

# The Burger Court Opinion Writing Database

*Hynes v. Mayor and Council of Oradell*  
425 U.S. 610 (1976)

Paul J. Wahlbeck, George Washington University  
James F. Spriggs, II, Washington University in St. Louis  
Forrest Maltzman, George Washington University



To: Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Powell  
Mr. Justice Marshall  
Mr. Justice Black  
Mr. Justice Harlan  
Mr. Justice Stevens

From: The Chief Justice

Circulated: MAR 11 1976

1st DRAFT

Recirculated: \_\_\_\_\_

## SUPREME COURT OF THE UNITED STATES

No. 74-1329

Edward H. Hynes et al.,  
Appellants,  
v.  
The Mayor and Council  
of the Borough of  
Oradell et al. } On Appeal from the Supreme  
Court of New Jersey.

[March —, 1976]

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

The question presented in this case is whether a municipal ordinance requiring advance notice to be given to the local police department by "any person desiring to canvass, solicit or call from house to house for a recognized charitable . . . or political campaign or cause . . . in writing, for identification only" violates the guarantees of freedom of speech and due process of law embodied in the Fourteenth Amendment.

(1)

The Borough of Oradell, N. J., has enacted two ordinances that together regulate most forms of door-to-door canvassing and solicitation. A broad ordinance, No. 573, requires all solicitors to obtain a permit from the Borough Clerk, by making a formal application, accompanied by a description and photograph of the applicant, the description and license number of any automobile to be used in soliciting, a driver's license, and other data. The

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

March 25, 1976

Re: 74-1329 - Hynes v. Oradell

MEMORANDUM TO THE CONFERENCE:

Enclosed is a second draft of the opinion in this case. I agree with Lewis that issues other than vagueness are not before us in this case, and I have added a sentence and a footnote (pp. 10-11) to make explicit what was implicit. I surely agree that this Ordinance is not a model of draftsmanship, but for me it is the kind of ordinance that this Court has told municipalities, for over thirty years, they have power to enact. I therefore cannot agree that this attempt -- however awkward -- is "silly," although the draftsmanship merits that description and I assume that is what Lewis means.

I also agree with Potter's suggestion. In view of Virginia State Board, I will omit any reference to the "commercial speech" doctrine rather than -- as the first draft did -- raising and reserving the issue.

Regards,

WSB

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
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March 25, 1976

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I also agree with Potter's suggestion. In view of Virginia State Board, I will omit any reference to the "commercial speech" doctrine rather than -- as the first draft did -- raising and reserving the issue.

Regards,

W. B.

[ HAB only: I think this draft takes care of your suggestion. ]

PP. 3-5, 8-11.

To: Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Johnquist  
Mr. Justice Stevens

From: The Chief Justice

Circulated: \_\_\_\_\_

Recirculated: MAR 25 1976

**2nd DRAFT**

**SUPREME COURT OF THE UNITED STATES**

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No. 74-1329  
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Edward H. Hynes et al.,  
Appellants,  
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The Mayor and Council  
of the Borough of  
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pp. 11-13

To: Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice Marshall  
Mr. Justice Black  
Mr. Justice Harlan  
Mr. Justice Sutherland  
Mr. Justice Brandeis  
Mr. Justice Cardozo  
Mr. Justice Frankfurter  
Mr. Justice Stone  
Mr. Justice Harlan

From: The Clean Justice

Circulated:

Recirculated: MAY 10 1966

3rd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 74-1329

Edward H. Hynes et al.,  
Appellants,  
v.  
The Mayor and Council  
of the Borough of  
Oradell et al. } On Appeal from the Supreme  
Court of New Jersey.

[May —, 1976]

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

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4483

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

May 24, 1976

Re: 74-1335 - Ringgold v. Collingswood  
(Held for 74-1329 - Hynes v. Oradell)

MEMORANDUM TO THE CONFERENCE:

Appellants in 74-1335 challenge an ordinance requiring registration of door-to-door solicitors, which the New Jersey Supreme Court narrowed and then upheld. The ordinance requires itinerant vendors, surveyors and poll-takers, and persons collecting contributions, first to register with the Chief of Police, furnishing: name, age, description, home and local addresses, name of organization, description of business, two photographs, the date and route of business, a statement whether the applicant has been convicted of a crime, and a description of any automobile to be used. The registrant is then issued a certificate, which he must carry. The ordinance contains less detailed requirements for solicitors for charitable and religious organizations, and requires them to carry only identification. The ordinance also restricts the hours during which registrants may canvass (Monday-Saturday, 9:00 a.m. - 5:00 p.m.).

Appellants conducted a door-to-door survey, without obtaining a permit. They were fined \$25 each, and appealed the convictions.

The New Jersey Supreme Court on appeal narrowed the ordinance somewhat. It disapproved a requirement that the registrant deposit his certificate with the Chief of Police overnight, and declared invalid a section that seemed to give the Police Chief discretion to deny a permit. The court then rejected appellants' argument that the ordinance unduly burdened interstate commerce, since the permit was free and issued without delay. It also rejected a First Amendment challenge, though it did not apply the "commercial speech" doctrine to the case. Given that the Police Chief had a ministerial duty to issue a permit, the court held that the ordinance was the sort of balance between the solicitor's rights and the municipality's authority to protect householders against crime and invasions of privacy approved

✓ ✓  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

April 22, 1976

RE: No. 74-1329 Hynes v. Mayor & Council of Oradell

Dear Chief:

I hope by next week I will have circulated a concurring opinion in the above.

Sincerely,



The Chief Justice

cc: The Conference

To: The Chief Justice  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice Brennan

Circulated: 4/30/76

Recirculated:

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-1329

Edward H. Hynes et al.,  
Appellants,  
v.  
The Mayor and Council  
of the Borough of  
Oradell et al. } On Appeal from the Supreme  
Court of New Jersey.

[May —, 1976]

MR. JUSTICE BRENNAN, concurring in part.

I join Part III of the Court's opinion holding that Oradell Ordinance No. 598A must be invalidated as impermissibly vague. The Court reserves decision on other constitutional contentions alleged to invalidate the ordinance. *Ante*, at 10-11, n. 4. Despite this reservation, Part II of the Court's opinion may be read as suggesting that, vagueness defects aside, an ordinance of this kind would ordinarily withstand constitutional attack. Because I believe that such ordinances must encounter substantial First Amendment barriers besides vagueness, I cannot join Part II and briefly state my reasons.

In considering the validity of laws regulating door-to-door solicitation and canvassing, Mr. Justice Black, speaking for the Court in *Martin v. Struthers*, 319 U. S. 141 (1943), properly recognized that municipalities have an important interest in keeping neighborhoods safe and peaceful. But unlike the Court today, he did not stop there. Rather, he emphasized the other side of the equation—that door-to-door solicitation and canvassing is a method of communication essential to the preservation of our free society. He said:

"While door to door distributors of literature may

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE POTTER STEWART

March 15, 1976

Re: No. 74-1329, Hynes v. Oradell Mayor

Dear Chief,

I agree with the conclusion reached in your proposed opinion for the Court and also with the views that Lewis has expressed in his letter to you of March 15. Even if his suggestions are incorporated in the opinion, however, I could not join it so long as it contains footnote 3 in its present form.

In short, I do not think that commercial solicitation "may conceivably" be different from political canvassing; I think it is wholly different. This difference of view seems to me of considerable topical importance because of the forthcoming decision in the Virginia Pharmacists case. I do not suggest that the footnote be changed to express my view, but simply that it be made wholly neutral or, perhaps even better, eliminate it entirely.

Sincerely yours,

✓  
P.S.

The Chief Justice

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE POTTER STEWART

April 6, 1976

Re: No. 74-1329, Hynes v. Oradell

Dear Chief,

I am glad to join your opinion for the Court in  
this case.

Sincerely yours,

P.S.

The Chief Justice

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE BYRON R. WHITE

March 17, 1976

Re: No. 74-1329 - Hynes v. Mayor and Council of  
the Borough of Oradell

Dear Chief:

Please join me in your suggested opinion  
in this case.

Sincerely,



The Chief Justice

Copies to Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

May 5, 1976

Re: No. 74-1329 -- Edward H. Hynes v. The Mayor  
and Council of the Borough of Oradell

Dear Bill:

Please join me.

Sincerely,

*T.M.*  
T. M.

Mr. Justice Brennan

cc: The Conference

March 22, 1976

Re: No. 74-1329 - Hynes v. Mayor and Council of Oradell

Dear Chief:

With some diffidence, I offer the following for consideration. I realize, of course, that these primarily have to do with style, and hence they are matters for the ultimate decision of the writer of the opinion.

1. I find it somewhat confusing to quote ordinance No. 573 in full in footnote 1 but not to quote ordinance No. 598A, which is the one at issue here.

2. The Ringgold case is cited in footnote 1 and also at the bottom of page 4 of the opinion. I am not certain that I am willing to speculate on what the New Jersey court would do. Further, Ringgold is being held for Oradell, and I wonder if that fact should be reflected in the opinion. It is our No. 74-1335.

Sincerely,

HAB

The Chief Justice

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

March 22, 1976

Re: No. 74-1329 - Hynes v. Mayor and Council of Oradell

Dear Chief:

I, too, agree with the conclusion reached in your proposed opinion for the Court. I also agree, however, with what Lewis has said in the third paragraph of his letter of March 15. Finally, I am in accord with Potter's suggestion that footnote 3 be eliminated or at least be held in abeyance until we are all at rest on Virginia Pharmacy.

Sincerely,

*HAB.*

The Chief Justice

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

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CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

✓

March 26, 1976

Re: No. 74-1329 - Hynes v. Borough of Oradell

Dear Chief:

Please join me in your recirculation of March 25.

Sincerely,  
*H. A. B.*

The Chief Justice

cc: The Conference

✓  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

March 15, 1976

No. 74-1329 Hynes v. Mayor of Oradell

Dear Chief:

I agree with the conclusion reached in your opinion that this silly ordinance is void for vagueness.

It seems to me, however, that the implication of the opinion's analysis is that if the borough of Oradell were to cure the vagueness problem its ordinance would be valid. As I stated at the Conference, I do not think this would be the case. The ordinance also suffers severely from overbreadth deficiencies. Moreover, even if this particular type of ordinance were neither vague nor overbroad, there is no showing in this case that it would serve the suggested purpose of preventing crime.

In view of these concerns, I wonder if you would consider adding a paragraph - say on page 9 of the opinion - noting that appellants challenge the ordinance on several grounds, but in view of our finding of vagueness we need not consider any of the other alleged deficiencies.

In short, I would like to remove the present strong implication that if the ordinance were not vague it would be perfectly valid. In view of the First Amendment interests involved (individuals would not even be permitted to solicit the votes of their friends and neighbors without registering), I think an ordinance in this area should be drawn with the utmost care and precision. I do not believe a more defective ordinance could have been drafted than this particular one.

Sincerely,

The Chief Justice

*Lewis*

lfp/ss

cc: The Conference

✓  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

April 2, 1976

No. 74-1329 Hynes v. Oradell

Dear Chief:

Please join me in your recirculation of March 25.

Sincerely,

*Lewis*

The Chief Justice

1fp/ss

cc: The Conference

✓  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

March 24, 1976

Re: No. 74-1329 - Hynes v. Borough of Oradell

Dear Chief:

In due course I will circulate a dissent in this case.

Sincerely,

*WW*

The Chief Justice

Copies to the Conference

CP 243

To: The Chief Justice

Associate Justice  
Associate Justice  
Associate Justice  
Associate Justice  
Associate Justice  
Associate Justice  
Associate Justice  
Associate Justice

Associate Justice  
Associate Justice  
Associate Justice  
Associate Justice

## 1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 74-1329

Edward H. Hynes et al.,  
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v.  
The Mayor and Council  
of the Borough of  
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Court of New Jersey.

[May —, 1976]

MR. JUSTICE REHNQUIST, dissenting.

I agree with virtually everything said in Parts 1 and 2 of the Court's opinion, which indicates that the Oradell ordinance in question can survive a wide range of "as applied" challenges based on the First and Fourteenth Amendments. I do not agree with Part 3 of the Court's opinion, which concludes that the ordinance is unconstitutionally vague as presently drafted.

The Court recognizes that none of our cases have ever suggested that a regulation requiring only identification of canvassers or solicitors would violate any constitutional limitation. As noted by the Court in Part 2 of its opinion, at least two decisions have taken care to point out that such ordinances would unquestionably be valid. See *Cantwell v. Connecticut*, 310 U. S. 296, 306 (1940); *Martin v. Struthers*, 319 U. S. 141, 148 (1943).

I also agree with the Court's observation that:

"A narrowly drawn ordinance, that does not vest in municipal officials the undefined power to determine what messages residents will hear, may serve these important interests without running afoul of the First Amendment." *Ante*, at 7.

The Court goes on to point out that this element of

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Stewart

P. 3-4, 5, 6

From: Mr. Justice Rehnquist

Complaint

Received Oct. 14 1976

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

\_\_\_\_\_  
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\_\_\_\_\_

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

May 17, 1976

Re: No. 74-1329, Hynes v. Oradell Mayor & Council

Dear Chief,

Enclosed is a copy of page 3 of my dissenting opinion in this case, showing the new footnote which I propose to add on that page. I am sending this change to the printer simultaneously with dissemination of this letter, so it should still be possible to hand down the decision on Wednesday.

Sincerely,



The Chief Justice

cc: The Conference