

Englewood sets 6 p.m. curfew on door-to-door solicitors

A nonprofit group says it violates free speech.

By [Doug Page](#), Staff Writer

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ENGLEWOOD — A federal judge says you have the right to eat your dinner without interruption from those going door-to-door attempting to sell you something.

But that ruling, which is being appealed, has touched a nerve among those who say it violates the First Amendment right of free speech.

The court's validation of Englewood's 6 p.m. curfew on door-to-door solicitors has other Miami Valley cities considering the same — if it survives future legal challenges.

"If it stands, we would take it to the council with a strong recommendation," said Greg Horn, Centerville city manager.

"It is of national importance," Lynette Dinkler, one of the Englewood's attorneys, said of the Feb. 16 ruling by U.S. District Judge Walter H. Rice. "The citizens' privacy and safety concerns are being recognized by the court."

There's the rub. Ohio Citizen Action, a nonprofit environmental and political advocacy group, has filed a notice that it intends to take Rice's decision to the 6th U.S. Circuit Court of Appeals. The group contends in its 2005 lawsuit that Englewood's ordinance violates the group's First Amendment rights.

While Rice upheld portions of the city's ordinance — including the curfew — as constitutional, he struck down some aspects of its do-not-solicit list and the licensing of solicitors.

One upshot is that young people who go door to door selling candy bars, cookies, discount cards or the like for school fundraisers will now need a license. Previously the city exempted those 17 and younger — often students selling candy for ball teams or school clubs — from the licensing requirements.

"It is interesting that candy bars were exempt, but not the grass-roots work of democracy," University of Dayton law professor Richard Sapphire said about the original ordinance.

Thin Mints vs. privacy

The city argued it needed its ordinance to protect the privacy of its residents. But in requiring licenses for those older than 17 — and not those 17 and younger — Rice held that the city wasn't being consistent.

“If protecting the privacy of its residents is a significant interest, the city has presented no justification for why residents would find visits from juvenile solicitors any less annoying or less of an invasion of their privacy than visits by older solicitors,” Judge Rice wrote.

Karen Wolford, region director of the Girl Scouts of USA, Western Ohio Region, said the ruling won't hurt her group.

Door-to-door “is not our primary method of selling anymore,” she said. “Direct sales — at the supermarket, online, over the phone — make up more than 60 percent of our sales of Girl Scout cookies.”

Rice's decision to uphold the curfew, however, does impact Ohio Citizen Action. Halting door-to-door solicitations at 6 p.m. makes it impossible to continue its political and environmental mission, according to attorney Ed Icove.

“We would no longer be able to exist,” said Icove. “We have to be able to see people, but the people who live there are at work.”

The city argued the main thrust of Citizen Action's door-to-door activities was fundraising, often from seniors.

UD's Saphire said the law must balance the rights of citizens against the rights of municipalities to regulate activities. In First Amendment cases, he said, that balance often tilts toward free speech.

Burden on police

In upholding the curfew, Rice found merit in the city's argument that allowing solicitors after dark placed too much of a burden on police officers, who are needed to deal with more meaningful crime.

He also noted that citizens today are naturally more fearful of strangers. “Citizens are living in more fearful times now than ever before, in large part due to the after-effects of the incidents of September 11, 2001,” he wrote.

But Icove said upholding the curfew is like barring founding father Thomas Paine from distributing his famed pamphlets that roused the citizenry against the British rule of the colonies. “I'm sure the British would have wanted a curfew,” he said. “The government is intervening in core political speech. It should be left to the individual whether or not they answer the door. The courts have always held the rights of those who want to listen outweigh the rights of those who do not.”

Other cities

Centerville's Horn said the city has been following the case. The city prohibits soliciting in residential areas, but exempts nonprofits.

“Most of our headaches come from residents troubled by a knock on the door after dark,” he said. “Our attorney tells us the case law is so sketchy on what we can and cannot do. We're keenly interested to see if this reasonable approach is accepted.”

Miamisburg, like most communities, has a solicitation ordinance. It is one of the few with a curfew: no solicitation from sundown to 9 a.m. on Sundays and holidays. Passed in 2004, the city was advised to suspend enforcement when OCA filed its suit against Englewood in 2005, according to Chris Fine, city development director.

“We’re reviewing the decision to see what modifications are needed to our ordinance,” he said.

Vandalia does not have a solicitation ordinance, but City Manager Jeff Hoagland said he has followed the case.

“It could have a profound effect in Ohio,” he said. “A lot of people don’t like soliciting. If it is upheld, you’ll see more cities going to a curfew.”

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