

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

SERVICE EMPLOYEES
INTERNATIONAL UNION, LOCAL #3,
RACHEL CANNING and
VELVET HAZARD,

Plaintiffs,

04cv1651

v.

MUNICIPALITY OF MT. LEBANON,

Defendants.

MEMORANDUM OPINION

December 9, 2004

I. Introduction

After careful review of the cross motions for summary judgment, and the memoranda of law and supporting materials in support and opposition, the Court will grant summary judgment in favor of defendant Municipality of Mt. Lebanon.

II. Procedural Posture

On Thursday, October 28, 2004, just before the last presidential election on November 2, 2004, the Service Employees International Union, Local #3, (“SEIU”), and individuals Rachel Canning and Velvet Hazard, filed a complaint and a motion for temporary restraining order and preliminary injunction against Mt. Lebanon and the Township of Monroeville seeking to prevent them from enforcing their respective ordinances regulating door to door solicitation and canvassing within their boundaries. Plaintiffs were part of a massive get out the vote campaign, and were planning on working various municipalities in Allegheny County on the weekend preceding the election to hand out literature, encourage voting and help voters identify their proper

polling places. According to the complaint, both municipalities allegedly had enacted licensing permit and registration ordinances governing door to door residential solicitation and canvassing and imposed fines for non-compliance, which substantially impacted the exercise of their First Amendment right of free speech.

Monroeville

According to Plaintiffs' complaint, Monroeville's Municipal Ordinance, Chapter 282, "Peddling and Soliciting," prohibited canvassing before 9:00 am and after 5:00 pm, required applicants to obtain a license from the police department, supply personal information and two forms of identification plus two photographs, pay the requisite fees, and wait between two and five days for a license to be granted if the applicants pass the required verification and criminal background check. Complaint, ¶¶ 17-22. Canvassers or solicitors for certain charitable, political and other non-profit organizations are subject to less demanding registration procedures. Complaint, ¶¶ 22, 26. Additionally, approved solicitors or canvassers must honor "no solicitation" signs posted by any residents. Complaint, ¶ 28. Plaintiffs assert that Ms. Canning contacted Monroeville's Police Department on October 27, 2004, and that the police chief's secretary advised her that every individual canvasser must personally come to the station and obtain a permit, supply personal information and bring two forms of identification plus two photographs, pay \$10.00 per person and \$50.00 a week per group, and wait between two and five days for a permit to be granted if the applicants pass the required verification and criminal background check. Complaint, ¶ 30.

Mt. Lebanon

As to Mt. Lebanon, Plaintiffs' complaint asserts that Part 3 of its Municipal Code,

“Solicitation,” requires applicants to submit a sworn application for a permit, pay a fee of \$50.00 for a required criminal background check of the applicants, wait up to five days for the police chief to approve the permit after verifying the information submitted, and go individually in person to the police station with photo identification and information about where and when they will be going door to door in Mt. Lebanon. Complaint, ¶¶ 31-37. The complaint avers there are no exceptions made for charitable, religious or political organizations, that the police chief will issue the permit if the information supplied is accurate. Complaint, ¶ 32. Plaintiffs further allege that Ms. Canning contacted Mt. Lebanon’s Police Department on October 27, 2004, and that “a woman named Yvette” informed her that every person who was to canvass must personally go to the station, provide names, addresses and photo identification, and list the time, date and place of their canvassing activity. Complaint, ¶ 38.

Viewing defendants’ ordinances as unlawful restrictions and prior restraints on speech, both facially and as applied, the Plaintiffs filed this action pursuant to 42 U.S.C. § 1983 seeking declaratory, immediate preliminary and permanent injunctive relief, costs and attorneys fees, and such other relief as the Court may deem appropriate.

Hearing

This Court directed defendants to file responses and briefs in opposition by the next morning (Friday, October 29, 2004), and the Court convened a hearing on Plaintiffs’ motion for injunctive relief. Monroeville represented that in fact, by its clear language, the permitting provisions of its ordinance did not apply to political canvassers who are not soliciting contributions, such as Plaintiffs, that such canvassing does not violate the Monroeville’s ordinance, and that Plaintiffs need not apply for a permit. Monroeville and Plaintiffs entered a consent order reflecting Monroeville’s interpretation of its ordinance, dismissing Monroeville as a

party, and specifying that the consent order “did not address the constitutionality of whether a municipality can require charitable or political organizations who seek contributions to preregister and/or obtain a permit.” Monroeville Consent Order (document No. 6) at ¶ 7.

Mt. Lebanon responded that its current ordinance for solicitation and canvassing had been amended in December 2002 to cure the unconstitutional infringement on free speech recognized by the Supreme Court of the United States, *Watchtower Bible and Tract Society of New York, Inc., v. Village of Stratton*, 536 U.S. 150 (2002). It also pointed out that, by its clear language, many of the provisions about which Plaintiffs complained regulated only “solicitors” who seek money donations or payments, as that term is defined, and that plaintiffs are considered “canvassers,” as that term is defined, who are subject to significantly less regulation than solicitors.

After an all day conciliation conference, Mt. Lebanon and Plaintiffs finally achieved a compromise consent order that would permit the SEIU and individual canvassers to work the Mt. Lebanon area through the weekend and up until the election on Tuesday, while preserving their request for permanent injunctive relief and constitutional challenge to its ordinances, by way of cross motions for summary judgment with no additional discovery. Mt. Lebanon Consent Order (document No. 7). Under this consent order, Plaintiffs averred they would not be seeking contributions or donations of any kind, but could accept offers of contribution or donation made by residents without prompting; that such canvassing “falls under the requirements of Chapter VIII, Part 3, Section 316 of the Municipal Code of Mt. Lebanon”; and that individual canvassers would not be required to appear in person at the police station but, instead, an SEIU supervisor at the staging area would compile a list of canvassers names and verify their identification for the Mt. Lebanon police department. Mt. Lebanon Consent Order at ¶¶ 3, 4. The Consent Order also provided that the Court retained jurisdiction to enforce its terms, and the Court made itself and

staff available over the weekend for judicial review or intervention in the event any problems developed with Plaintiffs' door to door, get out the vote efforts in Mt. Lebanon. The Court was not needed, apparently, and the canvassers were on the ground going door to door as anticipated.

III. Motions for Summary Judgment

As agreed and directed, cross motions for summary judgment were filed, and the constitutional issue is ripe for decision, namely, whether Mt. Lebanon's December 2002 amendment to its solicitation/ canvassing ordinance succeeded in its intent to craft regulations to comply with *Watchtower*. Stated otherwise, the Court must decide if *any* regulation of political or religious door to door speech can withstand scrutiny in the wake of *Watchtower*, for if Mt. Lebanon's relatively unobtrusive canvassing registration regulations herein are invalid, it is hard to imagine any such regulations that could withstand constitutional scrutiny. This Court does not believe *Watchtower* intended to go so far as to declare there can be *no regulation* of residential door to door speech consistent with the First Amendment, and the Supreme Court did not so hold.

Summary judgment under Fed.R.Civ.P. 56©) is appropriate “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” *Woodside v. School Dist. of Philadelphia Bd. of Educ.*, 248 F.3d 129, 130 (3d Cir. 2001), *quoting Foehl v. United States*, 238 F.3d 474, 477 (3d Cir.2001) (citations omitted). An issue of material fact is genuine only if the evidence is such that a reasonable jury could return a verdict for the non-moving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). "A factual dispute is material if it 'bear[s] on an essential element of the plaintiff's

claim,' and is genuine if 'a reasonable jury could find in favor of the nonmoving party.' "

Cloverland-Green Spring Dairies, Inc. v. Pa. Milk Mktg. Bd., 298 F.3d 201, 210 (3d Cir.2002) (quoting *Abraham v. Raso*, 183 F.3d 279, 287 (3d Cir.1999)) (alteration in original).

When the non-moving party will bear the burden of proof, the moving party's burden can be "discharged by 'showing' -- pointing out to the District Court -- an absence of evidence to support the non-moving party's case." *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). If the moving party has carried this burden, the burden shifts to the non-moving party who cannot rest on the allegations of the pleadings and must "do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986); *Petruzzi's IGA Supermarkets, Inc. v. Darling-Delaware Co.*, 998 F.2d 1224, 1230 (3d Cir. 1993). In deciding a summary judgment motion, a court must take the facts in the light most favorable to the nonmoving party, and must draw all reasonable inferences and resolve all doubts in their favor. *Doe v. County of Centre, PA*, 242 F.3d 437, 446 (3d Cir. 2001); *Woodside*, 248 F.3d at 130; *Heller v. Shaw Indus., Inc.*, 167 F.3d 146, 151 (3d Cir. 1999). Moreover, a district court may not make credibility determinations or engage in any weighing of the evidence at the summary judgment stage; instead, the non-moving party's evidence "is to be believed and all justifiable inferences are to be drawn in his favor." *Marino v. Industrial Crating Co.*, 358 F.3d 241, 247 (3d Cir. 2004), quoting *Liberty Lobby, Inc.*, 477 U.S. at 255.

IV. Discussion and Analysis

A. The Ordinance

In most relevant part, Mt. Lebanon's ordinance dealing with soliciting and canvassing provides:

PART 3
SOLICITATION

§301 Statement of Purpose. It is the purpose of this Part 3 to regulate Persons who Solicit or Canvass in the Municipality, whether on behalf of a charitable organization, a commercial enterprise, or otherwise.

§302 Permit Required. It shall be unlawful for any Person to Solicit in the Municipality without first obtaining a permit therefor as provided in this Part 3. It shall be unlawful for any Person to Canvass in the Municipality without first registering with the Police Department as provided in this Part 3.

§303 Definitions. When used in this Part 3, the following terms shall have the following meanings:

Canvasser: A Person who canvasses.

Canvass: To go from door-to-door in the Municipality, other than to “solicit” as defined in this Part 3, to hand pamphlets or other written material to an occupant of a residence, or to discuss with such occupant issues of public or religious interest.

* * *

Solicit: To go from door to door in the Municipality (i) soliciting contributions or pledges for contributions, or (ii) selling or attempting to sell subscriptions, products or services, or taking orders or attempting to take orders for subscriptions, products or services from or to an occupant of a residence.

* * *

§304 Application for Municipal Permit. Applicants for a Municipal Permit must file with the Police Department of the Municipality, a sworn application in writing on a form to be furnished by the Municipality, which shall give the following information [described in nine subparagraphs]

* * *

305.2 An application for a Municipal Permit shall be approved or rejected within a period of five (5) days from the date it is submitted. If an application for a Municipal Permit is rejected, the Chief of Police shall set forth the reasons therefor in writing.

* * *

§306 Fees. The fee for each Municipal Permit shall be \$50.00 . . .

* * *

§310 Violations. Any Person who violates any provision of this Part 3 shall, upon conviction thereof, be subject to a fine not to exceed Three Hundred Dollars (\$300.00). Each day that a violation occurs or is committed shall constitute a separate offense. Violations may also result in the revocation of the violator's Municipal Permit, as specified in Section 311 below.

* * *

§315 Posting of Signs. A property owner or his authorized agent may post a sign on his residence reading "No Solicitation" or "No Evening Solicitation." Such signs shall be displayed as close as possible to the front door of the residence. For purposes of this Section 315, "No Evening Solicitation" shall mean no Solicitation before 9:00 A.M. or after 5:00 P.M.

§316 A Canvasser must register with the Police Department of the Municipality and shall provide the following information in writing:

316.1 The name and the home address of the individual or individuals who will be canvassing in the Municipality.

316.2 The dates and hours during which the individual(s) will canvass in the Municipality.

316.3 The locations in which the individual(s) will canvass in the Municipality.

316.4 The individual(s) must present photo identification at the time of registration.

B. The Legislative History

As noted, Mt. Lebanon amended its soliciting and canvassing ordinance in December, 2002, in response to *Watchtower* (decided in June, 2002), in an attempt to conform its regulations to the constitutional mandate expressed therein. Among other differences, the previous ordinance had made no distinction between canvassers and solicitors.

Mt. Lebanon's memorandum in opposition to a TRO or preliminary injunction (Document No. 4) attaches the Affidavit of Stephen M. Feller, the Manager of Mt. Lebanon since prior to the

2002 amendment, which in turn attached several exhibits regarding that amendment, including the transcript and minutes of the public hearing on November 25, 2002 and certain materials about crimes committed by people posing as canvassers and solicitors obtained by Mt. Lebanon Police Chief Tom Ogden from an internet law enforcement site dedicated to tracking such crimes. At the public hearing, the Mt. Lebanon Commissioners introduced Bill No. 21-02, the proposed amendment the Commissioners and the solicitor believed was necessary to comply with the *Watchtower* decision.

Police Chief Ogden presented the police department's concerns about completely unfettered canvassing, and described actual burglaries and violent crimes against the person that had been committed in Mt. Lebanon and in neighboring communities, and stated his belief that a registration requirement would assist police in keeping track of those canvassers who are supposed to be in the area, which would help them know who was not. He described the canvassing and solicitation requirements as an important tool, one which would permit police to ask persons who they were if they were reported by a citizen for violating an ordinance, and they could then check that out immediately. A resident also spoke about an incident wherein he asked a solicitor for his permit, and when the permit description did not match the resident's observations, he called the police who issued a citation to the solicitor.

It is undisputed that the amendment to Mt. Lebanon's solicitation/ canvassing ordinance was predicated on its efforts to balance the needs of its citizens in preventing crime with the First Amendment interests recognized and protected by *Watchtower* – whether that effort was successful remains to be seen.

C. Governing Law

Recently, in considering the constitutionality of local ordinances regarding canvassing and

solicitation, the United States District Court for the District of New Jersey set out the following comprehensive standards of review:

. . . [A]lthough canvassing and solicitation are protected activities under the First Amendment, it does not follow that such activities are immune from any form of governmental regulation. In determining whether a certain restriction on speech passes First Amendment muster, a court must first look at whether the regulation in question is content-based or content-neutral. This determination will then dictate the standard of review the court must use in analyzing the facts presented.

Within the purview of the First Amendment, courts have had little tolerance for those regulations based on the content of the speech in question." [The Supreme] Court has held time and time again: 'Regulations which permit the government to discriminate on the basis of the content of the message cannot be tolerated under the First Amendment.' " . . . When the regulation at issue is content-based, "that regulation is subject to 'the most exacting scrutiny.'" . . . Courts will only uphold a content-based regulation in the rare instance when the regulation meets the demanding standards of strict scrutiny. . . . To meet this exacting standard, a court must find that the regulation is: (1) necessary to serve a compelling state interest; and (2) narrowly drawn to achieve that end. . . .

By contrast, if the government regulation restricts speech in a content-neutral manner--such as a time, place and manner regulation--the restriction need only meet the level of intermediate scrutiny. *Ward v. Rock Against Racism*, 491 U.S. 781, 790-791 (1989) ; *Phillips*, 107 F.3d at 172 ("Regulations of speech that are regarded as content- neutral ... receive 'intermediate' rather than this 'exacting' or 'strict' scrutiny") (citations omitted).

Activities like those at issue in this action can be "subject to reasonable time, place, and manner restrictions." *Heffron*, 452 U.S. at 647 (citation omitted); *Ward*, 491 U.S. at 790-791. For a time, place and manner restriction to be valid, it must meet three criteria: (1) the restrictions must not make any reference to the content of the regulated speech; (2) the restrictions must serve a significant government interest; and (3) the restrictions must "leave open ample alternative channels for communication of the information." *Heffron*, 452 U.S. at 647-648 (citations omitted); *Phillips*, 107 F.3d at 172.

Therefore, the Court must first determine whether the Ordinance in this case is content-based or content-neutral and then apply the appropriate standard of review.

C. Determining Whether a Regulation is Content- Based

The principal inquiry in determining whether a regulation is content-neutral or content-based, particularly when addressing time, place, manner restrictions, "is whether the government has adopted a regulation of speech because of disagreement with the message it conveys." *Ward*, 491 U.S. at 791 . . .(citing *Clark v. Comm. for Creative Non-Violence*, 468 U.S. 288, 295 (1984)). "If the purpose behind the regulation is unrelated to the content of the expression, the regulation will be deemed neutral even if it has an 'incidental effect' on some speakers and not on others." *New Jersey Freedom Org. v. City of New Brunswick*, 7 F.Supp.2d 499, 506 (D.N.J.1997) (citation omitted). Therefore, the Court must look to the purported purpose behind the regulation and determine whether it is related to the content of the expression.

New Jersey Environmental Federation v. Wayne Township, 310 F.Supp. 2d 681, 691-93 (D.N.J. 2004) (parallel and certain other citations omitted) (holding that provision of ordinance imposing permit requirement on political, religious, charitable, and nonprofit canvassers who asked for donations as part of their door-to-door canvassing activities was content-based regulation that violated First Amendment; even if ordinance's permit requirement was content-neutral, it was not valid time, place, and manner restriction; and ordinance violated First Amendment by imposing impermissible prior restraint on speech).

To meet the strict scrutiny standard that is applicable to content-based regulations of speech, regulation must be (1) necessary to serve a compelling state interest, and (2) narrowly drawn to achieve that end. *U.S. Sound & Service, Inc. v. Township of Brick*, 126 F.3d 555, 558 (3d Cir. 1997), citing *Sable Communications, Inc. v. FCC*, 492 U.S. 115, 126 (1989). The New Jersey District Court found that Wayne Township's ordinance was not content-neutral, because it exempted certain categories of canvassers solely on the basis of the content of their messages (e.g., political campaigning), and so applied strict scrutiny to the ordinance and found it wanting by that standard. *Wayne Township*, 310 F.Supp. 2d at 694-95.

Where regulation is content- neutral, the court applies an intermediate standard. “Regulations of speech that are regarded as content -neutral . . . receive ‘intermediate’ . . . scrutiny. This includes regulations that restrict the time, place and manner of expression in order to ameliorate undesirable secondary effects of . . .” the speech or expression. *Phillips v. Borough of Keyport*, 107 F.3d 164, 172 (3d Cir. 1997), citing *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986). “The test usually applied in First Amendment cases to content-neutral regulation requires an examination of whether the regulation is "narrowly tailored to serve a significant governmental interest" and "leave[s] open ample alternative channels for communication." *Bartnicki v. Vopper*, 200 F.3d 109, 123 (3d Cir. 1999), quoting *Clark v. Community for Creative Non-Violence*, 468 U.S. 288, 293, 104 S.Ct. 3065, 82 L.Ed.2d 221 (1984); *Phillips*, 107 F.3d at 172. (“reasonable time, place, and manner regulations of protected speech are valid if: (1) they are justified without reference to the content of the regulated speech; (2) they are narrowly tailored to serve a significant or substantial government interest; and (3) they leave open ample alternative channels of communication.”).

Mt. Lebanon’s Canvassing Ordinance Is Content-Neutral

Plaintiffs assert that “Mt. Lebanon’s registration requirement for ‘canvassers’ is content based . . . [because] it applies only to canvassers who want to ‘discuss with such occupant issues of public or religious interest . . . ,’” and so should be subjected to strict scrutiny. Memorandum of Law in Support of Plaintiffs Motion for Summary Judgment, at 7. On its face and as applied, this “canvassing registration requirement”¹ is content neutral. This requirement applies to all persons who go door to door “to hand pamphlets or other written material to an occupant of a residence, or

¹ The canvassing provisions Plaintiffs appear to be challenging are section 303, the definition section, and section 316, the registration requirement for canvassers.

to discuss with such occupant issues of public or religious interest,” and who are not “solicitors,” as that term is defined in section 303 (*i.e.*, those persons “soliciting contributions or pledges for contributions, or (ii) selling or attempting to see subscriptions, products or services, or taking orders or attempting to take orders for subscriptions, products or services from or to an occupant of a residence.”).

By the plain meaning of section 303, the Court rejects Plaintiffs hyper technical argument that “in order to determine whether a person must register, it is necessary to know what they plan to say going door to door.” Plaintiffs Memorandum, at 8. Section 316 requires registration of all persons who are not soliciting but who are going door to door “to hand pamphlets or other written material to an occupant of a residence, or to discuss with such occupant issues of public or religious interest,” wholly without regard to “what they plan to say,” *i.e.*, the **content** of the speech. Perhaps this provision exempts from its reach those persons who go to a neighbor’s or friend’s home to discuss some private matter, but that goes to the *character* of the speech, not its content, and in any event is consistent with concern expressed in *Watchtower* that a canvassing regulation might sweep so far as to include such purely private or neighborly speech. 536 U.S. at 167-68. A regulation that serves purposes unrelated to the content of expression is deemed neutral, even if it has an incidental effect on some speakers or messages but not others. *See Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 47-48 (1986).

Intermediate Scrutiny

Since section 315 is not content-based, it is subjected to intermediate scrutiny, and this Court must determine whether it (1) serves “significant government interests,” and (2) leaves ample room open for alternative channels of communication of the information. This level of

scrutiny does not permit the Court to make its judgment about what means or regulations might *best* serve those legitimate interests, or whether *better* means exist, as the Supreme Court of the United States explained in *Ward v. Rock Against Racism*, 491 U.S. 781 (1989), as follows:

The Court of Appeals erred in sifting through all the available or imagined alternative means of regulating [the problem] in order to determine whether the city's solution was 'the least intrusive means' of achieving the desired end. This 'less-restrictive-alternative analysis ... has never been a part of the inquiry into the validity of a time, place, and manner regulation.' *Regan v. Time, Inc.*, 468 U.S. 641, 657 (1984) (opinion of WHITE, J.). Instead, our cases quite clearly hold that restrictions on the time, place, or manner of protected speech are not invalid 'simply because there is some imaginable alternative that might be less burdensome on speech.' *United States v. Albertini*, 472 U.S. 675, 689 (1985).

Lest any confusion on the point remain, we reaffirm today that a regulation of the time, place, or manner of protected speech must be narrowly tailored to serve the government's legitimate, content-neutral interests but that it need not be the least restrictive or least intrusive means of doing so. . . . So long as the means chosen are not substantially broader than necessary to achieve the government's interest, however, the regulation will not be invalid simply because a court concludes that the government's interest could be adequately served by some less-speech-restrictive alternative. 'The validity of [time, place, or manner] regulations does not turn on a judge's agreement with the responsible decisionmaker concerning the most appropriate method for promoting significant government interests' or the degree to which those interests should be promoted. *United States v. Albertini*, 472 U.S., at 689

Ward, 491 U.S. at 798-99 (parallel and certain other citations omitted).

Mostly, but not exclusively, in reliance on the decision of the Supreme Court of the United States in *Watchtower*, Plaintiffs assert that Mt. Lebanon's ordinance creates impermissible barriers to their free exercise of quintessential protected speech, political speech. All along the *Watchtower*, the Justices kept the view that a municipal ordinance prohibiting "'canvassers' and others from 'going in and upon' private residential property for the purpose of promoting any

‘cause’ without first having obtained a permit” from the mayor's office was an impermissible infringement on core political and religious speech. *Id.* at 154. The ordinance required completion of a fairly lengthy and detailed application to obtain a permit, including a description of the applicant’s residence for the last five years, and listing every residence the applicant intended to canvas. *See id.* at 155 n. 2. It also required a canvasser to "carry the permit upon his person and exhibit it whenever requested to do so by a police officer or by a resident." *Id.* at 155. The Village of Stratton charged no fee and there was no apparent waiting period in obtaining a permit once an application had been made.

In *Watchtower*, the Supreme Court recognized the legitimate “interests a town may have in some form of regulation, particularly when the solicitation of money is involved,” but demanded the appropriate “balance between these interests and the effect of the regulations on First Amendment rights.” 536 U.S. at 162-63. The Court reiterated that crime prevention was a “legitimate interest served by these ordinances and noted that ‘burglars frequently pose as canvassers, either in order that they may have a pretense to discover whether a house is empty and hence ripe for burglary, or for the purpose of spying out the premises in order that they may return later.’ 536 U.S. at 163, *quoting and reaffirming Martin v. City of Struthers*, 319 U.S. 141, 144 (1943). Nevertheless, the Village of Stratton was unable to justify its ordinance on the basis of crime prevention because it had never presented any evidence to the trial court that it had been motivated out of such concern when it enacted its regulations on canvassing and solicitation. 536 U.S. at 169.

Plainly, the Supreme Court did not prohibit *all* regulation of door to door canvassers or solicitors, and it reaffirmed that *some regulation* is permissible if narrowly drawn to further

compelling local interests. 536 U.S. at 162-63. See *Wayne Township*, 310 F.Supp. 2d at 691 (“although canvassing and solicitation are protected activities under the First Amendment, it does not follow that such activities are immune from any form of governmental regulation.”). The Court did not, however, accept the Village of Stratton’s after-the-fact justifications for its ordinance, *i.e.*, protecting the privacy interests of the community and preventing crime, because these interests were not advanced in the district court and there was no evidence in the record that these concerns motivated the ordinance. 536 U.S. at 169.

Here, by contrast, Mt. Lebanon explicitly considered evidence of crimes presented by Police Chief Tom Ogden at the Commissioners’ public hearing on November 25, 2002, regarding serious violent crimes and burglaries in Mt. Lebanon, neighboring communities, and nationally.

Also, the canvassing registration regulations at issue herein are far less restrictive than those in *Watchtower*, or in the post-*Watchtower* cases cited by Plaintiffs. *Wayne Township*, (solicitors of donations required to submit detailed information to police chief who could deny permit if he was not satisfied with the “bona fides” of the organization or group or the ‘good moral character’ of the applicants); *Ohio Citizen Action v. City of Mentor-on-the-Lake*, 272 F.Supp.2d 671 (N.D.Ohio 2003) (solicitors of donations required to provide fingerprints, criminal background, and submit to photographs if requested).

By contrast, canvassers in Mt. Lebanon need only go to the station with photo ID, and sign in with the police department, stating the times when, and general locations within the community wherein, they will solicit. If this registration requirement is unconstitutional, as Plaintiffs vigorously maintain, then *every canvassing* registration requirement would most likely be unconstitutional, for it is difficult to think of less intrusive registration requirements than these. This Court does not believe this is what the Supreme Court had in mind in *Watchtower*, and it certainly is not what that

Court held.

D. Standing

Plaintiffs challenge the solicitation provisions of the Mt. Lebanon code, arguing that they have “expanded standing” in First Amendment cases to challenge even provisions which do not apply to them. The Court declines the invitation to go beyond review of the provisions which affect Plaintiffs, the canvassing registration provisions, and to issue an advisory opinion on the validity of the solicitation provisions, in the absence of any concrete injury in fact to these Plaintiffs caused by those provisions sufficient to create a justiciable "case or controversy" under Article III of the Constitution. *See Ernst v. Child and Youth Services of Chester County*, 108 F.3d 486, 599 (3d Cir. 1997). These Plaintiffs are *not* soliciting and have no plans to do so; thus, they are impacted only by the canvassing provisions, and the Court limits its review to those provisions.

V. Conclusion

The Court concludes that the Municipality of Mt. Lebanon struck an appropriate balance between the legitimate safety interests of its residents in effective crime prevention and the legitimate interests of all citizens in participation in the marketplace of ideas through political, religious and other public discourse with fellow citizens via the time-honored tradition of door-to-door canvassing. Section 316 of Mt. Lebanon’s code regulating canvassing of its residents is narrowly tailored to serve a significant governmental interest, and it does not appreciably curtail the door-to-door channel of communication available to canvassers.²

² Plaintiffs do not challenge the provisions of ordinance prohibiting canvassers from soliciting where residents have posted “no solicitation” signs, or restricting the hours for canvassing.

Accordingly, summary judgment will be entered in favor of the Municipality of Mt. Lebanon and against Plaintiffs.

Arthur J. Schwab
United States District Judge

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04cv1651

v.

MUNICIPALITY OF MT. LEBANON,

Defendants.

ORDER OF COURT

AND NOW, this 9th day of December, 2004, IT IS HEREBY ORDERED that Plaintiffs motion for summary judgment (Document No. 12) is **DENIED**, and defendant Municipality of Mt. Lebanon's motion for summary judgment (Document No. 14) is **GRANTED**.

IT IS FURTHER ORDERED that judgment is entered in favor of defendant.

Arthur J. Schwab
United States District Judge

cc: All counsel of record as listed below

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