



FROM: Witold J. Walczak, Legal Director

TO: Pennsylvania municipal officials and police chiefs; door-to-door canvassing groups.

RE: Warning about unconstitutional restrictions on door-to-door canvassing

DATE: September 18, 2018

Eastern Region Office
PO Box 60173
Philadelphia, PA 19102
215-592-1513 T
215-592-1343 F

Central Region Office
PO Box 11761
Harrisburg, PA 17108
717-238-2258 T
717-236-6895 F

Western Region Office
PO Box 23058
Pittsburgh, PA 15222
412-681-7736 T
412-681-8707 F

The American Civil Liberties Union of Pennsylvania (“ACLU”) has received complaints about municipal interference with door-to-door canvassers. Many of the complaints arise in the context of election-related activities and, more specifically, get-out-the-vote (“GOTV”) efforts. The ACLU is issuing this memorandum because outdated, unconstitutional ordinances restricting door-to-door canvassing abound throughout the Commonwealth. We hope this guidance, and the accompanying FAQ, will help canvassers know their rights and alert municipal officials to the limits of their authority to regulate or interfere with canvassers. We also hope to avoid expensive and time-consuming litigation, especially since GOTV efforts will likely increase as the November election draws near.

The law is clear: virtually all of the municipal interference with and restrictions on non-commercial door-to-door canvassers violates the First Amendment.¹ Requirements that canvassers secure permits, pre-register, provide advance notice to police, pay a fee, undergo criminal background checks, submit to fingerprint checks, wear identification badges, or refrain from canvassing at any point between 9:00 a.m. and 9:00 p.m. seven days a week are unconstitutional restraints on free expression.

In 2002, the U.S. Supreme Court decided *Watchtower Bible & Tract Society v. Village of Stratton* (“*Watchtower*”), ruling that a municipal ordinance prohibiting any “canvassers, solicitors, peddlers, hawkers, itinerant merchants or transient vendors” from “going in and upon private property ... without first registering in the office of the Mayor and obtaining a Solicitation Permit” was overbroad and violated the First Amendment’s free-speech guarantees.² The Court, in an 8-1 vote, reasoned that an ordinance requiring a person or group to give advance notice before discussing important issues of the day with friends and neighbors is “offensive — not only to the values protected by the First Amendment, but to the very notion of a free society” and

¹ The term “non-commercial” canvassers, also sometimes referred to as “charitable solicitors,” refers to people who do not have a commercial purpose, i.e., they are not selling goods or services. Non-commercial canvassing typically involves political, environmental or religious groups. Charitable solicitors may ask for donations, but the money is used to pay membership dues or support the organization’s political or religious work. GOTV canvassers are non-commercial.

² 536 U.S. 150, 165-66 (2002).

is incompatible with our “national heritage and constitutional tradition.” The Court recognized that the Village’s proffered justifications for the ordinance — namely, fraud prevention, crime prevention, and protecting residential privacy — were “important,” but concluded they did not, and could not, justify the burden on free speech imposed by the permitting system.

In 2006, the ACLU won a lawsuit on behalf of political GOTV canvassers who challenged a municipal pre-registration requirement. *See Service Employees Int’l Union v. Municipality of Mt. Lebanon* (“*SEIU*”).³ In *SEIU*, the U.S. Third Circuit Court of Appeals declared that even a minimally burdensome “registration,” or advance-notice, requirement prior to people canvassing door to door violates the First Amendment. As typically occurs in civil rights cases, the court forced the municipality to pay the ACLU’s litigation fees and costs, which totaled about \$65,000.

The Third Circuit’s decisions are binding in Pennsylvania, New Jersey, and Delaware. Many cases have followed *Watchtower* and *SEIU*⁴; none have overruled them. Consequently, any requirement that canvassers provide advance notice to, or share background information with, the municipality violates the First Amendment.

The law is also clear that municipal curfews that limit canvassers’ right to go door to door seven days a week (including on a Sabbath or Holiday), from 9:00 a.m. to 9:00 p.m., violate the First Amendment.⁵ Even though it should be obvious that if a simple pre-registration requirement is unconstitutional, then more burdensome restrictions like criminal background checks and fingerprint requirements are also unconstitutional, at least one court recently was forced to rule directly on these restrictions.⁶

³ 446 F.3d 419 (3d Cir. 2006).

⁴ *See, e.g., Ohio Citizen Action v. City of Englewood*, 671 F.3d 564 (6th Cir. 2012); *N.J. Env’tl. Fed’n v. Wayne Twp.*, 310 F. Supp. 2d 681 (D.N.J. 2004); *Ohio Citizen Action v. City of Mentor-On-The-Lake*, 272 F. Supp. 2d 671 (N.D. Oh. 2003); *N.Y. Youth Club v. Town of Harrison*, 150 F. Supp. 3d 264 (S.D.N.Y. 2015); *United States Mission Corp. v. City of Mercer Island*, 2015 U.S. Dist. LEXIS 16193, 2015 WL 540182 (W.D. Wash. 2015); *N.J. Env’tl. Fed’n v. Monroe Twp.*, 2008 U.S. Dist. LEXIS 64008 (D.N.J. 2008).

⁵ *See, e.g., Ohio Citizen Action v. City of Englewood*, 671 F.3d 564 (6th Cir. 2012); *Watseka v. Illinois Public Action Council*, 796 F.2d 1547 (7th Cir. 1986), *aff’d*, 479 U.S. 1048 (1987); *New Jersey Citizen Action v. Edison Township*, 797 F.2d 1250 (3d Cir. 1986); *Wisconsin Action Coalition v. Kenosha*, 767 F.2d 1248 (7th Cir. 1985); *ACORN v. Frontenac*, 714 F.2d 813 (8th Cir. 1983); *Citizens Action Coalition of Ind., Inc. v. Town of Yorktown*, 58 F. Supp. 3d 899, 2014 U.S. Dist. LEXIS 141158 (S.D. Ind. 2014); *N.J. Env’tl. Fed’n v. Wayne Twp.*, 310 F. Supp.2d 681 (D.N.J. 2004); *Ohio Citizen Action v. City of Mentor-On-The Lake*, 272 F. Supp.2d 671 (N.D. Ohio 2003).

⁶ *N.Y. Youth Club v. Town of Harrison*, 150 F. Supp. 3d 264, (S.D.N.Y. 2015) (fingerprint and background check requirements unconstitutional)

Homeowners (or tenants) can refuse door-to-door canvassers by placing “no soliciting” or “no canvassing,” signs in their yards or on their front doors. Such signs are constitutional because the homeowner is making the decision about whether to welcome canvassers; the government plays no role in the homeowner’s decision.

We hope this letter, and the accompanying FAQ, will help canvassers and municipal officials avoid litigation. If, however, canvassers encounter any of the unconstitutional restrictions discussed above and are unable to resolve the problem informally, please contact the ACLU by completing this [complaint form](#). We are prepared to take prompt action, including federal court litigation, to overcome any unconstitutional obstacles municipalities continue to enforce. Thank you.