

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 Marshall
 Mr. Justice Blackmun
 Mr. Justice Burger
 Mr. Justice Rehnquist
 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., | } On Appeal from the Supreme |
| Appellants, | |
| v. | |
| The Mayor and Council | |
| of the Borough of | Court of New Jersey. |
| Oradell et al. | |

[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,

WRS 13

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

CHAMBERS OF
THE CHIEF JUSTICE

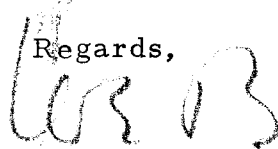
March 25, 1976

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,


[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 Rehnquist
 Mr. Justice Stevens

From: The Chief Justice

Circulated: _____

Recirculated: MAR 25 1976

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-1329

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

[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

AP-11-13.

To: Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Black
Mr. Justice Harlan
Mr. Justice Marshall
Mr. Justice Burger
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Souter

From: The Chief Justice

Circulated: _____

Recirculated: MAY 10 1976

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.

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

HAB

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) *fold*

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 con-
curring opinion in the above.

Sincerely,

Bren

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., | } On Appeal from the Supreme |
| Appellants, | |
| v. | |
| The Mayor and Council | |
| of the Borough of | |
| Oradell et al. | 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

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,

H.A.B.

The Chief Justice

cc: The Conference

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

✓

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,

Lewis

The Chief Justice

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

lfp/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,



The Chief Justice

Copies to the Conference

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

From: Mr. Justice Rehnquist

Circulation: _____

Revised: MAY 14 1976

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-1329

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

[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

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

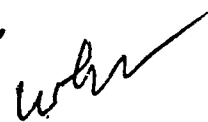
May 17, 1976

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