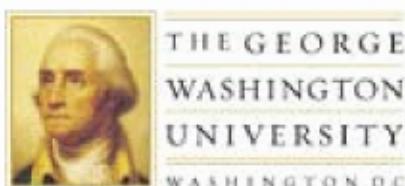


The Burger Court Opinion Writing Database

Schaumburg v. Citizens for a Better Environment

444 U.S. 620 (1980)

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



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

CHAMBERS OF
THE CHIEF JUSTICE

January 10, 1980

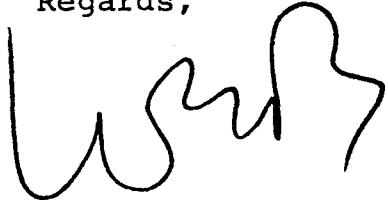
RE: 78-1335 - Village of Schaumburg v. Citizens For A
Better Environment

MEMORANDUM TO THE CONFERENCE:

Dear Byron:

I join.

Regards,



Mr. Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

January 2, 1980

Re: 78-1335 - Village of Schaumburg v. Citizens for a Better Environment

Dear Byron:

I agree. Please join me.

Sincerely,



Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

January 2, 1980

78-1335 - Schaumburg v. Citizens for Better Environment

Dear Byron:

I am glad to join your opinion for the Court.

Sincerely yours,

PS,
1

Mr. Justice White

Copies to the Conference

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

From: Mr. Justice White

Circulated: 28 DEC 1979

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-1335

Village of Schaumburg, Petitioner, } On Writ of Certiorari to
 v. } the United States Court
 Citizens for a Better Environment } of Appeals for the Sev-
 et al. } enth Circuit.

[January —, 1980]

MR. JUSTICE WHITE delivered the opinion of the Court.

The issue in this case is the validity under the First and Fourteenth Amendments of a municipal ordinance prohibiting the solicitation of contributions by charitable organizations that do not use at least 75 percent of their receipts for "charitable purposes," those purposes being defined to exclude solicitation expenses, salaries, overhead and other administrative expenses. The Court of Appeals held the ordinance unconstitutional. We affirm that judgment.

I

The Village of Schaumburg (Village) is a suburban community located 25 miles northwest of Chicago, Ill. On March 12, 1974, the Village adopted "An Ordinance Regulating Soliciting by Charitable Organizations." Schaumburg Ordinance No. 1052 (1974), is codified as Art. III of chapter 22 of the Schaumburg Village Code (Code), which regulates the activities of "peddlers and solicitors," Code § 22-1 *et seq.* (1974).¹ Article III² provides that "[e]very charitable or-

¹ Article II of chapter 22 regulates commercial solicitation by requiring "for profit peddlers and solicitors" to obtain a commercial license. For the purposes of Art. II, peddlers and solicitors are defined as any persons who, going from place to place without appointment, offer goods or services for sale or take orders for future delivery of goods or services.

[Footnote 2 is on p. 2]

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 3, 1980

Re: No. 78-1335 - Village of Schaumburg v. Citizens
for a Better Environment

Dear Harry,

Thank you for your suggestions with respect to the above case. I am adding the following footnote at the conclusion of Part II on page 12, which I hope contains the substance of your suggestions:

To the extent that any of the Court's past decisions discussed in Part II hold or indicate that commercial speech is excluded from First Amendment protections, those decisions, to that extent, are no longer good law. Virginia Pharmacy Board v. Virginia Consumer Council, 425 U.S. 748, 758-759, 762 (1976).

Sincerely yours,



Mr. Justice Blackmun

Copies to the Conference

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

STYLISTIC CHANGES THROUGHOUT.
 SEE PAGES: 4, 6, 11-12, 15

From: Mr. Justice White

Circulated: _____

Recirculated: 4 JAN 1980

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-1335

Village of Schaumburg, Petitioner, et al.	On Writ of Certiorari to the United States Court of Appeals for the Sev- enth Circuit.
Citizens for a Better Environment et al.	

[January —, 1980]

Mr. JUSTICE WHITE delivered the opinion of the Court.

The issue in this case is the validity under the First and Fourteenth Amendments of a municipal ordinance prohibiting the solicitation of contributions by charitable organizations that do not use at least 75 percent of their receipts for "charitable purposes," those purposes being defined to exclude solicitation expenses, salaries, overhead and other administrative expenses. The Court of Appeals held the ordinance unconstitutional. We affirm that judgment.

I.

The Village of Schaumburg (Village) is a suburban community located 25 miles northwest of Chicago, Ill. On March 12, 1974, the Village adopted "An Ordinance Regulating Soliciting by Charitable Organizations," codified as Art. III of chapter 22 of the Schaumburg Village Code (Code), which regulates the activities of "peddlers and solicitors," Code § 22-1 *et seq.* (1974).¹ Article III² provides that

¹ Article II of chapter 22 regulates commercial solicitation by requiring "for profit peddlers and solicitors" to obtain a commercial license. For the purposes of Art. II, peddlers and solicitors are defined as any persons who, going from place to place without appointment, offer goods or services for sale or take orders for future delivery of goods or services, Schaumburg Village Code § 22-6. Section 22-7 requires any person "en-

[Footnote 2 is on p. 2]

P. 12

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

From: Mr. Justice White

Circulated: _____

Recirculated: *1-31-80*

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-1335

Village of Schaumburg, Petitioner, } On Writ of Certiorari to
 "v."
 Citizens for a Better Environment } the United States Court
 et al. } of Appeals for the Sev-
 enth Circuit.

[January —, 1980]

MR. JUSTICE WHITE delivered the opinion of the Court.

The issue in this case is the validity under the First and Fourteenth Amendments of a municipal ordinance prohibiting the solicitation of contributions by charitable organizations that do not use at least 75 percent of their receipts for "charitable purposes," those purposes being defined to exclude solicitation expenses, salaries, overhead and other administrative expenses. The Court of Appeals held the ordinance unconstitutional. We affirm that judgment.

I

The Village of Schaumburg (Village) is a suburban community located 25 miles northwest of Chicago, Ill. On March 12, 1974, the Village adopted "An Ordinance Regulating Soliciting by Charitable Organizations," codified as Art. III of chapter 22 of the Schaumburg Village Code (Code), which regulates the activities of "peddlers and solicitors," Code § 22-1 *et seq.* (1974).¹ Article III² provides that

¹ Article II of chapter 22 regulates commercial solicitation by requiring "for profit peddlers and solicitors" to obtain a commercial license. For the purposes of Art. II, peddlers and solicitors are defined as any persons who, going from place to place without appointment, offer goods or services for sale or take orders for future delivery of goods or services. Schaumburg Village Code § 22-6. Section 22-7 requires any person "en-

[Footnote 2 is on p. 2]

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

From: Mr. Justice White

12, 14
 Circulated: _____

4th DRAFT Recirculated: 4 FEB 1980

SUPREME COURT OF THE UNITED STATES

No. 78-1335

Village of Schaumburg, Petitioner, | On Writ of Certiorari to
 v. | the United States Court
 Citizens for a Better Environment | of Appeals for the Sev-
 et al. | enth Circuit.

[January —, 1980]

MR. JUSTICE WHITE delivered the opinion of the Court.

The issue in this case is the validity under the First and Fourteenth Amendments of a municipal ordinance prohibiting the solicitation of contributions by charitable organizations that do not use at least 75 percent of their receipts for "charitable purposes," those purposes being defined to exclude solicitation expenses, salaries, overhead and other administrative expenses. The Court of Appeals held the ordinance unconstitutional. We affirm that judgment.

I

The Village of Schaumburg (Village) is a suburban community located 25 miles northwest of Chicago, Ill. On March 12, 1974, the Village adopted "An Ordinance Regulating Soliciting by Charitable Organizations," codified as Art. III of chapter 22 of the Schaumburg Village Code (Code), which regulates the activities of "peddlers and solicitors," Code § 22-1 *et seq.* (1974).¹ Article III² provides that

¹ Article II of chapter 22 regulates commercial solicitation by requiring "for profit peddlers and solicitors" to obtain a commercial license. For the purposes of Art. II, peddlers and solicitors are defined as any persons who, going from place to place without appointment, offer goods or services for sale or take orders for future delivery of goods or services. Schaumburg Village Code § 22-6. Section 22-7 requires any person "en-

[Footnote 2 is on p. 2]

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

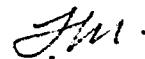
January 22, 1980

Re: No. 78-1335 - Village of Schaumburg v. CBE

Dear Byron:

Please join me.

Sincerely,



T.M.

Mr. Justice White
cc: The Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 2, 1980

Re: No. 78-1335 - Village of Schaumburg v. Citizens for
a Better Environment

Dear Byron:

I certainly agree with your result and am favorably inclined toward your opinion. Would you, however, consider the following two additions:

1. On page 9, at the end of the first full paragraph, the addition of "But see Virginia Pharmacy Board v. Virginia Consumer Council, 425 U.S., at 758, 762." I make this suggestion because, in my view, after Virginia Pharmacy, Valentine is virtually a dead letter. Of course, it has not expressly been overruled.

2. On page 12, at the end of the first full paragraph of Part III, the insertion of the following as a footnote:

"Our discussion in Part II of past cases involving solicitation, and of the distinction they have drawn between "purely commercial speech" and other forms of expression, is presented to illustrate only that charitable solicitations entail more than a commercial proposition. To the extent that these cases have been relied upon to exclude "purely commercial speech" from First Amendment protection, they are, of course, no longer good law. Virginia Pharmacy Board v. Virginia Consumer Council, 425 U.S. 748, 758-759, 762 (1976)."

Sincerely,



—

Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 3, 1980

Re: No. 78-1335 - Village of Schaumburg v.
Citizens for a Better Environment

Dear Byron:

Your proposed footnote meets my concerns, and I am happy to join your opinion.

Sincerely,



Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

January 2, 1980

78-1335 Village of Schaumburg v. Citizens

Dear Byron:

Please join me.

Sincerely,



Mr. Justice White

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

January 2, 1980

Re: No. 78-1335 Village of Schaumburg v. CBE

Dear Byron:

In due course I shall circulate a dissent from your opinion in this case.

Sincerely,

WW

Mr. Justice White

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

30 JAN 1980

Circulated: _____

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-1335

Village of Schaumburg, Petitioner, | On Writ of Certiorari to
 v. | the United States Court
 Citizens for a Better Environment | of Appeals for the Sev-
 et al. | enth Circuit.

[February —, 1980]

MR. JUSTICE REHNQUIST, dissenting.

The Court holds that Art. III of the Schaumburg Village Code is unconstitutional as applied to prohibit respondent Citizens for a Better Environment (CBE) from soliciting contributions door to door. If read in isolation, today's decision might be defensible. When combined with this Court's earlier pronouncements on the subject, however, today's decision relegates any local government interested in regulating door-to-door activities to the role of Sisyphus.

The Court's opinion first recites the litany of language from 40 years of decisions in which this Court has considered various restrictions on the right to distribute information or solicit door to door, concluding from these decisions that "charitable appeals for funds, on the street or door-to-door, involve a variety of speech interests . . . that are within the protection of the First Amendment." *Ante*, at 11. I would have thought this proposition self-evident now that this Court has swept even the most banal commercial speech within the ambit of the First Amendment. See *Virginia Board of Pharmacy v. Virginia Consumer Council*, 425 U. S. 748 (1976). But, having 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.

Supreme Court of the United States
Washington, D. C. 20542

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

January 2, 1980

Re: No. 78-1335 - Village of Schaumburg v.
Citizens for a Better Environment

Dear Byron:

Please join me.

Respectfully,



Mr. Justice White
cc: The Conference