AMERICAN CONSTITUTIONALISM

VOLUME II: RIGHTS AND LIBERTIES

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Supplementary Material

Chapter 10: The Reagan Era – Democratic Rights/Free Speech

**Schaumburg v. Citizens for Better Environment, 444 U.S. 620** (1980)

*In 1974, the village of Schaumburg in Illinois adopted an ordinance that required a permit for any charitable organization that to engage in door-to-door solicitations. Charitable organizations were only eligible for a permit if they could demonstrate that at least seventy-five percent of the collected funds would be used for the designated charitable purpose and not on salaries or administrative expenses. Citizens for a Better Environment (CBE) is an Illinois nonprofit that promotes environmental protection and employs canvassers to raise money and distribute literature about the environment. It applied for a permit, but was denied because it could not demonstrate that it met the spending threshold.*

*It filed suit in federal district court arguing that the permit system violated its First Amendment rights. The village responded that CBE spent more than 60 percent of its funds on employee salaries and spent a negligible amount on charitable activities. The district court found the spending requirement to be “a form of censorship.” The circuit court affirmed that ruling. In an 8-1 decision, the U.S. Supreme Court affirmed, holding that the spending requirement unreasonably discriminated against nonprofits whose primary mission was to advocate policies through door-to-door canvassing rather than to raise funds to disperse to the needy.*

JUSTICE WHITE delivered the opinion of the Court.

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It is urged that the ordinance should be sustained because it deals only with solicitation and because any charity is free to propagate its views from door to door in the Village without a permit as long as it refrains from soliciting money. But this represents a far too limited view of our prior cases relevant to canvassing and soliciting by religious and charitable organizations.

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In Schneider v. State (1939), a canvasser for a religious society, who passed out booklets from door to door and asked for contributions, was arrested and convicted under an ordinance which prohibited canvassing, soliciting, or distribution of circulars from house to house without a permit, the issuance of which rested much in the discretion of public officials. . . . [This Court held] that the city could not, in the name of preventing fraudulent appeals, subject door-to-door advocacy and the communication of views to the discretionary permit requirement. The Court pointed out that the ordinance was not limited to those "who canvass for private profit," and reserved the question whether "commercial soliciting and canvassing" could be validly subjected to such controls.

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Thomas v. Collins (1945), held that the First Amendment barred enforcement of a state statute requiring a permit before soliciting membership in any labor organization. Solicitation and speech were deemed to be so intertwined that a prior permit could not be required. The Court also recognized that "espousal of the cause of labor is entitled to no higher constitutional protection than the espousal of any other lawful cause." The Court rejected the notion that First Amendment claims could be dismissed merely by urging "that an organization for which the rights of free speech and free assembly are claimed is one 'engaged in business activities' or that the individual who leads it in exercising these rights receives compensation for doing so."

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Prior authorities, therefore, clearly establish that charitable appeals for funds, on the street or door to door, involve a variety of speech interests -- communication of information, the dissemination and propagation of views and ideas, and the advocacy of causes -- that are within the protection of the First Amendment. Soliciting financial support is undoubtedly subject to reasonable regulation, but the latter must be undertaken with due regard for the reality that solicitation is characteristically intertwined with informative and perhaps persuasive speech seeking support for particular causes or for particular views on economic, political, or social issues, and for the reality that, without solicitation, the flow of such information and advocacy would likely cease. Canvassers in such contexts are necessarily more than solicitors for money. Furthermore, because charitable solicitation does more than inform private economic decisions and is not primarily concerned with providing information about the characteristics and costs of goods and services, it has not been dealt with in our cases as a variety of purely commercial speech.

The issue before us, then, is not whether charitable solicitations in residential neighborhoods are within the protections of the First Amendment. It is clear that they are.

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We agree with the Court of Appeals that the 75-percent limitation is a direct and substantial limitation on protected activity that cannot be sustained unless it serves a sufficiently strong, subordinating interest that the Village is entitled to protect. We also agree that the Village's proffered justifications are inadequate, and that the ordinance cannot survive scrutiny under the First Amendment.

The Village urges that the 75-percent requirement is intimately related to substantial governmental interests "in protecting the public from fraud, crime and undue annoyance." These interests are indeed substantial, but they are only peripherally promoted by the 75-percent requirement, and could be sufficiently served by measures less destructive of First Amendment interests.

Prevention of fraud is the Village's principal justification for prohibiting solicitation by charities that spend more than one-quarter of their receipts on salaries and administrative expenses. The submission is that any organization using more than 25 percent of its receipts on fund-raising, salaries, and overhead is not a charitable, but a commercial, for-profit enterprise, and that to permit it to represent itself as a charity is fraudulent. But, as the Court of Appeals recognized, this cannot be true of those organizations that are primarily engaged in research, advocacy, or public education and that use their own paid staff to carry out these functions as well as to solicit financial support. The Village, consistently with the First Amendment, may not label such groups "fraudulent" and bar them from canvassing on the streets and house to house. . . .

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*Affirmed*.

JUSTICE REHNQUIST, dissenting.

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. . . . [H]aving arrived at this conclusion on the basis of earlier cases, the Court effectively departs from the reasoning of those cases in discussing the limits on Schaumburg's authority to place limitations on so-called "charitable" solicitors who go from house to house in the village.

The Court's neglect of its prior precedents in this regard is entirely understandable, since the earlier decisions striking down various regulations covering door-to-door activities turned upon factors not present in the instant case. A plurality of these decisions turned primarily, if not exclusively, upon the amount of discretion vested in municipal authorities to grant or deny permits on the basis of vague or even nonexistent criteria. In Schneider, for example, the Court invalidated such an ordinance as applied to Jehovah's Witnesses because "in the end, [the applicant's] liberty to communicate with the residents of the town at their homes depends upon the exercise of the officer's discretion." These cases clearly do not control the validity of Schaumburg's ordinance, which leaves virtually no discretion in the hands of the licensing authority.

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[F]rom a practical standpoint, the Court gives absolutely no guidance as to how a municipality might identify those organizations "whose primary purpose is . . . to gather and disseminate information about and advocate positions on matters of public concern," and which are therefore exempt from [the permit requirement]. Earlier cases do provide one guideline: the municipality must rely on objective criteria, since reliance upon official discretion in any significant degree would clearly run afoul of Schneider. . . . In requiring municipal authorities to use "more precise measures to separate" constitutionally preferred organizations from their less preferred counterparts, the Court would do well to remember that these local bodies are poorly equipped to investigate and audit the various persons and organizations that will apply to them for preferred status. Stripped of discretion, they must be able to resort to a line-drawing test capable of easy and reliable application without the necessity for an exhaustive case-by-case investigation of each applicant.

Finally, I believe that the Court overestimates the value, in a constitutional sense, of door-to-door solicitation for financial contributions, and simultaneously underestimates the reasons why a village board might conclude that regulation of such activity was necessary. . . . I believe that a simple request for money lies far from the core protections of the First Amendment as heretofore interpreted. In the case of such solicitation, the community's interest in insuring that the collecting organization meet some objective financial criteria is indisputably valid. Regardless of whether one labels noncharitable solicitation "fraudulent," nothing in the United States Constitution should prevent residents of a community from making the collective judgment that certain worthy charities may solicit door to door while at the same time insulating themselves against panhandlers, profiteers, and peddlers.