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[Watchtower Bible and Tract Society v. Village of Stratton](#)
[U.S. Supreme Court, Docket No. 00-1737](#)
(Click here for brief)

On October 15, 2001, the United States Supreme Court granted a petition for certiorari to review whether the First Amendment guarantee of anonymous speech barred the Village of Stratton, Ohio, from enforcing a permit system which required “canvassers, solicitors, peddlars [or] hawkers” to identify themselves before going from door to door of private residences for the “purpose of advertising, promoting, selling and/or **explaining** any product, service, **organization or cause.**” (Emphasis added).

Amicus Brief

On November 29, 2001, on behalf of RealCampaignReform.org, Inc., Free Speech Defense and Education Fund, Inc., Lincoln Institute for Research and Education, Capitol Hill Prayer Alert Foundation, U.S. Justice Foundation, Gun Owners of America, Inc., and Conservative Legal Defense and Education Fund, we filed an *amicus curiae* brief with the U.S. Supreme Court in the Watchtower case. The brief is in support of the anonymous speech principle found in the First Amendment and embedded in the freedom of the press. Oral arguments are expected in 2002.

The argument section of the Amicus Brief consists of two sections. In the first section, the case is analyzed according to recent U.S. Supreme Court precedents. We endeavor to demonstrate why the Stratton ordinance fails to meet certain tests developed by the U.S. Supreme Court in recent decades. In the second section, the case is analyzed according to the actual text and historical context of the U.S. Constitution.

Most readers have found the contrast between the two argument sections to be stark. Some non-lawyers reading the brief have asked why the brief even bothers with the first section. Curiously, many lawyers trained in constitutional law as taught in modern law schools might ask why the second section should be necessary. From our perspective, attempting to persuade the U.S. Supreme Court of the rightness of this cause, both sections are both desirable and necessary. The first section pays respect to modern First Amendment jurisprudence. This section attempts to demonstrate to the Court that we are cognizant of its decisions and the prism through which it views the First Amendment. The second section sets out our analysis as to how the Court should

approach and decide the case. These constitutional arguments attempt to urge the Court to focus on first principles, from which the path to a correct decision can be discerned more readily.

Lower Court Decisions

In a divided opinion, the United States Court of Appeals for the Sixth Circuit upheld the city ordinance, ruling that the Supreme Court's most recent case protecting anonymous speech (McIntyre v. Ohio Elections Commission, 514 U.S. 334 (1995)) did not apply to door-to-door canvassing since the canvassers "reveal a portion of their identities — their physical identities to the residents they canvass."

While the ordinance requires political canvassers to reveal the remainder of their identities, i.e., their **names**, we do not believe that requirement rises to the level of impinging on First Amendment protected speech the Court sought to protect....

By creating a **right of anonymity**, the Court sought "to protect unpopular individuals from retaliation — and their ideas from suppression" ... Once the political canvassers are before the resident, the ability to protect them from these dangers is substantially diminished. Accordingly, there is little reason to read the Court's holding as protecting political canvassers from being required to reveal a **portion** of their identities when their very activity will reveal **other portions** of their identity and subject them to scrutiny. [Emphasis added.]

The Sixth Circuit's rationale for discounting the First Amendment principle of anonymity is remarkably myopic. Anonymity protection, to be effective, extends far beyond protecting an identity at the time of a meeting or confrontation. The very purpose of the First Amendment, including its anonymity principle, is to protect the people from adverse action of the government. Just because one voluntarily reveals his identity, in whole or in part, to private residents does **not justify government** officials in **requiring** that person to register with the government as a canvasser, revealing his name and home address, as well as the name and address of the organization represented and of the nature of the registrant's affiliation with that organization. Indeed, a resident visited by such a canvasser may not long remember the physical characteristics of any particular canvasser, but the city registration records would enable government officials to track down any such person.

The Village of Stratton justified its permit system on the ground that it is designed to protect the city's residents from "fraud" and "annoyance." But neither of those interests is legitimate when applied to activities involving the dissemination of ideas, whether they be political or religious. Indeed, the ancient right of liberty of the press absolutely precludes the government from imposing a permit system on the publication of ideas when such publication occurs on private property, such as is the case with door-to-door solicitation.

Significance of the Case

If the Sixth Circuit ruling were affirmed by the Supreme Court, it would open the door to cities and counties nationwide to institute permit systems, not only for “cold-calling” religious proselytizers, such as the Jehovah’s Witnesses, but for members of other churches who call on Sunday church visitors during the following week. After all, just as the Jehovah’s Witnesses come calling to “explain” their “cause,” so do other church visitation groups ring the doorbell of their neighbors to discuss the Gospel of Jesus Christ.

Moreover, such a ruling would not be limited to religious proselytizers. Rather, it would extend as well to political party canvassers, candidates for election to office, and others who go door-to-door “promoting ... or explaining” their “organization or cause.” As the Supreme Court observed nearly 60 years ago, “as every person acquainted with political life knows, door to door campaigning is one of the most accepted techniques of seeking political support [and] [d]oor to door distribution of circulars is essential to poorly financed causes of little people.” Martin v. City of Struthers, 319 U.S. 141, 146 (1943).

For years, the Supreme Court has recognized that the homeowner, not the government, has the power under the First Amendment to determine whether to receive door-to-door messages. Requiring such visitors to register with the government, and to disclose their names and addresses, places the government in the position as Big Brother, watching over its citizenry to make sure that they are not fooled by religious hocus-pocus or politically disfavored ideas. The anonymity principle, as Justice Thomas observed in his concurring opinion in McIntyre, must be preserved if the freedom of the press is to be preserved.