

# LIBERTY COUNSEL



Post Office Box 540774  
Orlando, FL 32854-0774  
Telephone: 800•671•1776  
Facsimile: 407•875•0770  
www.LC.org

1015 Fifteenth St. N.W., Ste.  
1100  
Washington, DC 20005  
Telephone: 202•289•1776  
Facsimile: 202•216•9656

Post Office Box 1108  
Lynchburg, VA 24506-1108  
Telephone: 434•592•7000  
Facsimile: 434•592•7700  
liberty@LC.org

## DOOR-TO-DOOR WITNESSING

The right to witness, canvass, or distribute literature going door-to-door in private residential neighborhoods is an important right protected by the Constitution. Ever since the 1930s when the United States Supreme Court first confronted this issue, “the Court has invalidated restrictions on door-to-door canvassing and pamphleteering.”<sup>1</sup> This chapter will focus on the right to go door-to-door in private neighborhoods to engage in noncommercial religious or secular speech or canvassing either verbally or through distribution of literature.<sup>2</sup>

Most of the door-to-door witnessing cases have involved Jehovah’s Witnesses.<sup>3</sup> The most recent Supreme Court case arose in the Village of Stratton, Ohio. The Village ordinance prohibited “canvassers” and others from “going in and upon” private residential property for the purpose of promoting any “cause” without first having obtained a permit from the mayor.<sup>4</sup> A group of Jehovah’s Witnesses challenged the ordinance claiming they were following the example of the Apostle Paul, who taught publicly from house to house. They also claimed they were mandated by the Scriptures to go into all the world and preach the gospel.<sup>5</sup>

In striking down the ordinance, the High Court stressed several factors. First, the Court emphasized the value of the speech involved. The Court noted:

[H]and distribution of religious tracts is an age-old form of missionary evangelism – as old as the history of printing presses. It has been a potent force in various religious movements down through the years. . . . This form of religious activity occupies the same high estate under the First Amendment as do worship in the churches and

---

<sup>1</sup>*Watchtower Bible and Tract Society of New York, Inc. v. Village of Stratton*, 536 U.S. 150, 159 (2002). See, e.g., *Hynes v. Mayor and Council of Oradell*, 425 U.S. 610 (1976); *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. State of N.J.*, 308 U.S. 147 (1939); *Lovell v. City of Griffin*, 303 U.S. 444 (1938).

<sup>2</sup>If the purpose of going door-to-door is for commercial sales or for the solicitation of funds, then the government may have a greater interest in placing restrictions on such activity that would otherwise be impermissible if placed on noncommercial speech. However, this does not mean that the government may place burdensome restrictions on commercial speech. See *Village of Stratton*, 536 U.S. at 150, 168-69.

<sup>3</sup>The terms “witnessing” and “witness” in this chapter are often used to describe the particular activity in a given case. However, these terms may also be used when addressing the right to go door-to-door to engage in either religious or secular speech. This is done to avoid repeating the all encompassing phrase, “witness, canvass or distribute literature.” From a First Amendment Free Speech standpoint, there is no constitutional difference between these forms of expression. If the speech is religious, there may be the added right of Free Exercise of Religion.

<sup>4</sup>*Village of Stratton*, 536 U.S. at 153.

<sup>5</sup>See *id.* at 160; see also Acts 20:20; Mark 16:15.

preaching from the pulpits. It has the same claim to protection as the more orthodox and conventional exercises of religion. It also has the same claim as the others to the guarantees of freedom of speech and freedom of the press.<sup>6</sup>

Second, the Supreme Court underscored “the historical importance of door-to-door canvassing and pamphleteering as vehicles for the dissemination of ideas.”<sup>7</sup> In this respect, the Court noted:

[P]amphlets have proved most effective instruments in the dissemination of opinion. And perhaps the most effective way of bringing them to the notice of individuals is their distribution at the homes of the people. On this method of communication the ordinance imposes censorship, abuse of which engendered the struggle in England which eventuated in the establishment of the doctrine of the freedom of the press embodied in our Constitution. To require a censorship through license which makes impossible the *free and unhampered* distribution of pamphlets strikes at the very heart of the constitutional guarantees.<sup>8</sup>

Finally, the Court noted that the struggle of the Jehovah’s Witnesses has not been a struggle for their rights alone. The importance of going door-to-door is broader than one group or one cause. Many people rely on this method of communication. “Door-to-door distribution of circulars is essential to the poorly financed causes of little people.”<sup>9</sup> Because of the importance of door-to-door speech, the Court expressed its disdain for laws requiring prior registration for such speech as follows:

As a matter of principle a requirement of registration in order to make a public speech would seem generally incompatible with an exercise of the rights of free speech and free assembly. . . . If the exercise of the rights of free speech and free assembly cannot be made a crime, we do not think this can be accomplished by the device of requiring previous registration as a condition for exercising them and making such a condition the foundation for restraining in advance their exercise and for imposing a penalty for violating such a restraining order. So long as no more is involved than exercise of the rights of free speech and free assembly, it is immune to such a restriction. If one who solicits support for the cause of labor may be required to register as a condition to the exercise of his right to make a public speech, so may he who seeks to rally support for any social, business, religious or political cause. We think a requirement that one must register before he undertakes to make a public speech to enlist support for a lawful movement is quite incompatible with the requirements of the First Amendment.<sup>10</sup>

---

<sup>6</sup>*Village of Stratton*, 536 U.S. at 161-62 (quoting *Murdock*, 319 U.S. at 109).

<sup>7</sup>*Id.* at 151.

<sup>8</sup>*Id.* at 162 (quoting *Schneider*, 308 U.S. at 164) (emphasis added by *Village of Stratton*).

<sup>9</sup>*Village of Stratton*, 536 U.S. at 163 (quoting *Martin*, 319 U.S. at 144-46); see also *Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620 (1980); *Hynes*, 425 U.S. at 610; *Thomas v. Collins*, 323 U.S. 516 (1945).

<sup>10</sup>*Village of Stratton*, 536 U.S. at 164 (quoting *Thomas*, 323 U.S. at 539-40).

The Court rejected the Village's argument that the permit process placed a minor burden on speech. "Even if the issuance of permits by the mayor's office is a ministerial task that is performed promptly and at no cost to the applicant, a law requiring a permit to engage in such speech constitutes a dramatic departure from our national heritage and constitutional tradition."<sup>11</sup> The Supreme Court cited three reasons for striking down this law that required a permit to engage in door-to-door speech.

First, obtaining a permit to speak interferes with those who want to speak anonymously.<sup>12</sup> "The decision to favor 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."<sup>13</sup> "The requirement that a canvasser must be identified in a permit application filed in the mayor's office and available for public inspection necessarily results in a surrender of that anonymity."<sup>14</sup>

Second, "requiring a permit as a prior condition on the exercise of the right to speak imposes an objective burden on some speech of citizens holding religious or patriotic views."<sup>15</sup> A number of people object to applying for a permit based on religious principle. There are also some patriotic citizens "who have such firm convictions about their constitutional right to engage in uninhibited debate in the context of door-to-door advocacy, that they would prefer silence to speech licensed by a petty official."<sup>16</sup>

Third, a permit requirement chills spontaneous speech. "A person who made a decision on a holiday or a weekend to take an active part in a political campaign could not begin to pass out handbills until after he or she obtained the required permit. Even a spontaneous decision to go across the street and urge a neighbor to vote against the mayor could not lawfully be implemented without first obtaining the mayor's permission."<sup>17</sup> The High Court pointed out that any interest the government may have in protecting a homeowner's privacy or in preventing crime can be accomplished by an individual citizen posting a "No Solicitation" sign on the property.<sup>18</sup>

The Supreme Court's decision in *Village of Stratton* drew from a rich history of cases which had similarly struck down laws restricting door-to-door speech. In one of those cases, a city attempted to impose a licensing scheme essentially banning Jehovah's Witnesses from witnessing door-to-door in predominantly Roman Catholic neighborhoods. The Jehovah's Witnesses played records attacking the Roman Catholic church as an "enemy" and stating that the church was of the devil. This licensing scheme attempted to prohibit the door-to-door witnessing activities of the Jehovah's Witnesses, but the United States Supreme Court ruled the scheme unconstitutional.<sup>19</sup> The regulation at issue allowed the city officials to determine who would be permitted to engage in solicitation or distribution of literature based upon the content of the message.

The United States Supreme Court also ruled unconstitutional a municipal "license tax" that was imposed upon door-to-door solicitation and witnessing by Jehovah's Witnesses. The Court

---

<sup>11</sup>*Village of Stratton*, 536 U.S. at 166.

<sup>12</sup>*See id.*; *see also McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334 (1995).

<sup>13</sup>*Village of Stratton*, 536 U.S. at 166 (quoting *McIntyre*, 514 U.S. at 341-42).

<sup>14</sup>*Id.* at 151; *see also Buckley v. American Constitutional Law Found., Inc.*, 525 U.S. 182 (1999) (striking down a badge requirement those distributing petition circulars).

<sup>15</sup>*Village of Stratton*, 536 U.S. at 167.

<sup>16</sup>*Id.*

<sup>17</sup>*Id.*

<sup>18</sup>*See id.* at 167-68.

<sup>19</sup>*See Cantwell*, 310 U.S. at 296; *Tally*, 362 U.S. at 60.

noted:

Those who can tax the privilege of engaging in this form of missionary evangelism can close its doors to all those who do not have a full purse. Spreading religious beliefs in this ancient and honorable manner would thus be denied the needy. Those who can deprive religious groups of their colporteurs can take from them a part of the vital power of the press which has survived from the Reformation.<sup>20</sup>

In one case, the Supreme Court considered the constitutionality of a city ordinance that made it unlawful for any person distributing literature “to ring the doorbell, sound the door knocker, or otherwise summon the inmate or inmates of any residence to the door for the purpose of receiving” such literature. The United State Supreme Court ruled this type of ordinance unconstitutional stating:

Freedom to distribute information to every citizen wherever he desires to receive it is so clearly vital to the preservation of a free society that, putting aside reasonable police and health regulations of time and manner of distribution, it must be fully preserved.<sup>21</sup>

Interestingly named, the Town of Babylon had an ordinance requiring a resident’s consent before a speaker could approach a home. A federal district court in New York ruled that to require the “consent of householders before approaching their homes constitutes, in effect, an indirect unconstitutional imposition of a licensing fee; it generates costs which burden the exercise of first amendment rights in direct proportion to the number of persons the speaker wants to reach.”<sup>22</sup>

Numerous other federal courts have ruled that cities may not prohibit door-to-door witnessing.<sup>23</sup> In the city of Ocoee, Florida, Pamela Jones and Marcia Muller sought to distribute political and religious literature in residential neighborhoods, but the City had a policy requiring a permit prior to distributing any literature. This permit had to be filled out on a specified form which was then reviewed by the Chief of Police. The applicant was required to identify various physical features including any bodily scars or markings. Prior to the issuance of the permit, the Chief of Police was required to determine that the applicant was a person of “good moral character.” After Liberty Counsel filed suit, the city changed the policy and no longer requires prior permission to distribute literature door-to-door.

Reviewing an attempt by a municipality to regulate neighborhood activities like canvassing and soliciting, the United States Supreme Court stated that any regulation in this area must not “intrude upon the rights of free speech and free assembly.”<sup>24</sup> Other courts have recognized the value in literature distribution.

From the time of the founding of our nation, the distribution of written material has

---

<sup>20</sup>*Murdock*, 319 U.S. at 112; *see also Grosjean v. American Press Co.*, 297 U.S. 233 (1936) (striking down a circulation licensing tax).

<sup>21</sup>*Martin*, 319 U.S. at 146-67.

<sup>22</sup>*Troyer v. Town of Babylon*, 483 F. Supp. 1135, 1139 (E.D.N.Y.), *aff’d*, 628 F.2d 1346 (2d Cir.), *aff’d*, 449 U.S. 998 (1980).

<sup>23</sup>*See, e.g. Largent v. Texas*, 318 U.S. 418 (1943); *Jamison*, 318 U.S. at 413; *Weissman v. City of Alamogordo*, 472 F. Supp. 425 (D.N.M. 1979); *McMurdie v. Doust*, 468 F. Supp. 766 (N.D. Ohio 1979); *Levers v. City of Tullahoma*, 446 F. Supp. 884 (E.D. Tenn. 1978); *Murdock v. City of Jacksonville*, 361 F. Supp. 1083 (M.D. Fla. 1973).

<sup>24</sup>*Thomas*, 323 U.S. at 540-41.

been an essential weapon in the defense of liberty. Throughout the years, the leaflet has retained its vitality as an effective and inexpensive means of disseminating religious and political thought. Today when selective access to the channels of mass communication limits the expression of diverse opinion, the handbill remains important to the promise of full and free discussion of public issues. For those of moderate means, but deep conviction, freedom to circulate flyers implicates fundamental liberties.<sup>25</sup>

Indeed, the freedom to speak and circulate flyers, especially in your neighborhood, implicates fundamental constitutional liberties.

Because of their vital role for people who lack access to more elaborate (and more costly) channels of communication, certain public places have special status under the First Amendment. . . . The doctrine of the public forum achieves a central purpose of the freedom of the speech – the role of equality of communicative opportunities – by opening avenues of expression for the “poorly financed causes of little people.” . . . As our court has articulated the theme of the public forum cases, regulation of free expression in the public areas. . . affects most frequently those who advocate unpopular causes. It is those who seek to change the status quo who have historically taken to the streets or other public places to promote their causes. Those who are satisfied with our society as it is, normally use other forums.<sup>26</sup>

The Supreme Court ruled unconstitutional a city ordinance that made it a crime for a solicitor or canvasser to knock on the front door of a resident’s home or ring the doorbell.<sup>27</sup> The ordinance was too broad and impinged upon constitutional freedoms by substituting “the judgment of the community for the judgment of the individual householder.”<sup>28</sup> The Supreme Court has also invalidated an ordinance that prohibited the distribution of “literature of any kind . . . without first obtaining written permission from the city manager.”<sup>29</sup>

The Court ruled unconstitutional a city policy that required persons to obtain a permit, which would not be issued if the Chief of Police decided that the “canvasser is not of good character or is canvassing for a project not free from fraud.”<sup>30</sup> The Court found the ordinance unconstitutional because the canvasser’s “liberty to communicate with residents of the town at their homes depends upon the exercise of the officer’s discretion.”<sup>31</sup> In another case, the High Court ruled unconstitutional a municipal ordinance which required that advance written notice be given to the local police department by any person desiring to canvas, solicit or call from house to house for a recognized charitable cause, or for a federal, state, county, or municipal political campaign or cause.<sup>32</sup>

The right to freedom of speech is a precious liberty. It is important that this liberty be

---

<sup>25</sup>*Paulsen v. County of Nassau*, 925 F.2d 65, 66 (2d Cir. 1991).

<sup>26</sup>*Carreras v. City of Anaheim*, 768 F.2d 1039, 1043 (9th Cir. 1985) (quoting *Martin*, 319 U.S. at 146) (citations omitted).

<sup>27</sup>*See Martin*, 319 U.S. at 141; *see also Staub v. City of Baxley*, 355 U.S. 313 (1958).

<sup>28</sup>*Martin*, 319 U.S. at 144.

<sup>29</sup>*Lovell*, 303 U.S. at 447.

<sup>30</sup>*Schneider*, 308 U.S. at 147.

<sup>31</sup>*Id.* at 158.

<sup>32</sup>*See Hynes*, 425 U.S. at 610.

vigilantly guarded within residential neighborhoods, because it is important to allow free communication in these areas. Whether the issue is door-to-door canvassing, picketing on a public sidewalk, or carrying on expressive activity in a public park, any policy that contains a prior licensing scheme is constitutionally suspect. Generally the government has no business monitoring the speech activities of its citizens. An individual resident can avoid intrusion to their dwelling by posting a sign indicating that solicitors, canvassers, or leafleters are not welcome. However, this decision is best left to the individual resident and not to the government.

In addition to door-to-door witnessing, picketing in residential neighborhoods is also constitutionally protected.<sup>33</sup> Most residential neighborhoods have public sidewalks, and these public sidewalks are considered traditional public fora.<sup>34</sup> As the Supreme Court has noted, public sidewalks “have immemorially been held in trust for the use of the public.”<sup>35</sup> Notwithstanding the fact that the public sidewalks are in residential neighborhoods, they still are classified as traditional public fora and, therefore, are open to expressive activity by the public.

One difference between residential and business areas containing public sidewalks is that in residential areas the government has an interest in protecting “the well-being, tranquility, and privacy of the home.”<sup>36</sup> In this regard, the Supreme Court has stated that the home is the “last citadel of the tired, the weary, and the sick.”<sup>37</sup> In order to protect residential privacy, a city may pass an ordinance that restricts targeted picketing of a single residential address. Focused “picketing taking place solely in front of a particular residence” may be prohibited, but the government may not ban the general “marching through residential neighborhoods, or even walking around in front of an entire block of houses.”<sup>38</sup> In other words, while the government may prohibit picketing targeted at a single residential address, it may not prohibit general picketing throughout a neighborhood. Individuals may protest a particular residence but must do so by marching on the public sidewalk throughout the neighborhood. Congregating solely in front of a single residential home can be restricted, but marching generally throughout the neighborhood protesting an individual location is constitutionally protected.

In summary, the right to go door-to-door in private neighborhoods to engage in noncommercial religious or secular speech or canvassing either verbally or through distribution of literature has long been protected by the First Amendment. Laws which restrict this right or which require a permit to engage in such noncommercial speech are unconstitutional.

---

<sup>33</sup>For a more in depth discussion of picketing, see Chapter 12 entitled, “The Right to Picket, Demonstrate and Parade.”

<sup>34</sup>See *Frisby v. Schultz*, 487 U.S. 474, 481 (1988); see also *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37 (1983); *Hague v. CIO*, 307 U.S. 496, 515 (1939).

<sup>35</sup>*Frisby*, 487 U.S. at 481 (quoting *Hague*, 307 U.S. at 515).

<sup>36</sup>*Frisby*, 487 U.S. at 484.

<sup>37</sup>*Id.*

<sup>38</sup>*Frisby*, 487 U.S. at 477, 483; see also *Madsen v. Women's Health Ctr., Inc.*, 512 U.S. 753, 775-76 (1994).