SUPREME COURT OF THE UNITED STATES

No. 00–1737

WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., ET AL., PETITIONERS *v.* VILLAGE OF STRATTON ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

[June 17, 2002]

JUSTICE SCALIA, with whom JUSTICE THOMAS joins, concurring in the judgment.

I concur in the judgment, for many but not all of the reasons set forth in the opinion for the Court. I do not agree, for example, that one of the causes of the invalidity of Stratton's ordinance is that some people have a religious objection to applying for a permit, and others (posited by the Court) "have such firm convictions about their constitutional right to engage in uninhibited debate in the context of door-to-door advocacy, that they would prefer silence to speech licensed by a petty official." *Ante*, at 16.

If a licensing requirement is otherwise lawful, it is in my view not invalidated by the fact that some people will choose, for religious reasons, to forgo speech rather than observe it. That would convert an invalid free-exercise claim, see *Employment Div., Dept. of Human Resources of Ore.* v. *Smith,* 494 U. S. 872 (1990), into a valid free-speech claim—and a more destructive one at that. Whereas the free-exercise claim, if acknowledged, would merely exempt Jehovah's Witnesses from the licensing requirement, the free-speech claim exempts *everybody*, thanks to Jehovah's Witnesses.

As for the Court's fairy-tale category of "patriotic citizens," *ante*, at 16, who would rather be silenced than

licensed in a manner that the Constitution (but for their "patriotic" objection) would permit: If our free-speech jurisprudence is to be determined by the predicted behavior of such crackpots, we are in a sorry state indeed.