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First Amendment and the rest of the Bill of Rights. (From the public domain.) Some statutes are unconstitutional on their face. When a facial challenge against a statute is made on First Amendment grounds, one good case to cite is Watchtower Bible & Tract Soc'y of N.Y., Inc. v. Vill. of Stratton, 536 U.S. 150 (2002). Watchtower Bible invalidates ordinances that require people and organizations to register with the government before they may solicit door-to-door. In Watchtower, the Supreme Court said that: "The breadth and unprecedented nature of this regulation does not alone render the ordinance invalid. Also central to our conclusion that the ordinance does not pass First Amendment scrutiny is that it is not tailored to the Village's stated interests. Even if the interest in preventing fraud could adequately support the ordinance insofar as it applies to commercial transactions and the solicitation of funds, that interest provides no support for its application to petitioners, to political campaigns, or to enlisting support for unpopular causes. The Village, however, argues that the ordinance is nonetheless valid because it serves the two additional interests of protecting the privacy of the resident and the prevention of crime. "With respect to the former, it seems clear that §107 of the ordinance, which provides for the posting of 'No Solicitation' signs and which is not challenged in this case, coupled with the resident's unquestioned right to refuse to engage in conversation with unwelcome visitors, provides ample protection for the unwilling listener. Schaumburg, 444 U.S. at 639 ([T]he provision permitting homeowners to bar solicitors from their property by posting [no solicitation] signs ... suggest[s] the availability of less intrusive and more effective measures to protect privacy'). The annoyance caused by an uninvited knock on the front door is the same whether or not the visitor is armed with a permit. "With respect to the latter, it seems unlikely that the absence of a permit would preclude criminals from knocking on doors and engaging in conversations not covered by the ordinance. They might, for example, ask for directions or permission to use the telephone, or pose as surveyors or census takers. See n. 1, supra. Or they might register under a false name with impunity because the ordinance contains no provision for verifying an applicant's identity or organizational credentials. Moreover, the Village did not assert an interest in crime prevention below, and there is an absence of any evidence of a special crime problem related to door-to-door solicitation in the record before us." The Watchtower Bible majority opinion garnered six of nine votes, with Justices Scalia filing a concurring opinion with which Justice Thomas joined, and with the late Chief Justice Rehnquist as the only dissenter. Both due to the language and voting lineup of Watchtower Bible, the Supreme Court should not be expected to deviate from the opinion for a long time. Jon Katz.

Posted by Jon Katz in First Amendment at 00:30