz,* 487 **US. 474** (1988); *Rowan V. United States Post* **Office** Dept., *397* **US.** 728 (1970).

McIntyre, supra, considered the Constitutional guarantees to anonymously disseminate handbills, fliers or other literature in a public forum, concerning a controversial public issue. The Ohio law that blanketly required the identity of the distributor to be placed on the document was found to violate the right to distribute literature anonymously in a public forum. The Court recognized that **a** more limited identification requirement would **pass** constitutional muster in a different context. ***Id.*** at ***353,***

In *Buckley V. American Constitutional Law Foundation,* **525** U.S. 182 (1999), the Court held that the state **of** Colorado could not require the circulators of initiative petitions to wear a badge which displayed their name. The badge **display** was **a** blanket requirement that was present at all times during the circulation process in all locations. However, *in dicta,* the Court approved a registration framework for petition circulators that separated in time the identification from the actual speech itself, or more precisely from the point that the speaker attempts to persuade the listener.

The Stratton Ordinance is narrowly tailored and accommodates the rights proclaimed in *McIntyre,* ***supra,*** and *Buckley,* ***supra,*** as they would **apply** on the private property of Village residents, and to the rights of those residents in their homes.

First, the Ordinance is a limited restriction of speech. A traditional method a property owner employs to prevent unwanted speech is the placement of a "No Trespassing" sign. The Stratton Ordinance makes the **Village** a bulletin board for the speech which its residents will endure in the privacy of their homes. The Ordinance provides choices to the residents to decide for themselves what speech they are willing to hear on their property, while the placement of a "No Trespassing" sign necessarily prevents all speech on private property. If a rcsident chooses not to restrict admission of a would be speaker to his property, then that speaker, whether anonymous or proudly identified, can enter private property and convey any message in any form desired. This right exists as long as the resident wishes to continue his implied invitation. The Ordinance allows all persons to speak, and all persons to speak anonymously with the consent of the resident or a police officer in furtherance of his duties. Like the right to speak at the private residence, the right to speak anonymously ceases at the determination of the resident. The Stratton Ordinance does not require a disseminator of ideas, whether religious or political, to place his name on the literature, wear a badge, or outwardly proclaim his identity in any manner. It only requires the speaker to carry the permit on his person, presumably in a pocket. The Ordinance places the extent of the residents' implied invitation to speak anonymously where it belongs, in the discretion of the resident. Once the resident requests the identity of the speaker, the right to speak anonymously has ended and disclosure of registration compliance is required. Thus, the Ordinance represents a careful balancing of the right

to speak anonymously and the right to privacy. The right to speak anonymously no longer exists when the resident **asks** for production of the permit. Then the curtain **of** anonymity is lifted only to the extent that registration is confirmed upon private property.

In *Hill v. Colorado, 530* U.S. 703 (2000), the Court approved a statute limiting First Amendment activity within a specified zone without the listener's consent. This restriction was approved even though the speech took place on a sidewalk, the quintessential public forum. Stratton's Ordinance touches more lightly on First Amendment rights. It protects the rights of the unwilling listener in the home where the right to be free from such intrusion is recognized as absolute if the resident so chooses. The peace and tranquility of the resident in his home has been zealously protected by this Court from any unwarranted, outside disruption. The Stratton Ordinance is narrowly tailored to guard against fraud, criminal activity, and to assure a resident's privacy rights, while permitting the full gamut of First Amendment rights, including the right to speak anonymously to the extent that a resident permits. First Amendment activity is unaffected elsewhere and alternate channels of communication are available.

Overbreadth analysis permits the Court to determine if the scope of the Ordinance inhibits the recognized First Amendment rights of a hypothetical person. The Petitioners claim that the rights to anonymously promote political causes conferred in *McIntyre, supra*, and *Buckley, supra,* are swept within the Ordinance's otherwise legitimate regulations. While the Village argues that the rights

set forth in *McIntyre,* ***supra,*** and *Buckley, supra,* are not implicated by the Ordinance because of its narrow framing, the sweep of the Ordinance is also claimed by Petitioners to regulate both religious and political speech evenly. This thereby denies their First Amendment overbreadth analysis.

The question presented is whether the First Amendment interests of anonymity are abridged by the protection the Ordinance affords the unwilling listener in his home.

ARGUMENT

I.

A MUNICIPALITY HAS A LEGITIMATE GOVERNMENTAL INTEREST IN PROTECTING ITS CITIZENS FROM CRIME AND PRESERVING THE PRIVACY OF THEIR HOMES.

This Court's constitutional calculus has driven the creation and development of Stratton's registration and permit program **for** uninvited speech upon private **property.**

The right of homeowners to be left undisturbed by solicitors and canvassers in their homes **is** well established. *See, e.g., Rowan v. United States Post Office Dept.,* *397* **US.** 728, 737 (1970) ("Nothing in the Constitution compels us to listen to or view any **unwanted** communication, whatever its merit. . . . The ancient concept that 'a man's home is his castle' into which 'not even the king may enter' has lost none of its vitality. . . ."). The power

of a municipality to protect this right is also well established. *Carey v. Brown,* **447** U.S. 455, 471 (1980) ("The State's interest in protecting the well-being, tranquility, and privacy of the home is certainly of the highest order in a free and civilized society"), and *Breard v.* ***Alexandria,*** **341** U.S. 622, **640** (1951) ("To the city council falls the duty of protecting its citizens against the practices deemed subversive of privacy and of quiet"). See *also Kovacs v. Cooper, **336*** U.S. 77, **83 (1949)** ("The police power of a state extends beyond the health, morals and safety, and comprehends the duty, within constitutional limitations, to protect the well-being and tranquility of a community").

Canvassing and solicitation on private property **arc** activities entitled to First Amendment protection. These activities, however, **are** not immune from regulation.

As eloquently stated in *Hynes v. Mayor **of** Oradell,* 425 U.S. **610** (1976):

> There is, of course, no absolute right under the Federal Constitution to enter on the private premises of another and **knock** on a door for any purpose, and the police power permits reasonable regulation for public safety. We cannot say, and indeed appellants do not argue, that door-to-door canvassing and solicitation are immune from regulation under the State's police power, whether the, purpose of the regulation is to protect from danger or to protect the peaceful enjoyment of the home.

Id. at 619.

In support of this view the Court quoted Professor Zechariah Chafee who wrote:

> "Of all the methods of spreading unpopular ideas, [house-to-house canvassing] seems the least entitled to extensive protection. The possibilities of persuasion are slight compared with the certainties of annoyance. Great as is the value of exposing citizens to novel views, home is one place where a man ought to be able to shut himself **up** in his own ideas **if** he desires." Free Speech in the United States 406 (1954).

Id. at 619.

In the past, this Court has struck down restrictions upon door-to-door soliciting and canvassing that have been enacted by municipalities primarily because of the amount of discretion that the ordinances gave municipal officers to prevent or limit activities. *Village of Schaumburg v. Citizens for a Better Environment,* **444** U.S. 620, 640 (1980) (Rehnquist, J., dissenting), *citing Schneider v. New* Jersey, 308 U.S. 147, 163-64 (1939); *Cantwell v. Connecticut,* **310** U.S. 296, 305-06 (1940); *Largent v. Texas,* **318** U.S. **418,** 422 **(1943);** *Hynes v. Mayor* of *Oradell,* 425 U.S. **610,** 620-21 (1976).

In *Martin v. City of Struthers,* **319** U.S. **141** (1943), a case involving religious solicitation by a member of the Jehovah's Witnesses sect, the Court invalidated **a** municipality's total ban on canvassing. When the Court balanced the First Amendment rights of the Jehovah's Witnesses against the rights of the homeowners to safety, security, privacy, and quiet, it found that the *complete* ban on door-to-door soliciting failed to pass muster, because it substituted "the judgment of the community for the judgment of the individual householder+" *Id.* at 144. Nevertheless, the Court stated:

> Ordinances of the sort now before **us** may **be** aimed at the protection of the householders from annoyance, including intrusion upon the hours of rest, and at the prevention of crime. Constant callers, whether selling pots or distributing leaflets, may lessen the peaceful enjoyment of a home as much as a neighborhood glue factory or railroad yard which zoning ordinances may prohibit. . . . In addition, burglars frequently pose as canvassers, either in order that they may have a pretense to discover whether a house is empty and hence ripe for burglary, or for the purpose of spying out the premises in order that they may return later.

Id. at **144.**

The *Martin, supra,* Court concluded that the rights of the unwilling listener to be secure in the privacy of his home trumped a **speaker's** interest in pursuit of religious or political activity. *Id.* at **157.**

II.

REGISTRATION AND LIMITED IDENTIFICATION ARE CONSTITUTIONAL MEANS TO PROTECT THE PRIVACY OF RESIDENTS AND DETER CRIME.

Early on, cases identified municipal registration **and** permit programs as reasonable means to protect the **privacy** of residents and deter crime.

A registration mechanism that required establishment of identity **and** authority to act on behalf of a cause was expressly authorized in *Martin v.* City *of Struthers,* **319** U.S. **141, 149, fn.14** (1943), citing *Cantwell v. Connecticut,* 310 U.S. 296, **306 (1940).** The use of identification

devices to control the abuse of those who call on a home is a suggested methodology by the Court. *Id.* at 148.

Justice Frankfurter, dissenting in *Martin v. City of Struthers, id.* at 154, signaled that the Court should not unwittingly slip into the judgment seat of the legislature in determining the protective activity necessary. Subsequently, First Amendment analysis has included deference to legislative activity, and Stratton is entitled to that deference.

Legislatures are often faced with a number of arguably effective means of accomplishing their policy goals, and are uniquely suited to choose among those means for the most effective implementation of their policy choices. See *Turner Broadcasting* System, *Inc. v. FCC,* 520 US. 180, 199 (1997) (describing nature of legislative process). The same facts may support different conclusions in the judgment of different decision makers. The protection of privacy and the prevention of fraud are legitimate governmental interests. This Court, therefore, has guarded against the substitution of a court's policy choice for the discretion of the legislature by consistently holding that the validity of time, place or manner regulations "does not turn on a judge's agreement with the responsible decision maker concerning the most appropriate method for promoting significant government interests." *Turner Broadcasting System, lnc.,* 520 U.S. at 218, quoting *United States v. Albertini,* 472 US. 675, 689 (1985). Otherwise, courts would face the task of determining whether the chosen legislative scheme was the precisely least intrusive means of achieving its desired end, an approach this Court has consistently refused to require. *Turner Broadcasting System, Inc., 520* U.S. at 217-18.

Accordingly, Stratton's determination of the means most suited to its safety purposes, and to protect the privacy of its residents must be reviewed only to determine whether the means chosen are "substantially broader than necessary" to accomplish the governmental interests. *Turner Broadcasting System, Inc.,* **520** U.S. at 218, quoting *Ward v. Rock Against Racism,* 491 US. 781, 800 (1989). The legislature's chosen method "need not be the least restrictive or the least intrusive means." *Ward,* **491** U.S. at 798. It simply must be reasonable.

In *Ward,* this court stated:

> Expression, whether oral or written or symbol**ized** by conduct, is subject to reasonable time, place, or manner restrictions. We have often noted that restrictions of this kind are valid provided that they are justified without reference to the content of the regulated speech, that they are narrowly tailored to serve a significant governmental interest, and that they leave open ample alternative channels for communication of the information.

Id. at *798.*

Clark v. Community for Creative Non-Violence, 468 U.S. *288,* **293 (1984).** See *also Turner Broadcasting System, Inc.,* 520 U.S. at 215-16; *Frisby v. Schultz,* 487 U.S. 474, 481 (1988).

Legislatures may act to prevent harms from reasonably anticipated results. See *Turner Broadcasting System, Inc.,* 520 U.S. at 212.

Both by its plain terms and its legislative history, the Ordinance does not distinguish favored speech from

disfavored speech on the basis of the ideas or views expressed. Stratton's legislation makes no attempt to single out any topics of speech, such as labor, political or religious speech. Thus, it is not content-based, such as the statutes evaluated in *Police Dept. of Chicago v. Mosley*, 408 U.S. 92, 95 (1972) (exempting labor picketing); *Carey v. Brown*, **477** U.S. **455,** 461 (1980) (same); *Boos v. Barry*, 485 U.S. 312, 318-19 (1988) (burdening only political speech); *Burson v. Freeman*, 504 U.S. 191, 196 (1992) (same); *Lamb's Chapel v. Center Moriches Union Free School Dist.*, 508 U.S. **384, 393-94** (1993) (burdening only religious speech). The Ordinance applies to speech on any topic.

Neither does the Ordinance single out any speech based on the viewpoint of the speaker, unlike the provision invalidated in *R.A.V. v. City of St. Paul*, 505 US. 377, 392 *(1992)* (striking down "bias-motivated crime" ordinance that **expressly** applied to only one side of **a** debate). The legislative history shows that the Ordinance was drafted and intended to apply to **all.**

The approach taken by Stratton's Council is similar to that approved by this Court in *Rowan v. United States Post Office Dept., 397* U.S. 728, *737* (1970). *Rowan* recognized that differentindividuals might find different mailings offensive, and thus upheld a statute which allowed an individual the absolute discretion to invoke the power of the Post Office to prohibit delivery of mail which the individual found offensive against the protests of the senders. *See also Breard v.* City *of Alexandria*, **341** U.S. *622*,

643 (1951) [restriction on unwanted commercial solicitation upheld, distinguishing *Martin v.* City *of Struthers,* **319** U.S. **141** (1943)].

Stratton's legislation allows the resident to determine whether the speech has a willing listener by the listener's prior registration with the Village of who is welcome and who is not. It is the privacy of the home which is being protected by its resident at the point of persuasion.

III.

FORUM ANALYSIS AND COMPETING CONSTITUTIONAL INTERESTS REQUIRE THAT STRATTON'S REGISTRATION AND PERMIT LEGISLATION NEED ONLY BE REASONABLE.

A forum analysis is determinative of the amount of First Amendment protection required. *Hill v. Colorado,* **530** U.S. 703, 729 (2000) (Kennedy, J., dissenting), *citing Frisby v. Schultz,* 487 U.S. 474 (1988). This analytical tool is vividly portrayed by Justice Scalia's observation in his dissent in *Hill, supra.* He wrote: "The Court today elevates the abortion clinic to the status of the home." *Id.* at 753.

In *International Soc. for Krishna Consciousness, Inc. v. Lee,* 505 U.S. 672 (1992), the Court considered the right of a religious sect to practice a sect specific ritual that required the face-to-face solicitation of funds in **New York** City area airport terminals. The Court's analysis first used the "forum based" approach set forth in *Perry Education Association v.* Perry *Local Educafors' Association,* 460 U.S. *37,* 45 (1983), to determine the appropriate level of scrutiny to apply to activity on government property

that clearly **fell** within the scope of the First Amendment. *International Soc.* for ***Krishna*** *Consciousness, Inc.,* 505 U.S. at 680. After finding that the airport terminals were neither traditional public forums, nor designated public forums, it applied the reasonableness standard that is to be used by courts which are called upon to analyze governmental restrictions on "all remaining public property." *Id.* at 678-80. The Court wrote: "Limitations on expressive activity conducted on this last category of property must survive only a much more limited review. The challenged regulation need only be reasonable, as long as the regulation is not an effort to suppress the speaker's activity due to disagreement with the speaker's view." ***Id.*** at 679. *See also United States v. Kokinda,* 497 U.S. 720, 727 (1990) ("But regulation of speech activity where the Government has not dedicated its property to First Amendment activity is examined only for reasonableness") and *Perry Education Associafion v. Perry Local Educators' Associafion, 460* U.S. **37,** 45-46 (1983) ("In addition to time, place, and manner regulations, the State may reserve the forum for its intended purposes, **as** long as the regulation on speech **is** reasonable and not an effort to suppress expression merely because **public** officials oppose the speaker's view").

Regulations that protect homeowners' rights of safety, privacy, the freedom to be undisturbed in their homes, should be analyzed according to a standard that is no less liberal than that controlling permissible First Amendment restrictions on government property, as long as those regulations do not substitute the judgment of the community for that of the individual. *United States v. Kokinda,* **497** U.S. 720, 725-26 (1990) ("The Government,

even when acting in its proprietary capacity, does not enjoy absolute freedom from First Amendment constraints, as does a private business, but its action is valid in these circumstances unless it is unreasonable, or . . . 'arbitrary, capricious, or invidious' ") [quoting *Lehman v. Shaker Neighfs,* **418 U.S. 298 (1974)];** see *also Martin v.* City *of Struthers,* **319** U.S. **141, 143-44 (1943).**

When competing constitutional interests are implicated such as privacy, the Court scrutinizes the legislation's impact on those interests rather than mechanically applying some test. The interests are evaluated to determine whether any one such interest is overly burdened in a manner which is out of proportion to the salutary effects of the competing interest. *Nixon v. Shrink Missouri Government PAC,* 528 U.S. **377,** 402 (2000) (Breyer, J., concurring).

The Sixth Circuit Court of Appeals stated that this Court has not set the level of scrutiny to apply to laws that require an individual to obtain a permit before going door to door. (Opinion of the United States Court of Appeals for the Sixth Circuit, **J.A.** 69a). The Appellate Court utilized the standard for obtaining a permit in **a** public forum as found in *Forsyth County v. Nationalist Movement,* 505 U.S. **123** (1992). *Forsyth, supra,* sought a determination of whether the law's intrusion on speech were reasonable in the context of time, place and manner. (Opinion of the United States Court of **Appeals** for the Sixth Circuit, **J.A.** 70a).

The Court of **Appeals** then agreed with the District Court that the municipal Ordinance was content neutral and of general applicability. (Opinion of the United States *Court* of Appeals for the Sixth Circuit, **J.A.** 70a-71a).

This Court traditionally defers to a construction of a statute agreed upon by the two lower federal courts. *Frisby v. Schultz,* 487 U.S. 474, 482 (1988).

The conclusion that the Ordinance was content neutral and of general applicability **is** buttressed by a reading of the Ordinance that indicates all who seek to go door *to* door on private property are required to register. The legislative history adds that the applicability of the Ordinance and the issuance of the permit is just as readily available to the Girl Scout as the Klansman. It, therefore, reveals the evenhandedness of the application of the legislation. (Village Solicitor Frank J. Bruzzese, Tr. 156-157, J.A. 431a-432a). The discussion before the legislative body included a history of actual Village experiences of door-to-door difficulties, e.g., siding, black top sales. (Mayor John Abdalla, Tr. 94-95, J.A. 378a-379a), and late night intrusions. (Village Solicitor Frank J. **Bruzzese,** Tr. **138,** J.A. 416a).

The Mayor regularly receives telephone calls from residents who are being disturbed by door-to-door activity. He was even able to recite the names of those who regularly complain. (Mayor John Abdalla, Tr. 107, **J.A.** 389a).

Difficulties of fraudulent activity in the area **as** broadcast by the media was also made known, (Mayor John Abdalla, Tr. 97, **J.A.**380a). The location of the community, having only one police officer and a large elderly population, was thought to place the community at risk. (Village Solicitor Frank J. Bruzzese, Tr. **140, J.A.** 418a).

Petitioners argue at Section III, pp. **33-38,** that Stratton failed to establish that the evils of the legislation it

sought to hinder had in fact occurred. The argument denies the testimony at trial of actual events which had occurred within the Village, the surrounding area and the legislative history. See *City of Erie v. Pap's A.M.*, 529 U.S. 277,298 (2000). There is no requirement that a community suffer lawlessness before it passes legislation to prevent a perceived evil.

Helen MacMurray, Chief of the Ohio Attorney General Consumer Affairs Section, was provided a hypothetical of Stratton's demographics and locale, and determined that the legislation would be helpful. (Helen MacMurray, Tr. 216-217, J.A.467a-468a). Stratton's legislation was "preventative medicine" which discouraged fraudulent solicitors from activity within the Village. (Helen MacMurray, Tr. 216, J.A. 467a). The registration information, Ms. MacMurray stated, would be helpful in police investigation, and in addition, registration would serve as an aid to residents to determine the legitimacy of those who *go* door to door. (Helen MacMurray, Tr. 216-217, J.A. 467a-468a).

IV.

ANONYMITY IS NOT A CONSTITUTIONAL RIGHT, BUT A FACTOR TO BE CONSIDERED IN CONTEXT*

There is no generalized constitutional right to anonymity. *McIntyre v. Ohio Elections Commission,* 514 U.S. 334, 380 (1995) (Scalia, J., dissenting), *citing Lewis Publishing Co. v. Morgan, 229* U.S. 288 (1913); *Talley v. California,* 362 U.S. 60, 70 (1960) (Clark, J., dissenting) ("The Constitution says nothing about freedom of anonymous speech").

Anonymity is a factor to be considered along with other First Amendment interests in context. *McIntyre v. Ohio Elections Commission,* **514** U.S. **334, 358** (1995) (Ginsburg, J., concurring) ("We do not thereby hold that the state may not in other larger circumstances require the **speaker** to disclose its interest by disclosing its identity").

In *McIntyre, supra,* this Court struck a section of the Ohio Revised Code that required campaign literature to contain the name and address of the person issuing the literature. Margaret McIntyre **was** charged with violating Ohio law by distributing unsigned leaflets to persons attending a public meeting at a public school in Westerville, Ohio. The purpose of the meeting was to discuss a referendum on a proposed tax levy. The Court found that the speech engaged in by Mrs. McIntyre was indeed core political speech. Handing out leaflets in the advocacy of a politically controversial viewpoint is the essence of First Amendment expression. ***Id.*** at 347. The fact that the leafleting **took** place in **a** public forum, set aside for such discussion, and filled with willing listeners, compelled the conclusion that no form of speech .is entitled to greater protection than that of Mrs. McIntyre's. ***Id.*** at **347.**

As a consequence, the Court applied strict scrutiny and **found** that the ordinance **was** not narrowly tailored, nor did it serve a compelling state interest. The State **argued** that its interests in preventing fraud **and** libelous statements in the election process, and providing the electorate with all relevant information, were nonetheless sufficiently compelling to justify a ban on anonymous speech. The State's arguments were rejected. ***Id.*** 348-49. The asserted interest in providing the electorate with

relevant information was **found** insignificant in comparison with the statute's regulation of the message's content. The speaker's identity **was** found to be no different than any other component of the document, and could be omitted if the writer chose to do so. ***Id.*** at 348-49. It **was held** that the prohibition of the distribution of anonymous campaign literature abridges the freedom of speech in violation of the First Amendment. *Citing Talley v. California,* 362 U.S. 60 (1960). The Court also found that the State's interests in preventing fraud and libel, although legitimate, were adequately protected by other Ohio laws, ***Mclnfyre*** at **350-51.** After setting forth a laundry list of reasons why the statute was not narrowly tailored, the Court declared: "We recognize that a state's enforcement interest might justify a more limited identification requirement, but Ohio has shown scant cause for inhibiting the leafleting at issue here." ***Id.*** at **353.**

Other Justices, writing in Mclnfyre, ***supra,*** also recognized that more legitimate interests of government might justify compelled disclosure of **a** speaker's identity. **Justice** Ginsburg recognized that this right of anonymity is not absolute, and that in other, larger circumstances the state may require a speaker to disclose its identity. ***Id.*** at **358.** In dissent, Justice Scalia, joined by the Chief Justice, argued that there was no right to anonymous electioneering, and that it would take decades to "**work** out the **shape** of this newly expanded right-to-speak incognito, even in the election field." ***Id.*** **at 381.**

Stratton's Ordinance **is** limited to application upon private property, and furthers police protection **and** privacy of its citizens. This, when balanced against the right

of intrusion upon private property, provides Stratton's legislation constitutional compliance,

In *Buckley v. American Constitutional Law Foundation*, 525 U.S. 182 (1999), the Court reviewed a Colorado statute which required disclosure of the identity of a person circulating an initiative petition in two distinct instances. The statute required the circulators to wear badges displaying their names while requesting electors to sign the petition, and also required them to sign an affidavit containing the circulator's name, address and other pertinent information at the time the petitions were filed. *Id.* at 189, fn. 6, 7.

The state of Colorado justified its need to identify petition circulators by its strong interest in policing lawbreakers among petition circulators. *Id.* at 196. It claimed that the badge enabled the public to identify and the state to apprehend petition circulators who engage in misconduct. *Id.* at 198.

Both lower courts struck the badge requirement from the statute, but upheld the affidavit requirement. *American* Law *Foundation, Inc. v.* Meyer, 870 F. Supp. 995 (D. Colo. 1994); *American Law Foundation, Inc. v. Meyer*, 120 F.3d 1092 (10th Cir. 1997). The evidence at trial indicated that the badge requirement inhibited potential circulators from participating in the election process. The witnesses expressed fear of possible recrimination and retaliation while circulating petitions advocating support for volatile issues. Buckley *v. American Constitutional Law Foundation, Inc.*, 525 U.S. 182, 197-98 *(1999).* It was recognized that the inhibiting factor was compelled identification at the point of persuasion. The Tenth Circuit noted that the badge

requirement "forces circulators to reveal their identities at the same time they deliver their political message . . . [and] operates when reaction to the circulator's message is immediate and may be the most intense, emotional and unreasoned." *Id.* at 198-99. The affidavir requirement, on the other hand, was upheld by both lower courts because its identification requirement was distant in time from the point of persuasion, Signing and filing the affidavit after circulation and persuasion was complete did not expose the petition circulator to the risk of "heat of the moment" harassment. By striking the badge provision from the statute, the impediment to participation in the electoral process, and to the full exercise of First Amendment rights, were removed. The lower courts found that the affidavit requirement was not an impediment to the exercise of free speech and more narrowly accomplished the State's asserted interest in apprehending petition circulators who engage in misconduct. Approval of the affidavit requirement was not challenged in appeal to this Court.

On review, this Court approved the reasoning of the lower court striking the badge requirement and further found that it was unconstitutional pursuant to the holding in *McIntyre, supra.* Indeed, the badge requirement was declared to be more injurious to speech than the Ohio law forbidding the distribution of anonymous campaign literature. The petitioner circulator, unlike the pamphleteer, is required to persuade electors to sign the petition. *Buckley* at 199, Consequently, given the intimacy of the contact, and the compelled disclosure of identity at the point of persuasion, the circulator's interest in anonymity was

found to be greater than that of the anonymous pamphleteer. Accordingly, the badge requirement ran afoul of *McIntyre's* right to engage in anonymous speech. However, the Court went on to further explain that:

> For this very reason, the name badge requirement does not qualify for inclusion among the "more limited [election process] identification requirement[s]" to which *we* alluded in *McIntyre*. **514** U.S., at **353, 115** S.Ct. 1511 ("We recognize that a State's enforcement interest might justify a more limited identification requirement, but Ohio has shown scant cause for inhibiting the leafleting at issue here."); see *id.*, at **358, 115** S.Ct. 1511 (GINSBURG, J., concurring). In contrast, the affidavit requirement upheld by the District Court and Court of **Appeals,** which must be met only after circulators have completed their conversations with electors, exemplifies the type of regulation for which *McIntyre* left room.

Buckley at 199-200.

The Ordinance now before the Court presents governmental interests which support the more limited identification requirement contemplated by *McIntyre*. It in no way inhibits anonymous political discourse in any public forum. It does not require the recipient of a Solicitation Permit to wear a badge **or** outwardly identify themselves in any manner. It does not require a person engaging in door-to-door political discourse to disclose his identity until the resident requests identification. Thus, the disclosure requirements are limited to achieving the compelling governmental interests of securing privacy **and** deterring crime.

A major distinction between the laws reviewed in *McIntyre, supra,* and *Hill v. Colorado,* 530 U.S. 703 (2000), and the Stratton Ordinance is the location where the message is conveyed. As noted at the outset, the Stratton Ordinance applies only on private property at the residences of those who inhabit the Village. Unlike *McIntyre, supra,* which is limited by its facts to distribution in a public forum and the universal application of the badge requirement in *Buckley, supra,* the Stratton Ordinance applies only on the premises of a Village resident where the privacy interests have been found to prevail over the First Amendment rights of any message sender. *Frisby v. Schultz, supra; Rowan v. United States Post Office Dept., supra,* It is both well recognized and undisputed by Petitioners, that the resident has the right to ban a speaker from delivering any message in the home.

Petitioners level a broadside against the Ordinance by claiming that it is not narrowly tailored. A narrowly tailored statute "targets and eliminates no more than the exact source of the evil it seeks to remedy." *Frisby v. Schultz,* 487 U.S. 474, 485 (1988). The legislation need not be the least restrictive means of regulation, but it must further a significant governmental interest that would be achieved less effectively without the regulation. See *Ward v. Rock Against Racism,* 491 U.S. 781, *798 (1989).*

The significant governmental interests of protecting privacy and curbing criminal activity could not be achieved in a less intrusive manner.

The Stratton Ordinance is narrowly tailored to provide would be speakers greater opportunity to spread their message to the unwilling listener than does the

traditional method of placing a "No Trespassing" sign. In Stratton, the unwilling listener in his home can choose the messages he wishes to receive.

On the other hand, the resident who does not file a No Solicitation Registration Form with the Mayor implicitly invites all communication to the residence. This includes and respects the rights of citizens to express political, religious or other messages. The resident who does not avail himself of the protection afforded by Ordinance § 116.07 opens his property to **all** canvassers/ solicitors who have registered for a Solicitation Permit,. regardless of whether the message is vocally proclaimed by an unidentified advocate, quietly proclaimed by the anonymous pamphleteer, or proudly disseminated by a readily identified proponent. (Ordinance § 116.07, **RBA 6a-7a).**

The Stratton Ordinance does not require the permittee to wear a badge or outwardly display his identity in any manner. The permittee is allowed to go door-to-door in the Village, consistent with the invitation to speak anonymously, convey **his** message, and attempt to persuade the resident that his viewpoint is best. The Ordinance only requires that the canvasser carry in his pocket, or on his person, the permit which was issued by the Village. (Ordinance § 116.04, **RBA** 4a). It leaves the extent of the invitation to speak anonymously to the discretion of the resident.

Thus, the Stratton Ordinance is not nearly as intrusive on First Amendment rights as was the badge requirement in *Buckley v. American Constifutional Law Foundation, Inc.,* 525 U.S. 182 (1999). Disclosure of a speaker's identity

can only be compelled by the homeowner in the exercise of his own rights, or by a police officer in furtherance of official duties. The right to anonymity on the private property of a Village resident extends no further than the right to engage in any form of speech on the same parcel. The right exists only as long as the resident wishes. The resident can take steps to prevent anonymous discourse on his property to the same extent that he can ban all speech from the home. Once the resident **asks** a visitor on his property for identification, the right to anonymous discourse ends.

It is difficult to imagine an Ordinance that more perfectly balances the rights guaranteed by the First Amendment and the rights of the unwilling listener at the private residence. The Ordinance burdens speech as little as possible and places in the discretion of the resident the amount, **kind** and manner of speech or expression that can invade the home.

The simple registration and "permit-in-a-pocket" requirements are narrowly tailored to promote legitimate governmental interests. Chapter **116** of the Codified Ordinances of the Village of Stratton is **a** fully constitutional exercise of governmental authority.

The Stratton Ordinance requires no loss of anonymity at the point of persuasion. Consistent with this Court's instruction in *Martin v.* City *of Struthers,* **319** U.S. **141** (1943), registration is conducted regardless of speech content. Registration does not occur at the point of persuasion; it occurs at Village hall. Registration acts as the "automatic trigger" for the permit issuance to go upon

the private property and conduct door-to-door solicitation. The point of persuasion occurs at the time the canvasser decides to knock on the door selected by the canvasser. The only limitation to the delivery of the message is the prohibition of canvassing those potential listeners **who** have consciously made a decision that they do not wish to be disturbed.

No prior restraint argument is available to Petitioners because no message is prohibited. All can speak ***at*** all locations subject to the decision of the resident. Prior restraints typically involve a public official censoring the expression of a message to the public because **of** its content, *Organization* for *a* Better *Austin v. Keefe,* 402 U.S. **415** (1971), or denying use of an entire forum because of speech's content, *Southeastern Promotions, Ltd. V. Conrad,* 420 U.S. 546 (1975), all in advance of the actual expression.

The claim that the Mayor has unfettered discretion in granting or denying **a** permit is without support in the record or by a reading of the Ordinance. The Ordinance supplies the guidance necessary for the completion **bf** the form when it explains that the Mayor may request such additional information to fulfill the inquiries **of** the registration form. (Ordinance § 116.03(b)(6), **RBA** 3a-4a).

Stratton's registration provision is not speech. All who wish **to** exercise First Amendment activity may do so without cost.

The permit issued by the Village upon registration does not identify the canvasser. (Defendants' Exhibit **36,**

J.A. 248a).[1] The Ordinance does not dictate the language or form to be utilized as the permit. This is an administrative form used to facilitate the administration of the Ordinance. **It,** however, indicates registration and the only name on the permit is the name of the Mayor. In practice, the Mayor's name is pre-signed. (Mayor John Abdalla, Tr. 105-106, **J.A.** 386a-387a).

Thus, the permit does not contravene anonymity other than to indicate registration. Such a "badge" corresponds to an identification device. An identification device has been previously authorized by court decision. *Martin V. City of Struthers,* **319** U.S. **141 (1943).**

The display of the permit occurs only in two instances: (1) upon police officer request, or (2) upon request by the person who is being intruded upon, which occurs only upon private property. (Ordinance § 116.04, **RBA** 4a). The limited disclosure squares with the most minimal requirements to further the compelling governmental interest.

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[1] The only testimony at trial concerning **the** content of Stratton's permit is found in the testimony **of** Mayor John **Abdalla,** Tr. 105, **J.A.** 386a. **A copy** of a blank permit form **was provided** to the Court through stipulation. (Defendants' Exhibit **36,** *J. R* 248a). The document *was* provided to Petitioners during a request **fox** production of documents **and** was obtained by counsel from the Township **Clerk, Connie** Rohall. The Village Clerk stated and confirmed in writing the following: (1) The individual/organization is given an application *to* be filled out; **(2) upon** the return of the **application** to the Clerk of the Village of Stratton, a permit is issued; **and** *(3)* the permit: is not attached **to** the application. The application is retained by the Clerk of the Village of Stratton for their records. The permit form does not have the name of the individual on it **and** is pre-signed by Mayor **Abdalla.**

The permit is not displayed at traditional public fora, or non-traditional public fora under any circumstances because the Ordinance only pertains to private property.

Testimony identified a laundry list of alternative locations in which Petitioners' ministry could be conducted without obtaining registration – in front of a grocery store, tavern, truck stop, restaurant, **park,** playground, post office, street, any public area, power plant, any mutually agreeable location. (Robert Ciranko, Tr. **43-44,** J.A. 331a-333a). In essence, this means at any agreed upon location that the willing listener agrees. The Stratton legislation leaves the political activist with ample alternative channels of communication at these locales and is limited narrowly, even on private property, ***to*** deliver any First Amendment message. See, *e.g., Clark v.* ***Community*** *for Creative Non-Violence,* **468** *U S*. 288, 298-99 (1984). Thus, they are free to solicit or canvass in Stratton's streets and **parks** and other traditional forums. They are also able to use the mail, telephone, and internet as they *see* fit. They may even wait for the resident to leave the confines of his home.

What occurs at the point of persuasion? Anonymity is not compromised for the registrant because no name is on the permit. (Defendants' Exhibit ***36,*** **J.A.** 248a). The concern of the Court [*Buckley v. American Constitutional Law Foundation, Inc.,* 525 US. 182 (1999)] that at the most critical time of persuasion a name is disclosed does not occur. The physical presence of the canvasser at the door is the loss of anonymity that the Sixth Circuit Court of Appeals referenced. (Opinion of the United States Court **of** Appeals for the Sixth Circuit, **J.A.**76a). It is a voluntary disclosure when the canvasser decides to present himself

uninvited at the door. In *Buckley, supra,* the Court considered the Colorado statute that required the display of the badge during the entire initiative process. Stratton's display of the pocket permit is of the most limited kind, only upon demand **upon** private property previously determined by the canvasser as appropriate for display, or by a police officer in the furtherance of the registration ordinance. It must be stressed that Buckley's badge had the name or name and sponsoring organization upon it. Stratton has the most limiting approach, simple confirmation of registration.

V.

PETITIONERS' FIRST AMENDMENT OVERBREADTH CHALLENGE FAILS BECAUSE THE ORDINANCE DOES NOT SWEEP TOO BROADLY AND BECAUSE IT IS DIRECTED TO PLACE.

As the Court stated in *Broadrick v. Oklahoma,* **413** U.S. 601 (1973), "Application of the overbreadth doctrine . . . is manifestly strong medicine. It has been employed by the court sparingly **and** only as a last resort." ***Id.*** at 613.

The doctrine presumes the enactment is constitutional **as** applied to thwart gratuitous wholesale attacks. In *Bd. of Trustees of State Univ. of N.Y. v.* ***Fox,*** *492* U.S. 469 (1989), the Court stated:

> It is not the usual judicial practice, however, nor do we consider it generally desirable, to proceed to **an** overbreadth issue unnecessarily – that is, before **it is** determined that the statute would be **valid as** applied. Such a course would convert use of the overbreadth doctrine from a necessary means of vindicating the plaintiff's own

> right not to be bound by a statute that is unconstitutional into a means of mounting gratuitous wholesale attacks upon state and federal laws.

Id. at 484-85. Petitioners challenge to the Stratton Ordinance denies this admonition.

To find a statute unconstitutionally overbroad, its "overbreadth . . . must not only be real, but substantial as well, judged in relation to the statute's plainly legitimate sweep." *Broudrick v. Oaklahoma,* **413** U.S. at 615. The party challenging the enactment must show that its potential application reaches a significant amount of protected speech.

In *Broadrick, **supra,*** the Court examined a regulation placing restrictions on political campaign activity by public employees. The employees made a facial challenge to the statute arguing that it could be applied to protected political expression as the wearing of political buttons or the displaying of bumper stickers. This Court upheld the statute. The Court acknowledged some overbreadth, but upheld the statute because the act **was** "not substantially overbroad," and that whatever overbreadth may have existed "should be **cured** through case by case analysis of the fact situations. . . ." ***Id.*** at 615-16. See *also Houston v. Hill,* 482 U.S. 451, 458-59 (1987) (overbreadth must be substantial).

Petitioners have previously alleged that Stratton's Ordinance unconstitutionally interfered with their reli***gious*** activity in both a facial **and** as **applied** Constitutional challenge. Both the District Court and the Court of **Appeals** found the legislation constitutional. Facial overbreadth challenges posit a hypothetical plaintiff before

this Court, *See* City *Council of Los Angeles v. Taxpayers for Vincent, 466* **U.S. 789,** 801 (1984). This is an additional factor which limits application of the doctrine.

Anonymity of the petition circulator in core political speech activities stands no differently than Petitioners. The potential plaintiff on the limited issue of anonymity stands with the person who must register to propose his religious based intrusion.

In *Hill v. Colorado,* 530 U.S. 703 (2000), the Court examined a First Amendment overbreadth claim. The Court stated:

> * * * [T]he overbreadth doctrine enables litigants to "challenge a statute, not because their own rights of free expression are violated, but because of **a** judicial prediction or assumption that the statute's every existence may cause others not before the court to refrain from constitutionally protected speech or expression." Moreover, "particularly where conduct **and** not merely speech **is** involved, WE believe that the overbreadth of a statute must not only be real, but substantial **as** well, judged in relation to the statute's plainly legitimate sweep." *Id.,* at 615, **93** S.Ct. 2908. Petitioners have not persuaded us that the impact of the statute on the **conduct** of other speakers will differ from its impact on their own sidewalk counseling. **Cf.** *Members* of City *Council of Los Angeles v. Taxpayers* **for** *Vincent,* **466** U.S. *789,* 801, 104 S.Ct. 2118, 80 L.Ed.2d *772* **(1984).**

Id. at **731-32.**

Petitioners argue for overbreadth relief at the same time they claim that religious speech is equivalent to political speech. Petitioners' Brief, p. **23.** No evidence is

advanced in furtherance of any dissimilarity. It is Petitioners' obligation to present evidence and identify the distinction to allow the application of the overbreadth doctrine. Where the sweep of the legislation is equivalent in the evaluation of the actual plaintiff and the hypothetical plaintiff, facial overbreadth does not extend beyond the legitimate sweep of the previously determined constitutional challenge. Future Constitutional attacks may be considered on a case by case basis. Therefore, it cannot be said that the Ordinance *is* substantially overbroad.

The overbreadth doctrine is limited to First Amendment activity.

In *Hill v. Colorado*, 530 U.S. 703 (2000), this Court determined that a state statute which regulated the location of where speech occurred, a zone away from a health care facility on a traditional public forum, a sidewalk, only implicated the location where First Amendment activity occurred. The Court concluded that an overbreadth analysis was not applicable. The Stratton Ordinance is directed to location upon private property, *not* speech. With this conclusion, an overbreadth challenge is also unavailable.

CONCLUSION

Petitioners present the Court an inaccurate portrayal of the Stratton Ordinance as providing a flat ban on many types of expressive activity unless permitted by an unrestrained mayor. In their quest to establish the alleged unconstitutionality of the Ordinance, the Petitioners stray far from the limited scope of this Court's writ, raising

many issues that have no bearing on overbreadth. Regardless, a review of the Ordinance and the evidence presented at trial establishes that the Ordinance was designed with great care by the Village Solicitor to accommodate a plethora of constitutional considerations while at the same time promoting the interests of the Village. The Village Solicitor, in order to accommodate all rights and interests, invited counsel for the Petitioners to participate in the creation of the Ordinance. (Defendants' Exhibit 17, J.A. 128a-134a). It is the product of both that input and careful study of this Court's First Amendment jurisprudence regarding permissible restrictions on door-to-door activity and the privacy rights of individual homeowners to the quiet enjoyment of their homes.

The result of the Village Solicitor's endeavor is an ordinance which is, and has been found to be, content neutral and of general applicability by both the District Court and the Sixth Circuit Court of Appeals, and is a reasonable accommodation of competing interests. It is a perfect balance of the competing rights of free expression and the 'rights of the unwilling listener in his home. The Ordinance neither censors speech, nor restricts any message from being delivered to a willing listener. There is no restriction on the exercise of any expressive activity in a traditional public forum or on private property that permits such expression. It provides a registration format only for those who will be entering upon Village residences that is easily completed and is accommodating to the speaker's rights to anonymity. The Mayor is mandated to issue a permit to all those who register. (Ordinance § 116.04, RBA 4a). The Mayor's right to deny or revoke a permit is narrowly circumscribed. (Ordinance § 116.06,

RBA 5a). The permittee is required to carry, but not display, the permit, and is not required to identify himself in any outward manner. Display of the permit occurs only to a police officer in furtherance of his duties or the person who is intruded upon at his private property. Lastly, the Ordinance allows those residents who wish to be left alone in their homes the opportunity to register at the Village hall and notify would be applicants for a solicitation permit that they are not to be disturbed unless the resident has expressly excluded the permittee from the prohibition. (Ordinance § 116.07, **RBA** 6a-8a).

Chapter 116 is necessary to accomplish the protection of well-established governmental interests and is narrowly tailored to accomplish those goals leaving reasonable alternate channels of communication. Anonymity is reasonably accommodated under the competing circumstances. For the foregoing reasons, the Village of Stratton and its Mayor request that this Court affirm 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. 1996-6 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.

/s/ John M. Abdalla
MAYOK

ATTEST: s/ Lola **Kakascik**
CLERK

PASSED: *7/22/98*