

**ORIGINAL**

In the

**Supreme Court of the United States**

VILLAGE OF SCHAUMBURG,

PETITIONER,

V.

CITIZENS FOR A BETTER  
ENVIRONMENT, ET AL.,

RESPONDENTS.

No. 78-1335

Washington, D. C.  
October 30, 1979

Pages 1 thru 55

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IN THE SUPREME COURT OF THE UNITED STATES

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VILLAGE OF SCHAUMBURG,        :
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                Petitioner,    :
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v.                               :      No. 78-1335
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CITIZENS FOR A BETTER        :
ENVIRONMENT, ET AL.,         :
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                Respondents.  :
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Washington, D.C.

Tuesday, October 30, 1979

The above-entitled matter came on for argument at  
1:57 o'clock, p.m.,

BEFORE

WARREN E. BURGER, Chief Justice of the United States  
WILLIAM J. BRENNAN, JR., Associate Justice  
POTTER STEWART, Associate Justice  
BYRON R. WHITE, Associate Justice  
THURGOOD MARSHALL, Associate Justice  
HARRY A. BLACKMUN, Associate Justice  
LEWIS F. POWELL, JR., Associate Justice  
WILLIAM H. REHNQUIST, Associate Justice  
JOHN PAUL STEVENS, Associate Justice

APPEARANCES

JACK M. SIEGEL, ESQ., 39 South LaSalle Street,  
Chicago, Illinois 60603; on behalf of the  
Petitioner.

MILTON I. SHADUR, ESQ., 208 South LaSalle Street,  
Chicago, Illinois 60604; on behalf of the  
Respondents

## APPEARANCES (continued)

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Boyer, 1776 F Street, N.W., Washington, D.C. 20006;  
on behalf of the amici curiae.

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P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We will hear arguments next in 78-1335, Village of Schaumburg against Citizens.

Mr. Siegel, I think you may proceed whenever you're ready.

ORAL ARGUMENT OF JACK M. SIEGEL, ESQ.,

ON BEHALF OF THE PETITIONER

MR. SIEGEL: Mr. Chief Justice, and may it please the Court:

This case involves one question, the question of whether the First and the Fourteenth Amendments invalidates the provisions of Section 20, paragraph, of Chapter 22 of the Schaumburg Village code.

These sections require that as condition to receive a permit for charitable solicitation within the Village there must be presented a certified audit or other comparable evidence that 75 percent of the proceeds will be used directly for the charitable purposes of the organization seeking to solicit.

The ordinance covers both door-to-door solicitation, and the use of public streets and public ways within the Village.

The District Court held that specific provision, and that specific provision alone, to be unconstitutional on its face. The action was initiated by declaratory

judgment action brought by the Citizens for a Better Environment, an allegedly environmental group that sought a permit and complied with all other requirements of the ordinance except the 75 percent provision.

On appeal the Seventh Circuit held that the ordinance was not necessarily unconstitutional on its face, as applied to what the Court said was the more traditional forms of charitable organizations; but nevertheless, sustained a summary judgment, and held that the statute in question--the ordinance in question was unconstitutional when applied to an organization which allegedly was involved in the dissemination of information and political discussion.

Our position here, Your Honors, is first, that the ordinance is not unconstitutional on its face; is not unconstitutional as applied. At the very least, we suggest--

QUESTION: The posture of the case now, we take it that this--these distributions do involve the dissemination of information?

MR. SIEGEL: Your Honor, that's a question--that remains to be--

QUESTION: You said there was summary judgment?

MR. SIEGEL: There was summary judgment.

QUESTION: And they acted--the court acted on the pleadings?

MR. SIEGEL: The court acted on the pleadings.

QUESTION: And that's alleged in the pleadings?

MR. SIEGEL: It's alleged in the pleadings, Your Honor, and it's denied in our answer.

We allege as affirmative defense is the fact that a substantial portion of the funds in fact go to the solicitors and to the organizers of the group; and we suggest that a summary judgment was improperly granted.

We think it's apparent from the Seventh Circuit's opinion that the Seventh Circuit had great problem with this issue; it in effect held that this ordinance was not unconstitutional on its face, but was unconstitutional as applied.

And yet we suggest that they--that that court could not have reached that conclusion without some evidence. The only affidavits in support of the motion were the very skeleton affidavits which appear at page 40 and 43 of the Appendix. These affidavits, in essence, say that this organization was created under the laws of Illinois; that it's a not-for-profit organization; that they maintain a group of solicitors; and that they go from door to door; and that they give out environmental information, and take complaints.

QUESTION: Mr. Siegel, is this ordinance typical of villages in Northern Illinois?

MR. SIEGEL: No, sir, it is not. This case was initiated by the CBE against 22 villages and cities in Illinois. Judge Marshall at the district level sustained summary judgments on a number of ordinances, most of which simply required a permit, and left discretion with either the police department or the village board.

Our ordinance, we believe, is substantially different from the other ordinances in question, because it does not vest any discretion in the administrative officers. It sets forth what we believe to be definite standards guiding the issuance of a permit.

And if the applicant meets all the requirements of the permit, the Village is required to issue a permit. And that is uncontested.

Both the trial court and the Court of Appeals treated the ordinance as, in fact, a mandatory requirement if all the conditions were met.

QUESTION: What about guys by national organizations, like Boy Scouts, Red Cross--

MR. SIEGEL: I believe, Your Honor--

QUESTION: --and the like: Are they subject to this ordinance?

MR. SIEGEL: Yes, they are. And I indicated in my reply brief the substantial number of national organizations that have, in fact, complied with this ordinance.

QUESTION: So that they have met the 75 percent requirement?

MR. SIEGEL: Yes, sir. Yes, sir.

QUESTION: Would your argument be any different if it were 90 percent?

MR. SIEGEL: I think it's a question of reasonableness. I think the Ft. Worth case, which held an 80 percent requirement valid, indicates that it's a question of reasonableness.

We view this, Your Honor, as not an attack on freedom of speech at all, but as a police power regulation in which the local community has made a determination that in order to protect its citizens both from physical danger, if you will, from annoyance, from disturbance in their homes; but also from what we've loosely referred to as fraud; that we have the right to require that when a terrible organization comes into town and says that it's soliciting for charity, that in fact it devotes a substantial portion of their funds to charity.

QUESTION: Mr. Siegel, how would this ordinance operate? And I'm asking just as a bit of information. If the sole charitable purpose of the organization were to advertise, to advertise the plight of the American Indian, or to buy advertising in periodicals lamenting the plight of the Vietnam refugee or whatever, and that was its sole



charitable purpose, and that a 100 percent of its funds, net funds, would be used for advertising. And yet you have to deduct advertising expenses under this ordinance, as I understand it, before you count the 75 percent.

MR. SIEGEL: Well, Your Honor, I think if the sole purpose was advertising--

QUESTION: Yes.

MR. SIEGEL: --then the ordinance would permit solicitation.

QUESTION: It doesn't say so. It doesn't seem to say so.

MR. SIEGEL: Well, I don't--I think, Your Honor, first of all, it does say so. I think the section of the--

QUESTION: It says--it's 20(g) of Chapter 22 of the Village, subsection 2, requires the deduction of advertising expenses before the 75 percent figure.

MR. SIEGEL: I take it that advertising is in conjunction with the solicitation.

QUESTION: It would not cover--are you suggesting it would not cover advertising if it were directed at public education? Is that your point?

MR. SIEGEL: If the only use of the funds was for public education--

QUESTION: For advertising.

MR. SIEGEL: --and that was for a charitable

purpose, whether it be advertising--yes--

QUESTION: Well, my question is advertising.

MR. SIEGEL: --in a broad sense, certainly.

QUESTION: Because that's what--advertising expenses is what the ordinance says.

MR. SIEGEL: That's correct. But the advertising expenses go to the operation of the solicitation. If the sole objective of the organization was advertising, then 100 percent of the proceeds would go to the charitable purpose for which it was organized.

QUESTION: I see your point. You--your submission is that administrative expenses of the organization, including but not limited to--

MR. SIEGEL: That's correct.

QUESTION: --advertising.

MR. SIEGEL: We're talking about--

QUESTION: Therefore administrative expenses of the organization limits the term "advertising"?

MR. SIEGEL: Absolutely. Yes, sir.

QUESTION: Your ordinance also requires license for for-profit solicitations, doesn't it?

MR. SIEGEL: Yes. That's a different subsection of the chapter of the municipal code.

QUESTION: Then, did the respondents here ever apply under that section?

MR. SIEGEL: No, sir, they did not.

QUESTION: Did you--has it ever been interpreted by the Illinois courts?

MR. SIEGEL: This particular--

QUESTION: Yes?

MR. SIEGEL: No, it hasn't. I cited in my brief the case of Scott v. Police Hall of Fame, which interpreted or at least passed upon the Illinois Charitable Solicitation Act, statute.

In that Act, there is a 75 percent requirement in which the charitable organization is permitted to deduct the cost of solicitation before it arrives at its 75 percent figure.

That statute was attacked on the grounds that it invaded the First Amendment; the 75 percent requirement, regardless of how you calculated it, was an abridgement of the First Amendment, presumably based on the theory that anything that they did in the course of collections was immune, because of the First Amendment. And the appellate court, which is not, obviously, the Supreme Court, held that there was no violation of the First Amendment by putting that 75 percent--

QUESTION: Did either party request the District Court to abstain so that the state courts could engage in some of these constructions of the ordinance?

MR. SIEGEL: No, sir. This case was brought by the CBE in the Federal court. To the best of my knowledge, the state court has never been asked to pass upon this kind of the ordinance. The CBE has been active, as they say in their brief, in a number of Federal cases.

Our position, of course, is that this is a matter which is peculiarly susceptible to local determination. We do not believe that this is really a First Amendment case; this is a police power case.

QUESTION: Well, but certainly there are constitutional cases from this Court saying that you can't lodge total discretion in the power--in the chief of police to issue ordinances, and things like that.

But my thought was that the constitutional result may be entwined with how you interpret your own ordinance, and that that is something that is a province of the state court.

MR. SIEGEL: I would suggest that is the case, Your Honor. I did not suggest that--they filed a motion for summary judgment the same day they filed their amended complaint. I was given 15 days in which to answer both. And it happened very rapidly. There was no discovery, there was no nothing in this case.

I think the record is very bare, as I suggest in my argument that summary judgment is totally inappropriate

based upon this record.

QUESTION: Isn't it--I take it from reading this ordinance that it wouldn't apply at all to an organization that came in and said, "We want to go door-to-door, but we aren't the least bit interested in raising any money. We just never solicit contributions."

MR. SIEGEL: That's correct, Your Honor.

QUESTION: So you could go door to door, and put out the word about the environment or anything else as much as you want to without any permit?

MR. SIEGEL: That's absolutely--

QUESTION: So this applies only to the act of raising money.

MR. SIEGEL: That's right, Your Honor.

QUESTION: What about door to door, if they were going to urge people to vote for James Johnson for City Councilman and ask for a contribution to his campaign?

QUESTION: It would apply. Certainly, I suppose it would apply. Because that's what normally happens.

MR. SIEGEL: I think it would apply. I think it would apply.

I think that was sort of what Hynes v. Oradell was--

QUESTION: How do you measure the 75 percent then? All of it--the entire solicitation was for the purpose of electing James Johnson.

MR. SIEGEL: I would say that they would meet the requirement. If they had paid solicitors, which is admitted in this case. If they said, we want to elect James Johnson; give us \$10; we'll keep the \$5 for ourselves and we'll give \$5 to James Johnson. That's the sort of thing that this ordinance is intended to prevent. Because we recognize that there is a very serious problem--at least there was in Schaumburg--of people knocking on the doors at all hours of day and night. And Your Honor, in the Hynes case said, that there's no constitutional right to knock on anybody's door on private premises.

We feel the legislative body made the determination that when all the funds go to a charitable purpose, we are willing, particularly in the light of the other requirements, to permit this invasion into the privacy and the possible threat to our householders.

But when organizations parade themselves in the mantle of charity, and in fact have an undisclosed amount going directly to the people who solicit the funds, rather than for the charitable purpose, then we have the right, as this Court has said over and over again, I think going back to Cantwell, going back to Martin, certainly in Hynes, indicating that this is--that these are very important public rights that the municipal government has full power to preserve.

As I indicate over and over again in my brief, I think the closest case before the Court of Appeals decision in this one was that Ft. Worth case in 1969 in the Fifth Circuit where the Court of Appeals there said that a municipality can deny permission to solicit if the cost of solicitation is excessive. And they, relying on cases that predated Hynes, actually recognized this Court's view that this was an important municipal interest.

So our position, Your Honors, is simply that this is not a case of prior restraint. It's not a case of interference with freedom of speech. We have no desire to keep CBE or anybody else from spreading the message.

Our desire, and we think this ordinance is a carefully drawn and a clear ordinance--our desire is simply to protect our householders from the problems of invasion of privacy, from fraud if you will, from misrepresentation, and to preserve what we feel is very important, a constitutional right, perhaps, almost as important as the First Amendment, that is the right to be left alone.

I think that in Hynes this Court quoted Professor  
? Chafee writing back in 1945 where he indicated that this was the least likely type of expression to receive protection under the Sixth Amendment.

QUESTION: Well, why wouldn't it be just as effective, if those are your aims, to require anybody who

wants to raise money from any of your citizens to have written down on a little card what percentage of its budget it spends for this, that or the other thing? And let the householder make up his mind whether that makes any difference.

MR. SIEGEL: It might be. It might be. It might be even more effective. But I don't believe that that's the issue. I think the issue is: Has the local government, which has made this decision, infringed upon the First Amendment?

I can think of perhaps a dozen--

QUESTION: Well, do you think that--do you think that raising money, purely raising money, is in any case within the protection of the First Amendment? Do you think there are any First Amendment considerations here at all if all you're talking about is the pure solicitation of money?

MR. SIEGEL: I think, frankly, Your Honor that this is probably not a First Amendment case. I--in reading the decisions, I find no decisions--

QUESTION: I thought you had some opinions--cases in this Court to contend with.

MR. SIEGEL: The cases, Your Honor, that we have to contend with--

QUESTION: How about people going around--how about



religious organizations going around asking for contributions, and selling a piece of literature? All they do is sell and raise money.

MR. SIEGEL: All these--the religious cases, Your Honor--and those obviously, the Schneider v. Irvington and Martin v. Struthers, beginning with the Jehovah's Witnesses cases, all involved door-to-door solicitation by people who denote themselves as evangelists or missionaries to whom--

QUESTION: Yes, but where they do--is it clear in those cases that they were doing something besides raising money at the same time?

MR. SIEGEL: Yes, I think it is.

QUESTION: Spreading the gospel?

MR. SIEGEL: I think they were spreading the gospel. They felt that this was part and parcel of their religious function. And I think that's an entirely different situation.

I think that the religion cases, although they certainly give us guidance, are not determinative of the issue here. Because very, very frankly, we believe that we are engaged much more in the question of limitations on commercial speech.

QUESTION: I thought the Citizens for a Better Environment said that was precisely what they were doing

here, spreading information about environmental developments.

MR. SIEGEL: Well, Your Honor--

QUESTION: Well, they could do that without a license.

MR. SIEGEL: They could do that without a license.

QUESTION: Yes.

MR. SIEGEL: It's the question of collecting the money that brings them within the purview of our ordinance.

QUESTION: But they were doing both, as were the Jehovah's Witnesses--

MR. SIEGEL: They were doing both, and we were denied the opportunity to inquire into just what in fact they were doing.

I trust that Your Honors will look at the affidavits on page 40 and 43, and perhaps look at that District Court case, the Smith case, where they say the major constitutional questions should not be decided on motions for summary judgment, that the record should be fleshed out.

And we were prepared to flesh out the record. We were prepared to show a substantial number of organizations, only a portion of which I've listed in my reply brief, who operate, and operate very efficiently, under our ordinance.

I think, Your Honors, that there are certain

basic constitutional propositions which are dispositive of the case here.

First of all, we believe that Hynes v. Oradell holds there is no right under the constitution to knock on a private person's door for any purpose.

We believe there is no constitutional right to make public solicitation of funds for charity. I cite the National Foundation v. City of Ft. Worth.

We believe, both under the National Foundation case, and actually implicit in the opinion of the Court of Appeals in this case, that a municipality can deny permission to solicit if the cost of solicitation is excessive.

I think the court below in this case recognized that. In this Court, in Hynes v. Oradell, citing Martin v. Struthers, citing Cantwell, said that there are important municipal interests at stake, and these include protection of fraud, peaceful enjoyment of one's home, and prevention of crime.

Also, this Court has always held that time, place and manner, even assuming the exercise of a First Amendment right, was critical; the nature of the form is important.

The right of privacy in the home is to be protected. And of course in the Lehman v. City of Shaker Heights, both the majority opinion and the concurring

opinion are heavily weighted toward the fact that no one should be subjected to unasked for bombardments of voices or conversation or music or anything under the guise of the First Amendment.

QUESTION: Well, except--except this ordinance doesn't, at least by its terms, direct itself to protecting the privacy of homeowners and leasees, but rather, with the solicitation of funds. It doesn't purport to prevent, as my brother White suggested, all sorts of visitations on the--

MR. SIEGEL: That's correct.

QUESTION: --the householders, in an effort to propagandize them in one respect or another.

MR. SIEGEL: Your Honor, we're not unmindful of the First Amendment. We made a definite choice. We perhaps could draft an ordinance, although we made no attempt to do so, that would have prevented all kinds of disturbances. That wasn't the intent.

QUESTION: No.

MR. SIEGEL: There was a legislative intent here to limit the solicitations in a manner which we felt did not impinge upon freedom of speech.

QUESTION: Right.

MR. SIEGEL: But when the, if you will, quasi-commercial character of raising money became involved, then

we felt that we were engaged in a proper exercise of police power.

QUESTION: And that was its purpose, to protect the citizenry from some sort of species of fraud, not in the technical sense, but of being--paying out their money thinking it was going to a cause, a worthy cause, and--

MR. SIEGEL: Exactly.

QUESTION: --and more than 25 percent of it was not going to the cause.

MR. SIEGEL: That's correct, Your Honor.

QUESTION: But that's different from protecting the privacy of households.

MR. SIEGEL: Well, I think there are two or three different bases which are served by this type of ordinance. One--and these are coupled together in the cases, from Cantwell on down--fraud, misrepresentation, privacy, crime; the litany is recited in all of these cases, because these are fundamental aspects of the police power which the municipalities have always held--been held to have the power.

Now it happens in Illinois that towns over 25,000 such as Schaumburg are home rule, and we get our home rule police power directly from the constitution. So we didn't have to go through the intermediate question of whether there's a statute. And we do have the authority

to regulate and to enact ordinances in any area where the general assembly has the authority; and there's no question that the regulation of charity is, in fact, a proper exercise of the state's police power.

QUESTION: Mr. Siegel, is there anything in the record or the ordinance itself to explain how the village fathers came up with the figure, 75 percent?

MR. SIEGEL: I don't think so, Your Honor. I can tell you how, because I drafted the ordinance. We looked-- we looked at the state statute, the 75 percent restriction.

QUESTION: Is it the same restriction as--

MR. SIEGEL: No, it is not. There's a 75 percent number in the state statute.

QUESTION: Right.

MR. SIEGEL: But the formula is different. They are allowed to deduct the cost of solicitation.

QUESTION: Which your ordinance does not allow?

MR. SIEGEL: Our ordinance specifically does not permit that.

QUESTION: So you keep people out that the state would regard as proper charities.

MR. SIEGEL: That's correct.

QUESTION: Yes.

MR. SIEGEL: That's correct. And we do it, because we feel that the state statute, while a step in the

right direction, permits the kind of solicitation which CBE apparently is involved in; and we really don't know because we never tried it.

QUESTION: But what did you know at the time you fixed the 75 percent? That's what I--

MR. SIEGEL: We knew that--

QUESTION: How did you know you wouldn't be interfering with legitimate solicitation activities?

MR. SIEGEL: Well, first of all, I did a little research and I came up with the Ft. Worth case, where the Court had held 80 percent. And I felt at that time that was the--

QUESTION: You wanted to get the highest figure you could get?

MR. SIEGEL: No, we didn't. We could have taken 80 percent; we took 75 percent. Based on Ft. Worth, we could have taken 80 percent.

But that, to my mind, that opinion--

QUESTION: And if Ft. Worth had been a hundred you could have taken 95.

MR. SIEGEL: Well, perhaps we would have. I think if Ft. Worth had said there was an absolute bar, we might have considered that.

But it didn't say that, and this Court denied cert. So we assumed that for--at that time at least there

was a settled Federal Court of Appeals case, the only one we were able to find on this particular subject, and we had a state statute which recognized that the 75 percent cutoff was a reasonable cutoff as between what is administrative and what is otherwise.

That would--none of that's in the record. But this--this is the kind of thinking which went into the drafting of the ordinance and the legislative discrimination which we think is peculiarly the province of the local government and not necessarily for the Federal courts.

I would--Mr. Chief Justice, if I may, I'd like to reserve the remainder of my time.

MR. CHIEF JUSTICE BURGER: Mr. Shadur?

ORAL ARGUMENT OF MILTON I. SHADUR, ESQ.,

ON BEHALF OF THE RESPONDENT

MR. SHADUR: Mr. Chief Justice, and may it please the Court.

Counsel has told us that he drafted the ordinance at issue in this case. But I would submit with respect that what counsel is seeking to do here is to write a new ordinance and to make a new record from the one that's before this Court.

This case comes to the Court on a summary judgment. The summary judgment is not based on pleadings; the summary judgment is based, as is quite proper, on



affidavits.

We had both a sworn complaint and supporting affidavits, and those contained very specific references to precisely the kind of activity that was involved here with Citizens for a Better Environment.

What Citizens for a Better Environment concededly does, on this record, is to employ canvassers who are engaged in door-to-door activity in the metropolitan area who distribute literature on environmental topics and answer questions of an environmental nature when posed; solicit contributions to financial support the organization in this program; like traditional charities, this organization does not survive on air, although it deals with air.

One of its purposes, if it's going to disseminate literature, is that it has to have funds with which to do it.

QUESTION: Suppose the ordinance prohibited all solicitations for funds entirely. Do you think it would be unconstitutional?

MR. SHADUR: Your Honor, it would be unconstitutional as applied to organizations that require the obtaining of funds in order to exercise First Amendment rights.

QUESTION: Well, they all--can you think of any

organization that would not require funds to conduct--

MR. SHADUR: Your Honor, I would--I think that perhaps, although I can't read the mind of the Seventh Circuit, I think that perhaps the reference to the traditional form of charitable organization, as distinct from the kind here that is directly involved in programmatic activity, is the possibility that fund raising for charities alone may not carry with it--and I don't perceive the specific example--but could not carry--necessarily carry with it the desire to communicate ideas.

I would think that the traditional charities are subject to the same provisions that the American Cancer Society, which wants to educate the public on issues of cancer, and needs funds in order to do that, would also be in a position to attach the ordinance that Your Honor suggests as unconstitutional.

QUESTION: Well, an ordinance says that--a city doesn't say you can't canvass and spread your ideas; you can spread them all you want to. But it says you just can't raise money door to door. Raise it any other way, by the mail or by meetings; do it any way you want to. But just stay away from doors in raising money.

Now, you say that's unconstitutional?

MR. SHADUR: Yes, Your Honor. I think that just staying away from my door, to quote the old song, is

really inappropriate, in light of the decisions of this Court. It's been true for at least 40 years.

QUESTION: But it wouldn't be unconstitutional to say, stay away from all the doors that have signs on them: "Stay Away."

MR. SHADUR: That's correct, Your Honor. The reason it would not be unconstitutional is that that places the judgment exactly where this Court says that it should be. It places that judgment on the individual householders, not in the community.

The community is not in a position to make a collective judgment for everyone, that may be very different from what the individual judgment.

QUESTION: Well, do you have any cases that say that raising money is speech?

MR. SHADUR: Not raising money alone, but raising money for purposes--

QUESTION: Well, now you're changing my question.

MR. SHADUR: No, Your Honor, I do not.

QUESTION: Well, the only thing this ordinance applies to is the raising of money.

MR. SHADUR: But Your Honor--

QUESTION: And it doesn't--it doesn't prevent spreading the word.

Where is the authority for the fact that raising

money is speech?

MR. SHADUR: Beginning with this Court's decision in Martin v. Struthers, for example, when we're dealing with the--when we're dealing with the raising of money--

QUESTION: Tell me anyone of those cases that involved only solicitation. In those cases, if you wanted to go around and canvass or solicit, you had to get a license.

MR. SHADUR: But Your Honor, if the organization were raising money for the sake of raising money, then you would be dealing with a for-profit organization. The for-profit organization that may not be engaged in communications would have no protection by the First Amendment.

But the organization that raises money for its purposes, for its purposes being the charitable purposes, which is what this ordinance talks about. And those--and after all, that's precisely what the ordinance is directed at, the raising of money for charitable purposes.

QUESTION: Well, could you forbid the people trying to sell magazines from door to door?

MR. SHADUR: Your Honor, the magazine sales from door to door, which are strictly commercial speech--under Breard v. Alexandria we had--we had a case that dealt with that.

QUESTION: Well, can you--can you prevent the

selling of stocks from door to door? Securities?

MR. SHADUR: Your Honor, I would suggest that that's a case that's not before this Court. What the Village of Schaumburg might have done with an ordinance--

QUESTION: The case before the Court is an ordinance that forbids only solicitation for money; talk about that.

MR. SHADUR: I am, Your Honor. It forbids solicitation for money by charitable organizations, and it's being attacked by an organization that wants to solicit those funds to permit it to engage in First Amendment rights.

QUESTION: What, Mr. Shadur, if the ordinance, instead of requiring satisfactory proof that at least 75 percent of the proceeds of the solicitations would be used for the charitable purposes, said that if--before issuing a license it would require satisfactory proof that at least some of the proceeds of such solicitations would be used for the charitable purposes?

MR. SHADUR: Your Honor, if we were dealing with a requirement that dealt directly with the question of bona fide, which is what that ordinance would deal with, that is, that at least one percent, at least some of the funds are used, under those circumstances, the community could seek to justify the organization--could seek to justify

the ordinance as a means of preventing fraud. But I would call Your Honor's attention to one--

QUESTION: Well, that's really the basis on which the ordinance is sought to be justified here.

MR. SHADUR: Your Honor, let me, however, give you the example--

QUESTION: So is the argument about the 75 percent?

MR. SHADUR: No, Your Honor, it is not. Take the organization that's just starting up, the organization that by definition has to use all of its initial funds for administrative functions to permit it in that first year--that's an example that's been given by one of the amici here, the organization that's in its first year, in order to get itself started on what is concededly a charitable purpose, must nevertheless use those initial funds for purposes of getting itself geared up.

QUESTION: So in short, if instead of 75 percent the ordinance said, at least some, it would be equally invalid?

MR. SHADUR: As--

QUESTION: It would also be invalid, in any event.

MR. SHADUR: On over-breadth grounds, although that's not the problem we have--

QUESTION: No.

MR. SHADUR: --because our record is--

QUESTION: I just thought it's violating the First and Fourteenth Amendments.

MR. SHADUR: Yes, Your Honor, that's what I meant by over-breadth grounds, the First Amendment.

Let me--let me return to what we're dealing with here in terms of the organization, and what this ordinance seeks to do.

This ordinance characterizes charitable purpose in a sort of extraordinary way. Because it doesn't say charitable purpose in a way that, for example, the state's--the state statute deals with.

This characterizes charitable purpose--and nowhere in counsel's reply brief or anywhere else has this been denied--as applying to all salaries or commissions that are paid to canvassers, even though, on the uncontradicted record, they're people who in addition to soliciting funds exercise rights that are First Amendment rights.

It excludes all other salaries, yet this is an organization, an environmental organization, that has on its staff--and has to pay for--an in-house research staff, an expert on nuclear power, a physicist, a biochemist, a geneticist. All those funds that are used for that purpose are part of the prohibited 25 percent, and not part of the permitted 75 percent.

Lawyers' fees are characterized as part of the

non-permitted amount, yet the organization that's involved in environmental activities, by definition, is constantly dealing with the structure of the environment; that means dealing with the government, dealing with the private utilities; and it has to engage in enforcement activities.

QUESTION: Mr. Shadur, could your client have gotten a license under article II rather than article I?

MR. SHADUR: Your Honor, our organization is not a for-profit organization. But, in response to your question, if our--if our organization had to cope with the provisions of article II, then we would read directly, as the patent lawyers would have it, on the cases that this court has dealt with early in these areas, and that is saying that giving discretion to the public officials is not permitted. Because the second portion of this ordinance requires--provides--and I'm reading now from record pages--page 19 in the Appendix--when the chief of police makes, or causes to be made, an investigation to determine the character and reputation of the applicant, and that no license shall be issued to an applicant who is not found to be a person of good character and reputation, or to any firm, corporation, partnership or association.

Under those circumstances, what happens is that power is vested in the municipal official to make that kind of determination, and the decisions of this Court say that



that's not permitted.

QUESTION: Well, you say, in effect, then, there's no way that a municipal corporation can accomplish the result that they want to accomplish here. They can't do it by lodging discretion in the chief of police, and they can't do it by the objective profile that they've attempted to do under Article I.

You're saying, in effect, that people can come around and solicit money, and that there's simply nothing they can do about it.

MR. SHADUR: Well, no, Your Honor, I haven't said that at all.

QUESTION: Well, that's what it amounts to.

MR. SHADUR: No, Your Honor, there are statutes that deal with fraud. Indeed, other sections of this ordinance deal with fraud.

There are sections--there are provisions under which trespass can be forbidden, and indeed are.

If the purposes that are sought to be served by the Village in this case are indeed, as they proclaim, the prevention of fraud, and the preservation of privacy, there are adequate legal means to enable them to do that without creating the bed of Procrustes that--

QUESTION: Such as?

MR. SHADUR: --that's set up by this 75 percent

QUESTION: Tell us--tell us what some of those methods are.

MR. SHADUR: A provision in the ordinance that prohibits trespass, that excludes people from coming onto the premises of homeowners who have indicated that they don't want to be bothered.

QUESTION: By posting?

MR. SHADUR: By posting or otherwise; yes, Your Honor.

QUESTION: What if the Village council held a hearing at which due notice was given and said that we have reason to believe that CBE has engaged in fraudulent representations within this village, and we're here to determine that. And if we do determine it, we're going to bar them from soliciting in this town.

MR. SHADUR: As a--as a precondition to permitting CBE to solicit?

QUESTION: No. Suppose that only--that they allowed them to solicit until the hearing was over.

MR. SHADUR: And then we had a hearing as to fraud?

I would suggest that a finding of fraud in that kind of situation--it would be permitted to preclude fraudulent activities. That's what our laws about fraud deal with.

But what's wrong here is that that's very different from this case. What is done here is to create a sort of conclusive line that says 75.1 is not fraudulent; 74.9 is fraudulent. And in which the standards that are employed in going to those percentages has no relationship at all to the concept of fraud.

There's nothing in the activity that Citizens for a Better Environment is engaged in as established by the record in this case, by these affidavits, that goes into the prohibitive side of it, that constitutes fraudulent activity.

All of these things serve the direct First Amendment rights, and serve the functions of the public as well. We're dealing with both sides of the coin.

QUESTION: What if the solicitors for CBE take the money they've raised in two weeks of soliciting and just take it to the Caribbean?

MR. SHADUR: In that case, Your Honor, there are statutes that permit that; indeed, it was precisely that kind of activity that gave rise to the Police Hall of Fame case that was tried, and the Council has referred to, and that was the unfortunate genesis of this very different kind of ordinance.

QUESTION: Well, how do you get at that? How does a municipality get at that? On a case-by-case basis?

MR. SHADUR: Get at fraud? Your Honor--

QUESTION: Prosecute each one?

MR. SHADUR: Your HONOR, that's how fraud has historically been dealt with in fundraising activities, as well as anything else.

QUESTION: Well, then you implied before, if you did not say, that I could put up a sign--anyone can put up a sign--saying keep out, or posted, or no solicitors, or whatnot, and then--then they must stay out; is that right?

MR. SHADUR: As long as the village has an appropriate--

QUESTION: Yes.

MR. SHADUR: --kind of trespass ordinance, which all villages that I know of do.

QUESTION: So the combination of the ordinance, the action of the municipality, plus the sign?

Now, in other words, I can deprive you, or you can deprive of this First Amendment right you claim, we can do that individually, but we can't do it collectively?

MR. SHADUR: Oh, yes. That's right, Your Honor. And that's precisely the kind of distinction that was first made in Martin v. Struthers, and that I believe Your Honor's opinion, in Hynes v. Oradell, adhered to; and indeed, in between, the Rowan against the United States Post Office, in which this Court upheld a restriction of just

that kind--

QUESTION: But the--

MR. SHADUR: --in which citizens could make the judgment.

QUESTION: --citizen had to take an affirmative step there, didn't he? Just--he had to notify the Post Office that he didn't want mail from the Acme Publishing Company, for example?

MR. SHADUR: Yes, Your Honor. And there's nothing wrong with requiring that kind of evidence.

QUESTION: Well, what's the difference in the constitutionality of doing it individually and collectively?

MR. SHADUR: The difference, Your Honor, is the question of who does it individually and who does it collectively.

When it's done individually, no matter by how many individuals, the individuals are making a judgment for themselves. When it's done collectively, in the way that the Village of Schauburg has sought to do it, it's a sort of Big Brother activity that operates whether or not the individual--individuals who also have First Amendment rights. The individuals have First Amendment rights to hear messages. They also have First Amendment rights to communicate their complaints. That's, as I say, the other side of both coins that Citizens for a Better Environment

is engaged in.

That's a very different kind of standard. And--

QUESTION: Well--

MR. SHADUR: Yes, Your Honor?

QUESTION: --could the Village reverse the presumption you're talking about and say that soliciting is prohibited except on property where there is a soliciting permitted sign?

MR. SHADUR: I think that would present very serious constitutional problems. And the reason that I think that is that--that you would have to have coupled with that somehow the notion that all people are presumed to know the law in a very literal sense, as distinct from the theoretical sense in which the law usually treats with it. Unless you can show that--I don't like to get back into the preceding case which dealt with intention--but the notion that somehow people are presumed to know that an ordinance requires that if they want to be informed, they've got to post--

QUESTION: But the Martin ordinance presumed that they knew--that they had to know the law that they would have to post a no-soliciting sign.

MR. SHADUR: Yes, Your Honor, because when you deal with First Amendment rights, you have to have narrowly drawn statutes. I would suggest that a presumption that

flip-flops in the manner that Your Honor has suggested would be a serious impediment.

QUESTION: Well, where is the First Amendment right to the unregulated solicitation of funds?

MR. SHADUR: But Your Honor, this isn't--

QUESTION: Unregulated.

MR. SHADUR: But Your Honor, I must return to the refrain that what we're dealing with here is not the solicitation of funds in a vacuum. What we're dealing with here is the solicitation of funds that's irrevocably coupled with and tied to the exercise of speech rights.

It's not that they're--they're not raising funds to go to the Carribean. They are raising funds so that they can deliver messages dealing with the environment; so that they can engage in educational activities dealing with the environment; so that they can take complaints dealing with the environment; so they will know what kind of positions to take in litigation, in connection with legislation. All those things are not simply the raising of funds.

They're the raising of funds which necessarily carries with it the tie-in with the exercise of First Amendment.

That's a notion that this Court has accepted ever since the Jehovah's Witnesses cases. The Jehovah's

Witnesses cases made the strong point that the--that it is the poor organization, the one that is most often in need of the use of funds to exercise First Amendment rights to whom this privilege is the most important.

And that's what we're dealing with here. Yes, Your Honor.

QUESTION: You rely heavily on the connection--your type of organization--between the, you might call it, propaganda activity and the solicitation activity.

Do you, in effect, concede that pure solicitation has no First Amendment protection? In other words, say if the American Red Cross or somebody went around, all it wanted to say was, "Please give some money to the Red Cross." Is there any First Amendment protection for that message?

MR. SHADUR: Your Honor, that's--that's a--what I think--

QUESTION: You seem to be conceding that there is none, if I understand your argument. Because you rely entirely on a quite different argument.

MR. SHADUR: I'm pleased to say that I don't have to confront that one. I think that's a more difficult one.

QUESTION: Well you may, under Mr. Justice White's hypothetical, because the ordinance could possibly have



been written to say, "You can say anything you want to, but don't solicit any funds at all." Period.

MR. SHADUR: But it is not--

QUESTION: Then you'd say, your kind of organization has a right to object to it, but maybe the Red Cross or somebody else wouldn't.

MR. SHADUR: It's my view, and this is how I tried to respond to Chief Justice Burger's question--it's my view that the delivery of the message that has to do with the traditional charity itself contains the ingredients of speech; it contains, implicitly at least, the--the fact that you contribute to the American Heart Association and part of the activity that they engage in, or the Boy Scouts or the Red Cross--

QUESTION: Well, then you're saying that you have two First Amendment interests here, in effect: One, the asking for funds is itself First Amendment protected; and secondly, that you need to do that in order to support your other message.

MR. SHADUR: Yes, Your Honor.

QUESTION: So you wouldn't say--if I went around and said, I'm--you know, I'm the boy next door, I want to go to college, would you make a small donation. Or, you know me, I work down at the filling station, and I've got a--I've written a heck of a book and I want to publish it. How

about helping me out. I'm just raising money to publish my book.

MR. SHADUR: I think that's your--that's your freedom of speech. Whether the--

QUESTION: So you say the answer's the same?

MR. SHADUR: Yes.

QUESTION: Although there's--and you'd say anybody who came--would certainly have protection if he came and said, "By the way, I want to run for office. How about five dollars?"

MR. SHADUR: Yes. The running for office I think is clearly--what this Court's teachings have been, have been at least, at a minimum, that social, political, religious activities--I'm not sure that we have to confront for purposes of this case the purely--

QUESTION: Or the fellow who says, "I want to run for office or I want to go to college, and help me along; I have a few magazines I'm selling."

MR. SHADUR: I would not--I would not necessarily espouse that person's--

QUESTION: Well, why not?

MR. SHADUR: --on a First Amendment--

QUESTION: Why not? He's trying to achieve the very same ends. Instead of asking for a gift, he's asking for a--he's going to give you something for it.

MR. SHADUR: I think, Your Honor, that that--that that issue deals more in the area of what has been characterized as commercial speech, on which this Court has told us that First Amendment rights extend, but not necessarily to the same extent.

And that's why I say that I don't think we have to cope with it at this point.

I have, by leave of Court, agreed to give a portion of the time to counsel for one of the amici curiae that had filed in this Court. And therefore, I'm relinquishing the balance of my time for that purpose.

Thank you very much.

MR. CHIEF JUSTICE BURGER: Mr. Yarmolinski?

ORAL ARGUMENT OF ADAM YARMOLINSKI, ESQ.,

AS AMICI CURIAE ON BEHALF OF RESPONDENT

MR. YARMOLINSKI: Mr. Chief Justice, and may it please the Court:

I propose to argue briefly two points. First, the ordinance is constitutionally invalid not only as to so-called advocacy organizations, but also as to more traditional charitable organizations.

Second, in assessing the constitutionality of this ordinance, one must bear in mind the developing patchwork of other local ordinances not addressed to interests appropriate for local government to protect, and having a

particularly chilling effect on the fundraising efforts of national, voluntary charitable organizations.

QUESTION: National?

MR. YARMOLINSKI: National.

QUESTION: Why do you limit to national?

MR. YARMOLINSKI: I don't limit it to national; I'm simply speaking on behalf of a number of major, national voluntary charitable organizations.

I suppose regional organizations, organizations which have to deal with large numbers of local regulations, which aren't simply soliciting in one area, and therefore can adopt their solicitation practices to the needs of that area or that municipality.

Now, the court below declined to decide the reasonableness of the 75 percent requirement as applied to solicitation by traditional charitable organizations. The amici for whom I'm arguing include the major national traditional organizations, and the arbitrary percentage limit puts, I submit, an unconstitutional burden on these organizations.

Solicitation, including door-to-door solicitation, is essential to the continuing existence of these organizations. And what these organizations are engaged in is communicating public means, whether advocacy or more traditional means; whether they're preaching environmentalism

or whether they're selling Girl Scout cookies, or soliciting money for the Heart Fund.

Solicitation involves their right to communicate, and it involves a citizen's right to receive that communication. And I would even go so far as to suggest that on the citizen's side, contribution is a form of association.

There have been several references to Martin v. Struthers, which recognized the distinction and said that the community can't substitute its judgment for the judgment of the householder, the judgment in this case of spending 25 percent of contributions on what the village authorities deem to be administrative costs, is a bar to solicitation.

I do think one has to distinguish commercial organizations. That distinction was recognized in Schneider and other cases.

One has to distinguish governmental organizations which can call on the taxing power.

The amici for whom I speaking in many cases would have difficulty surviving under the regulations governing commercial peddlers' licenses.

Now, I suggest that there are two reasons why the ordinance is an unreasonable restriction as applied to all charitable organizations, not just to advocacy organizations.

The proportion of contributions that goes for fundraising is largely beyond organizations' control, beyond the control of the organization that's doing the fundraising. For example, sometimes causes tend to attract large contributions from comparatively well-off people; other kinds tend to attract small contributions from lower income people. Some solicitation goes on in areas where population is concentration; others in areas where it's less concentrated. There are more popular causes; less popular. Better established; less better established.

And there's even a question of weather, which influences the ability of solicitors to cover ground.

We don't suggest that the charitable organizations for whom I'm speaking use the cloak of charity to mask a commercial purpose; quite the contrary. They need the cloak of charity because it's the only cloak they've got.

Now, secondly, ordinances like this one imply judgment about the means by which the organization should pursue charitable purposes, a judgment which, we submit, is beyond the power of government, and certainly beyond the power of local government.

How much the organizations give directly to beneficiaries; how much they spend on what local authorities deem to be administrative purposes. And certainly that determination involves a degree of discretion which seems

inconsistent with cases in which the Court has been concerned about the degree of discretion that's accorded to local authority.

QUESTION: So, Mr. Yarmolinski, you would say that if the ordinance requires proof that some of the money went to the purported charitable purposes, it would still be invalid?

MR. YARMOLINSKI: I would say that if it required that proof for an initial period, it would certainly be invalid because we all know of cases in which validly charitable organizations must spend even more than they can raise, and borrow money, in order to survive for an initial period which may run more than a fiscal year.

QUESTION: What if the ordinance required that the--after the first year of operation that the solicitor hand out a card saying that in the past fiscal year X percent was devoted to administrative expense, and X percent was devoted to the ultimate purposes?

MR. YARMOLINSKI: I believe that that would almost certainly be a valid constitutional ordinance. I would raise a--at least a question as to the appropriate jurisdiction to enact such a ordinance. And that goes to my patchwork point, which I had mentioned earlier.

Because there is a good deal of discretion and a good deal of flexibility involved in defining what is an

administrative expense. There's an extensive footnote in our brief on the difference between the 1974 position of the American Institute of Certified Public Accountants and the 1977 position, which happens to work against the major charitable organizations which I represent.

And I simply suggest, perhaps not as a matter of constitutional law, that if you told me that such a provision was being enacted by state--by states, or by the Congress, it seems to me that would be a very happy solution to what is a real problem, and what involves--as any case reaching this Court does--a balancing of interests.

QUESTION: How about a statement that as a solicitor of CBE I receive \$8.50 an hour for my work?

MR. YARMOLINSKI: I can't see any constitutional objection to that requirement. Again, unless it gets into the patchwork quilt.

QUESTION: Unless it gets into the--?

MR. YARMOLINSKI: Into the patchwork problem, the problem of how do you get the word around to all your solicitors.

The problem of door-to-door solicitation--and I'll just take 30 seconds on this point because I think it is a First Amendment issue--it's increasingly difficult for even the largest and best established organizations not only to maintain their operations, but to collect the money they



need--part of the money they need to collect from door-to-door solicitations, because you can't get solicitors, because people are unwilling to open their doors at night; because you can't--because they're not home, because the members of the household are not home during the day; because you have two wage-earner households.

So that what we're dealing here is an economic problem that, I suggest, takes on First Amendment dimensions.

QUESTION: How about a limitation that such solicitations could be made only between 7 p.m. and 9 p.m.

MR. YARMOLINSKI: I think that that would probably be an unreasonable provision, because it would not appear to be related to safety or privacy.

QUESTION: Why not?

MR. YARMOLINSKI: Between 7 p.m. and 9 p.m.

QUESTION: Yes. Yes. After dark, people are a little more apprehensive about--

MR. YARMOLINSKI: I thought you said, could be made only between 7 and 9 p.m.

QUESTION: That solicitation would be only between those two hours when presumably the man of the house is home and the people are still awake and it isn't too late to call for help.

MR. YARMOLINSKI: Well, I guess I was thinking of it the other way around.

QUESTION: No, no, just two hours a day.

MR. YARMOLINSKI: That it was more dangerous to entertain solicitors after dark than before dark.

I think there would be a question of the reasonableness of that requirement, and it would be a close question.

I believe my time has expired--

QUESTION: But your basic First Amendment argument, I take it, is: That there is an underlying First Amendment argument to go out and abroad and solicit support both financial and all other areas of support from all persons except those who forbid it in some way.

MR. YARMOLINSKI: Yes, but only, Mr. Chief Justice, on behalf of charities; not--

QUESTION: Yes.

MR. YARMOLINSKI: Not on behalf of--not by the person who's putting himself through college.

QUESTION: Not the way they do it at the airport, where the solicitors are soliciting largely for themselves?

MR. YARMOLINSKI: Well, I won't comment on that.

QUESTION: What's the matter with the individual who's putting himself through college?

MR. YARMOLINSKI: Because--

QUESTION: Or getting money to publish his book. He thinks he will really educate the public.

MR. YARMOLINSKI: Now, I believe, Mr. Justice White, that this is again one of those balancing questions. We do not permit the--

QUESTION: So you'd balance him out?

MR. YARMOLINSKI: I suspect that you would balance him out.

QUESTION: Well, the First Amendment doesn't-- refer especially to charities, does it?

MR. YARMOLINSKI: No, but the First Amendment has been restricted--has been interpreted not to be a completely unrestricted opportunity. After all, this Court doesn't--this Court permits individuals to put out signs saying, "Don't talk to me. Don't knock on my door." That is a restriction on the First Amendment right, but it is regarded as a reasonable restriction.

It might be argued that to deny tax exemptions to the contributions to an individual, as Congress has done except under very limited circumstances, is a restriction on First Amendment rights. But I don't think that challenge will get very far.

MR. CHIEF JUSTICE BURGER: Thank you, Mr. Yarmolinski.

REBUTTAL ARGUMENT OF JACK M. SIEGEL, ESQ.,

ON BEHALF OF THE PETITIONER

MR. SIEGEL: Mr. Chief Justice, I think it's quite

clear from the remarks of my opponents that they think the charities are entitled to some specific protection, which I do not read in the First Amendment.

They make an assumption that the First Amendment gives an unrestricted right to solicit funds. I read nothing in the First Amendment, or in any of the cases that this Court has decided, which could lead to that conclusion.

Mr. Yarmolinski complains that the ordinance is invalid as to traditional charitable organizations. Not even the Seventh Circuit, whose opinion I disagree with almost 110 percent, was willing to go that far, and that issue is not before the Court.

Mr. Yarmolinski decries the possibility of a patchwork of ordinances. This nation is a patchwork of municipalities and states, each of which have local problems and local needs which better ought to be addressed by those governments closest to them.

QUESTION: What would you say about an ordinance that totally prohibited charitable solicitation in the Village?

MR. SIEGEL: Your Honor, I don't find anything in the First Amendment that would prohibit that.

QUESTION: You'd think that ordinance would be valid, in other words?

MR. SIEGEL: Yes, sir, I do.

I don't think it's necessary to decide that question here. But I think that what counsel is really seeking is an unbridled right to solicit, because these are quote, good causes.

They may be fine causes. I have nothing against the Heart Fund, the Cancer Group, the St. Judes, the dozens who solicit in Schaumburg. I may not even have anything against the CBE if I find out what it's about.

QUESTION: Just the Girl Scouts cookies, apparently.

MR. SIEGEL: Pardon me?

QUESTION: I guess the Girl Scouts can solicit?

MR. SIEGEL: Girl Scouts are fine, Your Honor.

QUESTION: I don't see how they comply with the ordinance, though, because they've got to pay for the cookies.

MR. SIEGEL: They do.

QUESTION: And those would be administrative expenses.

MR. SIEGEL: Well, they--they--they--they serve--

QUESTION: Maybe you make an exception for them?

MR. SIEGEL: We don't make any exceptions; no, Your Honor.

QUESTION: It would follow from your position that

an ordinance which prohibited, absolutely and totally, all door-to-door solicitation for any purpose would be valid. That would include commercial, which you said everyone agrees has somewhat less protection.

MR. SIEGEL: Your HONOR, I mean as far as the First Amendment was concerned. There might be other considerations.

QUESTION: Such as?

MR. SIEGEL: Well, I think if it was drafted in such a way as to make distinctions, if it was an outright prohibition, I suspect it would probably not violate the First Amendment.

I don't regard, in short, solicitation for funds alone as a violation--a prohibition of such solicitation as a violation of the First Amendment. I find nothing in any of the cases that would indicate that.

And I think it's quite interesting--I've got at least a half a dozen briefs from the various amici, as well as Mr. Shadur, and I find no cases in any one of them that goes that far.

It's always, solicitation coupled with something else. Our ordinance is not a prior restraint. Our ordinance doesn't care what your message is. God bless you with your message.

But when you start asking for money, then we say

that the community, through its local officials, have a right to make a decision.

And I would point out, because I know your Honors are well aware, that the Breard case said, in its substance, that the community could substitute the collective judgment for that of the individual.

And the mere fact that you post a sign that says, no solicitors, doesn't keep solicitors out. We had that no soliciting sign for four years in our ordinances before we adopted the present ordinance which is here in contention. Because unfortunately, when commissioners--when solicitors work on a commission, they don't always pay attention to such signs; and unfortunately, bewildered housewives--and I don't mean to paint a horrible picture here--but it's a terrible burden on an individual housewife to have to go through the procedures, in Illinois at least, to file a complaint for trespassing.

I think it's unrealistic to say that the traditional remedies against fraud and trespass are sufficient to deal with this problem.

In the case of pure First Amendment freedoms, exercise of freedom of speech and freedom of religion, we certainly can say that that inconvenience is outweighed by the social benefits.

But when the objective is to raise money, and most

or a substantial portion of the money does not go to the charitable purpose, I suggest that the municipality and the interests of the public safety are entitled to enact the kind of ordinances we've enacted here without infringing upon the First Amendment.

I ask that the Seventh Circuit be reversed.

MR. CHIEF JUSTICE BURGER: Thank you, gentlemen.

The case is submitted.

[Whereupon, at 3:00 o'clock p.m., the case in the above-entitled matter was submitted.]



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