CASE OVERVIEW

20 YEARS

WATCHTOWER v STRATTON

CONTINUING LEGAL EDUCATION (CLE)

LIVESTREAM PROGRAM

THE CONSTITUTIONALLY PROTECTED RIGHT TO GO DOOR TO DOOR:

HOW WATCHTOWER v. VILLAGE OF STRATTON PROTECTS FREE SPEECH FOR ALL

For over 80 years, the U.S. Supreme Court has accorded constitutional protection to the public ministry of Jehovah's Witnesses.[1] The Court's consistent rulings have benefited and preserved the rights of, not only Jehovah's Witnesses, but all religious and political advocates to engage in constitutionally protected free speech from door to door.

Foundation

Beginning in the early 1930s, Jehovah's Witnesses encountered municipal and state opposition to their door-to-door public ministry.[2] This led to thousands of arrests, convictions, and, in some cases, severe mob violence in the United States.[3]

Among those convicted was Clara Schneider, who was arrested for preaching "the gospel of God's kingdom" from house to house in the Town of Irvington, New Jersey in December 1935.[4] Her crime? Canvassing without a permit. Why did Clara decline to seek a permit from the Chief of Police before sharing her religious message from door to door? Because "she conscientiously believed that so to do would be an act of disobedience to the command of Almighty God."[5]

[1] See Lovell v. City of Griffin, 303 U.S. 444 (1938); Schneider v. State (Town of Irvington), 308 U.S. 147 (1939); Cantwell v. Connecticut, 310 U.S. 296 (1940); Martin v. City of Struthers, 319 U.S. 141 (1943); Jamison v. Texas, 318 U.S. 413 (1943); Largent v. Texas, 318 U.S. 418 (1943); Murdock v. Pennsylvania, 319 U.S. 105 (1943); Jones v. City of Opelika, 319 U.S. 103 (1943); Follett v. Town of McCormick, 321 U.S. 573 (1944); Marsh v. Alabama, 326 U.S. 501 (1946); Tucker v. Texas, 326 U.S. 517 (1946); Watchtower v. Village of Stratton, 536 U.S. 150 (2002).

[2] See Shawn Francis Peters, Judging Jehovah's Witnesses: Religious Persecution and the Dawn of the Rights Revolution, 72-73, 82-83 (2000) (discussing the causes of the opposition, including, "the Witnesses' unusual beliefs and practices, particularly their refusal to salute the American flag" as well as "the unfortunate [Gobitis] decision of the Supreme Court refusing to interfere with the action of school authorities in demanding the [flag] salute."); see American Civil Liberties Union, The Persecution of Jehovah's Witnesses, 3 (New York City, 1941) ("The cause of this extraordinary outbreak was the 'patriotic' fear aroused by the success of the Nazi armies in Europe and the panic which seized the country at the imagined invasion of the United States.").

[3] E.g. American Civil Liberties Union, The Persecution of Jehovah's Witnesses, 3 (New York City, 1941) (reporting that documents filed with the Department of Justice reflect more than 335 instances of mob violence against Jehovah's Witnesses in 44 states involving 1,488 men, women, and children during 1940; American Civil Liberties Union, Jehovah's Witnesses and The War, 2 (New York City, 1943) (noting "Jehovah's Witnesses have been subjected to a religious persecution unmatched in our history as a nation save for the violence years ago against the Mormons. More than any other minority they are suffering war-time attack on their freedom of conscience[.]")

[4] Schneider v. State (Town of Irvington), 308 U.S. 147, 157-158 (1939); see Petitioner's Brief, 1939 WL 48518, *4 (noting that Clara Schneider was arrested on December 7, 1935, and tried and found guilty on December 17, 1935).

[5] Schneider, 308 U.S. at 159; see Petitioner's Brief, 1939 WL 48518, *10 ("Petitioner did not apply for or obtain a permit from the police department because she regarded herself as sent by Jehovah God to do His work and that such application would have been an act of disobedience to His command."); Petitioner's Reply Brief, 1939 WL 48520 *1 ("The undisputed evidence that appears in the record is that the Petitioner was at the time she was arrested 'an ordained minister of Jehovah God to preach the gospel of God's kingdom under Christ Jesus' and that she was engaged in this work for that sole purpose. It would be wholly inconsistent to require a minister of the gospel to apply to a human official for a permit to do that which the Almighty commands must be done.").

On appeal, the Supreme Court reversed Clara's conviction and held the ordinance void as applied to her as it banned "unlicensed communication of any views or the advocacy of any cause from door to door,"[6] permitted "canvassing only subject to the power of a police officer to determine, as a censor, what literature may be distributed from house to house and who may distributed it,"[7] and rendered the "liberty to communicate with the residents of the town at their homes depend[ent] upon the exercise of the officer's discretion."[8] Since "streets are natural and proper places for the dissemination of information and opinion" and "distribution at the homes of the people" is "the most effective way of bringing [pamphlets] to the notice of individuals," the Court noted that "[t]o require a censorship through license . . . strikes at the very heart of the constitutional guarantees."[9]

The Supreme Court repeatedly acknowledged "the historical importance of door-to-door canvassing and pamphleteering as vehicles for the dissemination of ideas."[10] For example, when reversing the conviction of Thelma Martin, one of Jehovah's Witnesses who was arrested while engaging in her door-to-door ministry, the Court noted in *Martin v. City of Struthers*:

For centuries it has been a common practice in this and other countries for persons not specifically invited to go from home to home and knock on doors or ring doorbells to communicate ideas to the occupants or to invite them to political, religious, or other kinds of public meetings. Whether such visiting shall be permitted has in general been deemed to depend upon the will of the individual master of each household, and not upon the determination of the community.[11]

[6] Schneider, 308 U.S. at 163.
[7] Id. at 163.
[8] Id. at 164.
[9] Id. at 151, 164.
[10] Watchtower v. Village of Stratton, 536 U.S. 150, 162 (2002).
[11] Martin v. City of Struthers, 319 U.S. 141 (1943).

Similarly, in *Murdock v. Pennsylvania*, the Supreme Court observed:

The hand 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. . . . It is more than preaching; it is more than distribution of religious literature. It is a combination of both. . . . This form of religious activity occupies the same high estate under the First Amendment as do worship in the churches and preaching from the pulpits.[12]

The Supreme Court also consistently rejected schemes that required Jehovah's Witnesses to obtain approval from government officials prior to engaging in their speech activities on public streets and sidewalks.[13] For example, when reversing the conviction of Daisy Largent, a Witness who was arrested for offering religious literature from door to door without a permit, the Court noted: "Dissemination of ideas [that] depends upon the approval of the [speaker] by the official . . . is administrative censorship in an extreme form. It abridges the freedom of religion, of the press and of speech[.]"[14]

Likewise, when striking an ordinance requiring religious canvassers to pay a license tax a condition of canvassing, the Court observed:

Plainly a community may not suppress, or the state tax, the dissemination of views because they are unpopular, annoying or distasteful. If that device were ever sanctioned, there would have been forged a ready instrument for the suppression of the faith which any minority cherishes but which does not happen to be in favor. That would be a complete repudiation of the philosophy of the Bill of Rights.[15]

[12] Murdock v. Pennsylvania, 319 U.S. 105, 108-109 (1943).
[13] E.g. Lovell v. City of Griffin, 303 U.S. 444 (1938); Schneider v. State (Town of Irvington), 308 U.S. 147 (1939).
[14] Largent v. Texas, 318 U.S. 418, 422 (1943).
[15] Murdock v. Pennsylvania, 319 U.S. 105, 116 (1943).

In sum, the U.S. Supreme Court decisions involving the door-to-door religious advocacy of Jehovah's Witnesses in the 1930s and 1940s restored "to their high, constitutional position the liberties of itinerant evangelists who disseminate their religious beliefs and the tenets of their faith through distribution of literature."[16] This line of authority established a bulwark against the municipal regulation of door-to-door advocacy. As a result, legal conflicts between municipalities and Jehovah's Witnesses regarding their public ministry largely ceased.

Watchtower v. Village of Stratton

Nearly 60 years after Thelma Martin was arrested and convicted for distributing religious leaflets from door to door in Struthers, Ohio, the religious speech of Jehovah's Witnesses once again was threatened by a municipal ordinance — this time in the Village of Stratton, Ohio.[17] The Village of Stratton enacted an ordinance that required anyone desiring to engage in door-to-door activity to obtain a permit from the Mayor and to display it upon demand.[18] Since the ordinance prohibited any speaker from going house to house without a permit, Jehovah's Witnesses contested the application of this ordinance to their door-to-door public ministry — first in federal district court, then in the Sixth Circuit Court of Appeals, and ultimately, by filing a petition for writ of certiorari seeking review by U.S. Supreme Court.[19]

[16] Id. at 117.
[17] Martin, 319 U.S. at 142; Watchtower v. Village of Stratton, 536 U.S. 150 (2002); see Petitioner's Statement as to Jurisdiction, 1942 WL 53699, *3-5 (noting that Thelma Martin was arrested on July 7, 1940, while "preaching the gospel of God's Kingdom . . . from house to house").
[18] Watchtower v. Village of Stratton, 536 U.S. at 154-155.
[19] Id. at 153-154, 158-160.

On October 15, 2001, the Supreme Court granted certiorari to decide whether the Village Stratton's ordinance, which required a person "to obtain a permit prior to engaging in the door-to-door advocacy . . . and to display upon demand the permit" violated "the First Amendment protection accorded to anonymous pamphleteering or discourse."[20] Petitioner's brief highlighted:

Despite the unbroken line of authority protecting the right to engage in unlicensed door to-door advocacy, Stratton has enacted an Ordinance that regulates all forms of door-to-door speech and press activity. This Ordinance is anachronistic in that it: (1) relegates door to-door, one-on-one dissemination of ideas without a permit to the status of a "nuisance" that is to be suffered by residents only after the Village has granted a person the "privilege" to engage in such activity; (2) mimics solicitation ordinances from the 1930s; and (3) ignores the status accorded pure advocacy in well-established First Amendment jurisprudence.[21]

On June 17, 2002, the Supreme Court issued its opinion, Watchtower v. Village of Stratton, reaffirming that government-sanctioned obstructions of the door-to-door public ministry of Jehovah's Witnesses "raised constitutional questions of the most serious magnitude — questions that implicated the free exercise of religion, the freedom of speech, and the freedom of the press."[22]

In doing so, the Court highlighted "the important role that door-to-door canvassing and pamphleteering has played in our constitutional tradition of free and open discussion," as well as its repeated invalidation of restrictions on door-to-door canvassing and pamphleteering.[23]

[20] Id. at 160.
[21] Brief for Petitioners, 2001 WL 1576397, *10.
[22] Watchtower v. Village of Stratton, 536 U.S. at 161.
[23] Id. at 160, 162-163.

It also observed that "[i]t is more than historical accident that most of these cases involved First Amendment challenges brought by Jehovah's Witnesses, because door-to-door canvassing is mandated by their religion."[24]

With respect to the Stratton ordinance, the Court noted its infringement on anonymous speech and spontaneous speech:

[T]here is a significant amount of spontaneous speech that is effectively banned by the ordinance. 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.[25]

In holding that the Stratton ordinance was unconstitutional, the Court observed:

It is offensive — not only to the values protected by the First Amendment, but to the very notion of a free society — that in the context of everyday public discourse a citizen must first inform the government of her desire to speak to her neighbors and then obtain a permit to do so. 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.[26]

[24] Id. at 160.
[25] Id. at 167.
[26] Id. at 165-166.

By reaffirming the constitutional protections accorded to door-to-door advocacy, the Supreme Court in *Watchtower v. Village of Stratton* effectively held that its earlier precedents involving Jehovah's Witnesses are not mere historical relics, but instead fundamental fibers in the tapestry of First Amendment jurisprudence that benefit all citizens.

Implications of *Watchtower v. Village of Stratton*

Twenty years ago, the Supreme Court observed that "the efforts of the Jehovah's Witnesses to resist speech regulation have not been a struggle for their rights alone" but have also benefited others who face the risk of silencing by regulations restricting speech.[27] After the Court's decision in *Watchtower v. Village of Stratton* revitalized First Amendment protection of door-to-door advocacy, countrywide municipal attempts to regulate Jehovah's Witnesses door-to-door advocacy by means of solicitation ordinances virtually ceased. Courts have similarly relied on *Watchtower v. Village of Stratton* to protect the rights of citizens, not only to speak to their neighbors without having to obtain government authorization to do so, but to freely engage in door-to-door canvassing on a variety of subjects without prior restraint.[28]

[28] E.g. Service Employees International Union, Local 3 v. Municipality of Mt. Lebanon, 446 F.3d 419 (3d Cir. 2006) (relying on Watchtower v. Village of Stratton to invalidate municipal canvassing ordinance infringing on First Amendment rights of a local labor organization involved in a get-out-the vote campaign).

As a federal district court recently highlighted when affirming Jehovah's Witnesses' access to engage in their public ministry on public streets and sidewalks:

Jehovah's Witnesses enjoy the same First Amendment rights as all residents of Puerto Rico. If access to public streets can be denied to them, then access can be denied to anyone. For example, an aspiring politician will be barred from going door-to-door seeking endorsements. Likewise, the press could also be prevented from entering . . . to cover the reactions of residents to a court ruling, as that in this case. More so, during Easter, Catholics could similarly be barred from participating in a Via Crucis on public streets.[29]

Indeed, the Supreme Court's protection accorded to the door-to-door ministry of Jehovah's Witnesses in *Watchtower v. Village of Stratton* continues to benefit the constitutional rights of, not only Jehovah's Witnesses, but all who wish to engage in free speech from door to door.

[29] Watchtower v. Municipality of Santa Isabel, No. 04-1452, 2013 WL 1908307 (D.P.R. May 6, 2013); see Watchtower v. Municipality of Aguada, 160 F.Supp.3d 440, 443 (D.P.R. 2016).

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